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Dear Sirs/Mesdames:

Re: CSA Consultation Paper 33-403: The Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing the Best Interest Duty When Advice is Providing to a Retail Client

I provide the following observations and premises as derived from our experiences in providing legal representation to multiple investment advisors and dealers involved in the provision of retail investment advice.

Background

1. To the extent there is a standard of conduct debate occurring in other international jurisdictions, it has not arisen in Canada. It has not been necessary as the obligations an investment advisor owes his or her client have been detailed without opposition or dispute through both Canadian jurisprudence and SRO requirements. In Canada, these duties are established and informed, such that Canada should be recognized as a front runner rather than a country who lagged behind.

FIDUCIARY DUTY: WHAT IT IS AND WHEN IT ARISES AT COMMON LAW

2. The elements of the proposed fiduciary duty already exist irrespective of whether we choose to label the duty "fiduciary".

The proposed contents to a fiduciary duty all form part of either a general duty of care or the current statutory obligations on investment advisors and dealers to deal fairly, honestly and in good faith with their clients[1] or SRO Requirements, namely:

(a) client interests are paramount;

[1] (see section 2.1 of OSC rule 31-505 Conditions of Registration and applicable sections of provincial securities legislation as outlined at footnote 23 of the consultation paper.

(b) conflicts of interest are avoided;

(c) clients are not exploited;

(d) clients are provided with full disclosure; and

(e) services are performed reasonably prudently

For example, the Consultation Paper recognizes that "*client interests are paramount*" is "sometimes referred to as the duty of loyalty or the duty of utmost good faith" and is explained as prohibiting the investment advisor from balancing her own interests (or that of her employer) against her clients *if* it means the clients' interests are in any way compromised. (In other words, clients' interests are not invariably or necessarily compromised by the commerce of investment advisor self-interest). In similar vein, "*clients are not exploited*" is described as sometimes referring to the "no profit" rule with recognition that this may need to be qualified in order to apply it to investment advisors and dealers.

In both regards, the reality remains that like other professionals, investment advisors and dealers are paid for their services and advice. This reality does not inherently place every professional in a conflict of interest. Rather it is agreed, as a matter of good faith, that duties to the client must be taken into account. The concept of "good faith" recognizes that while a party may have a self-interest (payment), that self-interest must be qualified by that party in his decision and actions which must also have regard to the legitimate interests of his client.[2]

The requirement that "clients are not exploited" really speaks to unconscionability. Unconscionability would assume that an investment advisor may act in pure self-interest in his or her actions toward their client.[3] There has never been any debate that such is unacceptable.

3. A statutory fiduciary duty is not required to support a private law cause of action for damages. Private law causes of action for damages for negligent investment advice, whether by virtue of a breach of fiduciary duty, a breach of duty of care, or breach of suitability obligations have long existed.

4. It is incorrect to state that the value of a statutory duty lies in establishing the nature of the relationship and therefore "eliminating the need to prove the existence of a fiduciary duty". To so state ignores the individual, distinguishing facts and circumstances that inform any given advisory relationship on either a per investor or per product basis in addition to the substantive Canadian jurisprudence that has developed over the span of years which should be recognized rather than contradicted.

THE CURRENT STANDARD OF CONDUCT OF REGISTRANTS

5. The current standard of conduct of registrants is highly regulated and informed through SRO requirements, statute and common law.

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[2] *978011 Ontario Ltd. v. Cornell Engineering Co.* (2001), 53 O.R. (3d) 783 C.A.

[3] *supra*

For example the Consultation Paper relies in part on the statutory best interest standard for investment fund managers and in various provincial statutory requirements for other advisors or dealers exercising discretion. The exercise of discretion has always given rise to fiduciary obligations in statute and/or in Canadian jurisprudence.

Also, there is reliance on both the *Quebec Securities Act* and its Civil Code as referring to the client's best interest. As previously stated, the underlying elements to this are equivalent to duties of loyalty and care. In addition, it is noteworthy that under the Civil Code, the Consultation Paper notes that the relationship between an advisor or dealer and a client is governed by the rules underlying those legal relationships, *but the determination of those applicable rules depends on the nature and scope of the relationship*.

The following statement is key:

> The extent of these obligations under the Civil Code vary depending on the legal context and nature of the investment advisor relationship (example discretionary account or non-discretionary account, executing broker only), taking into account the degree of trust, dependence and vulnerability of the client.[4]

SUITABILITY OBLIGATION

6. It is highly unclear how a suitable investment is not the "best" product for the client, what the "best product" means, or how a "best product" can be identified apart from price/cost.

Contrary to the statement in the Consultation Paper, it is *not* accepted that, in some circumstances, an advisor or dealer providing advice can comply with its suitability obligation and yet not provide investment recommendations that are in the best interests of the client. Recommendations that are not in the best interest of the client cannot, by definition, be suitable to them.

The Consultation Paper describes the concept as follows: There may be a large number of potentially suitable investment products but the question is whether the advice to the client must identify a smaller range of products that are, in the advisor's view, in the client's best interest. One consideration in giving that advice would be the relative cost of the product.

It is agreed, depending upon the nature and extent of a given advisory relationship, that there are instances where an investment advisor should, pursuant to his or her duty of care identify a small range of products that are in his or her view, in the client's best interest and that relative cost should be one of the considerations in this regard, but it is not an indication of fiduciary duty.

CONFLICTS OF INTEREST

Client Relationship Model

7. The Consultation Paper notes that IIROC itself has (correctly) stated: (i) whether or not a fiduciary duty exists in an account relationship depends on the facts of each case including,

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[4] Consultation Paper [current statutory standard of conduct requirements]

among other things, the services being provided to the client and the degree to which the client relies on the firm/advisor in making investment decisions; and (ii) a best interest standard does not create a fiduciary duty.

> IIROC has long used "best interest" language in the context of its current rules and requirements. For example, with respect to issues related to suitability, IIROC's Dealer Member Disciplinary Sanction Guidelines state:
>
> 3.2 The Know Your Client Rule (Rule 1300.1(a) and (b)) is of paramount importance for the securities industry. All registrants must make a diligent and business like effort to learn and record the essential financial and personal circumstances and the investment objectives of each client. *Knowing your client is a fundamental ongoing obligation that a registrant is required to meet in order to be able to act in the best interests of his/her clients.*
>
> 3.4 IIROC Member Rule 1300.1(o):
>
> > "For many of the situations that are captured by this regulation, the main concern will be the client's best interests. That is, orders not within the bounds of good business practice will involve, *to some degree, a breach of the registrant's duty to act in the client's best interest.*

Similarly, the failure to act in a client's best interest gives rise to disciplinary proceeds by IIROC Enforcement.[5]

RECENT DEVELOPMENTS IN THE U.S., UK, AUSTRALIA AND THE EU

8. Overall, as the aforementioned comments show, the use of the term "best interest" of the client are not indicative. Rather, it is the details that inform the term that have the greater relevance.

> For example, in the United States, the SEC Study on Investment Advisors and Broker-Dealers referenced in the Consultation Paper recommend that the duty to act in the client's best interest include:
>
> (i) a duty of loyalty which in turn includes disclosure, concerns regarding principal trading (due to risks of price manipulation or the placing of unwanted securities into client accounts such as dumping),
>
> (ii) a duty of care,
>
> (iii) personalized investment advice about securities in the United States,
>
> (iv) investor education.
>
> The elements of all of the aforementioned can be subsumed in duties of care obligations as interpreted through various SRO requirements and Canadian jurisprudence.

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[5] *Re Melkonian* 2011 IIROC 62

Based upon the aforementioned, the following replies are provided to the questions posed by this Consultation Paper.

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.

Answer: Disagree. There is no evidentiary basis for the stated concerns. In particular:

> **A principled foundation for the standard of care investment advisors owe to clients already exists through detailed SRO Rules, By-Laws, Policy, Guidance notices and disciplinary decisions in addition to ample Canadian jurisprudence at large. In addition, all investment dealers are required to have compliance policies and procedures that also inform the standard of conduct, the content and implementation of which is subject to review and audit and enforcement by their SRO.**
>
> **Generally, most retail clients hire professionals to look after their investments due to their greater market knowledge and in the interests of time management. Financial literacy asymmetry between investment advisors/dealers on the one hand and their retail clients on the other hand will exist irrespective of fiduciary duties imposed. The existence of a fiduciary duty will not lead to greater symmetry. For example, all portfolio managed accounts are currently subject to a fiduciary duty at law. There is nothing to suggest that retail investors who hire portfolio managers are more fully informed or have greater financial literacy as a result of the obligations owed to them by those managers.**
>
> **There is no expectation gap as most investment advisors assume an obligation to provide advice in their clients' best interest.**
>
> **It is highly unclear as to how suitable investments are not in the clients' best interest apart from the issue of cost/commissions/ pricing.**
>
> **Similarly, the concern that the current conflict of interest rules "might" be less effective is centered solely around fees which are more properly addressed in another forum.**

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

Answer: No. See answer to Question 1.

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 (eg., changes to one or more of the existing statutory standard of conduct requirements) offer a more effective solution?

Answer: No. See answer to Question 1. It is highly notable that much of the

stated concerns centre around costs, fees and pricing of investment products.

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?

Answer: These concerns are equally inapplicable to all CSA jurisdictions. Advisors and dealers are subject to federal SRO requirements as opposed to provincial mandates. Canadian jurisprudence has consistency in its overriding principles and is persuasive value in all provinces.

The Appropriateness of Introducing and Statutory Best Interest Duty When Advice is Provided to Retail Clients

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?

Answer: Securities regulators already impose a "best interest" standard or language applicable to advisors and dealers that give advice to retail clients.

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?

Answer: The proposed articulation of the "best interest standard" described in the Consultation Paper is:

> ***Every advisor and dealer (and each of their representatives) that provides advice to a retail client with respect to investing in, buying or selling securities or derivatives shall, when providing such advice,***
>
> ***(a) act in the best interests of the retail client, and***
>
> ***(b) exercise the degree of care, diligence and skill that a reasonably prudent person or company would exercise in the circumstances.***

As explained earlier in this response, the language and expectation in item (a) already exists with Canadian regulators. It should not be misinterpreted as fiduciary in accordance with Canadian caselaw. The language in item (b) speaks to standard of care and is not fiduciary. Ongoing obligations of suitability already exist and need not be artificially termed "fiduciary".

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

Answer: No. See answers to questions 5 and 6 above.

Potential Benefits and Competing Considerations in Imposing a Statutory Best Interest Standard

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?

Answer: Disagree with the stated potential benefits. See answer to Question 1.

There is no legal uncertainty as to whether a fiduciary duty exists. A fiduciary duty is found to exist where there is an exercise of discretion or where the underlying facts to the investment advisor/client relationship meet the clearly enunciated legal requirements which include the extent of vulnerability and reliance on the retail investor. Simply put, the common law has recognized for several decades that the duties an investment advisor owes to his or her client is inversely proportional to the experience and sophistication of that client. The law is not to be overridden or ignored in these regards.

Retail clients have legal remedy for breaches of contract and duty of care which include a remedy for any damages arising from the purchase of unsuitable investments. There are multiple ways their losses may be assessed if breaches are found, all of which are designed to achieve fair restitution. It cannot be invariably stated that a breach of a fiduciary standard leads to a higher level of investor compensation.

Potential Benefits

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

Answer: A suitability standard may be used to identify an investment that is in the clients' best interest. The cost to that client of any given investment may be one of several factors considered in a suitability assessment.

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

Answer: All breaches of all current regulatory standards (howsoever defined) may give rise to civil liability at common law. It is not necessary to impose a fiduciary standard in all investment advisor/client relationships in order to give rise to civil liability.

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?

Answer: It is not necessary to so expressly state nor is it necessary to use the term "best interest" in statute. Civil liability already exists.

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?

Answer: The duties described above coupled with existing regulatory rules impose very high and most sufficient standard of conduct that need not be labeled "fiduciary" to be legitimated. To insist on such label confuses and runs contrary to Canadian common law.

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

Answer: Investors can enforce any duty owed to them as a private matter. They are fully informed of the options available to them in seeking restitution at account opening and again in response to any written or compliance complaint (eg. IIROC Rule 2500B).

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?

Answer: The introduction of a statutory best interest standard runs contrary to the well-established common law which states that the extent of the duties owed to any given retail investor depend upon the facts and circumstance of any given relationship. The imposition of an invariable statutory standard may be interpreted as ignoring this reality and wrongly assuming at least at its starting point, that all investment advisory relationships are the same. The common law recognizes that underlying facts and circumstances must be explored to achieve a fair result. A statutory best interest stand dissuades such necessary exploration.

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.

Answer: Much guidance is already available through the SRO requirements and publications with the client relationship model being one example only.

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?

Answer: The general concern and objections raised to addressing any issue in hindsight and through enforcement apply here. The issues raised in the Consultation Paper are issues of compliance and not enforcement.

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)

Answer: The articulation of the best interest standard as outlined in the Consultation Paper is redundant (see answer to Question 6). Subject to any further or differing interpretation by regulators in its implementation, it should not result in the increased cost for items (i) to (iv). A statutory "best interest standard" may nonetheless run contrary to a proper analysis of any given advisory relationship and could increase the quantum of complaints and litigation and further negatively impact insurance.

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?

Answer: The Consultation Paper does not clarify the circumstances in which a fiduciary duty is owed. These circumstances are known and factually based. They cannot be forced to a false common ground.

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 system in order to ensure compliance with a best interest standard?

Answer: It is unclear how the best interest standard differs from the suitability standard apart from the issue of cost of the product. It is not practical to expect a supervisory regime to ensure a client is buying the "cheapest" product at all times (nor is it practical to assume that the identical products providing a clear

comparison as to price are available).

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 EU. 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.

Answer: An internal analysis is both irrelevant and unnecessary. The extensive duties an investment advisor owes its retail clients in Canada have developed well and in advanced form through our SROs and our jurisprudence with acceptance and without debate, as distinguishable from at least some of the other jurisdictions offered by comparison.

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?

Answer: On the reasonable assumption that the obligation to make a suitable recommendation includes an obligation to consider as one of the factors for a retail clients' consideration, the cost of that investment, the imposition of a statutory best interest duty would have no impact on retail clients by way of choice, product access or affordability.

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?

Answer: Mutual fund dealers, exempt market dealers and scholarship plan dealers have KYC and suitability obligations also. See answer to question 21.

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

Answer: The discount broker model.

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

Answer: See answer to Question 20. There is no need to refer to these approaches.

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

Answer: See answer to question 6. Any additional statutory language would

confuse caselaw.

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

Answer: No. See answer to Question 25.

Impact on Capital Raising

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

Answer: No. See answer to questions 6 and 25.

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?

Answer: No. See answer to question 6.

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

Answer: No. Any duties exist irrespective of compensation.

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?

Answer: Yes. The compensation an investment advisor receives is unrelated to his or her obligation to make a suitable investment in his or her clients' best interest. In the event that the CSA has concerns regarding compensation structures and believes certain structures to be specifically prohibited, they should be clearly stated by the CSA so that they may be properly responded to in the correct forum.

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.

Answer: Please see answer to question 30 above.

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

Answer: Please see answer to question 30 above.

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?

Answer: Please also see answer to question 15. An impressive amount of guidance is already available.

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

Answer: This question appears aimed at the extra income over and above commissions charged brokerage firms may earn by using their own inventory to fill the order for a client. It is therefore a question aimed at issues of compensation which should be addressed separately in the appropriate forum.

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?

Answer: No, see answer to question 6. The registration requirements of investment advisors as a whole are currently designed with a view to KYC and suitability requirements which should include a consideration as to costs to the retail client.

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?

Answer: A fiduciary duty (as defined by the common law) may be inappropriate in any given advisory relationship. The duties an investment advisor owes to the client depends upon the nature of their particular and unique relationship which in turn includes a consideration of the extent of reliance any retail investor may or may not have on his or her investment advisor based upon their own investment knowledge, experiences and expectations. It is incorrect to assume that all investment advisory relationships can be similarly classified.

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

Answer: See answer to question 6.

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

Answer: No, though a statutory best interest may be interpreted as contrary to the Canadian caselaw.

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

described above?

Answer: No. Rather, the existing regulatory rules assume in them the same principles purported to be reflected in the best interest standard as reasonably applied in accordance with any given factual circumstance.

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?

Answer: The conflicts of interest referred to in this question appear related, at least in part, to advisor compensation. The fact of advisor compensation is independent of an advisor's obligations to his or her clients.

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

Answer: See above.

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?

Answer: The Consultation Paper considers a best interest standard only in respect of conflicts of interest or suitability requirements, and relates both to issues of advisor compensation and cost respectively.

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

Answer: A best interest standard does not address the key investor protection concerns raised in the Consultation Paper. See answer to question 1.

Application of Duty on Retail Clients

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

Answer: A best interest standard should apply only to retail clients whom have a relationship of dependence and vulnerability with their investment advisor. This includes all retail clients invested in discretionary accounts.

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?

Answer: The definition of retail client provided in the Consultation Paper is too broad and can easily include highly sophisticated and institutional investors who have limited reliance on their investment advisors. This duty is not required outside of retail clients.

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

Answer: Permitted clients with managed accounts already have fiduciary duties owed to them. With respect to non-managed accounts, the key remains the specific underlying facts and circumstances of any given relationship rather than a pre-classification of the investor.

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

Answer: Please see answers to questions 44 to 46 above.

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?

Answer: The best interest standard described in the Consultation Paper already exists. It has been modified by contract, for example with no advice, discount brokerage accounts.

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?

Answer: The existing duty described above cannot be meaningfully distinguished from the proposed articulation of the best interest standard described in answer to question 6.

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?

Answer: This appears a nuanced distinction difficult to practically implement.

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?

Answer: Personalized advice is taken to mean advice specific and tailored to the individual needs and circumstances of a particular retail investor.

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)?

Answer: The underlying premise to these comments has been that the best interest standard cannot be meaningfully distinguished from suitability requirements. On this basis, they are subject to the same triggers as suitability requirements.

Yours truly,

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