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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
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

John Stevenson, Secretary
Ontario Securities Commission
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Re: Canadian Securities Administrators (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 (Consultation Paper)

We are writing to provide comments on the CSA's Consultation Paper on the proposed statutory best interest duty published on October 25, 2012.

Investors Group Inc. (Investors Group) is a diversified financial services company and one of Canada's largest managers and distributors of mutual funds, with assets under management of over $61.8 billion at January 31, 2013. Investors Group distributes its products through approximately 4,500 Consultants engaged with its subsidiaries that are for the most part members the Mutual Fund Dealers Association of Canada. We provide financial planning solutions to approximately a million accounts in Canada.

We have a strong interest in the discussion set forth in the Consultation Paper since the proposal has the potential to diminish personal saving by Canadians due to several unintended consequences, reducing the positive impact on savings through the well regulated financial services industry and increasing the resulting burden on governments to care for Canadians in their retirement years.

A. Vocabulary for Serving Clients Well

A key purpose of securities law is the protection of clients. The difficulty lies – and opinions will differ – on how to fill in the details behind this general principle. This underlying tension has historically influenced the evolution of legislation in this area. In particular, the paper discusses whether a "best interest" standard should govern the relationship between advisors and their clients without clearly indicating what that would mean. "Best interest of the client" can mean many things in law and its applicability to products and services with uncontrollable variable outcomes are very different than the purchase of a commodity.

The difficulties with the Consultation Paper are aggravated by the fact that it does not demonstrate that there is in fact a gap between the current standard of conduct for advisers and dealers, which requires "suitable" solutions, and a potential statutory "best interest" duty. Concerns are expressed largely in conditional terms (there "may be" a gap or the current model "may not" address an issue). In our view the current standard of conduct (which continues to evolve through recent and pending reforms) achieves the goals of the proposed best interest duty.

In particular, client interests are protected today through the duty of dealers and advisors to act fairly, honestly and in good faith within, amongst others, a system of detailed rules for suitability, disclosure and management of conflicts of interest, relationship disclosure, dispute resolution, restrictions on compensation and incentives governing the sale of mutual funds.

B. Best Interest versus Suitability

Although the term "best interest of the client" can sound altruistically positive it can have a technical meaning that overreaches any intended result. If "best interest" is defined by the ultimate performance of the instrument, the determination of this will always be made in the future by looking back. This approach simply cannot work since performance is affected by many factors over which the advisor has no control, including many client decisions both initially and throughout the life of the investment holdings in conjunction with co-incident market movements.

"Best interest" can be interpreted anywhere from the advisor being responsible for the success of an investment in the nature of a guarantor, on the one hand, to a standard that is close to that which applies currently (acting fairly, honestly and in good faith), on the other. Adopting a standard closer to the former would be ill advised, since it would introduce new uncertainty into the relationship between the client and the advisor and open the door to unintended consequences. For example, saving over long periods of time to prepare for retirement requires a heavier mix of equity investments versus fixed income investments to improve after inflation accumulation values but this will lead to volatility in asset values, which may appear during bear markets not to be "best", yet the strategy clearly is in the long term "best interests" of the client.

C. Assessing Commodities versus Financial Planning/Mutual Funds

As we have noted, the difficulty with the Consultation Paper begins with its supposition that the concept of "best interest" has a precise meaning, when it does not. This issue is made worse by the implication that investments are a kind of commodity, interchangeable one with the other, where a set of objective requirements can identify a single solution. They are not. Instead securities are intangibles, where the choice is dependent on a range of subjective factors which, for most people, require the assistance of an advisor to determine which alternative is best.

The Consultation Paper seems to equate "best price" as being the only investment choice consistent with "best interest". In our view this analysis is incorrect. Any client's decision in this area is necessarily guided by a range of factors. The single product by product analysis, which appears implicit in the Consultation Paper, also negatively affects the ability of the advisor to create a comprehensive solution for clients by taking into account all factors. Taking investment funds as an example, price is one of these factors, but so is style of management, past performance and volatility, among others. Further, this approach would negatively affect the advisor's ability to consider a portfolio approach with a client, which may include a variety of products to meet the client's short and long-term objectives, risk tolerances and tax efficiencies. The advisor and the client can only know after the fact whether a product's price is high or low in relation to resulting benefits and competing products.

The degree to which the advisor relationship is ongoing to assist the client in many subsequent decisions regarding the care of their assets and alignment with their goals will also impact the pricing of the relationship whether those costs are embedded in the mutual fund fees or charged in some other manner.

This existing regulatory system requires advisors to recommend investment options that are consistent with the client's circumstances and objectives. This standard recognizes that the process of recommending appropriate options is a dynamic one that is dependent on subjective analysis, namely the guidance provided by the advisor. In addition, the regulatory system grafts certain other obligations on those advisors to ensure that they are competent and professional and act fairly, honestly and in good faith.

While the Consultation Paper suggests that there is a gap between public expectations and the current applicable standard, in our view this disappears when clients become aware as to how extensive the existing duty already is.

D. Securities versus Other Financial Services/Products

If adopted, the best interest standard would only apply to the securities industry, which is only one part of the financial services sector in Canada. Advisors in the insurance or banking sector (or dually licensed individuals to the extent they are dealing with insurance or banking products) would not be subject to this standard, which will result in product and regulatory arbitrage. Obligations owed by advisors selling products to their clients should not be dependent on the legal nature of the product being sold or the licence held by the registrant. Further, where investors are dealing with dually licensed salespersons (particularly securities and insurance) it is unlikely that an investor will understand that different standards of conduct will apply depending on the product purchased. **If a statutory best interest duty were to be implemented we strongly believe that this should be done concurrently across the securities, insurance and banking industry.**

E. Embedded Compensation Often Aligns Interest between Client and Advisor

The Consultation Paper seems to be negatively inclined towards dealers with a proprietary shelf and products with an embedded compensation structure. However this analysis is superficial and in practice, these are often well aligned with investors' interest, as follows: advisors are compensated once on sales with no recommissioning on switches – sales – into other funds, eliminating any incentive to churn; funds with a deferred sales charge (DSC) at Investors Group carry a lower management expense ratio than funds without a DSC, which provide a solid economic choice to clients to choose between No Load and DSC fund series. **In this situation the interest of the advisor and the client are very much aligned. Both have the incentive to take a long term view – the whole goal of investing – and both benefit when the client succeeds.**

F. Implementation Issues

As the Consultation Paper notes, foreign jurisdictions that have established a fiduciary duty for retail clients have had to introduce a variety of qualifications in order for it to be workable. This would undoubtedly also be necessary in Canada, in order to address the current registration categories and the distribution models they allow. This would need to include the ability of dealers both to have restricted product shelves, among other things. **Because the proposed standard is statutory, these qualifications would have to be codified in the legislation and it may not be possible to identify all of them in advance (unlike in the courts, where the common law can adapt to particular fact situations, rules cannot be amended quickly).** Further, the logistical difficulties in implementing harmonized legislation across 13 jurisdictions concurrently are significant and based on past experience may not even be possible. As a result, waiting until these foreign jurisdictions have some history with this standard to enable the CSA to then assess the experiences there before introducing a standard in Canada makes sense.

G. Conclusion

An alternative, and preferable, approach to the proposal in the Consultation Paper is to address the issue on a practical basis, by beginning with the principle that the interest of advisers and their dealers should be aligned with the client's and then proceeding to set out and refine the specific duties that they owe, using the existing suitability obligation as the base. This current standard achieves many aspects of the proposed best interest duty and is evolving further through the new disclosure rules introduced but not yet fully implemented including the Point of Sale and Disclosure, Compensation and Performance Reporting rules.

This incremental approach, which has historically been the most successful one in the area of securities legislation, should be allowed to carry on to fruition instead of imposing a new standard with uncertain meaning and questionable benefits.

We thank you for the opportunity to provide comments on the Consultation Paper. Please feel free to contact David Cheop (david.cheop@investorsgroup.com) or myself, if you wish to discuss this further or require additional information.

Yours truly,

INVESTORS GROUP INC.

Murray J. Taylor

President and Chief Executive Officer