



VIA EMAIL

February 22, 2013

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
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
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

Delivered to:

The Secretary
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Dear Sirs/Mesdames:

RE: 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* – Comments from Members of CIFFPs

On behalf of its 5,000+ members, The Canadian Institute of Financial Planners (CIFFPs) is pleased to provide the Canadian Securities Administrators (CSA) with this letter commenting on the above-noted Consultation Paper, which was published for comment on October 25, 2012. We appreciate being able to comment on the proposals, and wish to commend the CSA for providing an additionally long comment period which allowed us to canvass our members via the survey described below in order to obtain their feedback on these important proposals.

CIFFPs - Background

CIFFPs is the professional association for financial planners in Canada. Many of the members of CIFFPs are Certified Financial Planners (CFP®), which is the designation granted by the Financial Planning Standards Council (FPSC) to individuals who have met its educational standards, passed the FPSC Certified Financial Planner® Examination, satisfied work experience requirements and agreed

to abide by the FPSC Code of Ethics. CIFPs provides financial planners with continuing education, professional support, including mentoring, and media, communication and advocacy services on issues that have potential to impact financial planners.

As financial planners, the members of CIFPs include individuals registered as dealing representatives who are agents of firms registered as mutual fund dealers (members of the Mutual Fund Dealers Association of Canada) or as investment dealers (members of the Investment Industry Regulatory Association of Canada). CIFPs members can also be licenced insurance agents and many members are duly licenced as securities dealing representatives and as insurance agents.

Many of the CIFPs members are fee-based financial planners, which means they generally discuss fees with their clients up front at the start of the relationship and the clients pay these fees directly. This reality, along with the fact (as noted above) that many of the members are Certified Financial Planners®, which means they adhere to the FPSC Code of Ethics, colours many of our members' comments on the Consultation Paper.

CIFPs is very much in favour, at a high level, of a uniform, pan-industry approach that would provide dealing representatives with additional business flexibility with a minimum of regulatory burden, while preserving individual representative responsibility for advice to clients and the registered firm's oversight over the individual representatives and clients. It is of utmost importance for any new regulation or approach to not differentiate between financial planners, depending on the nature of their licencing – that is, whether they are registered with IIROC or MFDA firms and/or are licenced as insurance agents. All of our other comments must be considered in light of this central objective.

CIFPs – Commentary from Members

Because of the significance of the discussion and the proposals in the Consultation Paper, CIFPs sent a survey to its members asking them for feedback on the specific questions outlined in the Paper, as well as on six specific questions of our own, which we consider of central importance to any consideration of these issues. Not surprisingly our members' feedback was not uniform on any question (with one exception), with many members explaining that the FPSC Code of Ethics already requires them to put the interests of their clients first and that they consider that they already comply with many of the concepts set out in the Consultation Paper.

Notwithstanding these comments, many of our members were unable to understand exactly what the proposals set out in the Consultation Paper would mean for their business or for their clients. We note that, in our view, our members' practice to put client interests first, cannot be taken as saying that our members are in a fiduciary relationship (as defined at common law) with those clients. Oftentimes the CSA discussion, as well as the questions posed by the CSA were felt to be too legalistic to be completely comprehensible or answered by non-lawyers and hence our members could provide no meaningful comment.

Many of our members expressed their concern about the potential for more and more regulation and compliance obligations being imposed on them, including through the proposals set out in the Consultation Paper, without any measureable benefit for their clients. Indeed, many of our

members expressed concerns about their ability to continue to service their clients in the ways they consider optimal, given the amount of regulation that is required today and can be expected to be required if the proposals set out in the Consultation Paper come into force, when considered against the compensation that the members feel they can charge their clients (to the extent they operate under a fee-based model).

What follows is some of the feedback provided by our members to the six questions we posed in our member survey. These questions attempted to paraphrase what we considered the most essential elements of the CSA's proposal, putting these elements in a way that would be readily understood by our members.

1. Do you feel the proposed fiduciary duty needs to be formalized in a rule or do you feel comfortable relying on common law depending on the circumstances of the client engagement?

Our members were split on this question, with many being comfortable relying on the existing common law, particularly in light of the fact that relationships with clients do, in fact, vary. Members who were in favour of a legislated standard felt this was important to ensure formal consistency across the entire industry, inclusive of the insurance industry.

2. Will having a transparent fiduciary duty help you or hinder you when conducting a financial planning engagement with your client?

Many of our members felt that their engagements with their clients already provided clients with transparency on fees and on their duty to act in the clients' best interest, such that any regulation on this issue would add very little (other than increased regulatory burden) to how they operated. Other members suggested that a regulated fiduciary duty standard would assist clients, in that clients would realize the importance of working with a financial services professional – a Certified Financial Planner® -- who would put their interests first. Many members, even those who felt that the CSA's proposals would not change how they do business with clients, are very concerned about the potential for increased regulation and compliance burdens, particularly additional disclosures for clients, with the attendant necessity to increase the fees charged to clients.

3. Do you feel that there are conflicts of interest when serving clients as you are also an agent for your dealer?

This question recognizes that our members are financial planners who seek to put the best interests of clients first, but if they distribute securities products, they are also agents of, and supervised by securities dealing firms (mutual fund dealers or investment dealers) and must follow the business and compliance requests or requirements of those dealing firms. Many of our members expressed their concerns about conflicts arising out of this tension, particularly as it relates to compensation payable in respect of mutual funds, and relationships between the dealer firms and proprietary or related mutual funds and other investment products. Fee-only financial planners report less conflicts of interest, while others even where they receive compensation in respect of mutual fund trades, feel they

appropriately manage any conflict of interest through clear and unequivocal disclosure to clients about this compensation conflict. Many of our members explain that while there may be a potential for a conflict of interest, professional financial planners who conduct themselves appropriately using the accepted principles of financial planning and who always place their client's interest foremost can manage these conflicts of interest.

4. Will the proposed fiduciary duty make the aforementioned balancing act between you, your dealer and your clients more difficult?

Many of our members explain that they balance any potential for conflicts in the best interests of clients today – and therefore do not feel that any proposed fiduciary duty would impose greater issues for them. However, many added that they feel the increased compliance burdens attendant on a regulated fiduciary responsibility will add additional complexity and formalities, which in turn may lead to higher costs for clients and may also reduce the accessibility to advice for some retail clients.

5. Because you may not be compensated directly from the client but through product commissions, do you feel this proposed fiduciary duty rule will create conflicts in putting your clients' interests first when recommending products for the implementation of your clients' financial plan?

Most members responded to this question by explaining that this potential conflict arises today, but that it is dealt with by consciously putting investors' interest first and through clear explanations to clients on what compensation the advisor receives and how he/she receives it. Members recognized the conflicts and the fact that compensation differences can today drive behavior. Many members do not see that a proposed legislative standard would change this approach or the reality, other than to add additional compliance and regulatory requirements which will increase costs to investors.

6. Should the proposed fiduciary duty apply to all advisors, not just securities registrants, through government versus a CSA securities rule only to ensure consistent standards for the investors?

Members were overwhelmingly unanimous in their response to this question. Undoubtedly the same standards must apply to all financial services advisors, regardless of registration or licencing status, although several respondees expressed doubt that this would ever be able to be mandated in a consistent fashion so as to create a level playing field.

CIFPs Overriding Support for Meaningful Regulation

CIFPs members completely support a strong regulatory regime that seeks to ensure that their clients make informed investment decisions about their options to achieve their financial goals, with the advice of educated, fair and honest financial planners who keep the investors' best interests in mind.

CIFPs considers that the current regulatory regime works well for the clients of its members, particularly when coupled with the other standards followed by our members, including the

FPSC Code of Ethics. While the potential imposition of a “best interests” regulatory standard for dealing representatives may be simply legislating existing standards at common law that would apply to many of our members in their dealings with their clients, depending on the relationships, we are concerned that a legislated standard will introduce a completely unknown and unknowable standard – with potential for unintended consequences resulting from the increased costs, the unknowable compliance standards and the threat of litigation resulting from the new unknowable standard. The most drastic unintended consequence of all may be the slow withdrawal from the marketplace of investment opportunities and professional financial planning advisory channels for retail investors who seek alternatives for their financial future.

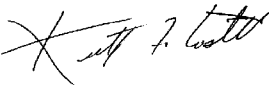
We consider the more significant issues to be around embedded compensation paid to dealers by fund managers, which issues are discussed to a certain extent in the Consultation Paper and in more detail in the CSA’s December paper on mutual fund fees. We urge the CSA to consider alternatives, including, but not limited to simply “banning” embedded compensation, which would allow advisors to receive compensation in respect of product sales, but which would be neutral to the type of product being distributed.

We also consider that the most significant issue today facing our members is the tension between following the business and compliance dictates of dealer firms and providing service and advice to clients that are in the best interests of those clients, given the potential for conflicts of interest inherent in a commission based environment where many dealer firms distribute proprietary products. We fail to understand how the CSA’s proposed fiduciary duty standard will deal adequately, if at all with this tension – indeed we consider that it may exacerbate the issues.

In conclusion, CIFPs urges the CSA to reinforce the fact that dealing representatives, particularly those in the financial planning field, and dealers do provide valuable financial advisory services to investors. It is the obvious reality that both the firms and the advisors need to be compensated for their services, which at the end of the day will be paid for by investors – either through fees charged to the product or directly by advisors. Any conflicts of interest inherent in a commission based, product oriented industry must be managed and balanced in favour of the best interests of investors, through disclosure or rules to remove the most significant potential for skewed biased advice. We respectfully submit that the regulators role should not be to seek to completely remove all conflicts of interest, rather the regulators should ensure that conflicts are properly managed and disclosed.

Thank you for considering our comments. Please contact Keith Costello, the President and Chief Executive Officer of CIFPs at 647-723-6447 or kcostello@cifps.ca if you have any questions about our comments or you would like to meet with our members to discuss them. We would be very pleased to set up meetings with our members so you could better understand the perspective of professional financial planners and hope that you will include us in any roundtable discussions you decide to set up.

Yours very truly,

A handwritten signature in black ink, appearing to read "Keith Costello". The signature is stylized with a large initial "K" and a cursive "Costello".

Keith Costello
President & Chief Executive Officer