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February 22, 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
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The 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: Canadian Securities Administrators 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 (the "CSA Paper")

Thank you for the opportunity to provide comments to the Canadian Securities Administrators ("CSA") on this Consultation Paper.

Fidelity Investments Canada ULC ("Fidelity Canada") is the 7th largest fund management company in Canada and part of the Fidelity Investments organization in Boston, one of

the world's largest financial services providers. Fidelity Canada manages over $70 billion in mutual funds and institutional assets and offers approximately 200 mutual funds and pooled funds to Canadian investors.

For over 65 years, including 25 years in Canada alone, Fidelity Investments has strived to help customers and clients achieve their financial objectives. Over 20 million investors worldwide have placed their trust in Fidelity Investments and we take the trust that investors place in us as stewards of their financial assets very seriously.

The CSA's goal of protecting Canadian investors is laudable and one that Fidelity Canada fully supports. The financial system is built on trust and ensuring that correct protections are in place for investors. Asset safety and accessibility are paramount to maintaining a healthy, working financial system. Along with adequate protections, Fidelity Canada strongly believes that Canadians should have the ability to choose where and how their assets should be invested including benefiting from the guidance and advice of professional financial advisors.

Mutual funds have long played a major role in many Canadian investors' portfolios as they are a well regulated, intelligent investment product that allows investors access to financial markets that otherwise they might not be able to access. Mutual funds are, highly regulated and more transparent than most other managed investment products.

Numerous research studies have shown that Canadians who use a financial advisor are better off with their savings and investments. Canadian households who receive advice from a financial advisor have, overall, 4.2 times as much in financial assets than households without a financial advisor. As well, advised households are more likely to save and save more than non-advised households[1]. The longer households are advised has a positive impact on financial assets. Households actively advised for at least four years have more financial assets than non-advised households. The majority of advised investors believe their advisor has positively impacted the value of their investments; 61% believe their advisor has assisted in increasing their net worth. These are powerful statements on the value that mutual funds and financial advisors can bring to Canadian investors.

The goal of establishing a fiduciary duty for financial advisors cannot be taken in isolation of other regulations. It is critical to fully assess the possible ramifications of new regulations, including fiduciary duty, so as not to harm investors with unintended consequences.

We believe that it is important to understand the cumulative impact of the move to a fiduciary duty standard as well as other proposed regulatory initiatives. Will the higher cost associated with a fiduciary duty reduce the number of financial advisors available to Canadians? Will this drive Canadians away from an advice-driven model? Will that then reduce the savings rates of Canadians? Do we know without a great deal of further study that a fiduciary duty standard won't ultimately harm Canadians in one way while we try to provide great protections for them in another way?

[1] Investment Funds Institute of Canada (IFIC), Mutual Fund Value Proposition, February 14, 2013

GENERAL COMMENTS

1. Definition of Fiduciary Duty

As stated above, CSA's goal of protecting Canadian investors is laudable and one that Fidelity fully supports. Fidelity Canada supports a limited fiduciary duty standard that is carefully and reasonably defined. We believe that the definition of the fiduciary duty needs to be carefully defined taking into account the specific nature of the investment industry so that it does not result in unintended or unfair consequences. We will consider the definition of fiduciary duty later in this paper and compare it to other jurisdictions, but suffice to say that the CSA Paper appears to adopt a higher standard than other jurisdictions have either adopted or proposed. We believe that this could lead to unintended or unfairly negative consequences to investors, advisors and mutual fund managers.

In fairness, the CSA does state in Footnote 12 that:

> …the unqualified nature of a common law fiduciary duty may need to be qualified if securities regulators wish to apply it to advisers and dealers in Canada.

We agree with this statement. Although the CSA Paper does a good job of explaining the notion of fiduciary duty in Canada, it does not fully consider the implications of extending the fiduciary duty to the advisor-client relationship. We expect that is because the law around fiduciary duty is quite voluminous. We would suggest a careful assessment of what a fiduciary duty will mean for the sale of investment products to ensure that it does not have far reaching implications which may not yet have been thought of, as discussed below.

2. Regulatory Arbitrage

If a fiduciary duty standard is adopted, it is critical that the standard be applied across all investment products. If this standard is only introduced to securities products such as mutual funds which are governed by securities administrators, the unintended consequences could be that investors and advisors alike will move to products which are not governed by a fiduciary duty. This would include insurance and banking products which are not regulated by the CSA and therefore are not covered by this proposal.

If the primary goal of the fiduciary duty standard is investor protection, driving investors and advisors to competing products with a lower standard will not have the result of increasing investor protection.

In addition, the CSA needs to be clear with all of its constituents (including the Ministers of Finance who govern the various CSA members), that other jurisdictions such Australia and the United Kingdom have been able to apply the fiduciary duty standard across all investment products. It is a very different matter in Canada to propose to apply the

standard only to securities products. We think this would be a fundamental flaw in investor protection in Canada and do an enormous disservice to investors.

As you are aware, a fiduciary duty standard exists in Quebec. We note that a recent Quebec Court of Appeal case (Marston v. Autorité des marchés financiers) stated that the goal of protection of the investing public means that there should be an even application of the duty across all financial products and services, not just those regulated as securities. We agree with this principle.

3. Other Concerns

We outline other concerns below. In summary, we are concerned that the application of a fiduciary duty which is not qualified and reasonably defined will lead to the following:

- A lack of financial advice for small investors
- Limited choice of securities products available to investors
- A default to more conservative investment choices with lower potential for returns
- A disproportionate compliance burden on dealers and advisors
- A move away from advice and financial advisors
- A reduced savings rate by Canadians

SPECIFIC COMMENTS

1. Definition of Fiduciary Duty

a. Best Product for Best Price

While we agree that price should be a factor in the decision making process between the investor and the advisor, Fidelity Canada is opposed to a fiduciary standard that makes the price of the product a defining feature of the definition of fiduciary duty. It is important to keep in mind the investor's right to choose what he or she considers to be the appropriate choice.

We believe that Fidelity Canada's products provide value that is not just tied to the price of our products. We believe that the value proposition must be a component of a reasonable fiduciary duty standard. The value proposition that Fidelity Canada provides, for example, includes its reputation for ethics and integrity. Fidelity Canada is large and well capitalized and has access to tremendous resources - both research and portfolio management expertise, with 765 investment professionals worldwide, as of December 31, 2012[2]. These resources are not free, but we believe that the kind of depth that Fidelity Canada can offer to its investors is worth the price and that some investors will be

[2] Source: Fidelity Management & Research Company, and Pyramis Global Advisors as of December 31, 2012. Data is unaudited. These figures reflect the resources of Fidelity Management & Research Company a U.S. company, and its subsidiaries.

willing to pay the price for the quality of research and investment expertise which we offer. Fidelity Canada offers other areas of expertise that investors can benefit from as well, including tax strategies and expertise within the Fidelity Canada products.

These are factors that thoughtful advisors take into account when making recommendations to investors to purchase Fidelity Canada products and should not be overridden solely by considerations around price in the decision making process.

b. Guarantor Model

Although the CSA says that it does not intend for the fiduciary duty standard to amount to a guarantee of performance, as it is currently framed, it may well amount to a guarantee. Again, the definition must be carefully drafted to ensure that the duty is tied to the investment process and not the ultimate performance of a product or the actual outcome. There cannot be guarantees for securities products as defined in securities legislation. And therefore, a reasonable definition for fiduciary duty must be clear to exclude outcome and investment performance where an appropriate and reasonable process was followed.

2. Legal Analysis of Fiduciary Duty

We would encourage the CSA to ensure that it has conducted robust legal analysis of what a fiduciary duty will mean for the sale of investment products. It would be helpful to the industry if such a paper (i.e. surveying the case law and the application to the investment industry of those principles) were published to allow for a better understanding of how the courts may apply such a duty. The fiduciary duty standard to date has been applied only to limited categories of relationships and the extension to this new category will undoubtedly have far reaching implications which may not yet have been thought of.

The paper should include a prospective understanding of the implications of a fiduciary duty. For example, it is our understanding that the Supreme Court of Canada has stated a fiduciary duty would not allow for a claim of contributory negligence[3]. In other words, if an investor contributes to the poor outcome and the poor outcome is not only because of the failure of an advisor to meet his or her fiduciary standard, the advisor can be held solely liable for the outcome and damages. It is our view that this could be an unreasonable and unfair result in some cases.

In addition, it is our understanding that the application of a fiduciary duty standard will mean that damages can be awarded not only to make the client whole for investment losses, but could also force a dealer to disgorge commissions, pay loss of opportunity damages and possibly have increased exposure to punitive damages. The CSA needs to be sure that from a public policy perspective, this is a desired outcome. In our view, it most certainly is not a desired outcome but will be an outcome of a fiduciary duty standard if that standard is not carefully and reasonably defined and limited appropriately.

[3] *Carl B. Potter Ltd. V Mercantile Bank of Canada* (1980), 8 E.T.R. 219.

In addition, if this new kind of fiduciary standard is created, it is critical that the CSA provide concrete guidance as to how the standard will apply in various circumstances and also how it expects advisors and dealers to conduct themselves in order to meet the fiduciary duty standard. It is our experience that the CSA has been reluctant to give concrete guidance when new rules are published. We note that the Australian regulators agreed with the Australian investment industry to provide such guidance. We would suggest that the CSA work closely with the industry to develop this guidance should the fiduciary standard come to pass.

3. Fiduciary Duty Proposals in Other Jurisdictions

We believe that the CSA has gone beyond the definition of fiduciary duty which is being considered or has been adopted in other jurisdictions. For example, in the United States, the Staff of the Securities and Exchange Commission has proposed a uniform fiduciary standard for brokers, dealers and investment advisers when offering personalized investment advice about securities to retail investors.[4] The Staff's proposed uniform standard would require brokers, dealers and investment advisers to act in the best interest of their customers without regard to financial or other interests of the broker, dealer or investment adviser providing the advice; but would be structured in a way that "allows and ensures retail investors to continue to have access to the various fee structures, account options, and types of advice that investment advisers and broker-dealers provide."

Similarly, in Australia, the definition of fiduciary duty suggests that price of an investment be considered as a factor among others. In addition, Australia has adopted what would be a "qualified" fiduciary duty standard applicable to retail investors.

In the United Kingdom, the focus is on addressing conflicts of interest as the critical element of the duty owned to clients as opposed to the concept of recommending the "best" or "best priced" investments to clients. Again, price would only be one factor in making recommendations under this regime.

In fairness to the Canadian investment industry, the debate around fiduciary duty should include a clear communication by the CSA to relevant constituents (including investors, investor advocates, media etc.) that there are many different understandings of what this term means. The term "fiduciary duty" is being used quite broadly by the CSA but actually can mean many different things to different people. The CSA should explain how its proposed definition compares to other international definitions. In our view, though there is much debate in the paper, the CSA seems to be moving toward a much higher standard than other international jurisdictions.

[4] Study on Investment Advisers and Broker-Dealers, as required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 2011), available at http://www.sec.gov/news/studies/2011/913studyfinal.pdf.

4. Preserve Choice for Investors

We believe that Canadian investors are best served if they are offered a range of products. We are concerned that the introduction of a fiduciary duty standard will narrow the range of products available on a broker/dealer's platform. While dealers already have an obligation to review products (the know your product standard) the liability associated with choosing the "wrong" product for a client may drive broker/dealers to offer lower risk/lower return products that are viewed as having less liability risk.

There is also a concern that a fiduciary duty standard will increase the costs to dealers and advisors alike. It will certainly take more time to fulfill the requirements associated with a fiduciary duty. The compliance burden on dealers and advisors will increase considerably.

We believe that the mutual fund product has been particularly successful at meeting the needs of small investors to find common investment vehicles that are reasonably priced. There is already a movement toward larger investors in our industry. Smaller investors are still serviced, but we worry that there will be fewer advisors and dealers willing to service smaller investors as the costs will simply be too high to make it worthwhile. This is not a good outcome for Canadians with smaller amounts of money who need financial advice in order to grow their savings.

We are also concerned that there will be an increased amount of litigation in our industry. While this may be beneficial to protect investors, we think it will encourage advisors and dealers to invest in more conservative products with less potential for asset growth in order to protect themselves. One of the primary goals of the federal and provincial governments recently has been to find ways to encourage savings rates in Canada and obviously the amount of money available to Canadians at retirement. An overly conservative investment approach will serve investors about as well as an aggressive investment approach with a negative outcome. In some ways, a suitability standard addresses this issue in a way that the fiduciary duty standard does not.

5. Proprietary Product

It is not clear to us what the CSA envisages will occur with respect to proprietary funds that are offered by integrated distributors (particularly, the large Canadian banks). Some distributors that offer proprietary product but also offer third party funds hold themselves out as independent. In some cases, these distributors limit shelf space and advantage their own proprietary products. In some cases, distributors make greater payouts to incent advisors to sell proprietary products. In our view, any new standard should ensure that proprietary funds are not advantaged over independent funds on open architecture platforms. The investor should receive a recommendation for the best fund regardless of the commission received by the distributor or the financial advisor.

6. International Studies

There have been numerous studies on this very issue from many jurisdictions around the world. Of note, a study was commissioned by SIFMA in the U.S. in 2010 relating to the potential impact of a higher/fiduciary standard of care. The SIFMA study concluded that retail investors would see reduced product and service availability along with higher costs under such a standard for investment advisers and broker dealers. The higher costs would result in less investor access for smaller investors and a negative impact on the performance of investments due to higher costs.

In Australia, the Australian Securities & Investments Commission ("ASIC") published Report 224 – Access to Financial Advice in Australia. It was a refreshing regulatory paper in that it started with the premise that access to financial advice is important to Australian investors. The paper went on to examine how access to advice could be improved. It acknowledged that there was a gap between what consumers were prepared to pay for advice in Australia and the actual cost to the industry. It also acknowledged that consumers with access to financial advice benefit financially as a result of that advice, even after the cost of advice is taken into account – through increased savings, faster debt reduction and higher investment returns.

Although Australia has adopted a fiduciary duty standard, it is clear that its goal was not to drive investors away from advice. Its goal was to provide protection to all investors of competing investment products. It remains to be seen whether access to financial advice will be reduced in Australia as a result as the move to a qualified fiduciary duty standard. But it is clear that this is not the Australian intention. One must remember that Australia also has the superannuation model which forces Australians to save for retirement through their employment remuneration as well. To date, the model in Canada is very different.

In addition, the Australian Financial Services Council ("AFSC") engaged KPMG Econtech to prepare an analysis around the value of advice. It concluded that an individual that has a financial adviser is estimated to save a significant amount more than without a financial advisor. This is similar to the research that has been conducted by the Investment Funds Institute of Canada ("IFIC") around the value of advice in Canada and shows a similar outcome. However, the AFSC/KPMG paper goes further. It estimated the increased level of savings of all Australians as a result of the advice channel. It then tied those savings to the national savings rate and the health of the Australian economy.

7. Conclusion

The CSA's goal of protecting Canadian investors is laudable and one that Fidelity fully supports. However, we believe the points raised in this letter show that there is more work to be done to fully understand the impact of a fiduciary duty standard on investors. We believe that it is important to understand the cumulative impact of the move to a fiduciary duty standard as well as other proposed regulatory initiatives. Will this drive Canadians away from an advice-driven model. Will that then reduce the savings rates of

Canadians? Do we know without a great deal of further study that a fiduciary duty standard won't ultimately harm Canadians in one way, while we try to provide great protections for them in another way?

We thank you for the opportunity to comment on the Proposed Amendments.

Yours truly,

"W. Sian Burgess"

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