CSA consultation 33-404: Non-fiduciary advice is an oxymoron. Enhancing obligations of advisers is insufficient-Advisers must become Fiduciaries

In a nutshell

Non-fiduciary advice is an oxymoron. Statutory fiduciary advice is achievable by a principle, rather than rules, based approach. Advice is about process not product. Advisors placed in a context conducive to fiduciary behaviour must transition from a business to a professional model by: state-of-the-art best practices (e.g. IPS), institutional/employer oversight and responsibility to meet Fiduciary level of care (including enablers like training, skill, competency, accreditation and institutional culture). Use of adviso/er title only permitted by fiduciaries. Oversight and enforcement by: mediation/arbitration/Court, public Review/Comments to share client experiences and spontaneous sampled/risk-based audits and client interviews. Robo-advice may help pave the path to standardization of and compliance with fiduciary standards. Fiduciary level of care must also apply to insurance industry. Vanguardization of the investment industry and the re-mutualization of the insurance industry would facilitate delivery of fiduciary level of care.

Recommendations in response to CSA consultation 33-404

The reality is that both the SROs and government legislated regulatory bodies have failed to deliver what individual investor/client needs for their retirement security:

-SROs are constrained/challenged in their perspectives by being industry representatives/advocates; industry self-regulation has never worked because it lacks the necessary checks and balances.

-Government legislated regulatory bodies are constrained/challenged by weak regulations, by regulatory-capture, as well as the difficulty in attracting/retaining the skilled resources needed to execute their mandate.

The Canadian investors deserve better. Non-fiduciary advice is an oxymoron! Statutory fiduciary level of care is the gold standard that investors need. Why is it that Canada always trails other western democracies in investor protection? Why does Canada have the world's most expensive financial products (MF)? Why does the government regulate every trivial aspect of our lives (recycling, speed limits, weed-killers, etc) but refuses to protect investors from non-fiduciary 'advice'?

So where should we go: Statutory Best Interest or Fiduciary Standards (SBI/FS) vs. Regulatory Best Interest Standards (RBIS) vs. Targeted Reforms (TR)? It is better to start where we want to end up, the SBI/FS but initially apply gentler enforcement with lower penalties and gradually ramping up both enforcement/penalties for repeat offenders, than to start with TR trying to move up to RBIS and then SBIS/ SF at some point in the future . Targeted Reforms may be necessary actions but even if successfully implemented will not lead to the level of care in financial advice to resolve Canadians' retirement finance crisis.

What is needed?

-principle, rather than rules, based Statutory Fiduciary level of care in financial services as a way to establish client and adviser expectations for service standards; fiduciary refers to advice not product, products are used to implement advice
-move from product to advice based focus; advice is the process used to achieve client objectives
-move financial advice from a business to a profession
-the process/advice must be based on state of the art best practices; e.g. Investment Policy Statement, or its equivalent, is the diagnostic tool to delivering holistic financial advice
-structural changes to the financial industry such that advisor is placed into business models conducive to fiduciary behaviour
-employer (financial institution) must be responsible to oversight of advisor: fiduciary care, advisor skill/competency/accreditation, "advise/or" title reserved exclusively for fiduciaries
-robo advice may be a way to standardize and assure fiduciary process compliance for a large segment of advice seekers
-Fiduciary care must apply to insurance companies/products as well

Enforcement needs:
-establish a client Review /Comment facility to share experience with adviser/institution by naming/shaming/praising...much like **RateMDs** for doctors or Amazon reviews/comments about products/vendors
-establish mandatory independent financial services mediation facilities with qualified mediators selected from financial client advocacy space;
-if mediation fails then provide option of arbitration or formal Financial Services Court, especially in case of blatant non-fiduciary practice
-define compliance/enforcement standards and disciplinary actions (compensation and fines)
-spontaneous sampled/risk-based audits and client interviews
- EPA/EC regulates environmental issues, UL check safety, etc but who protects against unsafe/toxic financial products and/or incompetent/self-serving/stupid adviser/advice?

Concerns/risks
-what reasonable/acceptable cost for advice value delivered
-fragmented Canadian regulatory framework
-perceived subjective fiduciary standard for financial advice until courts rule initial cases
-falling for the financial industry sowed FUD (fear/uncertainty/doubt); fiduciary is not more expensive for the same reason that there will be no "advice gap", because today very few receive real advice and the costs currently embedded in the product are sufficient to deliver it if separated

Opportunities
-low-cost investment products with decoupled fee-only advice
-re-mutualization of insurance industry and Vanguardizing the investment industry

Consultation history on Fiduciary level of care

The earlier 2012/3 consultation paper started with Statutory Best Interest Standard. In this new consultation paper we have regressed from Statutory (Fiduciary) to Regulatory Best Interest Standards (which, according to the current consultation paper, would not automatically establish a fiduciary duty) all the way to just a set of Proposed Targeted Reforms (the only part of the consultation that all provinces are interested in exploring; BC

in not even consulting on Regulatory Best Interest Standard (by the way, BC is also the only CPP member province which as yet failed to endorse the new expanded CPP). One step forward- three steps back!

The CSA has issued a new consultation paper **Canadian securities administrators consultation paper 33-404 proposals to enhance the obligations of advisers, dealers, and representatives toward their clients** this time dropping pursuit of the statutory "best interest duty"/fiduciary (SF/SBIS) requirement and instead requesting comments on "regulatory amendments... to better align the interests of registrants to the interests of their clients and enhance various specific obligations that registrants owe to their clients" referred to as proposed "targeted reforms" (TR) and "*regulatory* best interest standards" (RBIS). (**CSA propose to significantly increase obligations of registrants in Canada** and **"The Status Quo Must Change"** offer good short summaries of the CSA consultation paper.) This consultation paper argues that "Any best interest standard in the context of Canadian securities legislation would be formulated as a regulatory conduct standard and not as a restatement or formulation of a fiduciary duty. This approach is preferable since: BIS is more tailored to specific needs of client-registrant relationship, fiduciary (legal) less specific than customized BIS, "fiduciary duty remedies are potentially too harsh for all instances of registrant misconduct", "fiduciary duty, as a common law concept with a long history and application across various disciplines and situations, lacks the upfront clarity and specificity we require"..." The BIS Consulting Jurisdictions have also considered whether the use of the phrase "best interest" in the formulation automatically establishes a fiduciary duty. Our view is that it does not, since our express intention is not to establish a statutory fiduciary duty for registrants, and although the phrase "best interest" has been interpreted in some contexts as a fiduciary duty,{33} in others it has not.{34}" (followed by specific proposal of what it is and what it is not...)

My response to an earlier (2012/3) consultation paper on this subject at Fiduciary – Response to "CSA Consultation Paper 33-403 – The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients" was summarized there as follows:

"*A **fiduciary duty** requires the fiduciary to place the interests of the client ahead of one's own*. Consider fiduciary in the context of the ancient wisdom of the Bible which very sensibly suggests *not placing an obstacle before the blind*. In the financial adviser context*, not placing an obstacle before the blind* can be implemented by two orthogonal requirements: (1) statutory fiduciary requirement for financial advisors when dealing with retail clients (e.g. require adviser not to take advantage of the client's ignorance/naiveté due to asymmetric financial knowledge and client's incorrect assumption that adviser is already obligated to act in the client's best interest), and (2) placement of advisers for retail clients into business models conducive to acting in the client's best interest (i.e. permit only business models which eliminate/minimize temptation for adviser self-dealing; e.g. fee-for-service/fee-only rather than embedded/commissioned compensation structure). Thus "help" advisors meet the client's best interest standard we must legislate: statutory fiduciary requirement and business models conducive to its delivery."

Clearly this earlier input failed to persuade the CSA on the importance of a statutory fiduciary requirement in Canada. Hopefully this input will be more persuasive.

The good news appears to be that all provinces agree that there is an extensive list of problems in the client-salesman/advisor/registrant relationship and they are looking to improve on identified problem areas and thus are consulting on "proposed targeted reforms"

intended "to better align the interests of registrants to the interests of their clients and enhance various specific obligations that registrants owe to their clients".

The proposed targeted reforms might be addressing very specific issues, but a bottom up issues/rules oriented approach has failed repeatedly in the past and will fail again without the requirement for a clear top-down *principle based* high bar of fiduciary (or statutory best interest) standard.

Background

The financial and popular press is full of articles chronicling: salesmen masquerading as advisors, expensive (and even toxic) products being pushed instead of real advice based on a diagnostic analysis rooted in client's goals/objectives and circumstances, clients taking for granted that salesman-advisor acting in his(client's) best interest, clients fooled/gamed by asymmetric information, salesman-advisor conflicts-of interest, 'advisers' implying ability to forecast the market, opaque costs/fees, misleading job titles, minimal if any required qualification to deliver real advice, often salesman-advisor has little more understanding of the complex products being sold than the client-investor/victim buying the product.

While many of the examples provided below are from the US and elsewhere, that is because there is a substantially greater quantity of documentation in part due to the US having has spent the last half-decade or so slugging through matters relating to fiduciary standard. There is no reason why one would assume that the Canadian situation is better, in fact probably the contrary can be assumed, because the products and industry practices are the same in Canada just the products come with much higher price tags.

So what's wrong with financial industry today?

-**Opacity and regulatory malpractice allow perpetuation of an "institutionally corrupt" system:** John Plender writes in the Financial Times' **Perverse incentives in the industry have fostered the perfect financial crime** Thomas Philippon's research shows that the industry has always been charging about 2%/yr to manage/transact/inform/etc "US financial sector generated no increase in productivity at all over 130 years". The answer to why is due to the growing "chain of financial intermediaries" which resulted in loss of "line of sight between providers of capital and agents. Opacity allows those with expertise to use their knowledge to serve themselves without passing on commensurate benefits to the customer. Productivity gains are simply distributed within the industry." Plender calls the system "institutionally corrupt" due to lack of transparency and negligence of regulators to protect consumers.

-**Asymmetric information:** Noah Smith in Bloomberg's **The Dirty Little Secret of Finance: Asymmetric Information** observes"...asymmetric information, which is a nothing more than a nuisance in most markets, is at the core of finance. It's key to the way traders...make their profits. And it's probably at the root of why markets break down and crash. So when someone...proposes big rollbacks of financial regulation, we should be suspicious. In many cases that might be a good idea, but finance is no ordinary market." (This information asymmetry applies equally to the client salesman/'advisor' interaction.)

-**Regulatory failure:** **Ontario Auditor General: Province should better protect pension plan members** "As of December 31, 2013, 92% of Ontario's defined-benefit pension plans were underfunded; in other words, they would not have enough funds to pay full pensions to their members if they were wound up immediately. This is a huge risk to the millions of members of those plans and their families... It is uncertain whether FSCO's Pension Benefits Guarantee Fund, designed to protect members and beneficiaries of single-employer defined-benefit pension plans in the event of employer insolvency, is itself sustainable." (The crisis of Nortel pension beneficiaries and long-term disabled is a tragic and still unfolding example of complete regulatory failure)

-**Toxic products**: **MetLife VAs flounder as Fidelity halts sales** "Insurers have seen industry-wide variable annuity sales **slide over the past several years**. Total first-quarter VA sales **plunged to their lowest level in 15 years**, due mainly to market volatility eroding demand for equity-based products and a looming **Labor Department regulation** governing investment advice in retirement accounts. Sales are expected to continue their downward trajectory as the regulation comes into effect starting next year." (This is essentially due to the risk associated with selling such toxic products under the new DoL rules.)

-**Excessive fees:** 401(k) Lawsuits Will Change Retirement Savings Reuters reports that "Three well-known U.S. universities, MIT, New York University and Yale, have been accused of charging millions of dollars in excessive fees to participants in their retirement plans, according to federal civil lawsuits filed on Tuesday. The complaints against the three universities accuse them of breaching their fiduciary duties by causing the plan participants to pay millions of dollars in unreasonable and excessive fees for record keeping, administrative and investment services." Earlier this year, Disney workers did the same, as did workers at Edison, Intel, Anthem, Verizon and Chevron. And more ironically, financial service companies have been sued as well, firms like Franklin Templeton, Neuberger Berman and smaller firms like Cetera Advisor Networks have been sued for self-dealing their products with excessive fees—the irony of course being that these workers may have been selling the same products they were suing over." (i.e. even employees of mutual fund firms prefer Vanguard's rather than their company's products in their retirement accounts.) (When Fiduciary level of care comes to Canada, I can't wait to see how the mutual fund salesman will justify a 2.5% MER when a similarly effective ETF from Vanguard charges 0.2%. But the biggest mystery is how Canadians fail to see that they are being exploited by insurance and mutual fund companies given the impact of corrosive fees/costs.)

-How much am I paying per year? What am I paying for? In Benefit Canada's **CRM2, actions abroad put fee transparency in financial services under the microscope** Jennifer Patterson discusses the CRM2 rules now in effect in Canada on fee disclosure to retail investors. Essentially CRM2 has very specific requirements on disclosures related to all costs/charges/fees, benchmarks, enhanced account statements, performance. (There are no such requirements for insurance company products.) She also covers related regulatory changes in the UK (commissions banned) (2013), Australia (commissions banned and best interest duty) (2013) and US (all retirement accounts must have fiduciary advice) (2017). (No doubt that many investors will be shocked when they see their first CRM2 compliant reports from their brokers, even though brokers have been working diligently to contain the expected damage.)

-**What constitutes advice?** Advice is not about security selection or timing the market, or even building 60/40 portfolios. Real advice is about finding out your goals/objectives, circumstances, risk tolerance, constraints, generating a lifecycle financial plan which include risk management, low cost portfolio implementation and management for accumulation (retirement savings), transition to retirement (understanding must/wants expenses in retirement and how the differ from working ones) and decumulation (income generation during retirement). This is usually fully covered in an Investment Policy Statement. If you have never been offered/prepared one of these then you have never received real/holistic financial advice.

-**Toxic and opaque products:** Penelope Graham reports in **Segregated funds need CRM2-like disclosure** that "Harold Geller... says the lack of disclosure around insurance-wrapped investing products poses a glaring conflict of interest to consumers... the consumer protections available for the sale of a securities product are far superior to that of an insurance product... the consumer doesn't know the difference between a mutual fund, an IVIC or a seg fund....(IVICs (variable annuities with guarantees that promise participation in the market upside while providing downside protection are a triumph of hope over reality, and when you hear that you should run the other way) and SegFunds (insurance company originated mutual funds which are often even more expensive the regular Canadian mutual funds if that's imaginable) are insurance products which could be sold by dually licensed salesman (securities and insurance).

-**Regulatory capture**: in the current CSA consultation paper "the BCSC is of the view that implementing only the proposed targeted reforms will significantly strengthen the standards of conduct and advance the best interests of investors. Given the current regulatory and business environment (what does this mean?), imposing an over-arching best interest standard may not be workable and may exacerbate one of the investor protection issues identified, that being misplaced trust and overreliance by clients on registrants. (This can't happen if registrant is a Fiduciary he WILL act in the best interest of the client or will be disciplined for failure to do so.). Further, the introduction of a regulatory best interest standard over and above the proposed targeted reforms is vague and unclear and will create uncertainty for registrants." (Elsewhere on the subject of the expanded CPP, the B.C. Finance department observed that "The proposed CPP enhancement is meant to balance the needs of business owners with those of employees. British Columbia is committed to engaging with stakeholders in advance of ratifying the agreement in principle," the department said in the statement." ...and BC is the only CPP member province to withhold its agreement to proceed with the enhancement. Some might call this coincidence or "regulatory capture" or BC government policy.)

-**Unethical practices:** **Four life insurers will pay $3.4M to settle probe over death benefits** "State insurance regulators have reached settlements with four life insurance companies regarding payment of unclaimed death benefits, terms of which include paying an aggregate $3.4 million... Insurance departments have cracked down on insurers over the past several years for using the database in circumstances where it benefited the firm, such as identifying deceased holders of annuity contracts in order to stop making recurring payments, but not using the information when it would pay claims to beneficiaries, regulators claim."

-**Misleading job titles:** Carl Richard in the NYT's Meaningless Titles and Empty Promises in the Money Business that most people when they "... see the title "financial adviser," "financial planner" or "financial" anything and expect to receive unbiased advice... these particular titles mean nothing. No universal standard of care exists that applies to the

financial industry as a whole. Other than the financial professionals who are fiduciaries and must act in customers' best interest, there is no requirement to put a client's needs first." A disclaimer at the FINRA website warns that "Financial analyst, financial adviser, financial consultant, financial planner, investment consultant or wealth manager are generic terms or job titles, and may be used by investment professionals who may not hold any specific credential."

But challenges remain in a move to Fiduciary level of care

-**Fiduciary a path to a profession:** Statutory fiduciary requirement a path to a true profession: Finance professor/lawyer Ron Rhoades in the Journal of Financial Planning's **The Fiduciary Issue Path Toward a True Profession - The DOL's Conflict of Interest Rule and BICE's Impartial Conduct Standards** argues that "The DOL's fiduciary rule…promises to propel the financial planning community closer to status as a true profession with its foundation firmly rooted in the provision of objective advice and counsel." (I would agree that Fiduciary standard of care is a necessary, but not a sufficient condition for moving the advice business to the advice profession. **Fiduciary duty is necessary, but not sufficient**)

-**Fiduciary is about advice (process not product) in the client's best interest**: In Michael Kitces in **The Compliance #FinTech Gap Under DoL Fiduciary And The Next Generation Of Robo-Advice** Fiduciary is about advice/process rather than product. This is radically different from current model where irrespective of Broker-Dealer/Insurance-Co/RIA the standard for the 'advice' provided is product based suitability/suitability/PrudentPortfolio; so there are no standards for advice as such. Fiduciary level of care will require standards for advice to demonstrate that the "advice is the client's best interest". Today's reality is that there are no industry wide standards that 'advisor' or his employer can point at to defend themselves. But according to the US-DoL fiduciary rule the "*financial institutions (including advisory firms themselves) now have an oversight responsibility pertaining to whether the advice their advisors provide really betters the client's situation*." There is a good chance that in this fiduciary world advice (financial plan) will in fact be delivered by a computer algorithm to insure that it is consistent across the company's advisors, and the financial planning software become the fiduciary compliance solution. The algorithms could be based on the CFP or RIIA (or CFA) advice processes, but at this time there is no guarantee that the resulting advice will be the same, depending on the software (and perhaps even the individual who drives it). The bottom line is that the DoL fiduciary rule effectively will force financial institutions to oversee the advice delivered by their 'advisors'. (So nothing new here, process must be defined/used/improved to deliver quality products (ISO9000?). At a minimum it must include an Investment Policy Statement (IPS) and an appropriate low cost portfolio implementation reflecting the goals/objectives/risk-tolerances/constraints of the clients; if necessary, the courts will ultimately determine compliance with fiduciary/best interest standards, but I don't think it will be that difficult to do in the vast majority of cases.)

Given a fiduciary standard even products/practices usually considered toxic can be accommodated (at least theoretically due to threat of prosecution for non-fiduciary actions): CFA Institute blog **DOL fiduciary rule: Though complex it moves investment advice model in right direction** discusses the subject and notes that the DoL rule even allows firms to sell only **Proprietary Products** "permit firms to offer and sell only their products under a best-interests contract exemption (BICE), without having to

offer competing options to clients", **Marketing of Plan Roll-Overs** "recommendations about whether clients should take money out of a retirement plan such as a 401(k) now become fiduciary in nature", **Education** "greater leeway on educational exemptions…useful to companies wanting to ensure employees in their defined-contribution plans receive basic investment information. The exemptions are much stricter, however, when they apply to individual retirement accounts, as DOL will treat references to specific investment options as advice rather than education.", **Low-Fee Products** Many financial service providers complained that the original proposal favored low-fee and low-cost products… service providers do not have to recommend the lowest-cost investment option if a more appropriate option that better suits the clients' needs is available. The best-interests requirement still carries the day, but enforcement, again, will be key." **Insurance Products** "The BICE will allow advice relating to insurance products…also include a "streamlined exemption" for recommendations relating to fixed-rate annuities, but not for variable-rate annuities"

Standards are subjective and fees must be 'reasonable' (for the value received): The ABCs of the DOL fiduciary rules "The final rule, as published, is 1,023 pages. Overall, it broadens the definition of a fiduciary to anyone who receives direct or indirect compensation for providing advice to retirement plans, plan participants or beneficiaries and IRA owners. Advice is characterized as a recommendation intended to result in action. What's the difference between telling a friend "I like the meatloaf at Sal's Diner" and "Try the meatloaf at Sal's Diner"? According to the DOL, if it's the latter, and Sal decides to reward me with extra mashed potatoes, then I'm a fiduciary. That might seem insignificant, until the friend at Sal's gets sick — supposedly from the meatloaf — and decides to sue me. Recommendation is a broad term that is wide open for interpretation." Some of the key issues around the 1000 page fiduciary rule: standards are subjective ("The broadest definition is around fees, which must be "reasonable." This brings to mind a favorite quote: "Fees are only a problem in the absence of value.""), DOL is not a regulatory body ("Quite a field day for someone who fails to see value for the fee paid!"), IRAs are now subject to the same rules as qualified plans, method of compensation (commission or ongoing fees..." The new DOL fiduciary rule takes a bold stance and ends the debate, establishing hurdles and barriers in the form of the best-interest contract exemption (BICE).")

-**Risk of high costs of Fiduciary as in the practice of law- is this a business or a profession?**: Here are the fascinating and insightful comments by Ontario Chief Justice Winkler on the costs associated with services provided by the legal "profession" now compared to years ago, quoted in Bert Hill's Ottawa Citizen article **"Chief Justice Winkler vs. the Nortel quagmire"** "The environment in which many lawyers currently practice has, over time, become increasingly competitive and commercial. There is a pressure to bring in, and to keep, clients. The drive to the bottom line is difficult to resist. But I reiterate: Law is, first and foremost, a profession; it is a business only secondarily. If you fail to recognize this distinction, you will almost certainly lose your way." "At another legal conference, Winkler recalled that lawyers did not keep dockets when he was practising law. The amount of time spent on a case "was determined entirely on what the case called for, and how thoroughly you wanted to be prepared," he said. "It had nothing to do with how much you could charge." However cost concerns are real; since the start of the Nortel bankruptcy proceedings legal (primarily and other professional) fees have burned through $2B of about $7B in available to compensate creditors. But it doesn't have to be so in the financial industry as indicated in a study **"Fiduciary standard doesn't raise costs"** there are no incremental costs with fiduciary level of care because "the ability of firms that adhere to a non-fiduciary standard to take advantage of the information imbalance between advisers who know a great deal about investments and the products they offer, and their clients, who typically know much less. In the absence of fiduciary obligation, broker-dealers and

their representatives are able to exploit the information imbalance by extracting extra "agency rents" from clients."

DOL fiduciary rule brings different adviser standards to light "These differing standards can be confusing, particularly to investors, in part because the word "fiduciary" has different definitions and requirements under the Securities and Exchange Commission and DOL. The key difference with these standards is that they are governed by different laws, despite using similar terminology. The ERISA fiduciary standard under the DOL was established by the ERISA legislation; the investment adviser fiduciary under the SEC was established by the Investment Advisers Act of 1940" (This is an issue in spades in Canada with federal and multiple provincial jurisdictions, different regulatory bodies for insurance and securities, etc...)

What do real advisers think about Fiduciary model? Many love it, because it makes them feel better about who they are and what they do!

-**Fiduciary level of care reduces senior financial abuse:** In the Financial Post's **Why we need regulations to protect seniors from unscrupulous financial advisers** Jason Heath reports that "The Ontario Securities Commission has announced the formation of the Seniors Expert Advisory Committee". The objective is "preventing the overt financial abuse of Ontario's elderly... (this) relates to the lack of a fiduciary standard for Canadian financial advisers. This is a real risk at a time when our aging population is wealthier than ever and becoming increasingly vulnerable due to the natural changes in cognitive function as we age... financial advisers have no obligation to provide them with advice that is in their best interest. So, unlike their doctor, pharmacist or accountant, (interestingly lawyers were not included in the list- likely for reasons discussed above by Justice Winkler on the practice of law which for many has shifted from a profession to a business model.) there is nothing to require their banker, mutual fund salesperson or insurance agent to put them first.... I do hope the Seniors Expert Advisory Committee considers the benefit of a government-imposed fiduciary standard to ensure that all seniors — my parents included — are protected. It seems clear the financial advice industry won't self-regulate and do it themselves."

-**Advice must be in the client's best interest- Who on earth could possibly object to this?"** Radio show host Ric Edelman rants about raging fiduciary battle in response to the various industry interests lawsuits to prevent DOL fiduciary rule to effect Edelman quotes from the DOL document which indicates that "everyone giving retirement account advice must act in investors' best interests and without regard for their own financial interests" and then adds a question that's on everyone's mind "Who on earth could possibly object to this?".

-**Clients may not understand what Fiduciary means but they take it for granted that advisers were already working in their best interest:** Carl Richards in InvestmentNews' 'Fiduci-what?' Most clients don't know what the fiduciary duty really means explains that clients already thought that advisers were already working in their best interests and "the more we talk to our clients and the more we do to help them understand conflicts of interest, the better we can serve their interests and do the work that only a real financial adviser can do"

Advisers "may plan to expand services offered to more holistic planning…": **Advisers Sound Optimistic Note in Fiduciary Survey** "Nationwide polled 622 financial advisers for the survey, finding the vast majority (87%) expect near-term changes to how they do business. While advisers provided varied perspectives regarding how they plan to change their mix of products sold, the research shows 43% "may plan to expand services offered to more holistic planning..."

-**Comedian perspective of Fiduciary:** This hysterical video explains what fiduciary means for those who want to be simultaneously educated and entertained Last Week Tonight with John Oliver: Retirement Plans video

What does the financial industry think about the Fiduciary model?

Many in the financial industry are terrified of the Fiduciary standard, because it will suddenly become obvious that the emperor has no clothes. More often than not there is no real/holistic advice provided, and even some advice is provided its cost is far in excess for the real value provided to the client. But of course we must recall the Upton Sinclair quote **"It is difficult to get a man to understand something, when his salary depends on his not understanding it."** So for example the US financial industry continues to fight tooth and nail even after the DoL fiduciary rule enacted:

In **NAFA files second lawsuit against DOL fiduciary rule** "NAFA also attacks the DOL's extension of fiduciary obligations to individual retirement accounts, the private right of action created under the Best Interest Contract Exemption (BICE) portion of the rule, the "unduly" vagueness of the term "reasonable compensation" in the rule, the DOL's failure to consider the rule's impact on small businesses (particularly independent marketing organizations and insurance agents), and inclusion of fixed indexed annuities in the BICE." In **Insurance groups ACLI and NAIFA sue DOL over fiduciary rule's impact on annuities** "This suit argues that the measure would deprive savers of access to products, such as variable and fixed-indexed annuities, that give them an income stream in retirement." "The rule will drive up the costs of those valuable guaranteed lifetime income products, artificially distort the marketplace for retirement products generally, interfere with the free flow of valuable commercial information about those products to American consumers…Also in "**Industry makes move** and **Obama vetoes resolution against fiduciary rule**. It boggles the mind how those claiming to be 'advisors' are fighting tooth and nail 'against providing advice in the best interest of their client'...the arguments that advisers already act in the best interest of clients not credible...perhaps the problem is not the advisors only, but the companies that 'manufacture the financial products'....yes but no, because it doesn't explain how advisors are selling predatory products made not by their employer if they were acting in the best interest of their client. Ultimately, he responsibility must reside with advisors and their employers to deliver fiduciary level of care.

Canada's financial industry has been fighting changes to the current 'advice' model for years, arguing that a Fiduciary requirement will result in higher costs and will lead to an advice gap, particularly poor people will lose access to advice, as argued elsewhere in this consultation input the problem is not with access to advice but the lack of real advice. Studies have indicated that cost of fiduciary is not higher than for non-fiduciary advice because of the higher costs associated of the latter due to asymmetric information which can only be balanced by a fiduciary best interest requirement.

The Robo opportunity and challenges

Robos and the challenges of fiduciary advice "While robos can design and provide index-based investment portfolios that meet fiduciary standards, they may or may not be able to provide the type of holistic financial-planning advice in which investment choices are just one part. (Time will tell; automation will surprise us.) The answers to questions such as whether to pay off a mortgage or move to another state in retirement, for example, often have fiduciary implications — and current robo offerings may be ill-equipped to provide such advice." "Ms. Fein suggests that robo-advisers don't meet the standard, largely because they don't provide portfolio analysis that examines the risk and reward features of an investment in the context of the portfolio as a whole and as part of an overall investment strategy that considers other investments, assets, sources of income and other resources, among other factors." "At one end of the human-to-computer spectrum are the robo-advice firms that believe a sizable percentage of the investment market wants a totally automated experience... At the other...virtually the same (tool can be)...used as a lower-cost investment delivery mechanism by human advisers, often after a holistic financial-planning process that is in line with the fiduciary-standard goals of regulators... challenge is largely in the middle ground, where robos and humans will mix and clients will expect seamless human and online interactions." "One advantage of robo-advice is that its algorithmic formulas generate portfolios of low-cost exchange-traded funds that are high quality, diversified and balanced.... One disadvantage of robos, however, and one that ironically will be exacerbated by growing requirements for a fiduciary standard of care that will emphasize low-cost offerings, is that robos' portfolios and investment choices are becoming extremely similar..." This commoditization of the product will challenge firms to figure out how differentiate their product offering. Financial Engines ($100B) and Vanguard ($30B) far behind it are the largest robo asset managers...followed further behind by Betterment and WealthFront around $3-4B. "Robo-advice...
has gone from a novelty to an established and growing part of the financial advice landscape. While the new DOL regulations regarding advice for retirement accounts present a far greater challenge to incumbent advice providers than to robos, new regulation and greater competitive pressures are likely to make robos' future equally challenging." (I suspect that the robo disruption will be much greater than it is believed today, partly due to fiduciary requirement, the low bar that the current level of the 'advice' being offered, and the much greater than expected power of the future robo capability. The so called 'advice'/wealth-management/asset-management/etc business will shrink in size by at least a factor of 2-3 in the next few years.)

Bottom line

The reality is that both the SROs and government legislated regulatory bodies have failed to deliver what individual investor/client needs for their retirement security:

-SROs are constrained/challenged in their perspectives by being industry representatives/advocates; industry self-regulation has never worked because it lacks the necessary checks and balances.

-Government legislated regulatory bodies are constrained/challenged by weak regulations, by regulatory-capture, as well as the difficulty in attracting/retaining the skilled resources needed to execute their mandate.

The Canadian investors deserve better. Non-fiduciary advice is an oxymoron! Statutory fiduciary level of care is the gold standard that investors need. Why is it that Canada always trails other western democracies in investor protection? Why does Canada have the world's most expensive financial products (MF)? Why does the government regulate every trivial aspect of our lives (recycling, speed limits, weed-killers, etc) but refuses to protect investors from non-fiduciary 'advice'?

So where should we go: Statutory Best Interest or Fiduciary Standards (SBI/FS) vs. Regulatory Best Interest Standards (RBIS) vs. Targeted Reforms (TR)? It is better to start where we want to end up, the SBI/FS but initially apply gentler enforcement with lower penalties and gradually ramping up both enforcement/penalties for repeat offenders, than to start with TR trying to move up to RBIS and then SBIS/ SF at some point in the future . Targeted Reforms may be necessary actions but even if successfully implemented will not lead to the level of care in financial advice to resolve Canadians' retirement finance crisis.

What is needed:
-principle, rather than rules, based Statutory Fiduciary level of care in financial services as a way to establish client and adviser expectations for service standards; fiduciary refers to advice not product, products are used to implement advice
-move from product to advice based focus; advice is the process used to achieve client objectives
-move financial advice from a business to a profession
-the process/advice must be based on state of the art best practices; e.g. Investment Policy Statement, or its equivalent, is the diagnostic tool to delivering holistic financial advice
-structural changes to the financial industry such that advisor is placed into business models conducive to fiduciary behaviour
-employer (financial institution) must be responsible to oversight of advisor: fiduciary care, advisor skill/competency/accreditation, "advise/or" title reserved exclusively for fiduciaries
-robo advice may be a way to standardize and assure fiduciary process compliance for a large segment of advice seekers
-Fiduciary care must apply to insurance companies/products as well

Enforcement needs:
-establish a client Review /Comment facility to share experience with adviser/institution by naming/shaming/praising...much like **RateMDs** for doctors or Amazon reviews/comments about products/vendors
-establish mandatory independent financial services mediation facilities with qualified mediators selected from financial client advocacy space;
-if mediation fails then provide option of arbitration or formal Financial Services Court, especially in case of blatant non-fiduciary practice
-define compliance/enforcement standards and disciplinary actions (compensation and fines)
-spontaneous sampled/risk-based audits and client interviews
- EPA/EC regulates environmental issues, UL check safety, etc but who protects against unsafe/toxic financial products and/or incompetent/self-serving/stupid adviser/advice?

Concerns/risks
-what reasonable/acceptable cost for advice value delivered

-fragmented Canadian regulatory framework
-perceived subjective fiduciary standard for financial advice until courts rule initial cases
-falling for the financial industry sowed FUD (fear/uncertainty/doubt); fiduciary is not more expensive for the same reason that there will be no "advice gap", because today very few receive real advice and the costs currently embedded in the product are sufficient to deliver it if separated

Opportunities
-low-cost investment products with decoupled fee-only advice
-re-mutualization of insurance industry and Vanguardizing the investment industry