

Via email

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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

I am a retired senior that has experienced first hand the client- dealer relationship. It s my pleasure to provide the CSA some feedback on the proposals. I do not have the expertise to respond to all 68 questions but I can provide some grassroots feedback that I hope will be valuable to you. I am very glad to see there is less dependence on disclosure to investors and more obligations placed on dealers and advisors to act fairly, honestly and in good faith.

The Consultation document makes some very interesting and disturbing points: These include but are not limited to:

1. There is no disclosure related to conflicts of interest is fully understood by the client, including the implications and consequences of the conflict
2. No explicit requirement to consider product/account costs against the client's investment needs and objectives

3. No explicit requirement that the original KYC information, and any material change, is confirmed in writing with a signed copy provided to the client
4. No explicit requirement that registrant take reasonable steps to update KYC information at least once a year
5. Requirement is primarily "trade"-based (i.e., based on a product order or recommendation to buy or sell only)
6. No explicit requirement for representatives to recommend the product from their firm's shelf that is most likely to meet the investment needs and objectives of the client compared to the other products on the firm's shelf
7. No explicit requirement to consider the investment strategy and other basic financial strategies as part of the product-focused suitability analysis

Perhaps most disturbing of all is the observation that: **"The self-regulatory and industry organization investor complaint experience shows there is consistent and ongoing non-compliance with many of the current key regulatory requirements, with the unsuitability of investment recommendations being the primary basis for complaints to OBSI for the past five years, case assessment files for IIROC for the past three years and allegations in MFDA enforcement cases for the past three years"**.

Anyways, here are my comments:

Relationship Disclosure Investors must be informed as to 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 literature 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 documented finding that the limitations and restrictions do not prevent advisors from providing advice in those investor's best interest.

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. Clients also need to be made aware of dually licensed advisors and what to watch out for. Outside Business Activity should be articulated on the CSA registration check system so clients are made aware.

Sales Practices I am not familiar with NI81-105 *Mutual Fund Sales Practices* but I suspect there may be issues with other products like pooled funds, ETF's, closed-end funds and other structured products that were not anticipated by NI-105 We doubt that the guidance is sufficient given all the imaginative compensation and non-financial inducement approaches that have been introduced since NI81-105 was released way back in 1998. It is very important that regulators routinely enforce NI-105 violations. I am particularly concerned about "Free lunch" seminars, false advertising, deceptive titles and the improper promotion of leveraged investing. As an aside, I am concerned that the deceptive disclosure of risk in Fund Facts will be used by dealers to defend complaint

cases against investors. These ratings have been demonstrated to be misleading and not robust but are used in pre-sale solicitations to justify fund purchases. See **Warren Buffett on risk and volatility** in Business Insider <http://www.businessinsider.com/warren-buffett-on-risk-and-volatility-2015-4> Volatility is NOT risk !

Conflicts of interest In my opinion anyone who touches someone else's money should be a fiduciary. Thus, I support the statutory Best interests proposal but would much prefer a formal fiduciary obligation in place to protect Main Street.

Control Titles: The industry is using made up titles to deceive investors. Seniors titles are especially harmful. The regulators should narrow down the list to a few meaningful titles and enforce their use.

Improve Complaint handling I believe that much better redress mechanisms are needed. Current dealer complaint handling is adversarial and unfair to complainants. In 2015, 18% of non-backlog complainants who OBSI considered should receive compensation received less than OBSI recommended (on average \$41,927 less); including 3.5% who were at risk of receiving nothing. One can imagine the percentage when OBSI is not involved and retail investors are on their own. It is a key reason that the regulatory system is not providing clients the anticipated regulatory outcomes. Fair and timely complaint investigation is a critical dealer obligation to clients and is entirely consistent with a Best interests Standard of Care. And, bank- owned dealers should not be permitted to nudge victims to internal "ombudsman ". There are too many opportunities for abuse in that approach and it eats up valuable limitation period time.

Know Your Client The proposed changes clarify the existing obligations of KYC. It is important 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. Risk profiling should be given more prominence in the targeted reforms given the sorry state of affairs evidenced in the OSC IAP sponsored PlanPlus report. As noted in its 2015 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.. A defective KYC leads to inappropriate advice to investors . Unless there is a valid reason not to do so, a KYC should be prepared for each client account. The Small Investor Protection Association has issued a Report *The Know Your Client Process Needs an Overhaul* <http://sipa.ca/library/SIPASubmissions/500%20SIPA%20REPORT%20-%20KYC%20Process%20Needs%20Overhaul%20-%20201607.pdf> which outlines just how broken the system is.

Suitability The suitability regime (one could hardly call it a professional advice standard) is a cunning wealth management industry invention to provide regulatory cover for conflicted advice. It is not a coincidence that Morningstar says Canadians pay the highest mutual fund fees in the world. The fuzzy nature of suitability boundaries is, according to a number of industry observers, a primary reason for the relatively slow adoption of lower cost ETF's in Canada.

You would have thought that something as important as a recommendation suiting the client's financial needs and risk preferences, as well as the current risks in the market place, would be well defined. You would have thought that suitability would be etched in statute, in the courts, in common law, in financial services rules and regulations, in compliance departments rule books, in corporate quality control procedures, in the minds of everyone in the industry. In fact, it is not explicitly or specifically etched anywhere. There are no rules that say what is and what is not suitable, there are no principles that must be followed. The closest the Canadian financial services industry has got to putting principles of suitability into stone is the common garden "Know Your Client" (KYC) form. The KYC form cannot safeguard the suitability of a transaction because it cannot effectively relate the transaction to financial needs, existing investments, risk preferences or current risk/return relationships. All that really exists is the word itself amidst vaguely worded paragraphs on the subject. Indeed, because current thinking limits justification of suitability to the transaction there is in reality no substance to what is and is not "suitable". More often, it really just boils down to not providing unsuitable recommendations. The wide spectrum of "suitable" choices complicates complaint disputes for investors. Shrewd dealers can and do deflect liability in all but the most obvious cases of unsuitable advice.

The so-called "suitability" regime does offer some protections for investors, but it's certainly not the gold standard. Strangely, it doesn't include product cost, a key parameter in determining portfolio performance. If regulators truly want world class investor protection they'll need to ensure that the investment advisor is considered a fiduciary or at least works to a Best interests standard. The suitability regime is typically a regime that requires that whoever is handling your investments puts you in products that are "suitable" for your objectives, financial situation, risk tolerance/capacity and even age. They need not be the best or cheapest. The Suitability regime is the soil that allows conflicts-of-interest to transpire. The Cummings report clearly shows that conflicts-of-interest result in non-optimum investment recommendations. Product cost is pushed aside as a suitability factor while professional risk profiling is treated with disdain as evidenced by the PlanPlus report. The result? Reports like the Cummings report which show that salesperson recommendations are skewed towards higher cost products resulting in lower investor returns. Accordingly, we support the inclusion of the proposed Best interests overlay.

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 equipped with the necessary tools/systems, 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 so aptly 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 RRIF accounts I believe advisors who are accustomed to growth accounts will need additional training to competently advise on de-accumulating accounts.

Tax savvy 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 advice relationship. That implies a need for increased advisor

tax savvy and proficiency. It is certainly vile to think any advisor would give financial advice without first reviewing a client tax return. Should the client convert his/her RRSP to an annuity? Should they contribute to a RRSP or a TFSA? Does the client need to shelter income from taxes? Should the client borrow to invest? Which products are most tax efficient? The best possible way to pay less tax to the government is if the financial advisor is working hand in hand with the client's accountant/tax advisor. The primary reason advisors aren't reviewing tax returns before providing investment ideas is because they either don't know what they're looking for on the return OR they are told not to by the dealer they work for because they view it as a liability or as a constraint on commissionable advice. Either reason is unacceptable because clients may be paying too much in taxes or missing opportunities every year. With Canada's high tax rates, income taxes are a key consideration in investment decisions.

Make OBSI a real Ombuds Service As regards OBSI, I fully support the independent reviewers report <https://www.obsi.ca/assets/2016-Independent-Evaluation-Investment-Mandate-1465218315-e9fa5.pdf> The recommendations are consistent with the needs and wants of retail investors. Name and Shames and lowball offers bring disrepute to industry and regulators and harms investors. In 2015, 18% of non-backlog complainants who OBSI considered should receive compensation, received less than OBSI recommended (on average \$41,927 less); including 3.5% who were at risk of receiving nothing. This is shameful The report concludes that OBSI is capable of fulfilling a more meaningful role and it recommends that the CSA pursue this by giving OBSI binding authority. The report also recommends that OBSI develop guidance for the industry on how it will implement a process for identifying systemic issues and alerting regulators. As a result of numerous identified 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 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 . I certainly hope the CSA and the OBSI Board will adopt these well researched recommendations as part of an integrated approach to improving the client-registrant relationship.

Regulatory arbitrage According to media reports dual licensed "advisors" may be shifting client assets to Segregated funds that are more loosely regulated with less demanding reporting and disclosure requirements. Regulators should take steps to curtail this practice, Also , according to an advisor.ca report, **REGULATORY ARBITRAGE: HOW BANNED IIROC AND MFDA ADVISORS CAN STILL SELL INSURANCE** <http://www.advisor.ca/news/industry-news/hidden-in-plain-sight-how-banned-iiroc-and-mfda-advisors-can-still-sell-insurance-207496> cross sector enforcement and collaboration is weak. Among other things the investigation identified nine cases between 2013 and 2015 where reps were permanently banned by their securities 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, 2016). Again, we urge regulators and politicians to end this investor endangering nonsense.

Self -regulation : I cannot comment much on this topic but I have read a few articles questioning the biases of the MFDA and especially IIROC. The OSC IIROC Oversight

reports have certainly been telling and published remarks by the OSC IAP on IIROC are of concern. SRO IIROC is in effect national regulator for most retail investors. If it doesn't step up to enforcement and complaint handling most of the benefits of these initiatives will not be achieved. There is no speeding where there are no cops!

I believe the planned targeted reforms accompanied by the proposed Best interests principles will go a long way towards making the taking of advice more safe for retail investors. As noted by the CSA, many of the required actions are not routinely being applied to protect investor savings. Advisors and dealers should expect to dedicate more time and resources to better manage client accounts. They will also have to make some investments in better tools and IT systems if they wish to match the promises made in wealth management marketing materials. It is conceivable that the extra workload of providing trustworthy unconflicted advice may require longer hours or a reduced client count unless matched by technological innovation. See *U.K. regulator eyes "regtech" to reduce compliance costs*

http://www.investmentexecutive.com/-/u-k-regulator-eyes-regtech-to-reduce-compliance-costs?utm_source=newsletter&utm_medium=nl&utm_content=investmentexecutive&utm_campaign=INT-EN-All-afternoon

I sincerely hope this feedback will be of use to the CSA in formulating policy reforms.

I agree to public posting of this Comment Letter.

Sincerely,

Arthur Ross

RESEARCH DOCUMENTS

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_o.ca.pdf

Suitability , Minimum standards and Fiduciary Duty : A. Teasdale CFA

<http://www.moneymanagedproperly.com/newsletters/Suitability,%20Minimum%20Standards%20&%20Fiduciary%20duty.pdf>

Is Conflicted Investment Advice Better than No Advice?

https://www2.bc.edu/~reuterj/research/ORP_201503.pdf

Protecting Senior Investors : IIAC

<http://iiac.ca/wp-content/uploads/IIAC-Working-to-Protect-Senior-Investors.pdf>

Failure to address suitability processes is in itself a breach of a regulatory fiduciary duty : Teasdale CFA . <http://blog.moneymanagedproperly.com/?p=1977>

Vanguard's Principles for Investing Success

<https://www.vanguardcanada.ca/documents/investment-principles-goals.pdf>

Many Canadian investors unaware of fees they're paying to invest: Tangerine

"..When the survey narrowed in on the 67 per cent of investors who use a financial advisor, 24 per cent of those surveyed said they don't pay fees or commissions for their advisor's services, and another 13 per cent were unsure. Furthermore, of those who were aware of fees for their advisor's services, when asked how well they understood the fee structure, nearly 40 per cent said "not very well" or "not at all." This lack of knowledge around investing fees may help explain why Canadians pay some of the highest mutual fund fees in the world, and also why industry regulators have been phasing in a series of reforms called CRM2 over the past three years, designed to bring more transparency and disclosure to the industry. The most significant requirements of CRM2 come into effect on July 15, 2016 and will result in investors receiving two new annual reports from their investment dealer later this year. One report details the specific account charges and dealer compensation associated with their investments, and the other provides visibility to investors' personal portfolio performance...." <http://www.newswire.ca/news-releases/many-canadian-investors-unaware-of-fees-theyre-paying-to-invest-586603691.html>

Enhanced disclosure has limited effect on consumers - Article - investmentexecutive.com

Consumers pay relatively little attention to enhanced disclosure, even when the disclosure prompts them to take action that would produce "non-trivial" financial gains, new research from the United Kingdom finds. The U.K. Financial Conduct Authority (FCA) has published a paper that sets out the results of a series of field trials that aim to explore whether disclosure-driven regulatory interventions could encourage consumers to take action to improve their financial position, namely switching to higher-paying savings accounts http://www.investmentexecutive.com/-/enhanced-disclosure-has-limited-effect-on-consumers?utm_source=newsletter&utm_medium=nl&utm_content=investmentexecutive&utm_campaign=INT-EN-All-afternoon and Occasional Paper No. 19: Attention, Search and Switching: Evidence on Mandated Disclosure from the Savings Market – UK Financial Conduct Authority <http://www.fca.org.uk/news/occasional-paper-no-19>

“Held to a Higher Standard” – Should Canada’s Financial Advisors Be Held to a Fiduciary Standard?

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://dtp.r.lib.athabascau.ca/action/download.php?filename=mba-15/open/punkon-aprj-final.pdf>

TR14/4 – Risks to customers from financial incentives – an update - Financial Conduct Authority

<https://www.fca.org.uk/news/tr14-4-risks-to-customers-from-financial-incentives>

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>

Unfinished Business: It's Time to End Embedded Commissions - Steadyhand Investment Funds

https://www.steadyhand.com/globe_articles/2014/09/02/unfinished_business/

The Flaws In Canada's Financial Adviser System

<http://www.highviewfin.com/blog/the-flaws-in-canadas-financial-adviser-system/>

CARP calls for a Fiduciary Duty for advice givers

<http://www.carp.ca/wp-content/uploads/2013/12/CSA-Consultation-Paper-33-403-Fiduciary-Duty.pdf?e4b50d>

The impact of individual's financial behaviour on investment decisions

<http://www.eiic.cz/archive/?vid=1&aid=3&kid=20101-22&q=f1>

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.

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>

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

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>

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>

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.

Why won't Canadians pay for investment advice? - The Globe and Mail

"...Here's where the investment industry bears some responsibility for investor discomfort about paying for advice. These geniuses hid the cost of advice in the fees charged to own mutual funds. These fees are taken off the top of fund returns (investors see net gains or losses), so investors have often been ignorant of them. For these people, advice has no cost. And if there's no cost, there's no value. The investment industry also has to own up to the fact that many of its so-called advisers are really just salespeople hustling mutual funds. They're financial advisers like the sales guy at the La-Z-Boy store is an interior decorator...."

<http://www.theglobeandmail.com/globe-investor/personal-finance/why-wont-canadians-pay-for-investment-advice/article30927394/>

