



February 22, 2013

**SENT BY ELECTRONIC MAIL**

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Dear Sirs/Mesdames:

We are writing in response to the Canadian Securities Administrators Consultation Paper 33-404: *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**”). We appreciate the opportunity to provide comments on the CSA Paper.

As supported by the IEF study cited in the CSA Paper, we believe that most Canadian investors assume that financial advisors are obligated to provide advice that is in the best interests of their clients. As the CSA Paper demonstrates, this is often not the case. This creates what the CSA Paper describes as a “standard of conduct expectation gap”. We believe that this gap presents challenges to the ability of Canadian investors to seek objective advice, particularly given the financial knowledge asymmetry between advisors and investors. While we believe most financial advisors are currently providing advice that is in the best interests of their clients, Canadian investors trying to achieve their investment or retirement goals should be able to have full

confidence that their financial advisors are acting in their best interests at all times, and not just recommending investments that are suitable.

With the understanding that a best interest standard would not mean that advisors would be obligated to provide perfect or ideal advice, we believe that introducing a statutory best interest standard would be an effective way to address investor protection concerns; in particular, the standard of conduct expectation gap and financial knowledge asymmetry.

The helpful table in the CSA Paper summarizing the applicability of a statutory or common law fiduciary duty in a range of scenarios speaks volumes to the difficulty an investor would face in determining whether or not an advisor would be obligated to act in the investor's best interest. Additionally, respected commentators disagree about the nature of the current statutory duty that currently exists in certain scenarios. As for the common law, it is unreasonable for an investor to need to consider a five factor test to determine whether or not an advisor is obligated to act in the investor's best interest. The implementation of a statutory best interest standard in jurisdictions across Canada could clarify and harmonize the obligations of advisors to act in the best interests of their clients, across the range of scenarios.

Should a statutory best interest standard be implemented, we believe that a comprehensive companion policy would be of great assistance to industry participants.

Once again, we thank you inviting comment on the CSA Paper. Please feel free to contact the undersigned for further discussion of our comments.

Sincerely,

**HORIZONS ETFs MANAGEMENT (CANADA) INC.**

*“Adam Felesky”*

Adam Felesky  
Chief Executive Officer