Via email July 11, 2016

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CANADIAN SECURITIES ADMINISTRATORS CONSULTATION PAPER 33- 404
PROPOSALS TO ENHANCE THE OBLIGATIONS OF ADVISERS, DEALERS, AND REPRESENTATIVES TOWARD THEIR CLIENTS

http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.htm

Kenmar Associates welcomes the opportunity to comment on the Proposal to enhance the obligations of advisors, dealers and representatives toward their clients. Kenmar is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com.Kenmar also publishes *the Fund OBSERVER* on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

We'd like to acknowledge the CSA's recent positive actions on retail investor protection. The new proposals regarding improving the client-dealer relationship demonstrates true leadership in investor protection.

Kenmar is however concerned over the division amongst Canadian regulators as to the merits of introducing Best interest standards and the removal of commissions. We believe that advisors' responsibilities and duties with respect to advice, processes and communications are indeed fiduciary ones. In any event, if other provinces won't sign on, we strongly recommend that Ontario go it alone if necessary. It is our understanding from the Ontario Expert Committee that Ontario has the constitutional right to impose a statutory Best interests duty for the provision of financial advice and planning. The OSC need not wait for other provinces to act.

The problems we see in the delivery, quality and accountability of service outcomes lie with a system that rewards the transaction and that overly focuses on the transaction in its service processes. The focus on the transaction de-emphasises the importance of the construction, planning and management aspects in advice based service processes and constrains the development of services that put the client's best interests first and foremost in the process. [We actually prefer the term " Client First" because the words "best interests" may be confusing and misleading to some investors] . Thus, a major gap in current regulatory coverage arises from the fact that much of the current regulation tends to be product-focused rather than service-focused. This is a significant gap since determining the tactical allocation of an investor's assets often has a more profound effect on the overall success of a financial plan than decisions regarding which specific funds or investment products in which to invest to implement the plan.

We absolutely agree with the CSA that clients are not getting outcomes that the regulatory system is designed to give them . We also agree that, given the evidence, disclosure and increased financial literacy are relatively ineffective investor protection tools. Kenmar agree in principle with the targeted reforms (which are actually just more definitive wording of existing requirements) and the Best interests overlay subject to the commentary provided herein. However we believe the client dealer relationship is an integrated system and must have provisions for dealing with situations where the system fails. This is why we are urging the CSA to add a targeted reform that deals with complaint handling. This reform has dual investor protection value in that complainants have free access to a restitution process and the system failure information can be used to continuously improve the client-dealer relationship. Our comments in this regard are provided under the Complaint handling and OBSI headers.

We wish to stress that the target in our commentaries is not the individual salesperson aka "advisor", the majority of which would like to do a good job for clients. The target is the management that creates the culture, incentives (commission grids and the like), financial and non-financial rewards/sanctions and sales targets/quotas that drive a singular behavior to "produce". Management is the root cause of the many issues we see today. There is something inherently wrong with an "advice' system that doesn't put the client's best interests first and dealer integrity at its core ,yet advertizes that it does. A statutory Best interests standard will be a powerful force for change and improved financial advice for Canadians.

Introduction

The consultation document does a good job of summarizing the research conducted, the

issues and the reasons the reforms and a Best interest standard are necessary. While all of the provincial regulators are consulting on the package of targeted reforms, they are clearly divided over the proposed best interest standard. The Ontario Securities Commission (OSC) and the Financial and Consumer Services Commission of New Brunswick (FCNB) are convinced that it is necessary to consider the adoption of a best interest standard. At the far end of the spectrum, the British Columbia Securities Commission (BCSC) has ruled out the proposed standard. It is not even prepared to consult on the idea. This is disconcerting and raises questions about how a Cooperative Capital Markets Regulator involving the OSC and BCSC would function.

The problems involved with the prevailing suitability / conflicted advice/professional standards are well articulated in the consultation document. Investor abuses we routinely observe include excessive fees, unsuitable investments, unnecessary leveraging, unbalanced portfolios, account churning, unauthorized trading, outside business activities, reverse churning, referral fees to related parties , exploitative complaint handling among others (in addition to fraud, personal financial dealings and off book transactions). Current regulations cover these areas but a combination of inappropriate financial incentives, weak supervision /compliance and less than robust enforcement are the root causes. While the proposed changes and the introduction of a best interests standard will elevate the advice standard, unless there is meaningful enforcement and effective recourse the reforms will not , in our opinion, adequately deal with the investor protection issues articulated in Part 5.

Although they are more subtle and more difficult to measure than the harm that results from outright fraud, these types of abuses have a material impact on investors' financial and emotional well-being. The adverse impact on the retirement income security of Canadians of the existing compensation practices, suitability standard(s) and enforcement is a socio-economic issue.

Additional facts and figures supporting regulatory reforms

The CSA has provided details of research which point to systemic abuse of retail investors. These alone are sufficient to justify raising the standard of advice in Canada. In addition, there are other factors coming into play that make the acceleration of reforms a top priority for regulators.

With the decline in Defined Benefit Pension plans, Canadians are more dependent than ever on themselves for their pension. Add in increased longevity and the need for trusted financial advice is self-evident. The Canadian Securities Administrators 2016 Investor Education Survey https://www.securities-administrators.ca/aboutcsa.aspx?id=1475 revealed that there has been a steady increase since 2006 in the percentage of Canadians working with a financial advisor, from 43 per cent in 2006 up to 56 per cent this year. Assuming there are 12 million Canadian investors, this means that over 6 million Canadians are entrusting their life savings cash with an advisor.

According to Statistics Canada, household debt reached a record level during the final quarter of 2015: with mortgage growth the key driver. Its statistics, show that the total credit debt market for households leapt by 1.2 % during the final three months of the

year, reaching $1.923 trillion: household credit market debt incorporates both mortgage and non-mortgage loans, as well as consumer credit. Overall, this means that households in Canada hold an average of $1.65 in debt for each dollar they earn after tax and other fees.
http://www.wealthprofessional.ca/news/canadian-debt-at-all-time-high-204434.aspx We expect that the availability of unbiased advice could help moderate this ratio.
According to a 2015 CPA study, slightly more than half of Canadian working households said they did not save on a regular basis and only half of those surveyed said they maintain a special reserve fund for unexpected financial emergencies. The almost one fifth of respondents who indicate having an emergency fund said that their fund would not cover regular household expenses beyond four weeks.
https://www.cpacanada.ca/en/connecting-and-news/news/professional-news/2015/march/household-finances-canadians-at-risk

According to a Broadbent Institute study *An Analysis of the Economic Circumstances of Canadian seniors*
https://d3n8a8pro7vhmx.cloudfront.net/broadbent/pages/4904/attachments/original/1455216659/An_Analysis_of_the_Economic_Circumstances_of_Canadian_Seniors.pdf?1455216659 a large percentage of older, working Canadians are heading to retirement without adequate savings. Unbiased advice would help reduce the percentage.

A recent study *Old Age and the Decline in Financial Literacy*
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948627 shows the ability of the elderly to manage their money may decrease after they reach retirement age, but confidence in their ability to make good financial decisions stays the same. The study, found financial literacy declines at a consistent rate after retirement. The ability to answer basic financial questions decreases as respondents age, and this rate of decline almost exactly matches the gradual erosion of memory and problem-solving abilities later in life. This is worrisome because households aged 60 years and older control about half of the wealth in Canada. Since fewer employers provide pensions than ever before, more people are dependent entirely on their retirement savings and that in turn is dependent on trustworthy investment advice.

Canadian retail consumers need increased protection when dealing with the financial services industry, according to a 2013 report by the Public Interest Advocacy Centre (PIAC) entitled, *Purse Strings Attached: Towards a Financial Planning Regulatory Framework* .The report reveals that the pace of reform has been slow for an industry entrusted with the retirement security of Canadian consumers. "It's time all employees of the financial planning industry in Canada face the reality-they need to employ a uniform standard of care for investors, complete with a full disclosure of how they're being compensated," notes Jonathan Bishop, co-author of the report. The research reveals Canadian consumers are potentially leaving thousands of their retirement dollars in someone else's hands by conflicts of-interest .The report concluded that the time remains ripe for provincial consumer and finance ministries to work towards a regulatory framework for financial advisors. http://www.piac.ca/wp-content/uploads/2014/11/pursestrings_attached_final_for_oca.pdf

According to globeinvestor.com, the S&P/TSX Total Return index has a 20 year compound

average return of 7.55% to March 31, 2016 while the corresponding return for actively-managed Canadian Equity funds has been 5.99 %. The long term decompounding effect of such underperformance on retirement income security is dramatic (to be fair, the returns are not risk-adjusted). With this level of underperformance it is no wonder that the fund industry , perhaps justifiably, now promotes the value of advice as much or more as fund performance. If an essential nature of the product is indeed the advice itself, and the implementation is more incidental, it seems pretty clear that the advisor should have an obligation to offer advice that is in the best interest of the customer. [Per the consultation document, Canadian mutual fund investors are more highly invested in actively- managed funds relative to fund investors in other jurisdictions. At June 2015, index-tracking funds comprised only 1.5% of the Canadian mutual fund market (excluding exchange traded funds) compared to 15.3% of the U.S. market and 11.2% of the United Kingdom (U.K.) market. This implies that the CSA has the view that active management is inferior to passive after fees and/or that advisors in Canada are biased towards active funds with higher trailers.] See APPENDIX I MUTUAL FUNDS for a discussion of how Canadian mutual funds fit into the Best interests debate.

Why are high fees so important? According to a recent McKinsey report *Investors may need to lower their sights* http://www.mckinsey.com/industries/private-equity-and-principal-investors/our-insights/why-investors-may-need-to-lower-their-sights , investors will need to plan for lower returns going forward**.** Real total returns for equities between 1985 and 2014 averaged 7.9% in both the U.S. and Europe, the report indicates. Over that same period, real bond returns averaged 5.0% in the U.S., and 5.9% in Europe. In a slow-growth scenario, total real returns from U.S. equities over the next 20 years could average 4% to 5% and fixed-income returns could be 0% to 1%. This suggests that investors will need sound trustworthy advice to overcome inflation and taxes. High fee products under a suitability standard could leave millions of Canadians without adequate pension income.

These studies, facts and figures along with several others point to the crying need for more robust financial advice/ investor protection. The OSC, for one, clearly realizes that the status quo is a non-starter.

With the evolution of the investment markets, technological change, an aging and longer living population, complex structured products, exempt market expansion, high personal debt and the key "RRSP rollover" decision point, investor risks and vulnerabilities are much greater than ever before. Canadian investors are highly vulnerable due to low financial literacy, information asymmetry vs. dealers/dealing Reps ("advisors"), investor overconfidence in their investing skills, blind trust in advice givers and a desperate search for yield in a low interest environment. Whatever savings they have must be protected against conflicted advice/industry wrongdoing. See APPENDIX II INVESTOR VULNERABILITY for a detailed discussion.

The "advice" industry overview

Back in the sixties, an advisor was called a stockbroker. The broken recommended stocks for purchase using money identified by clients as investable cash. A brokerage

commission was paid for the recommendation, the execution of the order and account reporting. This later evolved into stock portfolio diversification and then to asset allocation but still conducted under the transaction model. Current marketing initiatives refer to advisors and wealth management but core processes have not kept up with the hype . Until recently, most firms offering advice could not and/or did not provide personalized rates of return, a core element of advice - it took CRM2 to make that happen starting in 2017. Closing the gap between what is marketed and what is actually provided appears to be the goal of this latest consultation.

Today , the Ontario Securities Act has a clause that requires advisers under the Act's jurisdiction to deal "fairly, honestly and in good faith" with clients. In the past, many investors have considered that phrase the statutory equivalent of a best-interests requirement or a "fiduciary" obligation. But over time, the suitability requirements imposed by self-regulatory organizations have put the emphasis on making sure the product is "suitable" for the client at the time of the transaction, based on the advisor's knowledge of the client and the product. Among other deficiencies. that has come to mean that product cost is out of the equation. Recent changes have extended the suitability obligation to "triggering" events, but it is still acknowledged that a suitable product is not necessarily the best product for the client. The regulatory system has condoned a failure to act in the best interest of clients and the failure to uphold fiduciary principles built into the Act by allowing suitability standards to prevail and not prohibiting conflicts of interest. Regulators need to enforce the fair dealing obligations of dealers and their representatives contained in the Securities Act .

For the purposes of this consultation we define Personal financial advice (PFA) as looking at where a person is financially and where he/she wants to be and devising a strategy and tactics to help them achieve their life goals. As such, PFA must be informed and trustworthy. Financial advice and investment advice have a foggy boundary as they overlap and interact one upon the other. We define investment as money expected to grow albeit with some risk and savings as cash set aside where capital preservation is paramount. Financial planning, currently unregulated, is an important component of a wealth management universe focused on the processes and frameworks that underpin the efficient planning, construction and management of personal financial assets and their liabilities over time.

Existing regulatory bodies should introduce laws/rules to regulate financial planning for those individuals operating within their platform, and those rules should be consistent and harmonized across all platforms. As we define it, financial planning is product agnostic. The Ontario Expert Committee is in fact working towards that end.

Over the past two decades the financial services industry has rebranded itself from a transaction business to a personal advice business and more recently to a Wealth management business but remained anchored in a transaction based regulatory environment. Corporate culture has remained tied to a sales and marketing mindset rather than as a trusted provider of unbiased, competent investment advice. Regulators have allowed this disparity between reality (the suitability standard) and advertising and marketing to persist by permitting dealers and salespeople to hold themselves out to Canadian consumers as trusted advisors despite significant conflicts- of- interest that

affect the advice provided. It appears that the CSA/OSC priority now is acting to transform itself from a regulator of transactions to a regulator of investment advice as well as products. We welcome this common sense approach.

The financial services industry has argued for investor choice in how they want to pay for advice. The fact is that over the past few years, choice has been reduced. Some dealers are forcing clients into fee- based accounts by eliminating the option of sticking with a transaction model (such accounts are not regulated per se or capped). Others have raised minimum account size levels or required an annual dollar value of commission payments. Some have even started charging for delivery of print copies of account statements .Online brokers have reduced the number of fund families they will offer. It appears the public words are not matched by actions. In a recent news release, Scotiabank said that the restructuring charge was part of its "strategic efforts to enhance customer experience, drive a digital transformation and improve its productivity.". According to people familiar with the decision. Scotiabank's wealth management unit was also targeted by the review, with at least 7 per cent of ScotiaMcLeod's brokers let go, as well as their assistants . (Scotiabank would not confirm the exact number affected).Now, according to financial press reports, the bank seems focused on serving the wealthiest clients and employing brokers with megabooks of business – the most assets under management – a burgeoning trend across the industry.

We have highlighted for years how brokerages mislead investors as to the true nature of the dealer- client relationship. Retail investors believe they are doing business with individuals they can trust, because the "advisors" use titles which imply trust, their advertisements give the impression they can be trusted, and the brokers say they can be trusted to look out for the best interests of their clients. Yet when that trust is breached, and a complaint filed, these same firms disclaim liability when held to account The public face of the firms is that they hold themselves to the highest standards, while the private face of the firms, in the SRO, OBSI or legal forum is that they are mere order-takers. Too often we read about OBSI rejections, "low ball" offers, and denial of responsibility letters sent to complainants by dealers. Were it not for our active engagement with investors, we would not see abusive dealer responses to complaints because of confidentiality agreements ("gag orders") that clients are forced to sign in order to obtain any restitution.

It's not just trust that is misrepresented. While marketing materials suggest robust financial plans are prepared, qualified income tax advice will be provided and that competent estate planning is available, our experience is that, with a few notable exceptions, the vast majority of the focus is on selling product. A report *Lack of truth in advertising deceives investors* from SIPA deftly illustrates the divergence of the advisory services promoted vs. the actual services delivered.
http://www.sipa.ca/library/SIPAsubmissions/720_SIPA_Report_Deception_20150505.pdf

University of Toronto law professor and former OSC IAP Chair Anita Anand sums up the situation in her September 2013 article *Yes, Investment Advisers Should be Fiduciaries* with this succinct comment "Provincial securities regulators have investor protection as a central mandate. A default fiduciary standard for investment advisers is the best way to protect investors and needs to be explicitly enacted - now." Source:
http://www.law.utoronto.ca/blog/faculty/yes-investment-advisers-should-be-fiduciaries

In a 2011 Financial Post comment piece, former OSC Chairman Ed Waitzer noted that, as one commentator to a published SEC staff study noted: "If the product sold is that of advice, then that advice should be in the best interest of the client. Anything else is fraud, because the seller is delivering a service different from what the consumer thinks he or she is buying." Source: *Make advisors work for Investors* http://business.financialpost.com/fp-comment/make-advisors-work-for-investors .

Much of the regulatory reform debate has centered on conflicts-of-interest and the argument that embedded commissions gives rise to conflicts-of-interest and skewed investment advice recommendations. There is another important dimension to consider. Commission –based (and fee-based advice) can also cause certain recommendations NOT to be made : discourage debt reduction, minimize insurance coverage, ignore household spending patterns, discourage gifts to charity or children and downplay savings (as opposed to investing). A commissioned "advisor" must find it very difficult to tell someone to go pay off their mortgage or credit card and build a rainy day savings fund when he/she has spent $20 on gas going to see them and it didn't help them hit the branch sales target. This is one reason why we support the imposition of an overarching statutory Best interests advice standard.

That being said, we would like to ensure that direct-to-client fund companies like Mawer, Leith Wheeler and Steadyhand are permitted to develop. Their focus is on managing funds, but to varying degrees they provide advice along with the investment management. They do not hold themselves out to be full service, holistic financial planners. These firms regularly rate highly in fund performance, client satisfaction and Morningstar stewardship scores (which measure how well the firms' interests are aligned with their clients). They do not pay trailer commissions. There is a definite need for such firms in the Canadian marketplace.

The prevalence of conflicted payments may actually interfere with low balance savers' ability to get advice. Ongoing developments in the financial industry are sharply reducing the cost of advice, but it may be difficult for new entrants providing quality, unconflicted, low-cost advice to compete on price when other advice erroneously appears to be free (or worse , are told it is free) .New CRM2 fee disclosures omit all fees/expenses not paid directly to the dealer so are an incomplete disclosure. Therefore , the prevalence of opaque fees and conflicted payments may make it more difficult for low-cost, high-quality alternatives to compete on a level playing field, reducing moderate-income Canadians' available options for inexpensive advice. As just one example, new approaches to advice that exploit technological advances are allowing firms to offer personalized advice at costs well below those of traditional advice.

We are of the firm conviction that while the CRM2 and the POS initiatives are important enhancements to investor information , their fundamental focus on disclosure is unlikely to address the material concerns identified in Part 5 of the consultation paper and our added issues. They are merely a long overdue catch up for information that should have been provided to investors as a matter of course. A Best interests overlay is necessary as is an added targeted reform- investor complaint handling/OBSI to effect the long march to effective regulation of advice .

A Best-interests obligation is one of the key factors that distinguishes personal financial advice from a sales recommendation. If dealers and their representatives want to portray themselves as trusted advisers (“wealth managers”), they need to meet the standard that warrants that trust.

Commentary on BCSC position on Best interests

We respect the BCSC willingness to publicly reveal its position . This kind of transparency within the CSA is refreshing and appreciated. The British Columbia Securities Commission (BCSC) has announced that it strongly supports taking action to strengthen the client-registrant relationship through a set of targeted reforms to the obligations that registrants owe to their clients (NI 31-103). They are convinced that the best way to achieve this is to implement the proposed targeted reforms on their own (without a Best interests overlay) but in our opinion , their position ignores years of investor advocate experience and documented research.

The BCSC argues that the overlay of the proposed best interest standard is not workable in the current regulatory and business environment, and may cause investors to think registrants have an unqualified duty to act in their best interests, not understanding that some conflicts would still be permitted. We're not sure what is meant by “current regulatory and business environment" but we feel confident that such an overlay is vital given the long history of industry misbehaviour and rule breaches. It is actually the current regulatory and business environment that is harming investors. We do agree is an issue that merits reflection. One can interpret the Best interests rule as effectively banning embedded commissions but we have learned over time that legal interpretations can twist even the most clear plain language. (We understand that CSA consultation of the compensation issues will be released before the end of the year but not before the due date of this consultation.).

We feel that our suggested changes to the proposed targeted reforms will largely mitigate this risk if they are implemented. The BCSC can further mitigate this concern by taking assertive action against “wealth management " firms that utilize deceiving ads, websites and brochures to lure unsuspecting retail investors by implying that a best interest standard will be applicable to their account. It can also step up collection of fines to increase deterrence of bad registrant behaviour. Further, a proposed Ontario approach to statutory Best interests would, if implemented, provide an alternative for millions of Ontarions, the largest Capital market.

The statement “We believe the targeted reforms establish clear, practical, and enforceable requirements for registrants to follow and for regulators and courts to enforce, all in a way that will not raise expectations about investor protection that may not be realized,” is unsupported by any facts or evidence. Every day we see unresolved investor abuse and unpaid fines coupled with relentless attacks against OBSI and an uncompromising resistance to reform. The courts have been proven to be virtually inaccessible to the average retail investor due to costs. The industry has lost its right to be trusted to do the right thing. Investors have waited for well over a decade and now is the time to introduce substantive reform.

The BCSC position that a Best interests overlay on the targeted reforms is vague and unclear would create legal uncertainty for firms doesn't resonate with us. Bay Street can cope with uncertainty better than the victims of abuse can with unfair dealer complaint handling or the uncertainty that even a restitution recommendation from OBSI may be summarily rejected without regulatory or other consequence .Kenmar have concluded that the proposed targeted reforms, combined with the implementation of the CRM2 and Point of Sale(POS) disclosure initiatives, will improve investor information and awareness but cannot be relied upon to significantly protect retail investors from conflicted advice and the inherent shortcomings of the suitability standard for advice.

Additional recommended Reforms

We present here two issues which are necessary to integrate the proposed reform package:

*1. Improve dealer complaint handling T*he consultation notes that Clients are not getting outcomes that the regulatory system is designed to give them caused by among other reasons, barriers to obtaining redress for a registrant breach A robust complaint handling system is integral to implement the Best interests advice standard - fairness of dealer complaint handling practices is essential . It is bad enough that victims lose money due to bad advice but even worse when restitution is denied due to unfair complaint handling. This reflects badly not only on the dealer but on the investor protection regime itself. Dealer responses tend to be unfair, dismissive and abrupt based on our samples. Too often the "substantive responses" are not responsive to the complaint and critical information needed by the complainant to make an informed decision is not provided. It is not however just the implementation of existing rules that are a problem. The rules themselves are deficient in a number of critical aspects. Kenmar have provided the OSC as well as the CSA, IIROC and MFDA with a detailed report explaining the fundamental flaws in the prevailing SRO complaint handling rules.(Canadian Fund Watch*: IIROC complaint handling rule needs an update*
http://www.canadianfundwatch.com/2016/01/iiroc-complaint-handling-rule-needs.html
a similar report was prepared for the MFDA)
We **strongly recommend** that the CSA/OSC address the deficiencies through a targeted reform of the IIROC and MFDA rules. [per the recently released report from OBSI's independent evaluator, 18% of clients with valid complaints received less from the firm than OBSI recommended.]

2. Allow OBSI to support Best interests According to the OBSI 2015 Annual Report, 219 cases ended with a monetary compensation to the consumer, worth a total of $4,659,194. This represents 35% of all closed case files. The approx. $4.7 million in total compensation comprised of $4.4 million in investment cases and $300,000 in banking cases. In 2014, OBSI recommended $4.3 million in client compensation. Twenty-two percent of banking complaints (53 of 245) and **43%** of investment complaints (166 of 384) ended with monetary compensation (ie over 4 in 10 dealer complaint decisions are reversed!). More than 65% of investment cases involved suitability. Over 50 % of investment cases involved mutual funds ; 55% of users were 60 years of age or older.

Securities Acts, regulations and rules across the country require investment firms to deal with their clients "fairly, honestly and in good faith" — an obligation that extends to dealing with client complaints. Dealers who refuse to participate meaningfully in a regulator-mandated dispute-resolution process, dealers who reject OBSI recommendations or worse, dealers who low ball OBSI recommendations are fundamentally against the higher principles of Best interests. They are deliberately subverting the process and OBSI. In addition, victims must sign gag orders that are attached to OBSI's restitution recommendations . . . when they are paid .

Investors want and need a financial ombudsman that has the mandate and capability to efficiently resolve disputes and deal with systemic issues in a timely manner. We believe that there are several important open issues with regard to OBSI that need closure. Specifically, we believe that there should be a mandatory regulatory investigation of each and every case where an OBSI recommendation is not accepted by a dealer. The findings should be published and compensation, if and as appropriate, provided. Secondly, we believe that regulators owe investors an explanation of what will happen, if anything, when they are advised by OBSI of a systemic issue. We remain disturbed that OBSI is unable to investigate an investment portfolio that contains a Segregated fund or other insurance products recommended by dually licensed "advisors". This (mal)practice places investors in harms way. Finally, we recommend that OBSI findings be made binding on dealers as the ideal solution to the chronic issues and that OBSI be given the mandate to investigate systemic issues that the Board/ CSA have removed. The OSC Investor Advisory Panel (of which I am a member) details this and other issues facing OBSI in its submission to the Independent reviewer http://www.osc.gov.on.ca/documents/en/Investors/iap_20160218_evaluation-banking-services.pdf The SIPA , Kenmar Associates and FAIR Canada Comment letters posted on the OBSI website explore the underlying issues in further detail. Every single comment letter to the OSC 2016-17 Priorities consultation from investors, investor advocates and CARP identified the need for OBSI to have binding recommendation authority. The time for Joint Regulator Committee "monitoring" is long past. Action in the form of a targeted reform is required in order to protect investors .accompanied by CSA guidance that fair complaint handling is integral to the best interests standard.

NOTE: The independent evaluator's Final Report https://www.obsi.ca/assets/2016-Independent-Evaluation-Investment-Mandate-1465218315-e9fa5.pdf concludes that OBSI is up to fulfilling a more meaningful role in the industry and it recommends that regulators pursue this by giving OBSI binding authority — along with an internal appeal process. The report also recommends that OBSI introduce the option of making earlier decisions on complaints; that it employ an independent expert to review its approach to the aspects of its loss calculation methodology that remain contentious; and that it develop guidance for the industry on how it will implement a process for identifying systemic issues and alerting regulators. Ultimately, as a result of several shortcomings, the report concludes that "OBSI is not a true industry ombudsman, it is a dispute-resolution service." Perhaps most importantly, the report recommends that OBSI move beyond cases by case dispute resolution and take a strategic approach. This would include using intelligence from casework to help: prevent and reduce complaints; empower customers and firms to resolve complaints more effectively ; improve the provision of financial services; and make proactive contributions to government policy .

See APPENDIX III for other related Issues.

General Comments

We have a two general comments related to the consultation – regulatory arbitrage and IIROC.

Recognize Regulatory Arbitrage as a threat to Best interests Wealth Management is a strategic goal of the three main pillars of the financial services industry – banking, insurance and investments. It is clear that arbitrage is growing as all pillars are competing for the same demographic. Regulatory arbitrage often leads to a race to the bottom as has already happened with banking Ombuds complaints. Such arbitrage contributes to unfair and disorderly financial markets. Retail investors are always the big losers in these regulatory arbitrage situations. At a minimum, consideration should be given to bringing Segregated funds under securities regulation as this is a major cause of regulatory arbitrage. One suggestion that keeps coming up would be to have an MOU between the FSCO and the IIROC/MFDA/OSC to provide better 360 degree knowledge of financial system issues in Ontario. We are encouraged by recent steps by the SRO's to formalize agreements among financial regulators to prevent registrants with discipline histories, including unpaid fines and permanent bans, from registering or maintaining registration with other organizations. Such agreements will help deal with individuals who engage in serious misconduct in one capacity in the financial services industry can continue to work with the public in another capacity. For example, when individuals apply for IIROC (or MFDA) registration and/or approval, while they may take individuals' disciplinary history with another regulator into consideration on a case-by-case basis, there is no automatic recognition by the SRO's of a sanction imposed by another regulator. Given the current fragmentation among financial regulators, consideration should be given to more formalized mutual recognition of sanctions among financial regulators .See our Bulletin *Regulatory arbitrage impairs investor protection* http://www.canadianfundwatch.com/2014/07/regulatory-arbitrage-impairs-investor.html

See this report *How banned IIROC and MFDA advisors can still sell insurance* | Advisor.ca The Advisor.ca investigation identified nine cases between 2013 and 2015 where reps were permanently banned by their SRO but remained authorized to sell life insurance products for periods ranging from six months to years after. Of those nine, six are still authorized to sell today (June 14).
http://www.advisor.ca/news/industry-news/hidden-in-plain-sight-how-banned-iiroc-and-mfda-advisors-can-still-sell-insurance-207496 See also *The Case for Robot-reciprocity* http://faircanada.ca/whats-new/the-case-for-robo-reciprocity/

We recommend that steps be taken to minimize the potential for regulatory arbitrage but are of the opinion that the risk of regulatory arbitrage is outweighed by the likelihood of more robust investment advice for a majority of Canadian investors. The far bigger risk, in our view, is reverse churning via managed accounts and similar arrangements.

IIROC could be a barrier to progress on Best interests

IIROC operates under a Recognition Order from the CSA making it the principal national

regulator for retail investors. The OSC is the primary overseer of the Order granting IIROC the privilege and responsibility for retail investor protection in Canada. Kenmar has identified a growing number of issues which give us concern as to whether IIROC can be counted upon to adequately protect retail investors.

The OSC IAP summed up our concerns in their response to IIROC's Strategic Issues consultation http://www.iiroc.ca/Documents/2015/7e3a6326-4620-4945-8696-2edcd650312a_en.pdf ***"IIROC cannot fulfill its investor protection mandate without major changes to its governance structure. IIROC's current governance allows ample opportunity for industry involvement but is closed to retail investor participation and engagement. IIROC offers no formal opportunity for retail investor involvement/input into its operations, its policy development or its Board of Directors. While the Ontario Securities Commission, for example, has created an Investor Advisory Panel in addition to individual retail and institutional investor representation on its policy committees, IIROC has no retail investor representation on its five industry Policy Committees or 10 member firm District Councils. "***

In a Dec. 2014 OSC IIROC Oversight report http://www.osc.gov.on.ca/documents/en/Marketplaces/sro-iiroc_20141204_oversight-rev-rpt-investment.pdf it was stated that there were concerns that in some cases, IIROC investigation staff decided not to proceed with allegations of unsuitable investments or unauthorized trading investigations because of: an incomplete assessment by investigation staff to determine if the firm effectively supervised its advisors (i.e. provided guidance on risk levels of products, reviewing if client risk tolerance was raised to match new holdings) . The OSC remarked that investigations of unsuitable investments and unauthorized trading may not be appropriately pursued due to a perceived failure of the firm or advisor to follow IIROC guidance, or the lack of a formal complaint thus allowing investor harming issues to persist.

In 2015, the OSC actually reversed a IIROC Panel decision noting " The Panel erred in law and proceeded on an incorrect principle in determining that a suspension was not required in all of the circumstances, In addition, the Panel's approach to determining the appropriate sanctions for Lukic's misconduct illustrates that the Panel's perception of the public interest is inconsistent with that of the Commission."

In IIROC Guidance Note *:Managing Conflicts in the best interests of the client Nov*. 6, 2016
http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3_en.pdf we find the following:

> **We believe that, taken together, our Dealer Member Rules and guidance put the best interest of the client before the interests of IIROC-regulated dealers and their representatives.** We acknowledge that further clarification of our rules and guidance may be necessary to make this point absolutely clear. This principle is also specifically reflected in our rule that requires a firm's representatives to address material conflicts of interest – whether existing or potential – in a manner that is consistent with the best interest of the client. Recognizing that firms must balance the interests of multiple clients

simultaneously, our rule requires them to address such conflicts in a manner that considers the best interest of the client.

This is news to us and quite frankly, disturbing. In practice we find the IIROC disclosure rule insufficient and its enforcement lacking conviction. The really big issue here is the definition of Best interests. What they appear to be talking about is the end point transaction devoid of the process that determines the transaction in the first place. There is no process definition of what they mean by best interests in this particular document. The fact that IIROC is taking this public position could muddle and unduly drag out the dialogue and implementation.

We are also troubled by the recent issue of the 3 year Strategic plan. It was not very responsive to investor concerns. The FAIR Canada comment letter on IIROC strategic priorities articulated these concerns very well. http://faircanada.ca/wp-content/uploads/2011/01/FAIR-IIROC-strategic-priorities-comment-2015-08-31.pdf

Since member firms take their lead from IIROC, this behaviour also causes them to act similarly. This could lead to a weak implementation of the reforms and Best interests. See APPENDIX IV for more details on the IIROC ISSUE.

To combat the potential for conflicted interests, CFA Institute has developed a set of recommendations for the governance and oversight of SROs. Among other things, these recommendations call for the independence of SRO boards and regulatory/arbitration panels as a means of enhancing market and investor trust in such regulatory systems. To further that trust, SROs must be transparent about their financial, governance and regulatory matters, and must be accountable to both statutory regulatory agencies and the public. See **Self-Regulation in the Securities Markets: Transitions and New Possibilities,** CFA Institute, 2013.
http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2013.n11.1

Specific Comments

Conflicts of interest- General Obligation

As we have stated in our previous Comment letters, integration of manufacturing and distribution is the single greatest conflict-of-interest in the mutual fund industry. This conflict manifests itself in at least three ways: First, the funds available are limited to the funds manufactured by the manufacturer severely limiting the scope of "advice" provided. The best example is the offerings at bank branches. Second, when an independent fund company experiences a period of negative performance, it is closely followed by a period of net redemptions. This provides an excellent incentive for the fund company to ascertain what is wrong on the performance side and to make changes that ought to benefit their retail investor clients. Non-independent fund companies do not suffer the same experience or, to the extent they do, it is muted in comparison. There are many financial and non-financial incentives for dealer Representatives who work for non-independent dealers to retain client assets with the investment management affiliate of their dealer (including compensation and licensing sponsorship to name a couple). Therefore, in the face of a decline in fund performance, those fund manufacturers do not typically see the same net redemption activity faced by the independents. As a result, their incentive to improve is less than that of an independent fund company The third

way in which the conflict-o-interest manifests itself is that dealers who are affiliated with manufacturers place an incentive to sell proprietary funds by virtue of the compensation grid , a grid designed to incent Reps to favour proprietary funds over third-party funds. . Because of these conflicts, it is the retail investor who suffers through diminished returns and restrained choice.

The most obvious conflict of interest, embedded trailer commissions in investment funds, is not formally addressed in this consultation but a June 29th CSA Staff Notice 81-327 *Next Steps in the CSA's Examination of Mutual Fund Fees* signals the CSA's inclination to prohibit trailer commissions in mutual funds (https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20150629_81-327_next-steps-mutual-fund-fees.htm) . A number of groups and investor advocates have argued that trailer commissions have created a undue bias towards active management and thereby likely impairing the retirement income security Canadians deserve. The stance is based on the idea that slick marketing , sharp sales practices coupled with 1% and up trailers have impeded migration to lower cost passive management. Trailer commissions, with their inherent opaqueness, allow dealers to subsidize small clients (presumably by charging larger ones too much). We regard this as a market distortion not in the public interest.

1) *Is this general approach to regulating how registrants should respond to conflicts optimal? If not, what alternative approach would you recommend?* The general approach is fine but we have concerns about implementation. We can't say if they are optimal but they appear adequate if adhered to. A recent IIROC NOTICE **Managing conflicts in the best interests of the client** http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3_en.pdf pointed out very weak dealer controls over compensation related conflicts- of -interest. To the extent that the CSA and/or SRO's can impose meaningful enforcement/sanctions for non-compliance , it is to that extent compliance to this rule will be satisfied and the negative aspects of conflict-of-interest minimized. We recommend that the CSA mandate mechanisms for monitoring conflicts-of-interest and disclosure.
2) Is the requirement to respond to conflicts "in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative" clear enough to provide a meaningful code of conduct? If not, how could the requirement be clarified? The stated additional language appears to be adequate to close the gap. The problem is enforcement of the rule in practice.

3) *Will this requirement present any particular challenges for specific registration categories or business models?* We cannot envision any existing business model so anti-investor that such a disclosure would present challenges. That however may require a behavioural change at some firms. Q Do the current proposals consider recommendations to rollover a RRSP say into an annuity, a regulated activity?

Know Your Client The proposed changes do not appear to be unreasonable -they clarify the existing obligations of KYC. We agree that registrants should implement policies and procedures to ensure that both the client and the registrant that reviewed the KYC information with the client sign and date the information. It is very important that the client and registrant should sign and date amendments to KYC information so that both

parties are working to the same game book.

Unless there is a valid reason not to do so, a KYC should be prepared for each account. Risk profiling should be given more prominence in the targeted reforms given the sorry state of affairs evidenced in the PlanPlus report. As noted in its Annual report, OBSI frequently encounters a disconnect between a complainant's risk tolerance, as calculated according to questions laid out in a risk profile document and the complainant's actual circumstances. Risk profile questionnaires and current NAAF forms can be interpreted in several ways and are not always specific or relevant to the investment at hand. Risk must be assessed and disclosed in clear unambiguous language. It is our opinion that, if financial services providers do not fully appreciate these concerns expressed by OBSI and OSC IAP risk profiling research and take the necessary steps to address the problems, firms will continue to use risk profiling processes that are fundamentally flawed and that means a defective KYC which leads to inappropriate advice to investors . It should be noted that the tolerance and capacity for risk changes as the time for achieving a goal approaches .

4) *Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients?* We believe understanding the client's tax position is core to providing personalized investment advice. We can say that from our experiences, registrants need more training on taxation matters . Some clients may be unwilling to provide tax information so it may be necessary to make this a voluntary entry on NAAF. At the same time we recommend that Reps acquire a working knowledge of Government and social programs as many income enhancing opportunities are being missed.
5) *Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content?* We think regulators should provide the minimum information content and key preamble text. Time and again we see how investors are duped right at the front end of the client- advisor relationship. The NAAF is filled in improperly completed, often in haste. Investors ought to be warned just how important every response and tick mark is when they first open an account. Provide BOLD plain language conflicts-of-interest warnings on NAAF documents so that the retail investor is informed of the true nature of the client-Rep relationship. Viz "Your account is a brokerage account . Our interests may not always be the same as yours. Before completing the form please ask us questions to make sure you understand each data block Enquire about your rights and our obligations to you, including the extent of our obligations to disclose conflicts of interest and to act in your best interest. We are paid both by you and, sometimes, by people who compensate us based on what you buy. Therefore, our profits and our compensation may vary by product and over time. In the event of a dispute, the information provided herein can and will be used against you. Ensure your responses are accurate. "

The form should be renamed as New Account Application and Client Information Form to clarify its multi-purpose use. If implemented, we think this simple warning or something like it could help prevent a lot of investor grief.

We recommend adding a block on the form for the investor to articulate his/her investment objectives in his/ her own words.

NOTE FINRA supplies a sample NAAF template at http://www.finra.org/sites/default/files/Industry/p117270.pdf

The completed form should be time stamped and a signed copy provided to the client.

Consider providing a Postage paid return envelope with the year-end statement asking about material changes.

Of course, none of these rules will be effective if dealers continue to allow NAAF's to be subverted by "papering", document adulteration, signature forgery and use of blank signed forms. See our paper The NAAF and Know Your Client. http://www.canadianfundwatch.com/2016/01/the-naaf-and-know-your-client.html

6) *Should the KYC form also be signed by the representative's supervisor?* Given the criticality of the KYC process and the large number of observed document adulterations by salespersons, we think it is essential that management approval is required.

Know your Product -Representative

7) I*s this general approach to regulating how representatives should meet their KYP obligation optimal? If not, what alternative approach would you recommend?* The general approach appears fine assuming we are talking about the product's role in the portfolio. The representative must also know the terms and conditions surrounding a structured product. For instance on Life Cycle Funds, a triggering event can cause the fund to switch to 100% income- if this happens early in the life cycle of the fund, most of the money will be earning very little after fees and taxes. We would add perhaps that KYP also includes pros/cons of different account types, trading strategies and leveraging (borrowing to invest). We wish to stress that it is the responsibility of the firm to provide training for its representatives and to ensure they do not provide advice on products or trading strategies for which they have not been trained and authorized to sell. Some firms have extensive product shelves so it may be unreasonable for a Rep to know every product in detail but for the product (or trading strategy) being sold , he/she should understand it thoroughly .

Know your product – Firm

Firms should be required to have a process to approve new products before putting them on the shelf. New ESMA rules refer to this process as "product governance". Non-bank ABCP , ROC funds and leveraged ETF's are examples of products that were put on the shelf without adequate due diligence and sold without adequate sales training. Firms should be required to identify the target market for each product and ensure that all relevant risks are assessed and understood before a product is distributed.

Firms should carefully evaluate and decline to offer products to customers when the conflicts associated with those products are too significant to be mitigated effectively. Product manufacturing firms can implement effective Know-Your-Distributor (KYD) policies and procedures. These KYD measures help mitigate the incentive to increase revenue from product sales by using distribution channels that may not have adequate controls to protect customers' interests.

8) *The intended outcome of the requirement for mixed/non-proprietary firms to engage in a market investigation and product comparison is to ensure the range of products offered by firms that present themselves as offering more than proprietary products is representative of a broad range of products suitable for their client base. Do you agree or disagree with this intended outcome? Please provide an explanation. We* cannot comment on the best way to obtain the intended outcome but the approach put forth appears sensible. Note also that some firms offer only one type of account e.g. A fee-based account. In some cases, say for a low turnover RRIF account, such an account type is inherently unsuitable if the fee is greater than the trading commissions that would have been incurred on a transaction basis. Note also that adding third- party mutual funds changes the shelf composition but still leaves investors with one choice of security- mutual funds.
9) Do you think that requiring mixed/non-proprietary firms to select the products they offer in the manner described will contribute to this outcome? If not, why not? We believe it will after a initial learning curve. *Q.* Does the CSA consider Seg Funds, CSB's, GIC's, Index- linked GIC's, PPN's as eligible candidates for diversifying the range of products? Many registered **individual** registrants can provide this range.e.g. Bank branch "advisor", dual registrants approved for OBA etc.
10) Are there other policy approaches that might better achieve this outcome? Stratification can also be by type of account- order execution, transaction, bundled (embedded commission), fee- based and fee- only. Another approach could be by type of service- order execution only, investment advice, financial advice and financial planning.

11) Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges. We leave this to the firms to comment.
12) Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products? This could happen but we are not certain that offering fewer products would necessarily be a bad thing for retail investors. Canadians need more and better *solutions* to their financial challenges, not more products. We expect bank-owned dealers to narrow the range of funds offered. Given the dominant position of the banks, it is entirely possible the independent fundcos could lose market share over time- that is happening today due to market forces. That would not be a favourable outcome as it would limit competition. The CSA should take whatever steps it can to counter this result. Industry lobbyists are concerned that eliminating trailer commissions will be the death knell for the independent shops that are already struggling to compete with the big institutions. Many dealers (and "advisors") rely heavily on trailer commissions. There's no easy answer here, but it shouldn't be lost on anybody that the banks' rise to domination has occurred during the trailer-commission era. Perhaps without the trailer subterfuge, we will see new business models emerge, something that Canada has been lacking.

13) Could these requirements create incentives for firms to stop offering non-proprietary products so that they can fit the definition of proprietary firm? We are unable to provide informed comment on this but in our opinion ,such an eventuality could happen.
14) Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products? We leave this question to industry participants.

15) Do you think that categorizing product lists as either proprietary and mixed/non-proprietary is an optimal distinction amongst firm types? Should there be other characteristics that differentiate firms that should be identified or taken into account in the requirements relating to product list development? The type of products and dealer philosophy. Example – a belief in indexing as opposed to active management. A general rule of thumb could be there should be at least 3 independent suppliers of each type of security/class to satisfy the requirement to be a non-proprietary firm. Related/affiliated company products would not be considered as an independent source .

Suitability

Under a suitability standard, mutual funds and other such investments that can't compete on quality, can and do compete by offering generous remuneration to the sellers, and that's the problem. DSC sold funds are one example of a sales series whose time has past – they serve the best interests of the firm, not investors. Investors end up suffering substandard performance, being exposed to liquidity risk and subjected to exploitative behaviours. DSC may have made sense when up-front fees were high but as sales commissions have essentially gone, so should DSCs .

Unsuitable investments have a huge impact on the ability of Canadians to afford a decent standard of living in retirement or fund other long-term financial goals. Surely, a CAVEAT EMPTOR standard for advice cannot be in the Public Interest.

The New Account Application Form was originally designed to enable a security transaction to proceed. It has not done a good job at that limited goal. But now it is being used as a basis to provide more fulsome financial advice and its deficiencies are glaringly apparent. Additionally, with an aging client population, the form's deficiencies are even more obvious . Clearly, the NAAF KYC client data capture process itself needs to be updated and enhanced.

We are impressed with the expanded approach taken by the CSA in defining suitability (should now more properly be called *Client Best interests*). It is clearly shifting from a transaction driven approach to a broader advice driven one. The requirement for an annual suitability analysis or upon a triggering event is just plain common sense. The use of a target rate of return is very interesting but its derivation assumes a underlying financial plan, something we rarely see in practice. This is another positive sign that the CSA is moving towards an advisory client-dealer relationship from the transaction model. Note also that RRIF portfolios may be designed more for monthly cash flow and longevity than rate of return per se.
16) Do you agree with the requirement to consider other basic financial strategies? We agree *.*This is the essence of financial advice and financial planning, services implied by the "wealth management" moniker used by the industry. Implementation will require a much more fulsome NAAF / Client information gathering process than what we see today.
17) *Will there be challenges in complying with the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives?* We would express it as "reasonable under the circumstances" in the context of the portfolio. "Most likely " may be hard to assess or measure as it involves fairly sophisticated statistical analysis and/or simulation.

18) Should there be more specific requirements around what makes an investment "suitable"? We think if a clear assessment process is followed and product cost and account expenses are duly considered, that should be adequate. The key is to consider the portfolio holistically based on a robust KYC and risk profiling process.
19) Will the requirement to perform a suitability assessment when accepting an instruction to hold a security raise any challenges for registrants? Cannot comment.
20) Will the requirement to perform a suitability analysis at least once every 12 months raise challenges for specific registrant categories or business models? For example, a client may only have a transactional relationship with a firm. In such cases, what would be a reasonable approach to determining whether a firm should perform ongoing suitability assessments? Common sense should prevail – we agree that assessment should occur annually and upon life events, dramatic market change, macro-economic factors, changes in objectives etc. Depending on the scope of the suitability analysis , this requirement could end up reducing the number of clients (currently about 250) an advisor could handle unless the industry invests in technology and/or a Six Sigma/productivity program. See PwC report entitled *Sink or Swim: Why Wealth Management Can't Afford to Miss the Digital Wave*.
http://www.pwc.com/gx/en/industries/financial-services/wealth-management-2-0.html

This sentence is of concern:"Where a client does not want to dispose of the unsuitable investment, it may be appropriate to recommend changes to other investments within the account in order to ensure the suitability of the overall portfolio ". This seems overly prescriptive. In practice it may not even be possible to mitigate the unsuitable investment. We recommend that it be left to the dealer on how to handle such a case. Whatever advice is given should be documented. An argument could be made that if the firm does not have or seek all of the information it should have a reasonable basis to believe, documented with specificity, that one or more of the factors are not components of a customer's investment profile in light of the facts and circumstances of the particular case. See also Suggested best practices for an investor directed trade
http://www.osc.gov.on.ca/documents/en/Securities-Category3/csa_20140109_31-336_kyc-kyp-suitability-obligations.pdf

21) Should clients receive a copy of the representative's analysis regarding the client's target rate of return and his or her investment needs and objectives? It should be made available upon request . We note again that not all accounts are designed for a target rate of return- some may for instance concentrate on monthly cash flow and account longevity.
22) Will the requirement to perform a suitability review for a recommendation not to purchase, sell, hold or exchange a security be problematic for registrants? Cannot comment. CSA should clarify the term "suitability review", particularly its scope and depth. Q. Will it need to be documented/ retained as a formal record?
No discussion of investor protection issues and the costs of transactions/advice can be complete without consideration of the broker and investment dealer business model. If embedded commissions are prohibited but a Best interests regime is not applied, all that will happen is that commissions will be converted into fees potentially leaving investors worse off. Thus, removal of embedded commissions alone is not a panacea. Conversely, if a Best interest standard is introduced and embedded commissions permitted we would

be critical of the effectiveness of the targeted reforms.

Relationship Disclosure
It must be made clear to investors what is the nature , scale and scope of the advice they will receive for the fees paid. If it is limited to mutual fund investment advice, relationship documents should make this point clear. If it is restricted to investment advice , marketing and sales materials and account agreements should so state. If it is broad personalized financial advice, the range and boundaries of this advice should be disclosed to clients in plain language. It is insufficient for a disclosure merely to state the firm "may" limit investment recommendations without specifically disclosing the extent to which the firm in fact does so. There should be a written finding that the limitations and restrictions do not prevent advisors from providing advice in those investor's best interest or from otherwise adhering to impartial Conduct Standards

Greater clarity will allow retail investors to make more informed decisions of the type and level of advice they need , if they need personalized advice at all or if the cost brings sufficient value.

23) *Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not?* We agree , otherwise the investor could be deceived . We do have some concern that the word *restricted* may be interpreted by some as a restriction on the range of advice that can be provided (e.g. tax planning). The CSA would also need to provide some investor educational material to buttress the disclosure.
24) Do you agree with the proposed disclosure required for firms that offer only proprietary products? Why or why not? We agree . In principle, firms that are restricted in their shelf cannot offer fulsome “advice” so we agree with the requirement to clearly disclose to clients, prominently and in plain language at the time of account opening (or before any product or service is provided), that they only offer, as a result of their registration category, a limited range of products and, as a result, the suitability analysis conducted by the firm and its representatives is constrained. The public needs to understand the conflicts-of- interest and limitations that arise from advisors who are strictly selling proprietary products. If the CSA were to permit sale from a menu of products so limited as to preclude any recommendation from that menu’s being in the best interests of the customer, that would leave unchallenged some of the most troubling practices permitted under the suitability standard. CSA educational materials should explain the ramifications of obtaining advice from a firm that offers only proprietary products.

25) Is the proposed disclosure for restricted registration categories workable for all categories identified? We leave this to industry participants.
26) Should there be similar disclosure for investment dealers or portfolio managers? Very likely there should be for consistency.
27 Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful? We recommend that the CSA prepare a brochure to be handed out on account opening that would explain the topic of relationships in plain language. It should also be available on the web.

Proficiency
Imposing a sweeping best interest standard on all advisors will have no positive impact to the consumer, unless assurance is provided that the advisor has been armed with and has been able to demonstrate the necessary tools, knowledge, skills and abilities to act in the client's best interest. That is, without appropriate proficiency standards, a best interest standard is moot. Advisor proficiency enhancement is critical as the UK RDR has demonstrated. Proficiency should include analytical competency and skills to translate KYC information into good financial plans and cost-effective portfolios. Advisors need training in how to develop and document an Investment Policy Statement, a key tool in improving client-advisor communications. For those firms holding themselves out as providing integrated financial advice (as opposed to *investment* advice), training in financial planning is essential. As the boundaries for "advice" are not well defined, it is not possible to be more specific. In some cases advice is delivered by a team but this consultation does not appear to deal with that situation. The team might include insurance agents, debt counselors, financial planners, accountants and estate planning experts.

Providing retirement financial advice and solutions that take into account the complexity of various government retirement income program entitlements (e.g. CPP, OAS and GIS) are increasingly part of the advisor's responsibilities. Advisor training and registration must include educational elements that deal with these issues.

Proficiency cannot be limited to technical skills and an understanding of markets - ethics and integrity training is an integral part of the overall package. Employing ethical individuals is an integral part of maintaining a culture of compliance and integrity in which conflicts of interest are addressed fairly. As part of screening applicants for employment, we think an effective practice would be to review those individuals' employment and regulatory history as well as their financial standing and credit history.

We remain concerned about a IIROC White Paper that would bring in mutual fund dealers but with reduced proficiency requirements. We are particularly concerned that the proposed "restricted" IIROC registrant category might not require completion of The Conduct and Practices Handbook Course (or equivalent) that covers ethics and conduct matters. We are of the view that the investing public benefits from the requirement that IIROC registrants must take courses that specifically address and build registrant knowledge in ethical practices, registrant conduct and compliance standards.

28) To what extent should the CSA explicitly heighten the proficiency requirements set out under Canadian securities legislation? While the bar needs raising, so does the floor. The proficiency level of advice givers needs to be raised to address complex issues like market turbulence, risk management, product complexity and increasingly, investor longevity. The mathematical skills need to be increased especially for MFDA registrants The course options for MFDA salesperson vary considerably in duration and complexity eg CSI,IFIC, CSC . There is a crying need to truly "professionalize" the financial advice industry. A huge issue is how to deal with seniors/vulnerable investors (soft skills) and how to design portfolios and withdrawal strategies for de-accumulating accounts. It is important that proficiency requirements be reviewed periodically to ensure they continue to meet the needs of investors.
29) Should any heightening of the proficiency requirements for representatives be

accompanied by a heightening of the proficiency requirements for CCOs and UDPs? We would assume so since they must oversee the activities of dealing representatives. More importantly, we believe there will be many technical and cultural changes required at IIROC and MFDA if these initiatives are implemented.

30) *Will more strictly regulating titles raise any issues or challenges for registrants or clients?* Vigilance over titles (representations) is an integral part of running a business. It should be business as usual to prevent deception. Clients will welcome honesty.

31) *Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around representatives' roles and responsibilities?* Advisor Roles and responsibilities are not really understood by most investors. Registration information is too high level to have any meaning. The key criteria we would have is- NO deception , titles should be meaningful to investors. Any of the CSA proposals are fine with us. It may be necessary to have a title for straight salespersons who provide only generic advice. Such persons would be required only to disclose the facts and effect transactions. They would be permitted to distribute dealer approved educational materials.

32) *Should there be additional guidance regarding the use of titles by representatives who are "dually licensed" (or equivalent)?* We believe so- the media have reported on cases where mutual funds were not recommended in favour of more expensive Segregated funds which are more loosely regulated. A key success factor will be regulatory enforcement with strong monetary penalties and sanctions for deception. We would like to see better plain language disclosure to clients when the representative has more than one license. The Ontario Government is currently examining the need for more consistent standards for individuals who offer financial advice and planning services. We urge the OSC to work with the government as this important initiative evolves.

Titles

Misleading Advisor titles are used to deceive investors especially those that imply some special skillset related to seniors and retirees. Title inflation is a reflection of a sales mindset that we hope the proposed reforms and Best interests obligation will temper. The SRO's were well aware of the harm being done but took no real action leading to 48 "advisor " titles across all platforms as revealed in the OSC Mystery Shop report. If these reforms are to be effective , major changes are required at the SRO and dealer level or else nothing will have been accomplished. NOTE: According to the report, just 32 % of shops (28) effected a complete collection of core KYC information; 68 % did not, so titles are clearly just part of a bigger problem. A title should make it abundantly clear to an investor whether they are dealing with a salesperson or an investment advisor.

30) *Will more strictly regulating titles raise any issues or challenges for registrants or clients?* Registrants won't like the change because thousands of business cards and other documents will need to be amended, but other than the costs involved we do not see any operational challenges. We do not see how better regulation of titles is anything but a positive for retail investors. Seniors especially have been taken in by misleading titles purporting to an expertise in dealing with the elderly. Managing titles is a small but important step in professionalizing the advice industry.

31) *Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around*

representatives' roles and responsibilities? We have no issues with the proposed alternatives ; alternatively, reps could use their actual registration nomenclature. We expect the number of titles to be minimal and whatever titles used to be meaningful to the investor and not misleading. The proposed titles appear clear enough but it should be noted that firms advertise that their reps advise on more than securities including financial planning and taxation. We wonder if provision should be made for a category wherein a salesperson is truly just selling and any advice is generic and incidental.No doubt this will come up during the anticipated Roundtable(s).
32) *Should there be additional guidance regarding the use of titles by representatives who are "dually licensed" (or equivalent*)? Yes, as this duality has given rise to a number of serious problems such as redeeming mutual funds and buying segregated funds/ selling complex/ expensive variable annuities or causing problems when a complaint arises. Clients must be made aware of the dual license status of their representative and its implications for them. This disclosure should be made in writing by the firm as well as the salesperson. The NRD should be improved by adding Outside Business Activities to the information provided. Q: What is the deciding factor that decides when securities related relationship begins and ends and how would a retail know when they've crossed borders? And how is the investor even made aware that there is a border?

Designations
33) *Should we regulate the use of specific designations or create a requirement for firms to review and validate the designations used by their representatives?* We think it will be best if the CSA/OSC regulate designations. We believe it is an important investor protection initiative to educate investors, to the extent possible, with respect to the qualifications and experience required for various advisor designations, and to ensure that advisors' titles provide meaningful information to clients, potential clients, and the general public.

Role of UDP and CCO
34*) Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, please explain.* Cannot comment- do not have knowledge.

Statutory Fiduciary Duty when Client Grants Discretionary Authority
35) *Is there any reason not to introduce a statutory fiduciary duty on these terms?*
We cannot think of a reason why not. We can think of many reasons why such a standard is long overdue. Retail investors are relying on their financial professional to assist them with some of the most important decisions of their lives. Investors have a reasonable expectation that the advice that they are receiving is in their best interest. They should not have to parse through legal distinctions to determine whether the advice they receive was provided in accordance with their expectations. See APPENDIX V BEST INTERESTS

36) *Please indicate whether a regulatory best interest standard would be required or beneficial, over and above the proposed targeted reforms, to address the identified regulatory concerns*. Yes. The prevailing suitability approach is built around disclosure and management of conflicts. The advisor tells the client about the conflict and the client must then determine what action to take -- an approach that we argue places the onus on the unsophisticated investor to contradict the advisor. This approach is clearly not reasonable or effective for retail investors.

Telling a client what ***should*** be done that's in their best interests is the very essence of what *advice* is. On the other hand, the suitability standard is about offering a product for sale that is suitable – or at least, not *un*suitable – given the client's circumstances. The latter, simply put, is not a standard for advice; it's not actually about advice at all, but simply determining whether a product being sold is so unsuitable that it's unconscionable to allow it to be bought at all. Advice is about telling someone what actually *should* be done, not merely what would be "not unsuitable" to buy. NOTE: Fund Facts uses the word "advice", so in principle, any advice provided under a Fund Facts disclosure is already a best interests obligation) . The 5 stated CSA Best interests principles will better align advisor behaviour with retail investor expectations and assumptions. These Best interests principles will also make it easier to enact investor-friendly reforms in future.

We therefore support a statutory Best interests standard along the lines put forward by the Ontario Expert Committee. In our view , the existing securities regulatory scheme that treat dealer Reps as salespeople does not offer adequate investor protection when such Reps offer advisory services, since under a suitability standard they generally remain free to put their own interests ahead of those of their clients Without a statutory Best interest duty, and a thorough one which effectively accords fiduciary responsibility to the investment process, the courts will continue to interpret fiduciary responsibility within the narrow transaction frame of reference, which effectively traps practically everyone except the far extreme of the investor universe. Industry arguments are intended to keep investors trapped and responsible for what ails it.

According to the study *Investor Behaviour and Beliefs: Advisor Relationships and Investor Decision-Making, most* retail investors incorrectly believe their Representative has a legal duty to put their interest ahead of his or her own. Apparently the words fairly, honestly and in good faith don't include the prices of products, a key piece of information, when making "suitable" recommendations. Further, according to the study, most retail investors are not aware of what products their advisors are licensed or registered to sell. Such blind trust can be hazardous to the financial health of investors. These findings highlight the public's vulnerability when dealing with a financial advisor, and suggest the need for a fiduciary "best interest" standard to ensure their interests are protected.

37) *Please indicate whether you agree or disagree with any of the points raised in support of, or against, the introduction of a regulatory best interest standard and explain why.* The industry argument that the common law route to settle issues of fiduciary accountability, is not a practically affordable one for retail investors. In all the arguments put forward by the industry with respect to its application they frame the spectrum with a DIY execution only at one side and a cognitively impaired senior at the other without making any reference to the considerable ground in between. In addition to performing the analysis necessary to determine the customer's best interest (comparable to the current know-your-customer obligations), those providing investment advice should be required to document the basis for their belief that their recommendation is in the customer's best interests. Such an approach would not necessarily require dealers to avoid all possible conflicts- of-interest. But it would require them to attempt to act in their customers' best interests despite their conflicts of interest, put policies and procedures in place to better ensure compliance, and hold them accountable when they

fail to do so.

38) *Please indicate whether there are any other key arguments in support of, or against, the introduction of a regulatory best interest standard that have not been identified above.* We agree with the introduction of a regulatory (statutory preferred) Best interests standard for the provision of personalized advice. As we demonstrate in APPENDIX II Canadians are highly vulnerable to financial exploitation.

39) *What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on compliance costs for registrants?* We would expect recruitment and training costs to increase while costs due to client complaints and litigation would decrease . The advice industry would be more professional. The financial health of Canadians would improve. Professional advisors would encourage better savings habits including the establishment of an emergency fund. They could also assist investors in navigating various social benefit programs and optimizing after tax returns. There could be an increase in clients as consumers regain their trust in the industry. A WIN-WIN for all.
40) *What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on outcomes for investors?* We fully expect the primary outcomes would be an improved relationship, optimized risk -reward performance, less worries, a reduction in complaints and an increase in client satisfaction and retention. A "Best Interest" standard would require advisors to show a greater level of due diligence to demonstrate how they build portfolios, select investments, disclose conflicts, and seek to minimize client costs. We also believe the industry would likely strengthen as a best interest standard would go a long way to help restore trust and faith in the investment industry. In a Best interests world, if financial services product manufacturers want to get fiduciaries to use their products, the companies issuing them would have to actually create products that are simple, practical, compelling, and reasonably priced, such that a fiduciary *would* choose to use them.

41) *What challenges and opportunities could registrants face in operationalizing:*
(i) the proposed targeted reforms? We leave this to industry participants.

(ii) a regulatory best interest standard? We leave this to industry participants but note that a BI standard would increase trust in the financial services industry.
42). How might the proposals impact existing business models? If significant impact is predicted, will other (new or pre-existing) business models gain more prominence? We leave this to industry participants.
43) Do the proposals go far enough in enhancing the obligations of dealers, advisers and their representatives toward their clients ? No. We feel strongly that better redress mechanisms are needed. Fair and timely complaint investigation is a critical dealer obligation to clients. We have recommended improvements to IIROC and MFDA dealer complaint handling rules and processes and a binding recommendation mandate for OBSI. We have also recommended that IIROC be X- rayed to see what governance, policy and cultural changes are needed for it to enforce the proposed targeted reforms and Best interest standard.
APPENDIX A
We comment on the Guidance documents but are concerned they appear somewhat

broad and more instructional than regulatory. If push comes to shove, will this guidance protect investors should a complaint arise? Can we interpret the guidance in such a way that embedded commissions are effectively banned?
44) Is it appropriate that disclosure by firms be the primary tool to respond to a conflict of interest between such firms and their institutional clients? This does not appear to be unreasonable but we understand some small institutional investors may also have some vulnerabilities .
45) Are there other specific situations that should be identified where disclosure could be used as the primary tool by firms in responding to certain conflicts of interests? We *remain constructively critical of the effectiveness of disclosure.* That being said, perhaps the choice of account type, bond pricing and IPO's might be candidates.

46) Is this definition of "institutional client" appropriate for its proposed use in the Companion Policy? For example: (i) where financial thresholds are referenced, is $100 million an appropriate threshold?; (ii) is the differential treatment of institutional clients articulated in the Companion Policy appropriate?; and (iii) does the introduction of the "institutional client" concept, and associated differential treatment, create excessive complexity in the application and enforcement of the conflicts provisions under securities legislation? If not, please explain and, if applicable, provide alternative formulations. No comments as this is outside our area of interest.
47) Could institutional clients be defined as, or be replaced by, the concept of non-individual permitted clients? No Comment due to our limited knowledge in this area.

48) Are there other specific examples of sales practices that should be included in the list of sales practices above? We are concerned about commission grids-- Implications of the Commission Grid for Investors http://blog.getsmarteraboutmoney.ca/preet-banerjee-commission-grid-for-investors#.UE3rddZlSco "These complex grid structures are designed to influence behaviours of investment advisers. For example, we can see that an investment adviser whose production is less than $100,000 per year is heavily penalized no matter what size the individual transactions are. (Rookie advisers are not subject to the full grid during their first few years.) As another example, an advisor who has a book of client assets totaling $10 million and charges them an average of 1% in commissions per year will generate $100,000 in commissions overall, but keeps as little as $10,000 while the firm takes $90,000. This adviser will either be forced to quit due to lack of income or he/she will have to change the way they do business in order to hit higher production levels."" The grid's only purpose is to incentivize increased sales. In a very real sense they are comparable to embedded commissions with similar consequences for investors.

Commission grids that favour proprietary products complicate the problem still further., We recommend prohibition of any differentiated compensation, direct or indirect, monetary or non-monetary, based on proprietary product flows.

An example of the kind of sales practices we feel could skew recommendations can be found in the IG Simplified Prospectus: " DEALER INCENTIVES: *We may from time to time reimburse your Investors Group Consultant for all or a portion of his or her eligible marketing costs, including advertising. We may also pay all or a portion of the cost for your Investors Group Consultant to attend educational or business courses or*

conferences that we sponsor, including annual business conferences. We may also pay prize awards and performance bonuses to your Consultant, or provide credits that may be paid in cash or used towards a variety of business, benefit and education-related expenses based on the dollar amount of the various products and investments distributed or serviced by the Consultant during the year, as well as bonuses for career achievements such as obtaining an educational designation, licence or program completion. Some prizes and bonuses paid for Investors Group Funds may be higher than those paid for other products. Also, your Consultant may own, directly or indirectly, shares of IGM Financial Inc. "
http://www.investorsgroup.com/en/documents/corp/regulatory/prospectus-guides/c3040.pdf Due to space constraints , Fund Facts does not include these other conflicts-of-interest disclosures so the investor is not warned unless he/she reads the Simplified Prospectus.

We are also concerned with the subsidization of firms by product manufacturers for such events as "free lunch "educational seminars. The UK FCA recently reported that it has found evidence of product manufacturers providing excess payments to advisory firms, which were supposed to cover the costs that firms face when facilitating training, or distributing educational material supplied by the product firm. We strongly recommend that dealing Reps only compensation should come from client fees and that non-monetary inducements, shares and stock options be prohibited.
49) *Are specific prohibitions and limitations on sales practices, such as those found in NI 81-105, appropriate for products outside of the mutual fund context? Is guidance in this area sufficient?* It is our understanding there has never been a prosecution for NI-105 Mutual Fund Sales Practices violations . We would think that NI81-105 would apply with a major update to accommodate all securities including pooled funds, ETF's, closed-end funds and other structured products. We doubt that the guidance is sufficient given all the creative compensation approaches that have been introduced since NI81-105 was released in 1998.
50) *Are limitations on the use of sales practices more relevant to the distribution of certain types of products, such as pooled investment vehicles, or should they be considered more generally for all types of products?* More generally. This industry is agile so that any barriers to sales of one product quickly give rise to new products . Any product which could impair the life savings of Canadians should be covered by robust rules on sales practices.
51) Are there other requirements that should be imposed to limit sales practices currently used to incentivize representatives to sell certain products? Commission grids are not consistent with professional advice giving. Payments between advisory firms and product providers must reflect and be commensurate with the costs incurred (e.g. to reflect the actual costs of setting up a webinar about a product on the advisory firm's website)

52) What type of disclosure should be required for sales practices involving the distribution of securities that are not those of a publicly offered mutual fund, which are already subject to specific disclosure requirements? Use the prevailing disclosure if the CSA deem it to be adequate. We note that ETF Facts will be used for ETF.s (despite our strong objections). Our primary concern regards the misleading risk disclosure based exclusively on volatility.

53) Should further guidance be provided regarding specific sales practices and how they should be evaluated in light of a registrant's general duties to his/her/its clients? If so, please provide detailed examples. We would warn that benefits, such as expensive dinners, golf tournaments or sporting events that are provided in conjunction with a legitimate training event could violate rules. Just because one provided by the firm is designed to enhance the quality of service to a client and is capable of being paid or received without breaching the client's best interest rule does not mean that another benefit (that does not meet these requirements) can be included in or alongside the compliant activity or event. Most importantly, eliminate commission grids.
APPENDIX B
The information collected should correlate directly with the service represented to the client. The more information collected the more one has to consider when constructing, planning or managing client assets and financial needs. More information requires better processes. There is a reason why the current KYC is short and simple: processes are narrowly focused on the transaction and not the wider whole that impacts proper planning. A wider KYC would increase the parameters for which a representative (advisor) is responsible. The KYC represents the point through which both regulators and industry misrepresent the nature and standards of service.

54) To what extent should the KYC obligation require registrants to collect tax information about the client? For example, what role should basic tax strategies have in respect of the suitability analysis conducted by registrants in respect of their clients? With Canada's high taxation rates, tax is an especially critical factor in wealth accumulation. As such, tax issues should be integral to a KYC/suitability analysis. Non-
- investment considerations such as tax, government benefit programs and estate planning can quickly become key aspects of the investment relationship. For instance, a client with significant unrealized capital gains may abruptly recognize that transitioning to a more conservative portfolio will trigger significant capital gains tax liabilities and reduced eligibility for government benefits.
That implies a need for increased advisor tax savvy and proficiency. We also believe more detail on debt obligations is required as part of KYC.

55) To what extent should a representative be allowed to open a new client account or move forward with a securities transaction if he or she is missing some or all of the client's KYC information? Should there be certain minimum elements of the KYC information that must be provided by the client without which a representative cannot open an account or process a securities transaction? The form should be filled in completely if financial advice is being provided. That is the purpose of KYC. There aren't any redundant inquiries on the form if it has been properly designed, If the client is unwilling or unable to provide the necessary information, the account should not be opened until the information is provided.
56) Should additional guidance be provided in respect of risk profiles? This is a major industry deficiency in accumulating an investor risk profile. Weak and superficial risk assessments are the primary cause of unsuitable investments. We believe the CSA should issue a standard on what it expects risk profiling to accomplish using the PlanPlus research and other research as applicable. We remain concerned that the misleading risk rating disclosure in FF's will be used as a basis for matching client risk tolerance to a mutual fund.

57) Are there circumstances where it may be appropriate for a representative to collect less detailed KYC information? If so, should there be additional guidance about whether more or less detailed KYC information may need to be collected, depending on the context? Except for execution only relationships , we are not aware of such circumstances. There could be a special case of a standard RESP account where the goal is crystal clear, the amount needed can be reasonably estimated and the timeframe pretty well defined. That being said, we are aware of Scholarship Plans that require a clear understanding of the ability of the client to continue making payments.
APPENDIX C We agree that if a representative recommends or considers a product that is not on his/her firm's approved product list, he/she must conduct a product review and have the appropriate authorizations and approvals from his/her firm to do so before recommending that the client buy or sell the security. Appendix C does not include a requirement to assess the impact of a product on the client's portfolio. Product recommendation in isolation may not be suitable for the client

APPENDIX D
58. *Should we explicitly allow firms that do not have a product list to create a product review procedure instead of a shelf or would it be preferable to require such firms to create a product list?* We have no opinion on this matter.
59. *Would additional guidance with respect to conducting a "fair and unbiased market investigation" be helpful or appreciated? If so, please provide any substantive suggestions you have in this regard.* We leave this to industry participants and regulators.
60. *Would labels other than "proprietary product list" and "mixed/non-proprietary product list" be more effective? If so, please provide suggestions.* These appear to be fairly descriptive. We are uncertain that the term *proprietary* will be understood by most retail investors – some research may be needed. Perhaps the term "in-house" would be clearer.

61. *Is the expectation that firms complete a market investigation, product comparison or product list optimization in a manner that is "most likely to meet the investment needs and objectives of its clients based on its client profiles" reasonable? If not, please explain your concern.* It appears reasonable- we cannot think of a better alternative.
APPENDIX E
62. *What, if any, unintended consequences could result from setting an expectation in the context of the suitability obligation that registrants must identify products both that are suitable and that are the most likely to achieve the investment needs and objectives of the client? If unintended consequences exist, do the benefits of this proposal outweigh such consequences?* Well trained Reps should be able to meet this requirement. We prefer use of the term *reasonable under the circumstances* to *most likely*. If a clear and transparent assessment process is consistently followed, we believe the dealer could be given safe harbour.
63. *Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?* The proposal sounds adequate and is supported by a minimum annual portfolio suitability review cycle. This section is important because it is a shift away from the transaction mindset towards more fulsome portfolio advice.

64. Should we provide further guidance on the frequency of the suitability analysis in connection with those registrant business models that may be based on one-time transactions? For example, when should a person or entity in such a relationship no longer be a client of the registrant for purposes of this ongoing obligation to conduct suitability reviews of the client's account? It seems fair to us to limit suitability analysis to the time of purchase unless that entity is in a long term relationship with the client where there is a intermittent but continuing flow of one time transactions.

APPENDIX H -Proposed Best interests standard

An overarching principle governing the relationship between clients and their advisors, a principle capable of both assisting in the interpretation of specific requirements and acting as a guide in addressing novel situations or evolving market conditions is needed. With a best interest standard, clients can be confident that their relationship with an advisor or dealer is governed by a standard of conduct that puts the client's interests first. Advisors and dealers can be confident that the same governing principle and standard of conduct applies across the industry and to every client relationship. Almost as important as complying with the Best interests standard Is the need to prove that compliance .Under Best interests the client specific situation, needs and desires are foremost .This is unlike existing practices with the requirement of knowing the client and not making unsuitable recommendations.

The 5 principles annunciated appear to capture the spirit of putting the client's interests first and placing client interests above the interests of the registrants. As such, with effective compliance and enforcement ,we expect positive behavioural change will result in the industry. As regards principle 2, Conflicts-of-interest, we agree that the emphasis should be on avoidance. In our experience firms appear to lack a meaningful process to identify, deal with, monitor and supervise compensation-related conflicts. For example, firms do not appear to have robust mechanisms in place to identify advisors who recommend products that favour higher fee products, leveraging or investment strategies that yield high commission expenses In the case of IIROC firms ,we remain concerned that unsuspecting clients are moved into fee-based accounts when such accounts are not appropriate for them based on their needs, objectives or trading patterns i.e. reverse churning. In fact , we have been unable to locate any rule or policy that prohibits reverse churning.

We are also concerned that investment dealers may not have sufficient internal controls to ensure the proper fee schedule is applied to client accounts. In Nov. 2014 ,TD Bank subsidiaries agreed to pay more than $13.5 million to clients whose accounts were charged excess fees, in some cases dating back more than a decade. In June , the British Columbia Securities Commission (BCSC) announced a couple of HSBC firms were fined after admitting that they accidentally overcharged some clients. To address the failures, HIFC has compensated 4,651 client accounts for a total of $7,076,651.35, and HPWS has compensated 10 client accounts for a total of $10,100.84. Mutual fund dealer HSBC Investment Funds (Canada) Inc. and portfolio manager HSBC Private Wealth Services (Canada) Inc. admitted they inadvertently charged excess fees in some client accounts. The settlement
http://www.bcsc.bc.ca/Enforcement/Settlements/PDF/2016_BCSECCOM_185/ indicates that the overcharging occurred because of inadequate controls and supervisory lapses.

65*. Should the Standard of Care apply to unregistered firms (e.g., international advisers and international dealers) that are not required to be registered by reason of a statutory or discretionary exemption from registration, unless the Standard of Care is expressly waived by the regulator?* We do not understand why anyone advising Canadians should not have the designated Standard of Care.
66. *Do you believe that the Standard of Care is inconsistent with any current element of securities legislation? If so, please explain*. We leave this to the lawyers. If it is inconsistent but needed, it should be covered off by giving it a higher precedence or using a "notwithstanding " clause type exemption. Complaint handling is a key part of the client-dealer relationship and it should be subject to a Standard of Care. The guidance/definition of best interest 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.
67. *Do you agree that the Standard of Care should not apply to the underwriting activity and corporate finance advisory services described above? If not, please explain*. Not sure we understand the question. If financial advice is being given , one standard should apply to all recommendations including IPO's.
68. *Do you think this expectation is appropriate when the level of sophistication of the firm and its clients is similar, such as when firms deal with institutional clients?* The focus should be on the retail investor. We assume institutional clients have the savvy to protect themselves as long as disclosures are timely, complete and accurate. If this assumption is incorrect, the standard of care should be identical to that applied to individual investors.

SUMMARY and CONCLUSION

Kenmar believe that the process of determining how clients can meet their goals through the management of financial resources should be subject to a Best interests standard that, ideally, is consistent across all of the applicable regulatory platforms.

A significant proportion of the retirement savings of Canadians continues to be channeled into the mutual fund sector in Canada. About $1.2 trillion dollars is invested in mutual funds by 12 million Canadians. Morningstar gave Canada's fund industry a low grade regarding fund fees. As the consultation paper points out, trailer commissions skew advisor recommendations to the detriment of clients and fees are a key determinant of long term mutual fund returns. We urge the CSA to integrate the issue of embedded commissions with this consultation.

The OECD warns poverty among seniors is rising in Canada providing yet one more good reason to introduce a Best interests standard and ensure systemic issue complaints are promptly investigated http://www.theglobeandmail.com/report-on-business/top-business-stories/oecd-warns-poverty-among-seniors-rising-in-canada-points-to-public-pensions-gap/article15600342/ Report at http://www.oecd.org/canada/OECD-PensionsAtAGlance-2013-Highlights-Canada.pdf Multiple research reports and polls suggest many Canadians may not be well prepared for retirement. Trusted and competent financial advice can play a huge role in mitigating this issue. We think the seniors issue alone would be enough to inspire all stakeholders to move on to the next

quality level of advice--- Best interests, an idea whose time has come . Caveat Emptor financial advice has no place in Canadian society.

As we have said many times before, implementation of the targeted reforms and a statutory Best interests standard must be accompanied by robust enforcement. This will require a complete overhaul of IIROC governance, philosophy, culture, policies, practices and rules.

The success of a statutory Best interests standard will also depend on enhanced KYC/risk profiling processes , how dual licensed advisors are treated , the type of fee structures put in place and how complaints are handled.

It's time for definitive action based on the extensive research available. The retirement savings and nest eggs of Canadians are at risk. The function of the financial services industry to turn retirement savings into future retiree wealth is an important public policy issue. More and more seniors and pensioners become vulnerable each day, quarter and year that the status quo remains entrenched with a low suitability standard coupled with sales commissions and other payments permit. Given the extensive research available on this subject we urge conclusive action on Best interests without undue delay

Regulatory bodies exist to safeguard trust in the system. Our quarterly Investor Protection Reports regularly highlight numerous breakdowns and missed opportunities to protect retail investors. The results of this initiative will shape the future of financial advice .Best interests has a compelling case for "trusted advice" found in history, law, research and common sense but it will require a high level of determination to counter the well funded opponents of change. The investment industry (now rebranded as the Wealth Management industry) needs regulatory guidance, decisiveness and finality.

As part of its rulemaking, the CSA should adopt a uniform, plain language disclosure document to be provided to customers and potential customers of firms and dealer Reps at the start of the engagement, and periodically thereafter, that covers basic information about the nature of services offered, fees and compensation, conflicts-of-interest, and complaint handling.

If these rule changes are made they would have to be accompanied by a massive investor outreach, awareness and education program.

A Best interests duty is important to the fabric of the country .This is a socio-economic issue. It is in the Public interest to introduce the proposed targeted reforms and a statutory Best interests standard and we fully support the OSC/ CSA in this initiative.

Kenmar Associates agree to public posting of this Comment Letter.

We would be pleased to discuss our comments and recommendations with you in more detail at your convenience.

Respectfully,

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Brokers Are Trusted Less Than Uber Drivers, Survey Finds - WSJ
"...One question the survey participants were asked: "If you knew your broker was not required to provide advice that was always in your best interest, would you seek an alternative?" Ninety-four percent said yes. "The big issue is trust—not only the fact that so many people do not currently trust their brokers, but also the fact that many who do trust them wouldn't, if they knew exactly what was going on," says Bill Harris, Personal Capital's founder and chief executive..."
http://www.wsj.com/articles/brokers-are-trusted-less-than-uber-drivers-survey-finds-1438081201

Awareness and Perceptions of Financial Planners in Canada: Leger research
Key findings- 92% have heard of the title financial planners
44% believe there are regulatory standards in place for financial planners
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The Feeling's Not Mutual D. Mac Donald Feb., 2015 PI
The High Costs of Canada's Mutual Fund Based Retirement System
ABSTRACT This study compares the management fees charged by mutual funds and pension plans, and finds that high management fees will cause Canadians relying on mutual funds for their retirement income to work longer or retire with less, compared to those with pension plans. The study recommends an expansion of inexpensive workplace pension plans or public pension plans, like the CPP; and as a stopgap measure, trailers fees—the portion of mutual fund fees that go back to the advisor—could be capped or banned entirely. - See more at:
https://www.policyalternatives.ca/publications/reports/feeling%E2%80%99s-not-mutual#sthash.arTWxQGH.dpuf

Conflict- of- interest guidance for captive EMDs published by CSA: Canadian Securities Law
The Canadian Securities Administrators (CSA) published CSA Staff Notice 31-343 Conflicts of Interest in Distributing Securities of Related or Connected Issuers (the Notice) on November 19, 2015. The Notice applies to "captive dealers" being firms registered solely as exempt market dealers (EMD) that distribute securities of related or connected issuers with common mind and management. The guidance is not directed at

firms that have more than one category of registration, such as portfolio managers and investment fund managers that also have an EMD registration. http://www.canadiansecuritieslaw.com/2015/11/articles/registration-registrants/conflict-of-interest-guidance-for-captive-emds-published-by-csa/ Of course a similar conflict of interest exists where bank branches offer only in house bank mutual funds and bank - owned online brokers limit fund choices to those paying trailers. Sometimes, trailer commissions are as high as 1% but no advice whatsoever is provided (Some would call this fraud based on the FF disclosure)

In a 2014 survey of CFA Institute members representing a broad cross-section of investment professionals, Canadian CFA Institute members cited "misaligned incentives of investment management services" and "mis-selling by financial advisers" as the two most serious ethical issues facing the Canadian market in 2015. https://www.cfainstitute.org/Survey/gmss_2015_detailed_results.pdf

Natixis global survey of individual investors
How investor behaviour is rewriting the job description for financial professionals Investors in 2016 need help meeting critical challenges. They want to grow assets but are hesitant to take on risk. They hear about the benefits of investment products but may not see where they fit in their portfolio. They know they are faced with funding a greater share of retirement but may not understand how to meet this goal. What they do know is that they want help and believe financial professionals can make a difference. On the surface, 70% of the 7,100 investors we spoke with globally believe the investment industry has a vested interest in helping them succeed, but only 50% believe the industry puts them first. We think it's time for every financial professional to demonstrate their commitment by ensuring each investor knows that they are the clear priority.
http://durableportfolios.com/docs/414/851/Individual%20Investor%20Survey%202016_white%20paper_Final.pdf

Study shows trust for advisors in Canada down
Entitled *From Trust to Loyalty: A Global Survey of What Investors Want*, the survey also showed that in Canada, strong ethics was the most important factor for clients."Overall, trust globally is up from 50% to 61% so that's the good news," she says. "In Canada, we are still above the global average with 64 per cent, but that is down from the 2013 survey when we were at 76%. Globally the financial markets have done better in that timeframe, while the reverse is true for Canada, so I think that might be the rationale for the change in sentiment." http://www.wealthprofessional.ca/news/study-shows-trust-for-advisors-in-canada-down-208737.aspx and https://www.cfainstitute.org/about/press/release/Pages/02172016_128524.aspx

Target Date Funds Threaten 401(K) Plan Trustees
Target Date Funds (TDFs) risk triggering litigation and class actions under the Department of Labor's tough new fiduciary rules, because they don't include robust defensible processes for matching portfolios to investor's needs while the portfolios they offer are likely to deliver inferior returns. There is now more than US$750 billion in these structures. But there will be trouble ahead and, as history shows, lawyers are rarely more than a few paces behind regulatory clarity that discloses significant financial disadvantage. Read our original research and data analysis **here**.

https://www.riskprofiling.com/blog/May-2016/tdfunds

TR14/4 – Risks to customers from financial incentives – an update - Financial Conduct Authority
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TR16/1: Assessing suitability: Research and due diligence of products and services - Financial Conduct Authority
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Proposed Best Practices Institute for the fiduciary standard
http://www.thefiduciaryinstitute.org/wp-content/uploads/2015/02/BestPracticesFinal-copy.pdf provides an overview of Best interests .This review of Best interests is taking place against the backdrop of social and demographic changes which have led to an increasing need for individuals to take more responsibility for their own financial future. AND for the industry to provide competent unbiased advice.

W**HITE Paper: The "advice gap" from an investor perspective**
https://www.blogger.com/blogger.g?blogID=4766585986003571384#editor/target=post;postID=3975731540117215175;onPublishedMenu=allposts;onClosedMenu=allposts;postNum=6;src=postname

WHITE Paper: The " advice gap" ?
http://www.canadianfundwatch.com/2015/11/white-paper-advice-gap.html

UK FCA suggests reforms that would make financial advice and guidance work better for smaller investors
http://www.fca.org.uk/news/reforms-will-make-financial-advice-and-guidance-work-better-for-consumers Some of the ideas would work well in Canada too and should be considered by the CSA/Government.

CFP Code of ethics and professional standards
http://fpsc.ca/professional-standards

"Held to a Higher Standard" – Should Canada's Financial Advisors Be Held to a Fiduciary Standard? Abstract Canada's financial regulators are set to bring in a number of sweeping regulatory changes over the next couple of years in an effort to improve consumer protection and boost investor confidence following the global financial crisis. One of the key changes being proposed by Canada's regulators is to raise the standard of care that financial advisors owe their clients to a fiduciary standard. Holding financial

advisors to a fiduciary standard would require them to act solely in the best interests of their clients, and avoid or disclose all conflicts of interest that arise in the advisor-client relationship. Currently, financial advisors in Canada are held to a "suitability" standard that does not require them to act in the best interests of their clients, instead, they must simply ensure that any investment recommendations are suitable given a client's risk tolerance and return objectives. The implementation of a fiduciary standard would have widespread implications for the financial industry, as advisors would be required to ensure that all recommendations were in the best interest of their clients, including the minimization of all fees and expenses, which is typically at odds with the advisor's goal of maximizing revenue from a client account. This literature review will explore the various issues associated with the fiduciary standard debate in Canada, with commentary, analysis, and perspectives from both the consumers and providers of financial advice. It also includes findings from a variety of academic sources on the subject of a fiduciary standard, and its potential impact on the financial advice industry
http://dtpr.lib.athabascau.ca/action/download.php?filename=mba-15/open/punkon-aprj-final.pdf

Suitability Versus Fiduciary Standard
" Would investment professionals who currently follow the suitability standard advise their clients differently if they were to follow the fiduciary standard instead? Although all respondents were asked this question, the focus here is on the registered representatives who indicated they follow the suitability standard. Sixty-seven percent of that group did not expect their advice to be different under a fiduciary standard. However, 16 percent of registered representatives expected that their advice might be different if they were to operate under the fiduciary standard and 17 percent didn't know. This result confirms that in the current situation, in which there are two different standards of care, at least some consumers may in fact receive different recommendations from investment professionals who follow different standards." See the table in the article.
https://www.onefpa.org/journal/Pages/Suitability-Versus-Fiduciary-Standard.aspx

Is conflicted advice better than no advice? :Research
ABSTRACT The value that brokers generate depends on both the quality of their investment recommendations and their clients' counterfactual portfolios. To identify counterfactual portfolios inside a defined contribution retirement plan, we exploit time-series variation in access to brokers. When brokers are available, the correlations with age, income, and educational attainment suggest that brokers are chosen by participants who value advice on asset allocation and fund selection because they are less financially sophisticated. When brokers are no longer available, demand for target-date funds (TDFs), which combine portfolio management with asset allocation, increases differentially among participants with the highest predicted demand for brokers. We find that broker client portfolios earn significantly lower risk-adjusted returns and Sharpe ratios than matched portfolios based on TDFS—due in part to broker commissions that average 0.90% per year -but offer similar levels of risk. Exploiting across-fund variation in the level of broker fees, we find that broker clients allocate more dollars to high-fee funds. This finding increases our confidence that actual broker client portfolios reflect broker recommendations, and it highlights an agency conflict that can be eliminated when TDFs replace brokers. https://www2.bc.edu/~reuterj/research/ORP_201503.pdf

FAIR Canada » "**Value of Advice" Claims "Completely Refutable"**
http://faircanada.ca/whats-new/value-of-advice-claims-completely-refutable/

The shift to F Class does not mean lower fees | PWL Capital
https://www.pwlcapital.com/en/Advisor/Ottawa/Cameron-Passmore/Advisor-Blog/Cameron-Passmore/July-2014/The-shift-to-F-Class-does-not-mean-lower-fees

What renders financial advisors less treacherous? – On commissions and reciprocity https://papers.econ.mpg.de/esi/discussionpapers/2010-036.pdf "An advisor is supposed to recommend a financial product in the best interest of her client. However, the best product for the client may not always be the product yielding the highest commission (paid by product providers) to the advisor. Do advisors nevertheless provide truthful advice? If not, will a voluntary or obligatory payment by a client induce more truthful advice? According to the results, only the voluntary payment reduces the conflict of interest faced by advisors.

Predictive Power of Fees: Morningstar research
Trailer commissions main source of excess fees in Canada . Canadians own about $1.2,trillion in mutfunds
http://corporate1.morningstar.com/DownloadRPSpdf.aspx?url=http://rps.morningstar.com/api/v2/654566632/documents/752589/file

Financial literacy and the demand for financial advice
http://www.netspar.nl/files/Evenementen/2011-06-16%20IPW/chiara%20monticone.pdf

Unfinished Business: It's Time to End Embedded Commissions - Steadyhand Investment Funds
https://www.steadyhand.com/globe_articles/2014/09/02/unfinished_business/

Clients sound off on mutual fund fees | Advisor.ca
http://www.advisor.ca/news/industry-news/compliance-roundup-november-2013-135783

Fact Sheet: Middle Class Economics: Strengthening Retirement Security by Cracking Down on Conflicts of Interest in Retirement Savings | whitehouse.gov
https://www.whitehouse.gov/the-press-office/2016/04/06/fact-sheet-middle-class-economics-strengthening-retirement-security

In whose Best interests? : Financial Engines
https://corp.financialengines.com/docs/Financial-Engines-Best-Interest-Report-040416.pdf

Letters to the Editor: Best interests duty needed for seniors
http://m.investmentexecutive.com/back-issues/letters-to-the-editor-best-interests-duty-needed-for-seniors-3/

What's a fiduciary? Americans clueless | BenefitsPro
"... How much investing jargon do you need to master while saving for retirement? The

word "**fiduciary**" is a good example. A **Financial Engines** survey released Thursday finds that only 18 percent of Americans are sure what the word means....." http://www.benefitspro.com/2016/04/01/whats-a-fiduciary-americans-clueless?eNL=56ff02ce150ba0d02c8b4584&utm_source=BPro_Daily&utm_medium=EMC-Email_editorial&utm_campaign=04042016

Who Are Fickler Fund Investors: Advisors, Institutions, or Individuals?
"...Overall, however, these numbers don't make a clear case in favor of one side or the other. The data doesn't prove or disprove the premise that financial intermediaries and institutions are any more or less fickle than individual investors. The lack of conclusive evidence is perhaps the most striking takeaway...."
http://news.morningstar.com/articlenet/article.aspx?id=340334

According to a **May 2011 Ipsos Reid poll** Seven in Ten (72%) Canadians are Not Fully Confident Their Math and Money Management Skills Will Help them Plan for a Secure Financial Future http://abclifeliteracy.ca/files/Financial_Literacy_Research-2011.pdf]

Financial Literacy Study of Canadians
http://www.statcan.gc.ca/daily-quotidien/160323/dq160323b-eng.htm

Overconfident Investors, Predictable Returns, and Excessive Trading (Kent Daniel and David Hirshleifer, authors of the paper)
http://www.kentdaniel.net/papers/published/JEP_15.pdf

Why do retail investors make costly mistakes? (2013)
Examines decisions related to fund choices.
http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1414&context=faculty_scholarship

Household Finances in Canada: Time for a Reality Check: CPA Canada (2015)
https://www.cpacanada.ca/~/media/site/the-cpa-profession/docs/cpa_canada_household_debt_study_2015_english.pdf?la=en

Investor Research project: submitted to SEC 2012
Good research on investor financial literacy.
https://www.sec.gov/news/studies/2012/917-financial-literacy-study-part3.pdf

Legal Origins, Investor Protection, and Canada : Poonan Puri
http://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=2474&context=lawreview and http://digitalcommons.osgoode.yorku.ca/clpe/72/

The Best Interests Advice Standard
https://www.canadianmoneysaver.ca/the-best-interests-advice-standard/

A report *British Columbia Investment Fraud Vulnerability Insights* issued on March 31, 2016
http://www.investright.org/uploadedFiles/news/research/2015BCVulnerability.pdf?t=1459571137102 by the British Columbia Securities Commission (BCSC) examined the fraud

vulnerability of older British Columbians. The research, conducted by Innovative Research Group, surveyed 800 British Columbians aged 50 and over. One key finding from the survey was that One**-in-eight British Columbians over 50 are vulnerable to investment fraud.** When presented with an investment opportunity that guaranteed 14% to 25% monthly and no risk, 10% said they would either look into it further and 3% said they simply didn't know, suggesting they are not sure enough to reject the offer.

Canadians living longer, StatsCan finds - Article - IE Executive
Canadians' life expectancy continues to rise, according to the latest data from Statistics Canada (StatsCan). StatsCan reports that, during the 2010-12 period, life expectancy at birth rose by 0.3 years for males to 79.4 years and by 0.2 years for females, to 83.6 years, compared with the 2009-11 period. The gap between the life expectancy at birth for males and females is down to its lowest level since the end of the 1970s, StatsCan also notes. Back then, the gender gap was 7.5 years. For the 2010-12 period, it was down to 4.2 years.
http://www.investmentexecutive.com/-/canadians-living-longer-statscan-finds?utm_source=newsletter&utm_medium=nl&utm_content=investmentexecutive&utm_campaign=INT-EN-All-afternoon

Rick Kahler: **Some Commission-Based Advisors Are Fiduciaries** | Kahler Financial
http://kahlerfinancial.com/financial-awakenings/weekly-column/fiduciary-duty-required-from-some-advisors-who-receive-commissions

Unpaid Fines: A National disgrace - SIPA
This report from the Small Investor Protection Association shows that regulators are owed nearly $1 billion in uncollected fines (mostly from advisors) casting doubt on the deterrence value of the sanction process. The BC Securities Commission has the largest amount owing at $ 340,000,000
http://sipa.ca/library/SIPAsubmissions/500%20SIPA%20REPORT%20Unpaid%20Fines%20A%20National%20Disgrace%20-%20April%202016.pdf

The Costs and Benefits of Financial Advice
http://www.hbs.edu/faculty/conferences/2013-household-behavior-risky-asset-mkts/Documents/Costs-and-Benefits-of-Financial-Advice_Foerster-Linnainmaa-Melzer-Previtero.pdf Stephen Foerster, Juhani Linnainmaa, Brian Melzer Alessandro Previtero assess the value that financial advisors provide to clients using a unique panel dataset on the Canadian financial advisory industry. They found that advisors influence investors' trading choices, but they do not add value through their investment recommendations when judged relative to passive investment benchmarks. The value-weighted client portfolio lags passive benchmarks by more than 2.5% per year net of fees, and even the best performing advisors fail to produce returns that reliably cover their fees. The research shows that differences in clients' financial knowledge cannot account for the cross-sectional variation in fees, which implies that lack of financial sophistication is not the driving force behind the high fees. Advisors do, however, influence client savings behavior, risky asset holdings, and trading activity, which suggests that benefits related to financial planning may account for investors' willingness to accept high fees on

investment advice. This research, existing independent research and OSC contracted research should be more than sufficient to help shape regulations.

Prosper Canada (2013). **Financial Empowerment Improving financial outcomes for low-income households**. http://www.prospercanada.org/getattachment/77fecc22-dff1-4a22-9d90-1f6746c9436b/Financial-Empowerment-Improving-Financial-Outcomes.aspx

The case for banning embedded fees - Investment Executive
http://www.investmentexecutive.com/-/the-case-for-banning-embedded-fees

The role of ethics and independence: Professional relationships
http://www.pearsoncanada.ca/media/highered-showcase/multi-product-showcase/showcase-websites-4q-2012/03_ch03_aren.pdf

Advisor Risk - How Would You Rate Your Advisor's Risk?
"...When it comes to investing, we can identify many risks investors assume, either knowingly or not. At Index Fund Advisors, we see it as our core mission to get investors to take the risks that are worth taking (e.g. market, size, value, term and default) and avoid the ones that are not (e.g. concentration risk, manager selection risk, market timing risk). In our opinion, there is one other risk that may overshadow all of them—the risk related to the selection of an advisor, including an investor choosing to be his own advisor. We call it "Advisor Risk" because it is the investor's advisor who chooses whether or not to engage in the potentially destructive investing strategies of stock picking, market timing, manager picking, and style drifting. Furthermore, it is also the advisor who chooses when and how to engage in the potentially helpful activities of asset allocation, asset location, re balancing, tax loss harvesting, tax management, withdrawal strategies, and glide path methods. The advisor also ultimately determines the costs borne by the investor such as fund management fees, transaction costs, taxes, and the advisory fees themselves. An advisor who fails to properly assess the risk capacity of his client will eventually face one of two bad situations: The client bails out in a bear market because he was carrying more risk than was appropriate, or the client fails to capture the long-term returns that were available to him because he did not take on the amount of risk that his capacity allowed. So there are many areas where bad advice from an advisor can have a substantial negative impact on a clients returns...."
https://www.ifa.com/articles/largest_risk_investing_advisor_risk/

The entire financial advice profession needs to be fixed - MarketWatch
http://www.marketwatch.com/story/think-your-financial-adviser-has-to-act-in-your-best-interest-think-again-2016-04-08

Do seemingly smarter consumers get better advice?: Research paper Feb. 2015
Abstract The existing theoretical and empirical literature considers expert advice to be a substitute for a consumer's information: According to these papers, more informed consumers should ignore the advice given to them, but the advisor does not (or cannot) take this into account. We show in a simple analytical framework that higher signals of consumer information should indeed lead advisors to provide better services. The model also suggests an identification strategy, i.e. to focus on consumers with bad signals (proxied by low education) but high financial literacy and vice versa. To verify our main

hypotheses, we choose a two-pronged approach using data from the SAVE-panel. First we show that individuals with higher financial literacy are more likely to solicit financial advice, but less likely to follow it. Then, we turn to data on the market for subsidized private pension plans in consumers buy a contract with the firm employing their financial advisor. We show that individuals are strongly influenced by their source of advice – with dependent financial advisors steering customers towards choice options yielding higher kickbacks. We finally demonstrate that individuals with higher financial literacy are less susceptible to this effect.
http://mea.mpisoc.mpg.de/uploads/user_mea_discussionpapers/1630_01-2015.pdf

Why A Fiduciary Standard For Investment Advisers Is Urgent And Crucial
http://faircanada.ca/wp-content/uploads/2012/06/Why-A-Fiduciary-Standard_-Kivenko.pdf

Current Practices for Risk Profiling in Canada And Review of Global Best Practices
https://www.osc.gov.on.ca/documents/en/Investors/iap_20151112_risk-profiling-report.pdf

Risk profiling Lessons from the FAIS
https://www.lexisnexis.co.za/pdf/Risk_profiling_In_search_of_the_correct_approach.pdf

Financial Advice: An Improvement for Worse? Yigitcan Karabulut June 17, 2013 Rotterdam School of Management, Erasmus University (RSM)
Abstract: In this paper, I analyze the role of financial advisors in individual investment decisions and ask whether financial advice is a reliable substitute for individuals' financial literacy. I report two main findings. First, I show that individuals who tend to be financially less sophisticated are more likely to consult professional advisors, which supports the notion that financial advice serves as a substitute for financial literacy. Second, when I analyze the impact of financial advice on portfolio choice, I find that, if anything, use of financial advice does not improve the quality of individuals' investment decisions. For example, I document that advised investors earn lower raw and risk-adjusted returns than self-directed investors, even before deducting advisory fees and transaction costs. Overall, the evidence presented in this study casts doubts on the ability of financial advice to serve as an effective substitute for financial literacy.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1710634

New Morningstar Manager Research Observer: Have Canadian Bond Managers Earned Their Keep?
You can find a copy of the full Manager Research Observer here:
http://www.morningstar.ca/industry/articles/Morningstar_Manager_Research_Observer_Canada_May_2016.pdf The paper features as the cover story here:
http://www.morningstar.ca/industry/articles/canadian_bond_managers.pdf

Lessons from proprietary mutual fund returns - Yahoo! Finance Canada
http://ca.finance.yahoo.com/news/lessons-proprietary-mutual-fund-returns-195227448.html

What me Worry? Income risks for retirement Canadians : CCPA
"..First, in focusing on saving ,the study ask the wrong question. The more appropriate question is not about saving but rather whether Canadians are on track to have adequate income in their retirement – especially those with middle incomes. "
https://www.policyalternatives.ca/sites/default/files/uploads/publications/Ontario%20Office/2015/07/What_Me_Worry%20FINAL.pdf

Naive diversification in DC plans
http://faculty.chicagobooth.edu/richard.thaler/research/pdf/DiversificationStrategies.pdf

The Impact of the Broker-Dealer Fiduciary Standard on Financial Advice by Michael S. Finke, Thomas Patrick Langdon:: SSRN (2012)
Abstract:Consumers who rely on the financial advice of experts are at an information disadvantage that may be exploited by advisers who are not required to make recommendations that are in the best interest of the customer. Registered representatives of broker-dealers are subject to a suitability standard under the Securities Exchange Act of 1934, while investment advisers are regulated as fiduciaries under the Investment Advisers Act of 1940. An early legislative version of the 2010 Dodd-Frank Act would have eliminated the broker-dealer exception from the definition of investment adviser under the Advisers Act. If enacted, this change would have subjected brokers to a common-law fiduciary standard (like investment advisers), but was postponed to examine the consequences of this policy change. It has been suggested that the imposition of a fiduciary standard on registered representatives would result in significant changes in how broker-dealers conduct business by limiting a representative's ability to recommend commission investments, provide advice to middle-market clients, and offer a broad range of financial products. We take advantage of differences in state broker-dealer common law standards of care to test whether a relatively stricter fiduciary standard of care impacts the ability to provide services to consumers. We find that the number of registered representatives doing business within a state as a percentage of total households does not vary significantly among states with stricter fiduciary standards. A sample of advisers in states that have either a strict fiduciary standard or no fiduciary standard are asked whether they are constrained in their ability to recommend products or serve lower-wealth clients. We find no statistical differences between the two groups in the percentage of lower-income and high-wealth clients, the ability to provide a broad range of products including those that provide commission compensation, the ability to provide tailored advice, and the cost of compliance.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2019090

Canadian Fund Watch: **The Best interest standard and the Elderly**
http://www.canadianfundwatch.com/2013/07/the-best-interest-standard-and-elderly.html

Is there any value in financial advice?: Rousseau
https://www.powercorporation.com/media/uploads/presentations/remarks_hp_rousseau_pcc_canadian_club_2015-11-19_final.pdf

Conflicts of Interest, Disclosure, and (Costly) Sanctions: Experimental Evidence
Abstract Conflicts of interest may compromise individuals' independence in providing advisory services. Full disclosure is a commonly recommended remedy for the adverse effect of conflicts of interest. Yet prior study shows that disclosure may not have the intended effect because it provides individuals with moral license to engage in self-interested behavior, thereby exacerbating biases. We follow up on this research and seek to determine whether other institutional factors may negate the potentially harmful effects of disclosure. We conduct a laboratory experiment, focusing on behavior in an investor/financial adviser dyad, including important representative features in this setting. Our results suggest that disclosure is not necessarily detrimental. We find that investors are better off when conflicts of interest are disclosed and sanctions are available, even though initiating sanctions is costly to investors. Under such conditions, advisers' bias is dampened markedly. (c) 2009 by The University of Chicago. All rights reserved.
https://ideas.repec.org/a/ucp/jlstud/v38y2009i2p505-532.html

Why do mutual fund investors employ financial advisors?
http://www.investisseurautonome.info/PDF-Downloads/FNB-FCP-COMPTES-INTEGRES-FONDS-MUTUELS/doc.1270-SSRN-id1319481.pdf

The Complete Guide to Canada's Robo Advisors
http://youngandthrifty.ca/complete-guide-to-canadas-robo-advisors/?utm_campaign=Young+and+Thrifty+Newsletter&utm_content=%5B%5Brss_title%5D%5D+Weekly+Update&utm_medium=email&utm_source=getresponse

NYTimes: **The Pros and Cons of Using a Robot as an Investment Adviser**
http://www.nytimes.com/2016/04/30/your-money/the-pros-and-cons-of-using-a-robot-as-an-investment-adviser.html?smprod=nytcore-ipad&smid=nytcore-ipad-share
Regulators and others question whether robo-advisers, which assemble investment portfolios online, can grasp clients' situations the way humans can.

Ethical Standards for Stockbrokers: Fiduciary or Suitability? Georgetown University
Douglas M. McCabe - Department of Management September 30, 2010
Abstract: What are the ethical obligations of the sellers of financial products to their customers? Stockbrokers in the U.S. have a legal and ethical requirement to recommend only "suitable" investments to their customers. This is a fairly weak standard. Currently, there are proposals to raise the standard to a fiduciary one in which the recommendations would have to be in the best interests of the clients. Brokers sell solutions to financial problems. Similar to an auto mechanic or a doctor, the product often consists of both the professional advice and its implementation. There are numerous conflicts of interest between brokerage firms and their customers in that the products that pay the highest commissions may not be the best one for the customers. The societal perspective adds complications, however. Society depends on modern financial markets to raise capital for productive enterprises and to spread risk. Issuers of financial products need distribution channels for their products just like the producers of any other products. Commissions create powerful incentives for the distribution channels, but at the same time produce conflicts of interest – a type of ethical pollution. Just as our

society tolerates some pollution as a by-product of other useful activities, it may be useful to tolerate some of these financial conflicts of interest. The nature of the relationship should govern the ethical standard. Those selling advice, regardless of how they label themselves, should adhere to a best interest fiduciary standard. More limited relationships would be limited to the mandate involved in the relationship. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1686756

Costly Financial Advice: Conflicts of Interest or Misguided Beliefs?∗ Juhani T. Linnainmaa Brian T. Melzer Alessandro Previtero December 2015 Abstract Using detailed data on financial advisors and their clients, we show that conflicts of interest matter, but appear limited to a small fraction of advisors. These advisors execute trades that increase their commissions and impose costs on the mutual fund system. At the same time, most advisors invest their personal portfolios just like they advise their clients. They trade frequently, chase returns, and prefer expensive, actively managed funds over cheap index funds. Differences in advisors' beliefs affect not only their own investment choices, but also cause substantial variation in the quality and cost of advice they give to clients. Our estimates suggest that correcting advisors' misguided beliefs, through screening or education, may reduce the cost of advice more than policies aimed at eliminating conflicts of interest.
http://faculty.chicagobooth.edu/juhani.linnainmaa/MisguidedBeliefs.pdf We publish all sides of the story including this controversial one. It's benchmark for assessing the conflict is an impaired one given that a) the conflict should not be discerned purely from the fund selection level but the asset/liability/risk preference, b) it ignores the impact of the conflict on the advisors' own culture, thought patterns and port structures and hence ignores causation, c) it assumes that the advisor lives in a universe that would allow lower cost fund purchases in the event of education, which we know not to be the case given industry pushback on moves to take out the conflict.Conflict drives the universe and its patterns.

Subject: Restricting Investment Sales Inducements: Impact of Reform, Other Mis-selling Solutions (Feb 2014)
" ..In our recently released paper, ***Restricting Sales Inducements: Perspectives on the Availability and Quality of Financial Advice for Individual Investors***, we explore the current state of play in markets that have decided to ban inducements, such as the UK and Australia, and others that have opted for increased transparency in lieu of an outright inducements ban...."
https://blogs.cfainstitute.org/marketintegrity/2014/02/18/restricting-investment-sales-inducements-impact-of-reform-other-mis-selling-solutions/

What Do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives by SUSAN E. K. CHRISTOFFERSEN, RICHARD EVANS, and DAVID K. MUSTO. ABSTRACT We ask whether mutual funds' flows reflect the incentives of the brokers intermediating them. The incentives we address are those revealed in statutory filings: the brokers' shares of sales loads and other revenue, and their affiliation with the fund family. We find significant effects of these payments to brokers on funds' inflows, particularly when the brokers are not affiliated.
http://onlinelibrary.wiley.com/store/10.1111/j.1540-6261.2012.01798.x/asset/j.1540-6261.2012.01798.x.pdf?v=1&t=hckxeghx&s=3bcea6c51c751e62a4f9b8a974adf03762dd

1e61 February 2013.

OSC Investor Advisory Panel Survey Findings on Adviser/Investor Relationship (2013)

Highlights of the study include:

- While investors generally trust the advice of their financial advisors, two things highlight the skepticism that many investors feel. Only 20% of investors strongly agree that they generally trust their financial adviser's advice and 25% strongly agree (39% agree- 64% overall) that how a financial adviser is paid impacts the recommendations that they receive. Advisers need to give their clients greater assurance that their best interest is being served.
- There is strong support for a statutory best interest duty: 93% agree that it is needed (with 59% strongly agreeing that it is needed).
- Investors want strengthened regulation of financial advisors, including clearer professional standards on use of the title, rigorous educational requirements and ethics training, and stricter regulatory enforcement of the rules.
- An investor/adviser power imbalance exists for most but is particularly problematic for those who lack confidence in their financial literacy. This places advisors in a powerful position. The majority (58%) rely on their financial adviser as their main source of information. More than four in ten do not know how their adviser is being paid.

http://www.osc.gov.on.ca/en/Investors_nr_20130318_iap-adviser-investor-relationship.htm

Suitability from a retiree perspective
http://blog.moneymanagedproperly.com/?p=2790

Enhanced protection for retail investors: MiFID II and MiFIR: ESMA News from Europe
http://www.a-tvp.si/Documents/enhanced_protection_for_retail_investors_-_mifid_ii_and_mifir.pdf

The RAND study (2008)
Iinvestor and Industry Perspectives on Investment Advisers and Broker-Dealers
https://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf

Consumer decision making in retail investment services: EC
http://ec.europa.eu/consumers/financial_services/reference_studies_documents/docs/consumer_decision-making_in_retail_investment_services_-_final_report_en.pdf

The Pension Fund Advantage: Are Canadians Overpaying Their Mutual Funds? By Rob Bauer Maastricht University and Luc Kicken ,October 1, 2008
Rotman International Journal of Pension Management, Vol. 1, No. 1, Fall 2008
Abstract: The institutional structure through which individuals accumulate retirement savings is an important issue. Ideally, it is expert and low-cost. This article compares the

cost-effectiveness of the pension fund structure with the mutual fund structure. The authors hypothesize that the pension fund structure provides investment management services at lower cost because most mutual funds are conflicted between providing good financial results for their clients and good financial results for their shareholders. Specifically, they compare the investment performance of a sample of domestic fixed income portfolios of Canadian pension funds with those of a sample of Canadian fixed income mutual funds. They find an average performance differential of 1.8 percent per annum in favor of pension funds. This performance gap is approximately equal to the average cost differential between the two approaches. They conclude that high mutual fund fees significantly reduce the net returns of mutual fund investors. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1290645

Blog **Financial Planning and Understanding Money** A thought provoking blogger from Australia lays out some key issues regarding financial advice. http://www.michaelsmusings.com.au/financial-planning/fees-independence-bias/financial-advisors-are-cheating-you/

Unwrapping Wrap Accounts: Dan Hallet
http://www.advisor.ca/images/other/ae/ae_1103_unwrapping.pdf

IIROC Guidance Note: Managing Conflicts in the best interests of the client April 6, 2016 http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3_en.pdf

How the Big Six banks won the battle for Canadians' wealth - The Globe and Mail Bank dominance has increased since 2013 when this article was written Latest CSA consultation proposals may accelerate the demise of independent fundcos and further strengthen the banks if care not taken "Independent domestic mutual fund companies are at a massive distribution disadvantage to the banks, which explains why so many have sold or partnered with a larger competitor over the past 10 years," he says. http://www.theglobeandmail.com/report-on-business/how-the-big-six-banks-won-the-battle-for-canadians-wealth/article13467969/?page=all

Managing conflicts in the best interests of the client: IIROC
"..However, when it came to compensation-related conflicts, most firms sampled lacked a meaningful process to identify, deal with, monitor and supervise compensation-related conflicts. For example, most firms did not have mechanisms in place to identify advisors who recommend products that yield higher fees and bonuses, when there are other suitable but less expensive alternatives available. They also did not have a process in place for implementing additional monitoring of advisors approaching compensation thresholds based on the amount of revenue generated. Furthermore, we found that there was confusion among some firms regarding the best interest standard as set out in our conflicts of interest rule and guidance. Although most Dealer Members responded that they always put clients' best interests first, we found little supporting documentation as far as compensation-related conflicts were concerned. .."
http://www.iiroc.ca/Documents/2016/F58C9465-AFC5-42F3-A5D1-6C5BFDF19CF3_en.pdf

The value of advice: An investor viewpoint Kenmar Associates
http://www.investingforme.com/pdfs/reports-studies/Advice-An-Investor-View.pdf

Canadian Fund Watch: **The Great Debate- Should trailer Commissions be Prohibited?**
http://www.canadianfundwatch.com/2013/07/the-great-debate-should-trailer.html

Invesco Comment letter on Fund Fees
"..The second way in which the conflict of interest manifests itself is that dealers who are affiliated with manufacturers place an incentive to sell proprietary funds by virtue of the compensation grid. The Discussion Paper clearly states that the percentage of trailing commission paid on proprietary funds is greater than that paid on third party funds. We note this is clearly illegal under subsection 4.1(1) of National Instrument 81-105. We understand that dealers construct "recommended lists" of mutual fund investments for their clients and sales of recommended list funds generate a higher grid payout than funds not on the list and that third party funds do appear on recommended lists. However, we suspect that all proprietary funds are also on the list and this enables the dealer to legally evade subsection 4.1(1). It appears that the CSA has condoned this practice since it makes the assertion regarding grid payments without commenting on the legality or ethics of the practice. To put it mildly, we are disappointed with the CSA in that regard. We also note that lack of enforcement on that point sends the message to all capital markets participants that, under Ontario securities law and the securities laws of other provinces, it is acceptable to do indirectly what you cannot do directly…"
http://www.osc.gov.on.ca/documents/en/Securities-Category8-Comments/com_20130412_81-407_adelsone.pdf

The case for index-fund investing for Canadian investors
https://www.vanguardcanada.ca/advisors/articles/research-commentary/indexing/indexing-communicating-cost-advantage-adv-brief.htm?lang=en

DISTRIBUTION DISRUPTION : IMPACTS OF THE DEPARTMENT OF LABOR FIDUCIARY STANDARD FOR US LIFE INSURERS
http://www.oliverwyman.com/content/dam/oliver-wyman/global/en/2015/jun/Oliver_Wyman_Distribution_Disruption.pdf

FCA cracking down on inducements - Investment Executive
British regulators are cracking down on industry junkets and other sorts of conflict-creating inducements that can impact retail investment advice. The U.K. Financial Conduct Authority (FCA) has announced the key findings from a review carried out last year into inducements and the conflicts of interest that can be created for firms as a result. The review follows guidance published by the FCA in January 2014 regarding practices that are likely to create conflicts that could undermine customers' best interests
http://www.investmentexecutive.com/-/fca-cracking-down-on-inducements?utm_source=newsletter&utm_medium=nl&utm_content=investmentexecutive&utm_campaign=INT-EN-All-afternoon Report at
https://www.fca.org.uk/news/inducements-conflicts-interest-thematic-review-key-findings Trailer commissions not the only way advice is skewed.

Impact of the DOL fiduciary rule on U.S. Financial advice industry: Morningstar
It appears that there will be a major shift away from active management among other major impacts. Retail investor retirement income security should improve dramatically.
http://www.advisor.ca/wp-content/uploads/2015/11/FinancialServicesObserver_DOL-Oct2015.pdf

Swedroe: **Fiduciary Duty Defeats 'Phishing'** | ETF.com
Classical economic theory suggests that free markets, in which individuals each act according to their self-interest, yield the best of all possible worlds. All one has to do is look around at places like Cuba and North Korea to see the benefits this system has provided. But economists George Akerlof and Nobel Prize-winner Robert Shiller present a very different side to this story in their book, "Phishing for Phools." (The "phish" is a way to get someone to make a decision that's to the benefit of the phisher, but not to the benefit of the "phool.") The authors observe: "Modern economics inherently fails to grapple with deception and trickery." Akerlof and Shiller aptly demonstrate that the "same human ingenuity that produces the cornucopia also goes into the art of the salesman." The result is that as long as there is a profit to be made, while "free markets produce good-for-me/good-for-you's, they also produce good-for-me/bad-for-you's." Thus, they conclude: "That means we need protection against the problems."
http://www.etf.com/sections/index-investor-corner/swedroe-fiduciary-duty-defeats-phishing?utm_source=newsletter&utm_medium=email&utm_campaign=dailynewsletter

UK Financial Inclusion Centre Manifesto on inclusion
"...So, the Centre presents a new vision of financial inclusion based on fairness, rights and social justice. It is not enough to provide consumers with 'opportunities'. We must ensure consumers' core financial needs are met and refuse to accept that it is natural that disadvantaged consumers should pay a huge cost for access to decent products or be treated as second class citizens who deserve second class products and services. We must start treating access to core financial services as a fundamental right on a par with access to healthcare and education...."
http://inclusioncentre.co.uk/wordpress29/wp-content/uploads/2011/08/financial_inclusion_manifesto_full_report.pdf

The financial "advice gap-"- it's the economics stupid: UK Inclusion centre
Focus should be on income adequacy in retirement rather than savings.
http://inclusioncentre.co.uk/wordpress29/wp-content/uploads/2015/10/financial-inclusion-centre-FAMR-blog-final.pdf

A Major Setback for Retirement Savings: Changing how Financial Advisers are Compensated could Hurt Less-Than-Wealthy Investors Most
A controversial paper supporting the retention of embedded sales commissions
http://policyschool.ucalgary.ca/sites/default/files/research/financial-advice-lortie.pdf

Canadian Fund Watch: **Kenmar review of "A Major Setback for Retirement Savings: Changing how Financial Advisers are Compensated could Hurt Less-Than-Wealthy Investors Most "**
http://www.canadianfundwatch.com/2016/04/kenmar-review-of-major-setback-for.html

Canadian Fund Watch**: Suitability from a Retiree Perspective**
http://www.canadianfundwatch.com/2013/08/suitability-from-retiree-perspective.html

The crime of the century: Financial exploitation of the elderly
http://www.investorprotection.org/downloads/KPF_IPT_Elder_Fraud_Insert_Nov-2011.pdf

Protecting Older Investors : The Challenge of Diminished Capacity- AARP
Yet one more reason to bring in Best interests advice giving
http://www.aarp.org/content/dam/aarp/research/public_policy_institute/cons_prot/2011/rr2011-04.pdf

Financial Abuse of Seniors: An Overview of Key Legal Issues and Concepts,
Canadian Center for Elder Law. Advocacy for the Elderly, 2013.
http://whaleyestatelitigation.com/resources/WEL_Background-Paper-Final-Financial-Elder-Abuse.pdf

Financial advice for retirement savers: Paying for advice without a conflict of interest | Brookings Institution
http://www.brookings.edu/blogs/up-front/posts/2015/07/29-paying-for-financial-advice-retirement-savers

How The ORPP Can Foster Pension Innovation
Workplace pension plans are in short supply in Canada, and that is not a good thing. The Ontario Retirement Pension Plan (ORPP) initiative could be the catalyst to improve the current situation. A new paper by Keith Ambachtsheer and Ed Waitzer argues that is far more likely to be the case if Canadian financial institutions were to compete with alternative offerings deemed 'comparable' to the ORPP. The paper shows how such an outcome could be achieved, and why it would benefit employees, employers, as well as the financial institutions taking up the challenge.
http://kpa-advisory.com/policy-papers/effective-competition-in-workplace-pensions-how-the-orpp-can-foster-much-needed-innovation/

McBride Bond submission to OSC re 2016-17 priorities
Greater issues facing Ontario investors The OSC, and through delegated powers, the SROs, are good at punishing those few who commit fraud, once they are caught. Unfortunately, these individuals are generally caught not due to robust compliance, but more often than not, due to tragic losses suffered by Ontario's investors. The OSC has a good record of enforcement with fraud and technical breaches; such as insider trading and market tinning. Fraud and technical breaches only represent a small portion of the alleged wrongs to Ontario investors and should therefore not be the focus of the OSC's investor protections. It is how we deal with those who have been wronged by industry that distinguishes a fair investor protection system from a system that defends the interests of industry who profited from these wrongs. At the stage of investor treatment, the system continues to fail Ontario victims in the majority of circumstances (i.e. not fraud and technical breaches). Most of the tragic harm to Ontario's investors is caused by: • Negligence, • Conflicts of interests, • Dealer's failure to warn investors of potential (and often likely) harm.

http://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20160425_11-774_mcbride-bond.pdf

The great debate Trailer Commissions
https://drive.google.com/open?id=0ByxIhlsExjE3VWZPOEMxb3JvcGc

Restricting Sales Inducements : CFAInstitute
http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2013.n15.1

Professional liability and the Financial advisor: Ontario Bar Association
The lawyers side of advice giving.
http://mccagueborlack.com/uploads/articles/128/lm_professional_liability.pdf?1357153588

Retail investors and financial advisors: New evidence on trust and advice taking heuristics http://www.otago.ac.nz/economics/otago113943.pdf

The Market for Financial Advice: An Audit Study
Do financial advisers undo or reinforce the behavioral biases and misconceptions of their clients? We use an audit methodology where trained auditors meet with financial advisers and present different types of portfolios. These portfolios reflect either biases that are in line with the financial interests of the advisers (e.g., returns-chasing portfolio) or run counter to their interests (e.g., a portfolio with company stock or very low-fee index funds). We document that advisers fail to de-bias their clients and often reinforce biases that are in their interests. Advisers encourage returns-chasing behavior and push for actively managed funds that have higher fees, even if the client starts with a well-diversified, low-fee portfolio. http://www.nber.org/papers/w17929?ntw

Strategic price complexity in retail financial markets
There is mounting empirical evidence to suggest that the law of one price is violated in retail financial markets: there is significant price dispersion even when products are homogeneous. Also, despite the large number of firms in the market, prices remain above marginal cost and may even rise as more firms enter. In a non-cooperative oligopoly pricing model, I show that these anomalies arise when firms add complexity to their price structures. Complexity increases the market power of the firms because it prevents some consumers from becoming knowledgeable about prices in the market. In the model, as competition increases, firms tend to add more complexity to their prices as a best response, rather than make their disclosures more transparent. Because this may substantially decrease consumer surplus in these markets, such practices have important welfare implications.
http://www.wiwi.uni-bonn.de/kraehmer/Lehre/Beh_IO/Carlin%20-%20Strategic%20price%20complexity%20in%20retail%20financial%20markets.pdf

APPENDIX I: The nature of mutual funds sold in Canada

Glorianne Stromberg, a former OSC Commissioner and advocate for investor protection, authored two seminal investor-focused reports on mutual funds. Although these reports were prepared over nearly two decades ago, they deal with mutual funds issues still relevant to investors today. (1) Investment Funds in Canada and Consumer Protection – Strategies for the Millennium (Oct. 1998) **and (2)** Regulatory Strategies for the Mid-90s – Recommendations for Regulating Investment Funds in Canada (Jan. 1995)

Of the approximately $1.3 trillion in mutual fund assets, the banks control about 47.5 % per Investor Economics **.** Of this amount, **a**bout $460 billion is in wrap accounts which frees the Rep from security selection, asset allocation and rebalancing duties. Per IFIC , the average MFDA account size is just $44000 .

Funds are available in a number of series with the A series the most popular. F class funds are available only for fee-based accounts- individuals cannot purchase these funds. D series are intended for DIY online accounts and have the advice element partially or wholly stripped out. There may also be a series with a reduced MER for large purchases. A large proportion of funds are sold in a proprietary manner e.g. bank branches, IG where investor choice of fund family is constrained.

The vast majority of retail mutual funds are distributed by dealers/salespersons ("advisors") who are compensated via trailing commissions embedded in the management fee .This of course creates a conflict-of-interest. The sales process is characterized as advice which may or may not be a realistic characterization of the actual service provided. The conflicted "advice" is tied to the product and ceases to be available when the product is sold.

A June 2015 Morningstar report *Global Fund Investor Experience Stud*y https://corporate.morningstar.com/US/documents/2015%20Global%20Fund%20Investor%20Experience.pdf shows that for Fees and Expenses, the highest-scoring country (that is, the country with the lowest costs) is the U.S., a position held since the start of this study in 2009 and reflective of the scale of this market and, as discussed later, sales practices. Australia and the Netherlands join the U.S. with an A grade. Among the lowest-scoring markets are Canada and China, which, while not the most expensive in all categories, do not have any category where fees are at an average or better level. Canada received a D- grade.

According to a Vanguard Canada report, the asset-weighted expense ratios of active and index mutual funds and ETFs are:

	Actively managed funds (bps)	Index funds (bps)	ETFs (bps)
Canadian equity funds	215	84	21
Canadian bond funds	125	84	29

Source: The Vanguard Group, Inc. calculations using asset-weighted management

expense ratios compiled from prospectuses by Morningstar, Inc. Data as of 31 December 2014. Report *The case for index-fund investing for Canadians* available at https://www.vanguardcanada.ca/advisors/articles/research-commentary/indexing/indexing-communicating-cost-advantage-adv-brief.htm?lang=en

The main features of a mutual fund are described in Fund Facts, a two page disclosure document delivered in advance of a decision to invest. It is written to be understood by people with a Grade 6 literacy level based on CSA Focus Group testing. The risk disclosure is based on the standard deviation which investor advocates argue is incomplete and misleading.

By design, mutual funds are a convenient way for a small retail investor to invest both inside and outside of a retirement savings plan. Mutual funds can be purchased with as little as $500. In addition, mutual fund companies provide investors with a convenient way to save by offering Pre-Authorized Chequing Plans (also known as pre-authorized deposit, or PAD plans) , a process not generally available to investors buying stocks, bonds or ETF's. Automatic no- cost reinvestment of distributions and free transfers between mutual funds of the same family are additional features offered by many mutual fund companies that make it easy to automatically add to increased investments .

Further , mutual funds sold with a deferred sales charge have caused a number of problems . This compensation structure can be and has been gamed by unscrupulous representatives that can lead to costly early redemption charges and increased costs for mutual funds (which appear as higher MER's) . In 2015 the Mutual Fund Dealers Association of Canada (MFDA) issued a Bulletin http://www.mfda.ca/regulation/bulletins15/Bulletin0670-C.pdf that detailed the results of a compliance sweep that it carried out. The compliance review looked at the use of DSC funds, particularly with senior clients, and dealers' supervision, suitability assessment, and disclosure practices in this area. The review uncovered several problematic practices, including: clients over age 70 that were sold DSC funds; clients who were sold funds with DSC redemption schedules that are longer than their investment time horizon; and evidence of poor disclosure of the redemption fees at certain firms.

Funds purchased via an online broker, with some exceptions (D class), incur the trailer commission but do not receive the advice related to the charge.

F class funds are only available for fee- based accounts. D class funds with a reduced trailer commission are available but only via an online account. A few fund companies sell directly to the public.

Fund-of-funds flows from affiliated dealers are pretty insensitive to past performance generally and that this relative insensitivity is quite a bit more impactful to flow than the effects of trailer fees. (Source : the Cummings report pg 60 http://www.osc.gov.on.ca/documents/en/Securities-Category5/rp_20151022_81-407_dissection-mutual-fund-fees.pdf 0

Mutual fund Wrap accounts with premium fees tend to hold on to assets and thus tend

to increase or at least maintain investor savings. Although wraps have many drawbacks ,they do stabilize returns and the reduced volatility can keep investors invested rather than panic selling in turbulent markets .Mutual fund investors are sometimes leveraged so that gross “savings” are further increased (as are sales commissions for salespersons) albeit at greatly increased risk.

Many Canadians who are not comfortable managing their own money through discount brokerages, buy their investments and get advice from retail bank branches that only offer their own mutual funds (ie proprietary/ lack of choice) and other products, such as guaranteed investment certificates (GICs) and Index- linked GIC’s. These are sold on a no-load basis. These products may not be the best or most suitable choices. At the same time, many of the country’s investment “advisors” are licensed by the Mutual Fund Dealers Association (MFDA) and are restricted from selling individual securities such as stocks and bonds.

With few exceptions, mutual funds sold by non-bank dealers are generally sold on a load basis, either front load or back load.

All of these plans, features and scenarios help make mutual funds a convenient but costly investment vehicle for generally unsophisticated retail investors. The cumulative effect of all these features and conflicted “advice” tend to increase investor investments (referred to by industry participants as savings). The real question is, of course, what is the price of this convenience/ conflict-of-interest and what, if any, response should regulators take? Is convenience a factor in determining best interests for small investors?

As multiple reports demonstrate , the price is very high but since most retail investors are not conscious of the price or opportunity costs, they blissfully keep on dealing through an “advisor” whom research indicates they trust. That is why several studies show that investors that use an "advisor' (aka salesperson) have higher savings and higher savings rates than those without an advisor. They also show that a large percentage of the market return is consumed by fees over the long term and that the majority of actively-managed mutual funds fail to meet or exceed their benchmarks over time after fees.

APPENDIX II: Investor Dependency and Vulnerability

Most retail investors need some level of financial advice. And as validated by the referenced research, most Canadians lack financial literacy and numeracy is weak. According to ABC Life Literacy Canada, over the last 10 years, Canadian literacy rates have dropped: in 2003 we ranked above average compared to other countries, we are now just average. The Percentages of Canadians with below desired literacy and numeracy rates are staggering: 49% for literacy and 55% respectively. http://abclifeliteracy.ca/workplace-literacy-facts With increased immigration, we expect these figures to get worse. As Company Defined Benefit pensions disappear, many boomers must rely on their RRSPs to generate retirement income but they’re uncertain how long their nest eggs will last. Bad or flawed advice could put these vulnerable folks in a serious financial predicament.

Here’s a sampling of specific reasons retail investors are vulnerable (some, but not all, are addressed by the targeted reforms):

• clients are overconfident in their investment knowledge

• weak regulatory enforcement by SRO’s

• legalese, jargon filled prospectuses and forms

• the Ombudsman (OBSI) cannot provide a binding decision leaving investors uncompensated or exposed to low ball offers

• information, knowledge and experience asymmetry put clients at a disadvantage

• increasingly complex structured products not understood by clients (and sometimes advisors too) and large number of series of a mutual fund

• misleading sales and marketing materials/ “free lunch ”seminars/ slick salesmanship

• a growing (in absolute numbers and as percentage of population) population of seniors with a long list of known vulnerabilities associated with aging

• a low suitability standard for advisors permits a wide array of abuses not the least of which is product cost and price breakpoints

• misleading titles used by “advisors” that imply competencies that don't actually exist

• low proficiency standards for “advisors” especially in mutual funds

• A broken NAAF/KYC tick -off- the- blocks system; unless system integrity is improved, adding a Best interests regime is like building a home on a foundation of Jello.

• “advisors” compensated by transactional commissions (conflict-of-interest)

Other KEY factors include:

FINANCIAL LITERACY VULNERABILITY In *FINANCIAL KNOWLEDGE AND RATIONALITY OF CANADIAN INVESTORS* Cécile Carpentier* and Jean-Marc Suret** March 18, 2012 demonstrate that Canadian investors’ financial knowledge is limited. On average, they obtain a mediocre knowledge score; only 5% score above 66%. The vast majority of respondents scored between 40% and 57%. Significant gaps were noted regarding knowledge of risk and return of asset categories. Knowledge of past returns of the main asset categories is abnormally low, particularly for equity, an area where all of the respondents are involved. Mediocre knowledge of the performance of categories and of the concept of risk premium calls into question investors’ financial planning ability. One out of five investors is unaware that the return of a small growth company comes not from dividends, but rather from a capital gain. One-third of investors are certain that they will receive future dividends from a company that usually pays them. Almost 30% of respondents are unaware that stock indices are greatly influenced by the returns of the largest capitalization stocks. Three-quarters of investors do not systematically compare the return on their portfolio with that of a stock market index.

https://www.lautorite.qc.ca/files/pdf/fonds-education-saine-gouvernance/finances-perso/fin-perso_ulaval_knowledge-rationality.pdf

PROCESS VULNERABILITY Wealth management is a complex area and those firms and individuals providing advice within it have considerable discretion over the processes that plan, structure, manage, educate and communicate. We believe that this discretion, the complexity of the processes and the asymmetry of knowledge and experience place the professional advisor and the firm in a position of great responsibility and the investor in a vulnerable position. Kenmar believes that this places fiduciary duties, accountabilities and responsibilities on advisors for the processes that plan, structure, manage and communicate outcomes irrespective of whether the service's nomenclature is discretionary or advisory and irrespective of title. Hence we support a Best interests standard where client interests always come first.

ADVISOR TRUST VULNERABILITY "Advisors" are the key influence on investors' decision-making, according to a study *Investor Behaviour and Beliefs: Advisor Relationships and Investor Decision-Making* http://www.getsmarteraboutmoney.ca/en/research/Our-research/Pages/Investor-behaviour-andbeliefs. aspx released by the Investor Education Fund, an Ontario Securities Commission (OSC) funded education entity. The study found that Canadian investors most commonly look to their dealer Reps for advice on asset mix and specific types of investments to buy. The study found that investors' trust in their advisors' opinions dominates all other factors in the decision to buy investments. In addition, the study revealed that investors are unaware of potential conflicts-of- interest. It found that only 13% of consumer's believed that commissions influenced the investment recommendations that their advisor provided, and 29% of consumer's admitted that they were unaware of the commissions their advisor received and didn't know how they might impact their advisor's recommendations- 36% believe the advisor looks out for their best interests regardless of compensation . Knowledge of mutual fund fees and what affects them is minimal. Their complexity makes it difficult for investors to assess potential conflicts- of-interest.

A study . *The National Smarter Investor Study* http://www.bcsc.bc.ca/uploadedFiles/About_Us/Publications/Smarter%20Investor%20Study%20FULL%20REPORT.pdf commissioned last year by the BCSC showed many clients don't do their own research when it comes to investing, nor do they read their account statements, relying instead on their advisors. The Study found that although almost half of investors (49%) said that researching the investments recommended by their advisor was their responsibility, only 22% actually did any research. As well, although 74% of investors say they are responsible for reading their account statements, only 62% always read them, the study found. The high degree of trust that clients place in their advisors is one possible explanation for the gap between what clients believe they should do, and what they actually do, when it comes to investing, the BCSC suggests. For example, the BCSC reports that almost two thirds (63%) of investors who admit to not always reading their account statements, said this is "because they trust their advisor is taking care of their money." A Best interests standard would make this trust warranted.

AGE VULNERABILITY Financial fraudsters often attempt to evoke strong emotions in their victims to convince them to hand over money. New research suggests that seniors may be particularly vulnerable to the effects of heightened emotions on decision making. Researchers at the Stanford Center on Longevity—working in collaboration with researchers from the FINRA Investor Education Foundation and the AARP Fraud Watch Network—found that inducing emotions such as excitement and anger in older adults increased their intention to buy falsely advertised items. An important implication of these research findings is that older people may indeed be more susceptible to acting on misleading pitches, which employ tactics designed to push a variety of emotional buttons. http://www.finra.org/investors/highlights/emotions-increase-susceptibility-fraud-older-adults?utm_source=MM&utm_medium=email&utm_campaign=Military%5FNews%5F051216%5FFINAL

A research paper *Old Age and the Decline in Financial Literacy* by Michael S. Finke, John S. Howe, Sandra J. Huston:: SSRN http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1948627 found that households over age 60 own half of the discretionary investment assets in the United States and are increasingly responsible for generating income from these investments to fund retirement. Studies in cognitive aging show that older respondents experience a decline in cognitive processes closely related to financial decision making. We investigate whether knowledge of basic concepts essential to effective financial choice declines after age 60. Financial literacy scores decline by about 2% each year after age 60, and the rate of decline does not increase with advanced age. Results from regressions censored by respondent groups and financial literacy topic areas suggest that the decline is not related to cohort effects or differences in gender or educational attainment. Confidence in financial decision making abilities does not decline with age. Increasing confidence and reduced abilities can explain poor credit and investment choices by older respondents. Such vulnerability should not be exposed to any advice standard other than a Best interests standard.

FINANCIAL COMPETENCY VULNERABILITY The Key findings of the *CSA 2012 Investor Index* http://www.securities-administrators.ca/investortools.aspx?id=1011 show that almost 30 %t of Canadians surveyed believe they have been approached with an investment fraud at some point in their life. Over half agreed they were just as likely to be a victim of investment fraud as anyone else. The *Investor Index* also shows that the overall investment knowledge of Canadians is low, with 40% of Canadians failing a general investment knowledge test. According to the findings, 57 % of Canadians say they are confident when it comes to making investment decisions. Yet most Canadians have unrealistic expectations of market returns. When asked what they think the annual rate of return on the average investment portfolio is today, only 12 % of Canadians gave a realistic estimate, while 29 % provided an unrealistic estimate and 59 % explicitly chose not to hazard a guess. Nearly half of Canadians (49 %) say they have a financial advisor, up from 46 % in 2009 and 42 per cent in 2006. However, 60 % of those with a financial advisor have not ever completed any form of background check on their advisor. Thirty-one per cent of Canadians say they have a formal written financial plan, up from 25 % in 2009. Although more Canadians have a financial plan, they are reviewing it less frequently (78 % say they reviewed their plan in the past 12 months, down from 83 % in 2009).

VULNERABILITY CAN LEAD TO HEALTH ISSUES

A 2007 CSA Investor study http://www.getsmarteraboutmoney.ca/en/research/Related-research/Pages/2007-CSA-Investor-Study.aspx#.VzQNVuIrK70 found that victims of investment fraud experience negative effects on their physical and mental health. Fraud victims in the study reported higher stress levels, increased feelings or displays of anger, depression, and feelings of extreme loss or isolation, as well as physical effects such as panic or anxiety attacks. Financial loss for a senior is a life altering event from which it is difficult or impossible to recover, either financially or emotionally. Losses under the prevailing low suitability standard are not often outright fraud, but the devastating effects are the same. Conversely, if advisors worked under a Best Interests / fiduciary standard like professional engineers, doctors, accountants, then they would be trustworthy neutral allies for seniors protecting against all manner of exploitation including family, friends and caregivers and wealth creators.

From Australia we learn from ASIC's Consumer Advisory Panel (CAP) that they commissioned a study *Compensation for retail investors: the social impact of monetary loss* (REP 240) http://asic.gov.au/regulatory-resources/find-a-document/reports/rep-240-compensation-for-retail-investors-the-social-impact-of-monetary-loss/ into the social impacts of investors suffering losses due to licensee misconduct in circumstances where the licensee is unable to provide full compensation. It was commissioned to better understand the personal consequences of investors not being fully compensated and to help inform submissions to the Government's review into whether a statutory compensation scheme should be introduced in Australia.

The key findings of the study are that investors who suffered the most had invested all their money, had not diversified or went into debt as part of their investment strategy .The impact of the monetary loss was immediate on investors without a financial buffer, for others the first six months from when they discovered their loss were critical. Most investors received none, or only a few cents in the dollar back .Investors had little knowledge of existing avenues of redress, such as their financial service provider's internal dispute resolution system or the external dispute resolution scheme they belonged to .Investors were reluctant to commence legal action to recover their monetary loss, particularly where they blamed themselves Some investors suffered 'catastrophic loss' as their loss was 'so significant their life will never be the same'. Some felt prolonged anger, uncertainty, worry and depression. Further, investors who suffered monetary loss lacked confidence in the Australian financial system, financial advisers, the government and regulators including ASIC

In the U.S. the FINRA Foundation research reveals fraud victims are vulnerable to severe stress, anxiety and depression. The report *Non-Traditional Costs of Financial Fraud* https://www.evanslaw.com/finra-foundation-releases-report-non-traditional-costs-financial-fraud/ found that: nearly two thirds (65 %) reported experiencing at least one type of non-financial cost to a serious degree; and the most commonly cited non-financial costs of fraud are severe stress (50 percent), anxiety (44 %), difficulty sleeping (38 %) and depression (35 %). *Non-Traditional Costs of Financial Fraud* found that, beyond the psychological and emotional costs, nearly half of fraud victims reported

incurring indirect financial costs associated with the fraud, such as late fees, legal fees and bounced checks. Twenty-nine percent of respondents reported incurring more than $1,000 in indirect costs, and 9 % declared bankruptcy as a result of the fraud. .Additionally, nearly half of victims blame themselves for the fraud—an indication of the far-reaching effects of financial fraud on the lives of its victims.

It is improbable that increased financial literacy will be able to reach a level of competency that would prevent individual cases of significant loss of savings and investment capital.It is therefore imperative that the regulatory regime increase the standards of care imposed on firms. The proposed Best interest standard goes a long way towards providing that level of care.

APPENDIX III Related Investor Advice / Investor Protection Issues

The following issues are related to this Consultation and merit CSA consideration:

1. Robo -advisors While imperfect, this smart use of technology can help small investors get reasonable investment advice at lower cost using low cost products. We urge the CSA to ensure that the resulting reforms do not unduly hinder the growth of this segment of this fledgling industry so important to small investors. We understand that some robos use proprietary securities such as pooled funds, defined securities (usually a brand of ETF's) and/ or a related broker to execute trades- these issues must be addressed..

2. Rescission rights We urge the CSA to increase the time frame from the current 2 days to time periods associated with other consumer protection sectors.

3. Workplace related education for DC plans Such general financial education sponsored by employers should be considered a real positive and no restrictions put on it that would make employers back away. Indeed, provincial governments should consider establishing workplace pension plans as Ontario has done.

4. Prevailing investment fund issues There are a number of outstanding fund issues that impact this consultation .First there is the question of embedded trailer commissions that are known to skew salesperson advice. Second, there is the misleading characterization of risk in the proposed Fund Facts disclosure that could result in bad advice by the salesperson and unduly cause tension in the client-registrant relationship. As noted by all investor advocates and a few industry participants this disclosure is misleading and incomplete. Finally, there is the issue of fund manufacturer payments to dealers to subsidize "Free lunch " educational seminars that have often been shown to be nothing more than disguised sales pitches to promote mutual funds.- these seminars have caused investor harm and clearly are inconsistent with Best interests behaviour protocols. These would need to be addressed in parallel with a review of the Best interests standard for advice giving.

5. Prosper Canada initiatives The current focus of Prosper Canada www.prospercanada.org is on developing and promoting financial empowerment interventions that have been proven to measurably improve the financial well-being of people living in poverty. These interventions include free financial coaching and counselling -- services that typically involve helping people to assess the overall state of

their finances, to set realistic financial goals and to develop and follow an action plan to achieve them. This may include helping them to resolve urgent financial issues, prepare a household budget, access basic banking, tax file and access government benefits to boost their income, manage and reduce debt, build their credit history and score, and access public savings supports (e.g. RESP and RDSP and related grants and incentives). No products are sold. When delivered by properly trained personnel in conjunction with other community supports, these interventions have been shown to increase people's incomes and improve their credit scores and savings and debt levels. When integrated with other municipal and community services, they have also been shown to improve employability, employment stability, earnings, housing stability and mental health. We urge the CSA to ensure that nothing in any of the resulting reforms unduly hinders the growth of this economic good .

6. Exemptions There may be times when a client chooses to invest in an investment that may not be in their best interests (ie. client wants to buy a speculative stock or an ethical fund). In addition, there would also be times when a client may want to direct the investment process – even though it might contrary to their best interests. In these cases, there would need to be an exception rule (or a separate account established) that allows advisors to exempt themselves from a fiduciary standard to accommodate a situation where clients willingly choose to do something that may not be in their best interests.

7. Hold dealers Accountable The SRO's need to focus compliance and enforcement more on dealers. For example if a carpet cleaner ruins your carpet, the normal protocol is to hold the company responsible, not the individual. So it should be with the wealth management industry . After all , it is the dealer that has recruited the Rep , trained him/her, and is responsible for supervision. The dealer compliance function is also there to detect and prevent investor abuse. Dealer compensation models dramatically impact Rep behaviour. Dealers that set tough sales quotas, establish sales motivating commission grids and pay hefty commissions and trailers must be held accountable when those models drive a bad corporate culture and investor harming behaviours. An unintended consequence of these regulatory reforms and a Best interest standard could very well lead to an increase in outside business activity, personal financial dealings, off book transactions and controversial referrals. It is therefore more important than ever that dealers be held accountable for the actions of their representatives in order to protect investors . Perhaps this should be labelled Principle # 6 of Best interests .

OBSI already does this. Para 22 of the OBSI Terms of Reference states: "..that after the investigation of a complaint, the Ombudsman shall make a recommendation for compensation or action to the Complainant and the Participating Firm if, in the opinion of the Ombudsman, the Complainant has suffered a loss, damage **or harm** because of an act **or omission** of the Participating Firm ***or its Representative*** in the provision of a Financial Service". Formal recognition of this principle would bring dealer practices in line with OBSI.

8. *Improve registration search* The NRD webpage is a valuable tool retail investors can use to conduct due diligence and make informed decisions when hiring a registrant. We recommend the national registration search website page be revised in order to make it

more robust and retail investor friendly. It also needs to be more intuitive. For example entering Dan [family name] will not trigger a name for Daniel [family name].It is currently more structured for use by market participants and should be revised to reflect the fact that many investors will not have any knowledge of the various registration categories at the firm level and on an individual basis, jurisdictional differences etc. Taking on the function of an educational tool as well as a due diligence tool would also promote investor protection initiatives. The revised website page should then be tested on an appropriate focus group of retail investors before it is launched to ensure that it is providing investors with the information they need in a way that is easily understood. We also believe the NRD website page should prominently and clearly describe why the searches are important to investors and what specific information an investor should be looking for before engaging a registered advisor. Finally, we recommend that important that Outside Business Activities be included to ensure people can validate dual licencees and look out for fraudsters. The system should be capable of being data-mined for research and analysis purposes.

9. Extend the Statute of Limitations time frame to 3 years. (in Ontario the period is two years, too short for unsophisticated retail investors/seniors)

10. We have repeatedly pointed out that fixed rate administration fees can effectively prevent mutual fund expenses from declining as a percentage of assets as the fund grows .We would observe that such is a rather high price to pay for the "stability and predictability" such fees supposedly provide. We believe such fees represent a serious conflict-of-interest for a mutual fund manager as there is a clear incentive on the manager to reduce service to unitholders in order to increase its profitability. We see no difference between these fees and management fees and view the industry movement adopting such fees as a backdoor attempt at increasing management fees.

APPENDIX IV The IIROC Issue

IIROC is an essential building block in making a Best interests standard work .Investor advocates have expressed serious doubts that IIROC is up to the task.

For the 5-years 2011 to 2015 there were 6,255 complaints reported under the ComSet rules but IIROC only initiated 245 investigations. That is an unbelievable investigation rate of only 3.8% of dissatisfied investor complaints reported to IIROC by Investment Dealers. What happened to the other 6,010 (96.2%) ComSet registered complaints that IIROC received? We note that IIROC is the largest self-regulatory organization in the country. Total sanctions, including both at the firm level and the individual level, were a mere $4.6 million of which just 36 % were imposed on dealers. It is hard to get excited about such a figure in a $3.6 trillion market. The top complaint received related to unsuitable investments but that only totalled 33 complaints down from 35 in 2014.There were 124 investigations completed in 2015 but 41% never made it to prosecutions. Robust enforcement?

The I*IROC Unpaid Fines Report June 1 2008-March 4, 2016 reveals total unpaid fines for IIROC current according to their website is* ***$27,941,793.00***
http://www.iiroc.ca/investors/Pages/Unpaid-Fines-Report.aspx We wonder on what basis IIROC believes their approach to enforcement is effective as a deterrent that protects investors.

The practice of prosecuting "advisors " most of the time w/ o considering root causes i.e dealer management policies /supervision / compensation is not achieving justice or deterrence. If firms were held accountable for all the actions of their representatives, investing would be a lot safer place.

Some other examples:

- Governance - heavy dealer focus ---retail investor not represented on BOD
- Low level of retail Investor engagement and sensitivity
- Panel decisions not tied to a strategic direction or vision, wrist slap penalties in too many cases.
- Investor Complaint handling process and policies- many valid complaints closed without adequate explanation. Investors are so frustrated with the boilerplate response" *Our review of your complaint is now complete and Enforcement staff has determined not to pursue formal disciplinary proceedings against Mr. X. As such, we have closed our file. "* that it is hard to see why anyone would bother to complain to IIROC at all.
- Controversial sanction guidelines -no numerics, strictly principles based , little use of disgorgement– questionable deterrence effectiveness
- Allowing discount brokers for years to collect 1% trailers but knowing that such dealers are not permitted to provide financial advice
- Well identified serious issues with client risk profiling practices not being expeditiously addressed ref OSC IAC report on risk profiling
- Unclear initiatives regarding protection of seniors -eg proposed use of stockbrokers as executors [the OSC IAP officially oppose this rule change See http://www.osc.gov.on.ca/documents/en/Investors/20150831_members-dealers-rule.pdf]
- Privacy and security systems - physical and digital privacy gaps
- Deficient dealer complaint handling rules - many issues including substantive responses, internal bank "ombudsman", systemic issues etc We have provided a detailed analysis to IIROC with NIL response to date. This is our critique of the IIROC complaint handling rule https://drive.google.com/open?id=0ByxIhlsExjE3ZGp5MWc1TUI4RzA
- Not controlling dealer Representative titles that mislead investors

In 2015, IIROC granted 634 regulatory exemptions granted , which included more than 500 relating to proficiency requirements, 64 that involved specific aspects of the trading rules, and 14 to facilitate bulk transfers, among other issues. In March, some IIROC dealers were let off the hook to report client performance on Off Book assets.

Even a simple rule change like adding the IIROC logo to client statements has been mired in quicksand for years. More recently , IIROC has issued a controversial White

Paper that would allow sales commissions to be diverted to personal corporations for "advisors" and could dramatically disrupt the operations of the MFDA. Neither of these two outcomes support investor protection. The latest OSC Oversight report also identified a number of issues including a critical unattended IT issue.

Because of the adverse impact IIROC could have on introducing a Best interests standard , we strongly recommend that the CSA/OSC impose on IIROC as a condition of maintaining the Recognition Order that (a) the OSC Review every aspect of IIROC operations to identify areas where investor protection is deficient (including the ones identified in this letter) and compel IIROC to make the necessary changes on a defined milestone scheduled (b) set aside at least three board seats for retail investors and (c) implement a funded Investor Advisory Panel similar to the one established by the OSC .

APPENDIX V Note on BEST INTEREST STANDARD

Selected Investor Issues in the Suitability world

Use of unduly expensive products
Not using indexing. Improper conversion of mutual funds to Segregated funds by dual licensees
Undue leveraging and margin buying
Exploitive "Free lunch" Seminars
Use of blank- signed NAAF's/ Adulteration of KYC after the fact
Wholly unsuitable recommendations
Sale of 6 and 7 year DSC funds /Outright misappropriation of assets
Sale of risky / fraudulent Off book deals
Abuse of POA /Advisors Clandestinely being named as the executor
Unfair denial of valid complaints/Diversion of complaints to "internal ombudsman " to wear down investors' resolve
Controversial sale of annuity at critical RRSP rollover time
Unjustified transfer into 1% plus fee- based accounts (reverse churning)
Account churning /Borrowing money from clients
Exploitation of elderly with obvious diminished capacity
Defective disclosure re conflicts-of-interest, hidden fees, price breakpoints, early redemption charges
Reverse churning

Given the number of observed issues , the vulnerability of investors and the adverse consequences, it appears to us that there is no choice but to adopt a statutory Best interests/ fiduciary standard for investment advice (and complaint handling). The targeted reforms by themselves will not move the boundaries of advice giving to a higher level. Only a fiduciary duty (Best interests) will move Canada beyond the prevailing low suitability standard.

The problem with the common law definition of fiduciary however is that it does not have a frame of reference with respect to the investment process. It is case- specific. Accordingly, CSA Guidance should ensure that complaint handling falls under the best interest regime.

The problem the courts have in applying a fiduciary responsibility today is that the advisory segment of the market place is deemed to be a transaction request interface, that is the investor comes with cash armed with risk preferences and objectives and is merely asking for a product which matches those preferences. In this context the investor is responsible. Applying a simple best interest standard to this process would require that the product selected for the parameters provided by the investor is the most efficient: i.e. an indexed ETF versus an active high MER mutual fund.

Even though a best interest standard is a fiduciary duty in the context noted above, the position held by the advisor would not, in our opinion, be that of a fiduciary. Attempting to apply a fiduciary status to this process based on suitability would not work and would likely not be accepted by the courts -clients would still be exposed to legal challenge .However, if we were to change the definition of the processes being regulated to advice based service processes where it is acknowledged that there is considerable discretion over the processes that govern the construction, planning and management of wealth and considerable asymmetry of experience and expertise that places the investor in a de facto vulnerable position, then a best interest standard would be one that would extend beyond the transaction to the processes and widen the fiduciary duties beyond the narrow interpretation of a best interest standard within a transaction frame.

It is not the title accorded to the role of advisor but the processes for which the advisor is deemed responsible for that determine responsibilities, duties and accountabilities. This is the frame. Note that in legal cases, principles are applied to assess whether a fiduciary responsibility exists or not and this is because most relationships lack clearly defined frameworks that would allow the relationship and the breach to be determined.

A Best interest standard in a transaction framework bears minimal resemblance to the term fiduciary and the term fiduciary in such a framework is unlikely to apply to it likewise. Neither term is a solution to the current problem.

But a best interest standard in a process driven service framework, where it is acknowledged that there is considerable discretion over these processes and that their operation requires experience and expertise, is virtually indistinguishable from the common law determined fiduciary status. This is “Wealth management” as touted by the financial services industry. The courts would have a frame of reference and so would regulation and by virtue of redundancy , the statutory rule would dominate and the need to seek legal redress and legal definition of the duty would no longer be needed. Best interest standards and fiduciary would conflate.

A statutory rule would be the optimal frame for managing conflict where you can define the frame of reference, but a common law frame for one which you cannot. Because we have regulation of the relationships and investment processes by their nature are structured processes, a statutory standard can be implemented to replace the inefficient common law process.

Imposing a fiduciary duty is the right thing to do, particularly at a time when governments and employers are gradually shifting the burden of providing for retirement

onto the shoulders of individuals. Canadians have to rely more on their own savings to get them through their retirement years. And if savings are placed with a financial advisor, it is even more important now that greater responsibility is placed on the shoulders of the people providing the advice. Vulnerable investors and seniors especially cannot be exposed to the suitability standard and flimsy processes.

The observed advisor abuse incidence rate is too high, the downside potential demonstrably evident and the likely human effects truly serious. Even if the abuse incidence rate was low, contemporary regulation must have a preventative element. We don't wait for a heart attack to have an annual medical checkup or cancer screen. Canada has a long-range radar system to protect against an enemy attack. When clear and present vulnerabilities exist, rational people take action and that is exactly what regulators need to do without undue delay. While the impact of deficient investor protection is financially enormous, the collateral damage is often more devastating.

This problem is potentially worsened by additional categories for IIROC registrants and the applicable proficiency standards. This could cause confusion among investors as to which products and services could be offered by the proposed restricted dealing representatives. A Best interest standard would help ensure that investment or allocation of financial resources is in fact in a client's best interests, and would help mitigate concerns relating to potential conflicts of interest. The end users of these services, the investment industry, and society as a whole, would benefit if all professionals offering investment advice were held to this high standard. The Best interest standard is at least as important as determining proficiency requirements for true investor protection, especially for less sophisticated investors.