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April 12, 2013

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Secretary
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Montréal (Québec) H4Z 1G3

Dear Sirs/Mesdames:

RE: Canadian Securities Administrators Discussion Paper 81-407: Mutual Fund Fees

Thank you for the opportunity to provide comments to the Canadian Securities Administrators ("CSA") on this Discussion Paper.

Fidelity Investments Canada ULC ("Fidelity Canada") is the 7th largest fund management company in Canada and part of the Fidelity Investments organization in Boston, one of the world's largest financial services providers. Fidelity Canada manages over $70 billion

in mutual funds and institutional assets and offers approximately 200 mutual funds and pooled funds to Canadian investors.

For over 65 years, including 25 years in Canada alone, Fidelity Investments has strived to help our clients achieve their financial objectives. Over 20 million investors worldwide have placed their trust in Fidelity Investments and we take the trust that investors place in us as stewards of their financial assets very seriously.

The CSA's goal of protecting Canadian investors is laudable and one that Fidelity Canada fully supports. The financial system is built on trust and ensuring that correct protections are in place for investors. Asset safety and accessibility are paramount to maintaining a healthy, working financial system. Along with adequate protections, Fidelity Canada strongly believes that Canadians should have the ability to choose where and how their assets should be invested including benefiting from the guidance and advice of professional financial advisors.

Mutual funds have long played a major role in many Canadian investors' portfolios as they are intelligent investment products that allow investors access to financial markets that otherwise they might not be able to access. Mutual funds are highly regulated and more transparent than most other managed investment products. Mutual funds allow smaller investors to access professional financial advice both through professional financial advisors and professional portfolio managers.

Numerous research studies have shown that Canadians who use financial advisors are better off with their savings and investments. Canadian households who receive advice from a financial advisor have, overall, 4.2 times as much in financial assets than households without a financial advisor. As well, advised households are more likely to save and save more than non-advised households[1]. The long-term positive effect of receiving financial advice is shown in the higher level of financial assets that advised households have in comparison to non-advised households. The majority of advised investors believe their advisor has positively impacted the value of their investments; 61% believe their advisor has assisted in increasing their net worth. These are powerful statements on the value that mutual funds and financial advisors can bring to Canadian investors.

Encouraging healthy discussions and debates are essential to ensuring a well-balanced regulatory and business environment. We recognize that the CSA may feel increased pressure to scrutinize the mutual fund fee structure in Canada because of the recent regulatory reforms in the United Kingdom and Australia as well as pressure within the Canadian marketplace. However, we are of the opinion that Canada is in the enviable position of being able to wait to understand how the changes in other jurisdictions will impact investors before moving ahead in Canada. The international reforms are very new. There is no evidence yet that investors are getting better value for their money or better financial advice (especially smaller investors). Before any decision is made to pursue regulatory action, we urge the CSA to closely monitor how these international developments unfold.

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[1] Investment Funds Institute of Canada (IFIC), Mutual Fund Value Proposition, February 14, 2013

We believe that it is important to understand the cumulative impact of the regulation of mutual fund fees as well as other recent and proposed regulatory initiatives (including National Instrument 31-103 amendments and the 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. Financial advisors drive advice and advice drives savings rates in Canada which obviously has a social and economic impact. Fidelity Canada believes strongly that regulation should not drive Canadians away from financial advice. We believe that a reduction in the availability of financial advice will result in a reduction in savings rates for Canadians. So while the CSA may have good intentions, is the CSA considering the broader impact to investors, to savings rates and to the economy?

The CSA's stated goal for this initiative is investor protection. However, we are concerned that the CSA is considering only the protection of investors who invest in securities or mutual funds with these initiatives. There is a broader social goal of protection for all investors. Other goals, as stated above, include the need to increase savings rates for retirement and the health of the Canadian economy. If the CSA simply drives investors to other less regulated and less transparent products, it will not accomplish the overarching goal of investor protection for all investors.

SPECIFIC COMMENTS

The Consultation Paper poses a range of options for consideration. In this section we will comment on each of those options.

1. Specify Advisor Services Received for Trailing Commissions

As we understand it, this proposal is based on the premise that investors may not be receiving comparable services in return for the trailing commissions broker/dealers are paid. The CSA would like to standardize the services provided.

We do not object to this proposal. If clarity of services provided would give good guidance to broker/dealers and clarify regulatory expectations, that seems to be an appropriate goal. Of course, it will be important to have a strong industry dialogue around exactly what the services should be and how they would be measured. Compliance monitoring in this area is obviously a big challenge. It is important to get input from the Mutual Fund Dealers Association ("MFDA") and Investment Industry Regulatory Organization of Canada ("IIROC") to ensure that any specification of services can be monitored appropriately. It is also important to ensure that monitoring methodology is very clearly explained to the industry. In short, the services required should be appropriate and measurable.

2. Create a Standard Class for "Do It Yourself" ("DIY") Investors

The CSA believes that DIY investors do not have a real investment option currently. The CSA would require all mutual fund manufacturers to make available a cheaper class of

securities (i.e. without the trailing commission component) to investors who do not wish to have advice.

Fidelity Canada offers a lower management fee-based class (Series F). Series F does not pay trailing commissions and is available to dealers who wish to make it available on their shelf. We are seeing growth in assets in F Class currently. It may be possible to offer a class with a small trail or service fee so that DIY investors can access funds through discount brokers. It is unreasonable to expect discount brokers to offer a no fee series as they need to pay for the infrastructure to support these sales even without advice.

We do not believe that the CSA should force fund manufacturers to offer a DIY class. It should be up to the manufacturer to decide whether or not they wish to offer a DIY class based on their own business model.

The CSA suggests that a DIY class be available either through discount brokers or through direct sales by mutual fund managers to investors. It is completely unworkable for many fund managers to offer their funds directly to investors. Many, including Fidelity Canada, are not set up to distribute directly to investors. We do not have the necessary license, but more importantly, we do not have licensed salespeople, the ability to perform all the services required to service retail investors, or the considerable compliance infrastructure necessary. In short, we don't have the experience that professional licensed financial advisors have in this country.

3. Unbundle Trailer Fees and Charge Them Separately to the Fund

Fidelity Canada believes that transparency of fees is a good thing. However, Fidelity Canada also believes that Canadians have been well-served with the current fee model – commissions embedded within the management fee. Given the choice, we believe that Canadians will not be willing to pay for the true cost of financial advice services.

In our view, the better route is disclosure. Currently, trailing commissions are clearly disclosed in a mutual fund's simplified prospectus and fund facts document. Disclosure will be further enhanced through recent amendments to National Instrument 31-103. Investors will be able to see exactly what was paid to their dealer in dollar terms in respect of his or her own account and be able to compare the amounts paid for their own account to the actual performance of their account, again in dollar terms. There will be increased scrutiny and understanding as the result of the implementation of 31-103, which arguably could do more to advance CSA's position than other regulations. Again we suggest that the CSA take the opportunity to assess the changes that will result from 31-103 implementation as well as the changes in other jurisdictions before embarking on regulatory initiatives to regulate mutual fund fees.

There is a discussion in the Paper about the use of fund assets to pay for trailing commissions. Fund assets are not used to pay trailing commissions – management fees are used to pay trailing commissions. Fund managers are going to be paid a management fee for their services, and it is up to the fund manager how they use that management fee. There is no evidence in Canada that management fees are rising to

meet the demands of an increased trailing commission for advisors. That simply is not happening. In addition, there is a statement that says that the retention of less net management fees in order to pay higher trailing commissions "may be a significant contributing factor to the growth of those products." We found that statement to be suspect (as evidenced by the word "may"). We do not see any evidence that supports this proposition in the paper and feel that statements like that add to the unfairly negative perception of mutual funds generally.

4. Cap Trailing and Ongoing Sales Commissions

Fidelity Canada believes that the CSA should not decide how mutual fund managers should price their products or cap ongoing sales commissions. Through the many CSA disclosure initiatives discussed above, investors have access to and/or already receive important mutual fund disclosure information explaining how their dealer/advisor gets paid. We do not believe that capping commissions will lead to a greater alignment of advisor compensation and services. Rather, we are of the view that greater clarity and transparency around how their dealers/advisors are paid will enable investors to make more informed investment decisions.

5. Introduce a Different Series or Class for Each Purchase Option

As you are aware, Fidelity Canada has a different series for front load and back end load purchase options. We led the industry with this change in 2005. Series A units represent the back end load and series B units are front load. In addition, series B units are offered at a discount to front end load units. The fee for series A units for a typical equity fund is 2.00% whereas the fee for series B units is 1.85% - typically 15 basis points lower. In addition, the fixed administration fee for series B units is also lower than the series A fixed administration fee by 5 basis points. If an investor purchases series A units, at the end of the deferred sales charge schedule, investors are automatically rolled into the lower fee series – series B, thereby immediately benefitting from a reduction in the management fee and fixed administration fee (a total of 20 basis points savings plus HST). There are no charges for this automatic switch.

Fidelity Canada is obviously an advocate for the different series for each purchase options and particularly the reduction in fees for the front load purchase option. There is little doubt that the front load purchase option is cheaper for the fund manager and Fidelity Canada has made the choice to pass those savings onto Fidelity Canada investors.

6. Implement Best Interest Fiduciary Duty

We refer you to our comment letter dated February 22, 2013, included as Appendix A to this letter, in which we articulated our views on this concept.

7. Ban Embedded Fees - Move to a Negotiated Fee Model

Fidelity Canada does not support a ban on embedded fees and strongly believes that banning advisor compensation will lead to catastrophic consequences for mutual fund investors, particularly small investors.

Retail investors need and value financial advice. Financial advice plays a critical role in investment decision-making. We expect that banning advisor compensation (similar to the UK and Australia) will drastically limit retail investors' access to financial advice as investors will no longer seek financial advice as they will perceive the costs to be too high.

Mutual funds are pooled vehicles that allow smaller investors to access professional financial management because the services are subsidized by larger investors in the pools who pay higher fees. Similarly, smaller investors are serviced by financial advisors, because in total their fees (both from smaller and larger investors) allow them to be able to afford to service smaller investors. However, if a fee for service model is adopted, it will not be economic for financial advisors to service smaller investors in many cases. It is important for the CSA to actually understand the true cost of advice and the amount of time it takes to service a small investor and a large investor.

Later in the paper we summarize research that has been conducted in the United Kingdom and Australia. The term "guidance gap" has been coined in both countries. The guidance gap simply means that investors are unlikely to be able to access financial advice either because there will be fewer advisors in a fee for service environment, or investors will not be willing to pay for financial advice directly because they will perceive the costs to be too high. That will not serve investors well – financial advice is important to encourage savings as well as to guide investors to appropriate investment choices.

While no compensation system is perfect, and each has its benefits and disadvantages, the embedded fee model in Canada has served investors well. We believe that Canada is in a very different position than the UK and Australia, economically, on the regulatory front and otherwise, and that it would currently be inappropriate for Canada to adopt these measures here. The real issue, we believe, has to do with the lack of understanding of the costs associated with mutual fund investments and how financial advisors are paid. This, we believe, would not be achieved through the outright ban of advisor commissions, but rather through proper education and transparency. Unlike several international jurisdictions, the CSA has worked hard over recent years to enhance cost disclosure at point of sale and through client level reporting, so we feel that these initiatives should be given the time to run its course and then be assessed to determine if additional measures are needed.

The CSA stated that "*While this option would have the greatest impact on current business models, it would also be the most straightforward way to align the interests of both the mutual fund manufacturers and the advisors with those of investors. Commissions would no longer be a consideration in the sale of the mutual fund product.*" We disagree. While the CSA efforts are noble, we realize that retail investors would now have to shoulder the burden of having to negotiate a fee directly with their advisor that

they would not have otherwise had to do under the current model. Some investors may not be equipped for these negotiations. Embedded fees may provide an upper limit to the fees those investors may pay.

We have not seen concrete evidence to support the proposition that unbundling of fees has led to cost savings for investors and better financial advice. Unbundling trailing commissions may well cause investors not to invest in mutual funds altogether. Moreover, investors may abandon this type of savings, believing the costs of investing are too high. Alternatively, they may move to other less regulated products where the fees are still bundled, believing that the costs are cheaper. These, we believe, are real risks, which were not addressed in the Discussion Paper but which must be part of the discussion and debate.

INTERNATIONAL OBSERVATIONS

In addition to providing comments in the areas for consideration that are identified in the CSA paper, we wish to consider the broader implications that changes in mutual fund fee structures may have for investors. We have surveyed studies and literature in some of the other countries noted in your paper - Australia, the UK and the U.S. and found some interesting observations.

But the observations from these papers are that these countries share similar concerns about the impact of changes to fees.

A common concern raised in Australia and the UK was the fact that Australians and citizens of the UK are not willing to pay the true cost of financial advice. A specific Australian study conducted by the Australian Securities and Investment Commission[2] found that Australians were willing to pay AUD $300 per year for financial advice, but the true cost of providing advice was AUD $2,500 or more. The paper acknowledged the importance of financial advice and posed a challenge for regulators and the investment industry alike - how could this gap be closed and could both parties better articulate the value of advice.

Similarly, in the UK, Fidelity Worldwide Investments (an affiliate of Fidelity Canada) and the Cass Business School at the City University of London wrote a paper called "The Guidance Gap" [3]. The paper was written in light of the move to a fee-based remuneration model in the UK under its Retail Distribution Review ("RDR"). The question again was whether retail savers and investors be willing to pay a fee for financial advice. The author estimated that as many as 43 million UK investors (who currently save £54 billion per year) will be without professional financial advice following the new RDR rules. They will not have the confidence to make their own financial decisions in the absence of professional advice, but they will need financial guidance in order to maintain the health of their personal finances. The authors called this the "Guidance Gap". They also said that because RDR is new it is very possible that more people could fall into the Guidance Gap

[2] Access to Financial Advice in Australia, ASIC, December 2010

[3] The Guidance Gap, Andrew Clare, Professor of Asset Management Cass Consulting, Cass Business School, January 2013

over time. The paper identified three reasons for this - UK investors are generally not willing to pay the true cost of advice, financial advisors will be less willing to service small accounts (defined as £61,000 or less) and there will likely be a decline in the demand and supply of financial advice as a result of the regulatory changes. The authors' main concern is that the Guidance Gap could lead to investors making poor decisions about where to put their savings or, worse, stop saving altogether. While the goal of the RDR may have been to improve the average quality for financial advice, the authors believe that both the demand and supply of financial advice are likely to shrink as a consequence of this new regulatory regime.

Interestingly, KPMG Econtech prepared a study for the Australian Financial Services Council in January, 2011[4]. KPMG modelled the Australian economy based on Australian savings rates and analyzed the impact of financial advice on savings. The proposition was that financial advice is critical to savings rates. And savings for Australians are very important to the health of the Australian economy. Basically, the report indicated that those with a financial advisor save more than those without one. To drive home this point, the study found that someone who commenced receiving financial advice at the age of 30 would be better off by $91,000 at retirement because they received financial advice.

In addition, Strategic Insight prepared a study on the evolution of costs of mutual funds in the U.S.[5]. The study indicated, among other things, that the unbundling of mutual fund fees in the U.S. has resulted in an increase in the total shareholder costs for many mutual fund investors. It also found that investors can easily compare total shareholder costs when such costs are bundled within the total expense ratio (similar to Canada's MERs). Therefore, Strategic Insight's view was that when total shareholder costs are unbundled, the transparency and comparability are reduced. Finally, with respect to smaller investors, Strategic Insight found that with rising costs for fee-based accounts as investor account sizes decrease (because of the lack of economies of scale in servicing such accounts), many smaller investors are faced with significantly higher ongoing costs for financial advice or the complete lack of an advice option in many cases.

Further, and of some interest, are some papers relative to the U.S. We know that you are aware that the cost of ownership of Canadian mutual funds on average is comparable to the cost of ownership in the U.S.[6]. And although the OSC has said that the comparisons of cost to the U.S. is not a driver behind the consultation paper, we have also heard the OSC say that reducing cost to investors is at least one of the major considerations for the paper - the other being the improvement in transparency and investor education around fees.

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[4] Value Proposition of Financial advisory Networks - Update and Extension, KPMG Econtech, January, 2011

[5] A Perspective on the Evolution in Structure, Investor Demand, Distribution, Pricing, and Shareholders' Total Costs in the U.S. Mutual Fund Industry, Strategic Insight, November 2012

[6] Mackenzie Financial Corporation - Canadian Mutual Fund Ownership Cost: Competitive Relative to the U.S., September 2010

INDUSTRY TRENDS

It is no surprise to the CSA that how mutual funds are sold and by whom is changing. You will see month in and month out that the Canadian banks dominate sales of mutual funds and that industry sales are becoming concentrated among a few participants. Please refer to Appendix B for a view of how sales into the bank channel have increased while sales of mutual funds sponsored by independent fund manufacturers have declined. We believe that there is a role for both banks and independent fund manufacturers in Canada and in order to have a healthy industry, both need to exist. We also note the increase in sales of proprietary products by the banks. In some cases, you will see that competing products actually have stronger performance over shorter and longer terms, and yet the bank products garner more sales. This speaks to the distribution power of the banks all over Canada through a variety of distribution methods.

We have seen and heard that in Australia, mid-tier financial planning organizations are almost extinct as the large banks have been and are buying up those organizations. A similar concentration of sales with the large Australian banks is evolving in and anecdotally we are told that this is largely the result of increased regulation of the financial products.

Another trend that we have observed relates to the financial advisory channel in Canada. Approximately 87% of financial advisors licensed with the MFDA are dually licensed as insurance salespeople. And similarly, of IIROC advisors, 63% are dually licensed. [7] We are concerned that with the regulation of fees for mutual funds only, and with the unbelievable increase in regulation and compliance burdens faced by these advisors, that they will feel that their only option is to sell less regulated and less transparent products to their clients.

We think the CSA needs to be aware of these and other trends. It is our view that Canadians are well served by having a healthy securities based financial planning industry.

CONCLUSION

Beyond the consideration of the specific options put forth by the CSA, we would ask the CSA to consider the broader implications to some of the proposed changes to the regulation of mutual fund fees. The overarching goal for the CSA is the protection of investors who invest in securities products. But there are broader goals for Canadian society that should be considered - they are the protection of all investors, no matter what products they invest in, the savings rates for retirement for Canadians and the health of the Canadian economy.

It is important that the impact of changes to fees in the mutual fund industry not impact the savings rates. It is also important that Canadians are not driven away from the mutual fund product to products that are either less regulated or less transparent or both. Also,

[7] Source: Investor Economics, 2011 Household Balance Sheet Report

the mutual fund industry is a big employer in Canada. The financial advice sector, which includes fund management companies and fund dealers, employs more than a quarter of a million Canadians, who work in all regions of Canada.

It is also important that the small investor continue to be serviced. Embedded fees have allowed small mutual fund investors to benefit from the scale of larger investors in the pools. Similarly, financial advice is much more available in the current model to smaller investors because financial advisors can afford to include them in their practice.

Also there is a growing concern and evidence in the U.S. that moving to a fee for service model and away from embedded fees may actually result in an increase in fees as there is no cap on a fee for service that can be negotiated through financial advisors, and investors may move to more expensive competing products like segregated funds or other banking products like separately managed accounts.

Lastly, it is important to remember that initiatives in the UK and Australia have been uniformly applied across competing products - securities, banking investment products and insurance investment products. As a result, regulatory arbitrage has not been permitted in those countries and there is a common investor protection regime for all investors in those countries. In our opinion, unless this and other regulatory initiatives are implemented across competing products, the CSA will not achieve investor protection for Canadians. We think this is absolutely the wrong approach to investor protection in Canada.

Yours truly,

"W. Sian Burgess"

W. Sian Burgess
Senior Vice President,
Head of Legal and Compliance, Canada

c.c. Robert S. Strickland, President

Appendix A

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February 22, 2013

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
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Dear Sirs/Mesdames:

RE: Canadian Securities Administrators 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 (the "CSA Paper")

Thank you for the opportunity to provide comments to the Canadian Securities Administrators ("CSA") on this Consultation Paper.

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the world's largest financial services providers. Fidelity Canada manages over $70 billion in mutual funds and institutional assets and offers approximately 200 mutual funds and pooled funds to Canadian investors.

For over 65 years, including 25 years in Canada alone, Fidelity Investments has strived to help customers and clients achieve their financial objectives. Over 20 million investors worldwide have placed their trust in Fidelity Investments and we take the trust that investors place in us as stewards of their financial assets very seriously.

The CSA's goal of protecting Canadian investors is laudable and one that Fidelity Canada fully supports. The financial system is built on trust and ensuring that correct protections are in place for investors. Asset safety and accessibility are paramount to maintaining a healthy, working financial system. Along with adequate protections, Fidelity Canada strongly believes that Canadians should have the ability to choose where and how their assets should be invested including benefiting from the guidance and advice of professional financial advisors.

Mutual funds have long played a major role in many Canadian investors' portfolios as they are a well regulated, intelligent investment product that allows investors access to financial markets that otherwise they might not be able to access. Mutual funds are, highly regulated and more transparent than most other managed investment products.

Numerous research studies have shown that Canadians who use a financial advisor are better off with their savings and investments. Canadian households who receive advice from a financial advisor have, overall, 4.2 times as much in financial assets than households without a financial advisor. As well, advised households are more likely to save and save more than non-advised households[1]. The longer households are advised has a positive impact on financial assets. Households actively advised for at least four years have more financial assets than non-advised households. The majority of advised investors believe their advisor has positively impacted the value of their investments; 61% believe their advisor has assisted in increasing their net worth. These are powerful statements on the value that mutual funds and financial advisors can bring to Canadian investors.

The goal of establishing a fiduciary duty for financial advisors cannot be taken in isolation of other regulations. It is critical to fully assess the possible ramifications of new regulations, including fiduciary duty, so as not to harm investors with unintended consequences.

We believe that it is important to understand the cumulative impact of the move to a fiduciary duty standard as well as other proposed regulatory initiatives. Will the higher cost associated with a fiduciary duty reduce the number of financial advisors available to Canadians? Will this drive Canadians away from an advice-driven model? Will that then reduce the savings rates of Canadians? Do we know without a great deal of further study that a fiduciary duty standard won't ultimately harm Canadians in one way while we try to provide great protections for them in another way?

[1] Investment Funds Institute of Canada (IFIC), Mutual Fund Value Proposition, February 14, 2013

GENERAL COMMENTS

1. Definition of Fiduciary Duty

As stated above, CSA's goal of protecting Canadian investors is laudable and one that Fidelity fully supports. Fidelity Canada supports a limited fiduciary duty standard that is carefully and reasonably defined. We believe that the definition of the fiduciary duty needs to be carefully defined taking into account the specific nature of the investment industry so that it does not result in unintended or unfair consequences. We will consider the definition of fiduciary duty later in this paper and compare it to other jurisdictions, but suffice to say that the CSA Paper appears to adopt a higher standard than other jurisdictions have either adopted or proposed. We believe that this could lead to unintended or unfairly negative consequences to investors, advisors and mutual fund managers.

In fairness, the CSA does state in Footnote 12 that:

> ...the unqualified nature of a common law fiduciary duty may need to be qualified if securities regulators wish to apply it to advisers and dealers in Canada.

We agree with this statement. Although the CSA Paper does a good job of explaining the notion of fiduciary duty in Canada, it does not fully consider the implications of extending the fiduciary duty to the advisor-client relationship. We expect that is because the law around fiduciary duty is quite voluminous. We would suggest a careful assessment of what a fiduciary duty will mean for the sale of investment products to ensure that it does not have far reaching implications which may not yet have been thought of, as discussed below.

2. Regulatory Arbitrage

If a fiduciary duty standard is adopted, it is critical that the standard be applied across all investment products. If this standard is only introduced to securities products such as mutual funds which are governed by securities administrators, the unintended consequences could be that investors and advisors alike will move to products which are not governed by a fiduciary duty. This would include insurance and banking products which are not regulated by the CSA and therefore are not covered by this proposal.

If the primary goal of the fiduciary duty standard is investor protection, driving investors and advisors to competing products with a lower standard will not have the result of increasing investor protection.

In addition, the CSA needs to be clear with all of its constituents (including the Ministers of Finance who govern the various CSA members), that other jurisdictions such Australia and the United Kingdom have been able to apply the fiduciary duty standard across all investment products. It is a very different matter in Canada to propose to apply the

standard only to securities products. We think this would be a fundamental flaw in investor protection in Canada and do an enormous disservice to investors.

As you are aware, a fiduciary duty standard exists in Quebec. We note that a recent Quebec Court of Appeal case (Marston v. Autorité des marchés financiers) stated that the goal of protection of the investing public means that there should be an even application of the duty across all financial products and services, not just those regulated as securities. We agree with this principle.

3. Other Concerns

We outline other concerns below. In summary, we are concerned that the application of a fiduciary duty which is not qualified and reasonably defined will lead to the following:

- A lack of financial advice for small investors
- Limited choice of securities products available to investors
- A default to more conservative investment choices with lower potential for returns
- A disproportionate compliance burden on dealers and advisors
- A move away from advice and financial advisors
- A reduced savings rate by Canadians

SPECIFIC COMMENTS

1. Definition of Fiduciary Duty

a. Best Product for Best Price

While we agree that price should be a factor in the decision making process between the investor and the advisor, Fidelity Canada is opposed to a fiduciary standard that makes the price of the product a defining feature of the definition of fiduciary duty. It is important to keep in mind the investor's right to choose what he or she considers to be the appropriate choice.

We believe that Fidelity Canada's products provide value that is not just tied to the price of our products. We believe that the value proposition must be a component of a reasonable fiduciary duty standard. The value proposition that Fidelity Canada provides, for example, includes its reputation for ethics and integrity. Fidelity Canada is large and well capitalized and has access to tremendous resources - both research and portfolio management expertise, with 765 investment professionals worldwide, as of December 31, 2012[2]. These resources are not free, but we believe that the kind of depth that Fidelity Canada can offer to its investors is worth the price and that some investors will be

[2] Source: Fidelity Management & Research Company, and Pyramis Global Advisors as of December 31, 2012. Data is unaudited. These figures reflect the resources of Fidelity Management & Research Company a U.S. company, and its subsidiaries.

willing to pay the price for the quality of research and investment expertise which we offer. Fidelity Canada offers other areas of expertise that investors can benefit from as well, including tax strategies and expertise within the Fidelity Canada products.

These are factors that thoughtful advisors take into account when making recommendations to investors to purchase Fidelity Canada products and should not be overridden solely by considerations around price in the decision making process.

b. Guarantor Model

Although the CSA says that it does not intend for the fiduciary duty standard to amount to a guarantee of performance, as it is currently framed, it may well amount to a guarantee. Again, the definition must be carefully drafted to ensure that the duty is tied to the investment process and not the ultimate performance of a product or the actual outcome. There cannot be guarantees for securities products as defined in securities legislation. And therefore, a reasonable definition for fiduciary duty must be clear to exclude outcome and investment performance where an appropriate and reasonable process was followed.

2. Legal Analysis of Fiduciary Duty

We would encourage the CSA to ensure that it has conducted robust legal analysis of what a fiduciary duty will mean for the sale of investment products. It would be helpful to the industry if such a paper (i.e. surveying the case law and the application to the investment industry of those principles) were published to allow for a better understanding of how the courts may apply such a duty. The fiduciary duty standard to date has been applied only to limited categories of relationships and the extension to this new category will undoubtedly have far reaching implications which may not yet have been thought of.

The paper should include a prospective understanding of the implications of a fiduciary duty. For example, it is our understanding that the Supreme Court of Canada has stated a fiduciary duty would not allow for a claim of contributory negligence[3]. In other words, if an investor contributes to the poor outcome and the poor outcome is not only because of the failure of an advisor to meet his or her fiduciary standard, the advisor can be held solely liable for the outcome and damages. It is our view that this could be an unreasonable and unfair result in some cases.

In addition, it is our understanding that the application of a fiduciary duty standard will mean that damages can be awarded not only to make the client whole for investment losses, but could also force a dealer to disgorge commissions, pay loss of opportunity damages and possibly have increased exposure to punitive damages. The CSA needs to be sure that from a public policy perspective, this is a desired outcome. In our view, it most certainly is not a desired outcome but will be an outcome of a fiduciary duty standard if that standard is not carefully and reasonably defined and limited appropriately.

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[3] *Carl B. Potter Ltd. V Mercantile Bank of Canada* (1980), 8 E.T.R. 219.

In addition, if this new kind of fiduciary standard is created, it is critical that the CSA provide concrete guidance as to how the standard will apply in various circumstances and also how it expects advisors and dealers to conduct themselves in order to meet the fiduciary duty standard. It is our experience that the CSA has been reluctant to give concrete guidance when new rules are published. We note that the Australian regulators agreed with the Australian investment industry to provide such guidance. We would suggest that the CSA work closely with the industry to develop this guidance should the fiduciary standard come to pass.

3. Fiduciary Duty Proposals in Other Jurisdictions

We believe that the CSA has gone beyond the definition of fiduciary duty which is being considered or has been adopted in other jurisdictions. For example, in the United States, the Staff of the Securities and Exchange Commission has proposed a uniform fiduciary standard for brokers, dealers and investment advisers when offering personalized investment advice about securities to retail investors.[4] The Staff's proposed uniform standard would require brokers, dealers and investment advisers to act in the best interest of their customers without regard to financial or other interests of the broker, dealer or investment adviser providing the advice; but would be structured in a way that "allows and ensures retail investors to continue to have access to the various fee structures, account options, and types of advice that investment advisers and broker-dealers provide."

Similarly, in Australia, the definition of fiduciary duty suggests that price of an investment be considered as a factor among others. In addition, Australia has adopted what would be a "qualified" fiduciary duty standard applicable to retail investors.

In the United Kingdom, the focus is on addressing conflicts of interest as the critical element of the duty owned to clients as opposed to the concept of recommending the "best" or "best priced" investments to clients. Again, price would only be one factor in making recommendations under this regime.

In fairness to the Canadian investment industry, the debate around fiduciary duty should include a clear communication by the CSA to relevant constituents (including investors, investor advocates, media etc.) that there are many different understandings of what this term means. The term "fiduciary duty" is being used quite broadly by the CSA but actually can mean many different things to different people. The CSA should explain how its proposed definition compares to other international definitions. In our view, though there is much debate in the paper, the CSA seems to be moving toward a much higher standard than other international jurisdictions.

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[4] Study on Investment Advisers and Broker-Dealers, as required by Section 913 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Jan. 2011), available at http://www.sec.gov/news/studies/2011/913studyfinal.pdf.

4. Preserve Choice for Investors

We believe that Canadian investors are best served if they are offered a range of products. We are concerned that the introduction of a fiduciary duty standard will narrow the range of products available on a broker/dealer's platform. While dealers already have an obligation to review products (the know your product standard) the liability associated with choosing the "wrong" product for a client may drive broker/dealers to offer lower risk/lower return products that are viewed as having less liability risk.

There is also a concern that a fiduciary duty standard will increase the costs to dealers and advisors alike. It will certainly take more time to fulfill the requirements associated with a fiduciary duty. The compliance burden on dealers and advisors will increase considerably.

We believe that the mutual fund product has been particularly successful at meeting the needs of small investors to find common investment vehicles that are reasonably priced. There is already a movement toward larger investors in our industry. Smaller investors are still serviced, but we worry that there will be fewer advisors and dealers willing to service smaller investors as the costs will simply be too high to make it worthwhile. This is not a good outcome for Canadians with smaller amounts of money who need financial advice in order to grow their savings.

We are also concerned that there will be an increased amount of litigation in our industry. While this may be beneficial to protect investors, we think it will encourage advisors and dealers to invest in more conservative products with less potential for asset growth in order to protect themselves. One of the primary goals of the federal and provincial governments recently has been to find ways to encourage savings rates in Canada and obviously the amount of money available to Canadians at retirement. An overly conservative investment approach will serve investors about as well as an aggressive investment approach with a negative outcome. In some ways, a suitability standard addresses this issue in a way that the fiduciary duty standard does not.

5. Proprietary Product

It is not clear to us what the CSA envisages will occur with respect to proprietary funds that are offered by integrated distributors (particularly, the large Canadian banks). Some distributors that offer proprietary product but also offer third party funds hold themselves out as independent. In some cases, these distributors limit shelf space and advantage their own proprietary products. In some cases, distributors make greater payouts to incent advisors to sell proprietary products. In our view, any new standard should ensure that proprietary funds are not advantaged over independent funds on open architecture platforms. The investor should receive a recommendation for the best fund regardless of the commission received by the distributor or the financial advisor.

6. International Studies

There have been numerous studies on this very issue from many jurisdictions around the world. Of note, a study was commissioned by SIFMA in the U.S. in 2010 relating to the potential impact of a higher/fiduciary standard of care. The SIFMA study concluded that retail investors would see reduced product and service availability along with higher costs under such a standard for investment advisers and broker dealers. The higher costs would result in less investor access for smaller investors and a negative impact on the performance of investments due to higher costs.

In Australia, the Australian Securities & Investments Commission ("ASIC") published Report 224 – Access to Financial Advice in Australia. It was a refreshing regulatory paper in that it started with the premise that access to financial advice is important to Australian investors. The paper went on to examine how access to advice could be improved. It acknowledged that there was a gap between what consumers were prepared to pay for advice in Australia and the actual cost to the industry. It also acknowledged that consumers with access to financial advice benefit financially as a result of that advice, even after the cost of advice is taken into account – through increased savings, faster debt reduction and higher investment returns.

Although Australia has adopted a fiduciary duty standard, it is clear that its goal was not to drive investors away from advice. Its goal was to provide protection to all investors of competing investment products. It remains to be seen whether access to financial advice will be reduced in Australia as a result as the move to a qualified fiduciary duty standard. But it is clear that this is not the Australian intention. One must remember that Australia also has the superannuation model which forces Australians to save for retirement through their employment remuneration as well. To date, the model in Canada is very different.

In addition, the Australian Financial Services Council ("AFSC") engaged KPMG Econtech to prepare an analysis around the value of advice. It concluded that an individual that has a financial adviser is estimated to save a significant amount more than without a financial advisor. This is similar to the research that has been conducted by the Investment Funds Institute of Canada ("IFIC") around the value of advice in Canada and shows a similar outcome. However, the AFSC/KPMG paper goes further. It estimated the increased level of savings of all Australians as a result of the advice channel. It then tied those savings to the national savings rate and the health of the Australian economy.

7. Conclusion

The CSA's goal of protecting Canadian investors is laudable and one that Fidelity fully supports. However, we believe the points raised in this letter show that there is more work to be done to fully understand the impact of a fiduciary duty standard on investors. We believe that it is important to understand the cumulative impact of the move to a fiduciary duty standard as well as other proposed regulatory initiatives. Will this drive Canadians away from an advice-driven model. Will that then reduce the savings rates of

Canadians? Do we know without a great deal of further study that a fiduciary duty standard won't ultimately harm Canadians in one way, while we try to provide great protections for them in another way?

We thank you for the opportunity to comment on the Proposed Amendments.

Yours truly,

"W. Sian Burgess"

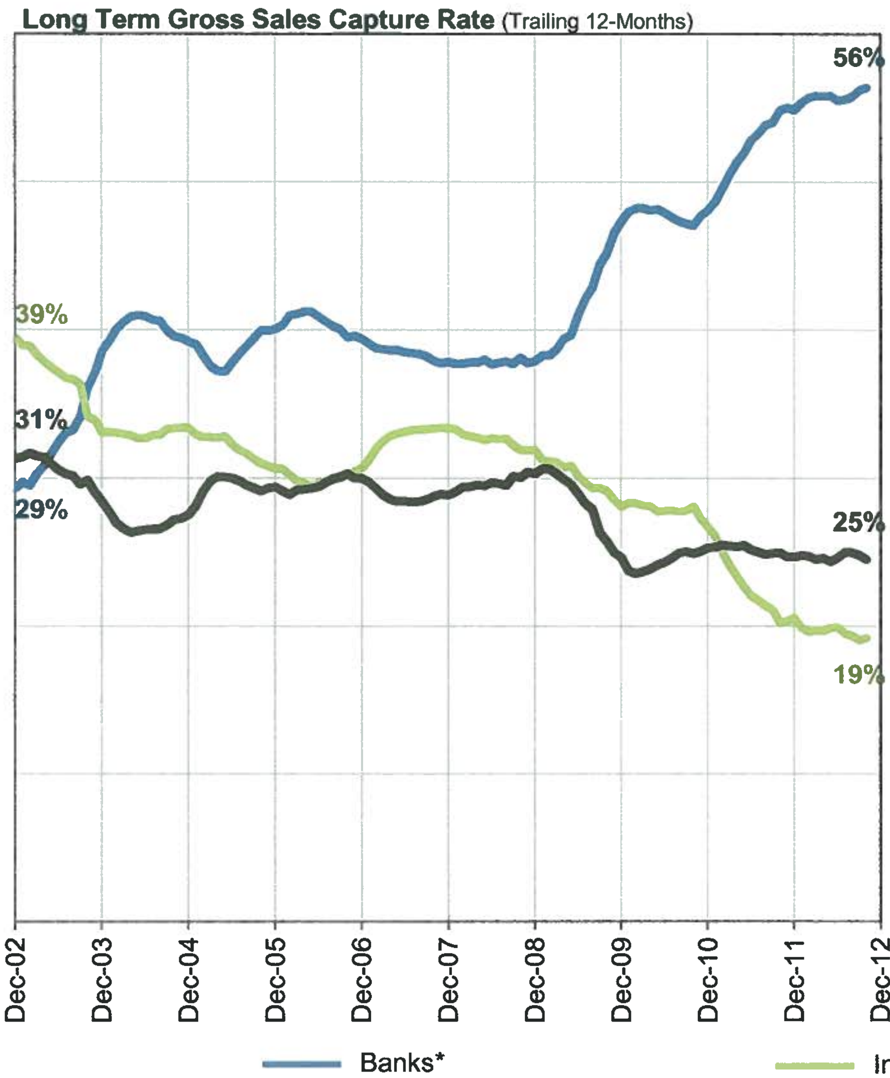
W. Sian Burgess
Senior Vice President,
Head of Legal and Compliance, Canada

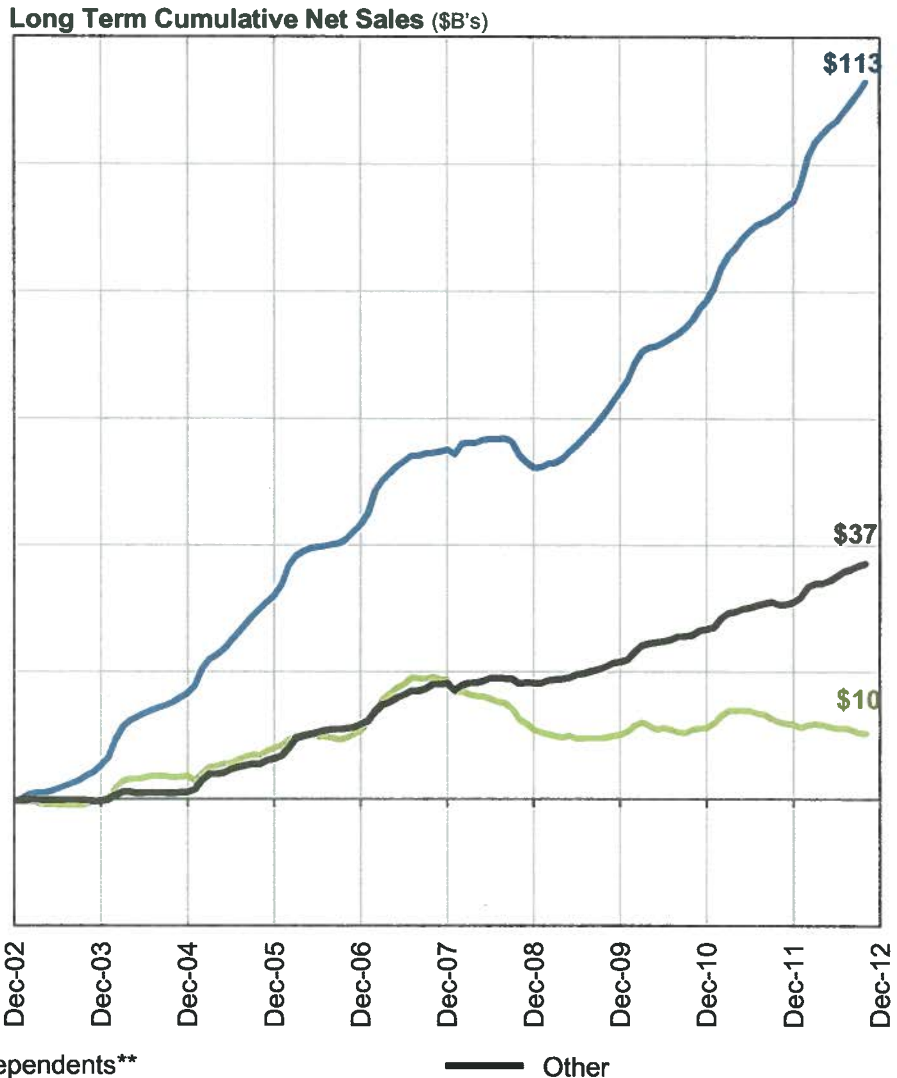
c.c. Robert S. Strickland, President

Appendix B

Mutual Fund Industry Sales

Industry sales are becoming concentrated among a few participants





Banks* Independents** Other

Source: IFIC

** Banks include BMO, BNS, CIBC, NB, RBC, TD*

*** Independents includes those Fund Managers that have no affiliation with distribution*

 Fidelity Internal Information