To all of:

CSA
Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
The Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan

From:

Chris Reed, independent

Regarding Request for Comment: Consultation Paper 33-404 "Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients"

Introduction:

Most importantly, I find this proposal lacks any appreciation of the full extent of its implications, and implicitly presumes facts not in evidence.

This paper expands the scope far beyond situations where the advisor benefits at the expense of the client. Here the scope includes the obligation that all advice be best for the client –whether the advisor benefits or not. The best advice requires not only (a) no conflict of interest, but also the (b) training, knowledge and time necessary to determine the best advice and convince the client.

The problem here is that you fail to stipulate exactly who will be the arbiter of that knowledge base. And importantly, what happens when the arbiter's own knowledge is false

Secondarily, the U.S. is now finding that their recent changes in this direction are falling flat due to the inadequacy of their legal recourse for violations. I have not seen any discussion in the Canadian media on this point. Most retail investors know the one-sided system of our current Ombudsman has no validity. This will be a waste of time if not enforced, or not enforceable. .

Conflict of Interest – General Obligation … Questions 1) to 3)

These deal with the issue of 'best interest duty' that is clearly limited to situations of competing benefits where the advisor puts his own interest first. CRM2 is a good first step in this direction although not all the fees being paid will be disclosed. There is nothing inherently wrong with your proposals.

Know Your Client … Questions 4) to 6)

(a) Missing here is a specific, explicit allowance that excuses advisors when the client tells them to 'mind your own business'. The exception from this whole issue for discount brokerages should not be delegated to a footnote. It should be included in the documentation signed by all their clients on opening an account.

Clients should also be free to sign away the advisor's responsibility when the client chooses to not disclose personal information. E.g. a client may choose to use a full-service brokerage for the limited reason to buy bonds. The client should be free to NOT fill out all the personal information necessary for a reasonable KYC. The broker should feel free to hold a portfolio of only bonds without being reprimanded for an appropriate asset allocation.

(b) The reality of today is that advisors use canned software to complete their KYC obligations. Who is to determine which are satisfactory? Will that be determined before or after a complaint is filed? E.g. some allow 100% allocations to common shares for risk tolerant people, some require some bonds no matter what. Which will be deemed 'correct'? One? Both?

(c) Question 6) regarding the client signatures on these forms … this is clearly all about the advisor's ability to legally cover his but. Your question should have been expanded to ask not only about the signature of the representative's supervisor, but also about the required signature of the client. The issue of enforceability cut both ways. You should separately address the enforcement issue so that the relative positions of the client and advisor is clear.

Know Your Product – Representative … Question 7

In the analysis of any person's financial situation, before individual products come into focus, the decision regarding which tax-account-type should hold the product is paramount. Your wording fails to specify whether knowledge of the different types of accounts (RRSP, TFSA, RESP, RDSP) in included in your use of the word 'product'. A lay reader would say 'no'. And yet the advice regarding which account to use is of prime importance.

Proficiency … Questions 28) to 29)

Maybe you think the issue of 'knowledge of the account types' is covered in this section. You mention 'strategy' here which would include the objective to reduce taxes. But nothing is made explicit.

More importantly, you fail to stipulate exactly who will be the arbiter of that knowledge base, or what happens when the arbiter's own knowledge is false. This is the situation we are now in. The self-appointed arbiters of knowledge are teaching, testing, and advising wrong information and wrong strategies regarding RRSPs. See http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2636609 .

All these organizations have been advised of their errors. All have decided to continue without change. The public needs protection from the arbiters, as well as the advisors they teach, test, accredit and employ. For a long list of wrong advice currently issued and falsely believed by advisors see http://www.retailinvestor.org/RRSPmodel.html and its following page.

What would be the legal status of an advisor who used correct knowledge of RRSP benefits – that was the opposite of the arbiter's ideas - to develop recommendations for a client? Will advisors be required by law to give wrong advice … because the arbiters of knowledge have too much to lose by admitting they are wrong?

More generally, how is the choice between active and passive strategies to be determined? I personally stock-pick and have been successful for 30 years. The arguments against it are lacking. See http://www.retailinvestor.org/activeVSpassive.html. But I also acknowledge that for the vast majority of people without skills, training, time or interest, passive indexing is better. I have no doubt that ALL advisors being taught today are being taught that Passive is the best for everyone, always. That is today's received wisdom. Will that mean they cannot sell active mutual funds or recommend individual stocks? Who will be the arbiter of acceptable advice?

Are you thinking that the SROs will police their own education content and proficiency standards? I recently put them to a test. I disputed the content of a 'continuing education' course certified by most of our SROs. The issue was factual and provable by math. The responses from the SRO were hilarious. Not one had any internal mechanism for checking the validity of what they teach/test/regulate. Not one of their responses addressed the issue I had raised. Most were just dismissals. One was an absolutely fabulous exercise in political-speak. Their guy should go into politics. In essence their positions were … "what we say is correct because we say it".

Reviewing their internal procedures for accrediting course content I could see that they required only that specified issues be addressed – not that they be addressed correctly. None gave a hoot about being correct.

Conclusion:

You have expanded the scope with this paper to include these wide-reaching issues – beyond conflicts of interest. Yet you don't seem to realize it. You seem to simply 'presume' that the experts know best. Yet it is a fact that they don't – and are happy with that situation.