

BY EMAIL: jstevenson@osc.gov.on.ca;
consultation-en-cours@lautorite.qc.ca



February 22, 2013

Ontario Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
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 Territory
Superintendent of Securities, Nunavut

Attention: Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto ON, M5H 3S8

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

Dear Sirs/Mesdames:

RE: CSA Consultation Paper 33-403

AGF Investments Inc. (“**AGF**”) is writing to provide comments in respect of the Canadian Securities Administrators’ (“**CSA**”) Consultation Paper 33-403: *The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients*, as published on October 25, 2012 (the “**Consultation Paper**”).

AGF appreciates the opportunity provided by the CSA with respect to seeking stakeholder feedback on the consultation points raised in regard to the desirability and feasibility of introducing a statutory best interest duty for advisers and dealers in Canada.

Generally, AGF concurs with the submissions being made by the Investment Funds Institute of Canada (“**IFIC**”), in the comment letter they have submitted on the topic. Specifically, AGF takes this opportunity to emphasize the following opinions (some of which are similarly addressed by IFIC) with regard to the concept of imposing a statutory best interest standard for Canadian advisers/dealers:

- the lack of evidence relating to specific Canadian investor harm that the imposition of a statutory best interest standard would be addressing;
- the already robust (and evolving) framework that advisers/dealers in Canada operate within;
- the need for a clearer articulation of what “best” would mean for a statutory best interest standard;
- the potential costs for advisers/dealers and resulting impact on investors; and
- the potential for product sales arbitrage

Each of these points is addressed in further detail below.

Lack of Canadian-Specific Justification for a Statutory Best Interest Standard

AGF acknowledges the rationale for the CSA’s consideration of a statutory best interest standard for advisers/dealers in Canada in light of the adoption (or proposed adoption) of similar standards in the E.U., U.K., Australia and the U.S. That said, AGF agrees with IFIC’s assertion that the circumstances inducing these jurisdictions toward a statutory best interest standard (e.g. mis-selling issues in the U.K.; superannuation plan implications in Australia) do not resonate within the Canadian adviser/dealer environment.

Consequently, AGF does not necessarily agree with the suggestion in the Consultation Paper that the current Canadian suitability framework puts Canadians behind other jurisdictions in terms of investor protection. It could be argued that the market failures and deficiencies in regulatory framework that these other jurisdictions faced propelled (and required) them to advocate change within their statutory framework for their own advisers/dealers. This does not necessarily mean that Canada is lagging behind in terms of similar action, especially when the jurisdictional circumstances necessitating change are so different from Canada’s own experience.

In the Consultation Paper, the CSA has not articulated any specific harm that currently exists for investors in Canada that a statutory best interest standard for advisers/dealers would seek to address. In the absence of a specific harm, it is difficult to appreciate the added investor benefit of a statutory-imposed framework of fiduciary duty for advisers/dealers in Canada, especially when Canada’s regulatory framework already vigorously captures/governs the provision of investment advice to retail investors (as discussed further below).

Already Existing and Evolving Canadian Requirements for Advisers and Dealers

Notwithstanding that there is currently no specific statutory best interest standard in Canada, AGF submits that the duty already imposed on advisers/dealers to deal “fairly, honestly and in good faith” with investors (including suitability requirements, relationship disclosure, conflict disclosure, compensation disclosure, etc.) is arguably already akin to a best interest standard. In other words, AGF believes that investors are already well protected within the existing Canadian regulatory framework.

Further, and as addressed by IFIC in their comment letter, Canada’s regulatory framework is evolving further in the direction of achieving “best interest” requirements without specifically imposing a statutory best interest standard. New disclosure rules relating to client relationship disclosure reforms, as well as point-of-sale enhancements, are already underway with the CSA. AGF strenuously submits that a full assessment of whether or not a statutory best interest standard would add meaningfully to the present system must await completion (and resulting impact) of such initiatives.

Uncertainty as to the Meaning of “Best”

AGF agrees with IFIC’s assertion that the lack of definition in the Consultation Paper relating to what “best interest” means makes it difficult to fully understand and appreciate the rationale for the imposition of such a new statutory standard. AGF suggests that a clearer articulation of what “best interest” refers to is required before the need for a statutory best interest standard can be properly assessed amongst the various stakeholders. It would be useful for stakeholders to know, from the CSA’s perspective, what specific considerations are contemplated with respect to an adviser/dealer acting in an investor’s best interest. Are there certain factors that the CSA proposes would be a higher consideration than others?

Costs for Advisers/Dealers and Resulting Impact on Investors

Should the CSA adopt a statutory best interest standard for advisers/dealers, AGF believes that it is likely that the direct and indirect costs on advisers/dealers in changing their business operations to ensure adherence to the standard may be unduly onerous for many advisers/dealers with unintended negative effects for investors. It is arguable that the costs on advisers/dealers in adopting internal mechanisms for administering, recording and maintaining a set of “best interest” principles could lead to higher costs for the investor or force certain advisers/dealers out of business. As such, the statutory best interest framework could have the unintended consequence of limiting the options available to Canadian investors in seeking financial advice and add to the difficulties smaller investors face in accessing affordable financial advice. In light of the existing (and currently evolving) robust regulatory framework governing the provision of investment advice to retail investors, as referred to above, a clear understanding of such costs and their implications is fundamental.

Potential Product Sales Arbitrage

Finally, AGF submits that adoption of a statutory best interest standard for Canadian advisers/dealers will require a change to the current sales process and a change relative to the sale of other products on an adviser/dealer's shelf today. Rather than making that change, advisers/dealers may look to other products that do not have a similar requirement. These may or may not be better investment choices for the investor, but it could result in sales arbitrage to other alternative products (e.g. insurance products) operating within a differently regulated framework.

We thank you for the opportunity to raise the above issues with you. We look forward to constructive dialogue should the CSA's consultation proposals progress further. AGF certainly promotes the necessary balance of truly benefitting investors while not unduly prejudicing the industry.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Mark Adams', with a long horizontal flourish extending to the right.

Mark Adams
Senior Vice President, General Counsel & Corporate Secretary
AGF Investments Inc.