



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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

February 22, 2013

Attention:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

Attention:

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
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Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

RE: Canadian Securities Administrators Consultation Paper 33-403: The Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients (the consultation paper)

TD Bank Group appreciates the opportunity to comment on the consultation paper exploring the desirability and feasibility of introducing a statutory best interest standard in Canada. At TD we strive to be the better bank and, in doing so, to deliver an exceptional client service experience. We applaud the CSA's continued support of consumer-focused regulation and remain open to any regulatory developments that improve the customer experience.

TD's full service and mutual fund dealer representatives ("advisors") provide our clients with investment advice that is reflective of their unique goals and objectives. We take that client relationship and the associated regulatory obligations very seriously and we are a leading proponent of regulatory goals aimed at furthering investor protection. We believe, however, that the introduction of the statutory fiduciary standard contemplated by the consultation paper is not the best approach to materially advance investor protection and may negatively impact investors' ability to achieve their financial objectives. We urge the CSA to first assess the benefits resulting from implementation of the Client Relationship Model before it proceeds further with this initiative. We also note that the new UK regime referenced in the consultation paper came into force



early this year. We encourage the CSA to continue to assess the outcomes of these new regulations, together with the pending developments in Australia, as it proceeds with its analysis of these issues.

The consultation paper recognizes that advisors have a duty to deal fairly, honestly and in good faith with their clients. Advisors are also subject to an overarching duty to observe high standards of ethics and conduct in the transaction of their business; not engage in any business conduct or practice which is unbecoming or detrimental to the public interest; and be of such character and business repute as is consistent with that obligation. In certain circumstances, relationships with vulnerable and unsophisticated clients are already subject to a fiduciary duty at common law. In the consultation paper, the CSA asks whether this duty should be extended by statute to all advisor/retail client relationships. We believe that there is insufficient evidence to support the position that the application of a broad fiduciary standard would further investor protection in Canada and are concerned that unintended consequences may, in fact, exclude certain groups of investors from accessing affordable levels of investment advice.

The CSA implies that Canada's investor protection regime is weak, lags behind that of other jurisdictions and is in need of fundamental change. There are, in fact, strong indicators to support the view that Canada is a leader in this regard. The current duty of care, as supplemented by the new Client Relationship Model, is a robust, "made in Canada" solution that reflects the needs of the investing public, while offering consumers a broad range of investment choice. Furthermore, the recent IAC/Advisor Impact study "*Economics of Loyalty 2012*" found that Canadian investors are generally very pleased with their relationships with their advisors. We ask that, before the CSA takes further action, it first identify whether there is a significant market failure or harm that would be better addressed by the imposition of a fiduciary standard. As noted, the common law fiduciary standard offers increased protections to vulnerable investors. We would question whether there is a problem with the judicial interpretation of the common law that necessitates a legislative response.

The CSA has articulated a best interest standard for discussion purposes. This standard constitutes a full, fiduciary duty as defined by common law. The consultation paper also notes that some stakeholders have suggested that the introduction of this duty could reduce investor choice and access to advisory services and would increase the costs of those services. We agree with that conclusion.

Canadian investors currently benefit from access to a broad array of investment products. Open architecture offers customers a range of investments that can be consolidated into portfolios designed to meet their individual needs and objectives. The introduction of the unqualified fiduciary duty, as described in the consultation paper, would likely limit the number of available products. One key aspect of the consultation paper is that conflicts must be avoided. Consequently, initial public offerings and new issues underwritten by affiliates of the dealer would be unavailable. Customers would also be unable to purchase securities manufactured by affiliates of the dealer, such as proprietary mutual funds. TD offers a range of highly rated proprietary products that have been developed to meet the needs and objectives of our clients. These clients expect TD advisors, who have detailed knowledge and understanding of those products, to be in the position to include them in the clients' portfolios. This is particularly true where clients have specifically chosen TD as their advisor.

The CSA has asked whether any elements of such a fiduciary duty should be qualified to take into account the business models of dealer members. We encourage the CSA to ensure that any new standard allows dealers to continue to offer non-arm's length products to their clients, with the appropriate disclosures.

Canadian investors also benefit from choice among a variety of investment models, from execution-only services through to privately managed portfolios. The impact on compensation structures associated with a best interest standard would reduce the range of choice for many investors. Due to inherent conflicts of interest, commission-based compensation, typical in the brokerage industry, presents significant complications in the context of a fiduciary standard. Absent commission-based models, investors seeking advice-based services would be required to pay annual fees, which in many cases would be higher than

commission payments. Fee-based accounts require minimum assets or minimum fees to offset costs and are, therefore, designed for investors with larger portfolios. For example, for a young investor with a small portfolio seeking to save for retirement, the most cost-effective and appropriate model may be a commission-based account that reflects the low trading volume associated with a buy and hold strategy. Given the increased costs associated with fee-based advisory services, this investor is more likely to move his accounts to an execution-only channel that offers lower cost, commission-based trading, but without advice and suitability obligations. A young client starting out with his first investment portfolio derives tremendous value from an advisor relationship. The introduction of a fiduciary duty could put that investor at increased risk of being excluded from the market for good financial advice at a reasonable price.

There are, however, alternatives that would address many of the concerns identified in the consultation paper. The paper notes that low financial literacy levels remain a significant issue in Canada. TD supports various financial literacy programs to help Canadians identify and reach their financial goals and instill greater confidence when it comes to managing money. These include programs with ABC Life Literacy Canada, Junior Achievement Canada and United Way of Greater Toronto.

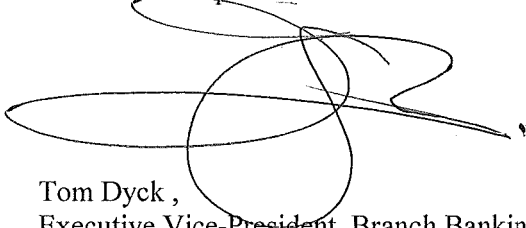
TD is engaged in capacity building in the non-profit sector through sponsorship of the Canadian Centre for Financial Literacy and offers grants to non-profits doing innovative financial literacy projects through the TD Financial Literacy Grant Fund. More than 1,000 TD employees coast-to-coast volunteer their time to deliver financial literacy programs to Canadians in communities and schools across the country. We also help our customers make better financial decisions with various online resources, tools and calculators. At TD, we are committed to improving the financial literacy of Canadians and would welcome the opportunity to work with regulators to further this objective.

TD appreciates the opportunity to provide comment on this proposal. We strongly endorse investor protection initiatives, and agree that there are opportunities to improve the current regime. We would, however, ask that the CSA conduct a comprehensive cost/benefit analysis, taking into consideration the implementation of the Customer Relationship Model, before it takes any further action on the statutory best interest concept.

Sincerely,



Leo Salom ,
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Ultimate Designated Person, TD Waterhouse Canada Inc,
TD Bank Group



Tom Dyck ,
Executive Vice-President, Branch Banking
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