Investment Planning Counsel®
FINANCIAL SOLUTIONS FOR LIFE

VIA E-MAIL:
comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

September 26, 2016

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

Robert Blair, Acting Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec
H4Z 1G3

Re: Canadian Securities Administrators (CSA) Consultation Paper 33-404: Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward Their Clients (Consultation Paper)

On behalf of Investment Planning Counsel Inc. (IPC), we thank the CSA for the opportunity to provide comments on the Consultation Paper.

Our company
IPC is a diversified financial services company, operating on a national platform with over $24 billion in assets under administration as at June 30, 2016 on behalf of approximately 250,000 investors across all provinces. Its subsidiaries include IPC Investment Corporation (IPCIC), an

MFDA member firm, IPC Securities Corporation (IPCSC), an IIROC member firm and Counsel Portfolio Services Inc., (Counsel), a mutual fund manager.[1]

IPC is part of IGM Financial Inc., which is a member of the Power Financial Corporation (PFC) group of companies.

General Comments

IPC has a strong interest in the discussion set forth in the Consultation Paper. We are supportive of the CSA's objectives to set out a more explicit framework for addressing conflict of interest matters and to clarify the nature of the client-registrant relationship for clients. Founded in 1996, IPC has always adhered to the philosophy that clients are best served through the comprehensive services of an independent financial advisor.

In our view, however, some of the proposals in the Consultation Paper will have far-reaching, and we presume, unintended outcomes. For example, as currently proposed, we expect some aspects of the new know-your-product (KYP) and know-your-client (KYC) requirements may significantly diminish the degree of choice of investment products and the accessibility and affordability of financial advice to Canadians by the financial services industry in Canada. We recommend the proposals be reconsidered in this context.

In addition to our specific comments on the Consultation Paper, we also wish to emphasize the following 3 key objectives which we believe must guide the CSA's decision-making process:

1. Preserving financial advice for Canadians

Personal savings is a key component to the accumulation of financial wealth and retirement readiness. Among other things, households who have and keep an advisor (i) are twice as likely to save for retirement at all ages (ii) have significantly higher levels of investable assets at all ages (iii) improve their regular saving for retirement at all income levels (iv) rate themselves as more financially knowledgeable; and (v) are more confident in their ability to achieve a comfortable retirement.[2] We also know that investors' primary source of financial information comes from their advisers.[3]

Beyond active management ("Alpha") and asset allocation ("Beta"), better financial planning decisions ("Gamma") have a significant impact on an investor's retirement outcomes. In fact, "Gamma" can increase approximately 1.59% in arithmetic "Alpha" on a portfolio.[4] Therefore as part of the CSA's deliberations on the targeted reforms and the best interest standard, we urge

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[1] Approximately 18.5% of IPC's assets under administration as at June 30, 2016 are in the Counsel Funds and programs.

[2] Sources: CIRANO, *Econometric Models on the Value of Advice of a Financial Advisor* (2012) and *The Gamma Factor and the Value of Financial Advice* (2016). All advised households, at all age levels, is found to save at approximately double the rate of non-advised households, with advised households having higher net worth than non-advised households across all ages and income levels (Source: IFIC *The Value of Advice,* 2011).

[3] Key Highlights CSA Investor Education Study 2016 prepared for the CSA by Innovative Research Group, Inc. (April 2016)

[4] Source: Morningstar, *Alpha, Beta and Now... Gamma,* 2012.

the CSA to be mindful of not proceeding with any regulatory changes that may have the potential to diminish the level of advice provided to Canadians.

2. Not disadvantaging the sale of securities vs. other financial services and products

We share the views expressed by our sister companies within PFC on this topic, that the obligations owed by registrants to their clients should not be dependent on the legal nature of the product being sold or the license held by the registrant. The securities industry is only one part of the financial services sector in Canada. Insurance and deposit products are also significant segments of the capital markets. To truly enhance the level of advice provided to Canadians, we need consistent reforms across securities, insurance and banking sectors. As part of the CSA's consideration, it will therefore be critical to ensure that the targeted reforms do not result in product and regulatory arbitrage, with clients being directed towards products which may not best meet their investment needs and objectives.

3. The need to ensure advice remains affordable and accessible for modest investors

Finally, while the CSA continues its review of whether or not to ban embedded commissions, as outlined in CSA Staff Notice 81-327,[5] we believe it is important for the CSA to ensure that the enhancements proposed to the client-registrant relationship under this Consultation Paper remain accessible and affordable to all Canadians going forward. Research shows that fewer choices of compensation models can limit access to advice and result in higher overall cost if only fee-based compensation is available, particularly for households with more modest investment levels.[6] We believe the barriers to financial advice in the U.K. post-implementation of its reforms raise legitimate concerns as to whether banning embedded commissions will ultimately improve client outcomes, particularly for more modest investors.

Proposed Targeted Reforms

Conflicts of Interest

A broad approach to addressing conflicts of interest is needed

We are supportive of the CSA's objective to enhance the regulatory framework for addressing conflicts of interest and agree with the CSA's approach to have firms assess whether *any remuneration or incentive practice* could reasonably be expected to inappropriately influence how advisors deal with their clients. We firmly believe the CSA must consider conflicts of interest beyond simply commission-based compensation to advisors. For example, advisors who are salary-based employees, such as those at financial institutions, may be eligible for sales

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[5] CSA Staff Notice 81-327 *Next Steps in the CSA's Examination of Mutual Fund Fees*, June 29, 2016.

[6] In the United States, the average total cost of fee-based advice is comparable to the cost of advice in Canada (2.00% to 2.20%), however the cost is higher for modest investors with less than $100,000 of financial assets (2.40%) than for high net worth investors (1.70%) (Source: Investor Economics & Strategic Insight, *Monitoring Trends in Mutual Fund Cost of Ownership and Expense Ratios: A Canada-U.S. Perspective,* 2015). Where regulation has been changed to ban or limit commission, the absence of embedded compensation has been found to lower the cost of the product, but the cost of advice was seen to go up. It has also been found that in jurisdictions that have moved to fee-based compensation, those with less wealth or income found it more difficult to get advice than others. Ultimately, all forms of compensation affect advice and outcomes and there is not enough evidence indicating that fee-based compensation will lead to better long-term outcomes than commission-based compensation (Source: The Brondesbury Group, *Mutual Fund Fee Research,* 2015).

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Tel: 1-877-212-9799 Fax: 1-844-378-6244
Web: www.ipcc.ca

incentives or bonuses as a result of recommending their firm's proprietary products or programs over third-party products to clients. Incentives for the sale of certain product types over others in a mixed/non-proprietary firm may also exist. Any framework for addressing conflict of interest matters must therefore extend beyond the limited perspective of conflicts of interest inherent in commission-based compensation. As noted in the Brondesbury Group research for the CSA, all forms of compensation affect advice and outcomes for clients.

Clarity surrounding existing discretionary relief

With the introduction of the new explicit conflict of interest requirement, we are unclear as to how the CSA intends to view actual or perceived material conflicts of interest that today are addressed either in the regulations or through discretionary relief. We would presume that any existing discretionary relief, which is subject to terms and conditions that have been prescribed by the CSA, will be seen to comply with the new requirement.[7] We encourage the CSA to provide greater specificity as well as the opportunity for further comment.

Reconciling the conflicts of interest requirement with the KYP requirements for firms

It is not clear to us how the proposed conflict of interest requirement will work in practice for firms with a mixed product list such as IPC, especially in conjunction with the KYP obligation to conduct a market investigation and develop a product list that is "fair and unbiased".

There will always be, in our view, a perceived economic conflict of interest to have a proprietary product (including an affiliate product) on a firm's shelf. Unless there is greater clarity by the CSA on this point, we do not see how firms will be able to effectively sustain or manage a mixed product list, especially if the CSA will continue to view firms which trade in or advise on proprietary products as having a material conflict of interest. This is particularly significant as the CSA has chosen not to restrict this type of business model. We anticipate that this may result in some firms with a mixed product list simply choosing to become a proprietary firm, while others may unduly limit proprietary products from their product list that would otherwise meet the needs of their clients because of a concern over the ability to demonstrate the firm's product list analysis meets the conflict of interest and KYP requirements.

At risk with both these potential scenarios is potentially firm product lists with fewer product choices and solutions available for advisors to offer their clients. We discuss this issue further and the importance and value for a firm to have a broad product shelf in our discussion of KYP.

Disclosure

We note that the CSA, MFDA and IIROC requirements today contain obligations for firms to develop policies to identify, control and appropriately disclose conflicts of interest and potential conflicts of interests. Research such as *The Smarter Investor Study*, conducted on behalf of the BCSC,[8] suggests that clients place a great deal of trust on their advisor and in response to this trust do not always review their statements and disclosure. The Consultation Paper further identifies that conflict disclosure is generally an ineffective conflict mitigation strategy and may

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[7] For example, IPC has received discretionary relief from the CSA under NI 81-105 to permit their representatives to provide evergreen disclosure of equity interests to clients. We assume the level of detail of such disclosure as set out in the decision document will be deemed to be sufficient by the CSA and grandfathered.

[8] National Smarter Investor Survey prepared for the BCSC by Innovative Research Group Inc., November 2015.

have counter-intuitive results; yet, it seems that in response to concerns of information asymmetry between the registrant and client, the CSA is proposing more disclosure. We do not believe that more disclosure is necessarily the answer, and further note that the issuance of disclosure has little influence in defense against a claim.

As a firm with what would be characterized by the Consultation Paper as trading in or advising on proprietary products, we strongly object to the proposed disclosure obligation that would seem to require our advisors to have to obtain from existing clients informed and specific consent before each and every transaction of a Counsel fund or affiliate mutual fund. We do not agree that this type of disclosure is warranted. At IPC, advisors are not subject to quotas (express or implied) in respect of selling securities of Counsel funds or the funds of our affiliates, nor are they provided with any incentives (express or implied) or encouraged to recommend to clients the Counsel funds over third-party mutual funds. If the CSA insists with some form of disclosure beyond what is provided today, we would submit a one-time disclosure be made for existing clients similar to the disclosure the CSA contemplates prior to opening an account for a new client, concerning the possible sale of a proprietary product.

We also question what documentation the CSA expects, beyond what is done today, to demonstrate registrants have a "reasonable basis" for believing that clients fully understand the disclosure being provided, given the CSA's own acknowledgement of the counter-intuitive results that may occur with conflict disclosure. It is simply not clear how this is to be achieved. Some clients may claim they understand and sign documents acknowledging this, only later to deny having any understanding in the event of a claim. At risk is the potential for some advisors to decide not to advise clients who fail to demonstrate at least some degree of financial acumen, because of a concern over increased liability from clients who may later complain or allege that they lacked a full understanding of the implications and consequences of the conflict of interest at the time of the trade or advice. We also are concerned with the CSA's continued emphasis on disclosure, despite the acknowledgement of its limitations, and increasingly the limited reliance placed on disclosure by the CSA in instances where regulatory disputes arise.

Know Your Product (KYP) – For Representatives and Firms

The label of Proprietary versus Mixed/Non-Proprietary for Firms

As a starting proposition, we believe that the CSA can achieve the objective of clients knowing the nature of the firm's product list through relationship and product disclosure without the need for a firm's product list to be labelled as either "proprietary" or "mixed/non-proprietary." In our view, these labels have the potential to cause greater confusion for clients, as well as seem to create under the reforms (particularly with respect to titles and disclosure) a negative bias towards the sale of proprietary products. We think this outcome is not appropriate, particularly since the CSA has chosen not to restrict proprietary or mixed product list models.

The proposed labeling under the Consultation Paper also fails in our view to take into account important nuances and distinctions between firms within these two broad categories, and within the category of "proprietary" itself. For example, the breadth of a firm's product shelf in terms of its size and product offerings and the financial services accessible, whether the portfolio management activities of the proprietary products are conducted in-house or by third-party portfolio managers or sub-advisors, and whether the products on the firm's shelf are distributed exclusively through the firm or are more broadly available (this last distinction can impact the transferability of products from one firm to another). All of these distinctions, we would summit, can be very important considerations in an investor's decision in choosing both an advisor and

5015 Spectrum Way, Suite 300, Mississauga, ON L4W 0E4
Tel: 1-877-212-9799 Fax: 1-844-378-6244
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a firm and are not well explained or made clear by the broad labels of “proprietary” or “mixed/non-proprietary”.

We also challenge the CSA’s characterization of “proprietary”, which we consider to be unduly broad in scope. For example, we would submit that IPC does not offer traditional proprietary products. All of the Counsel mutual funds have third-party portfolio managers, some of whom are affiliates of IPC but many who are not. In our view, labeling Counsel as proprietary (and in doing so causing IPC to identify itself as having a mixed product list) has limited value for the client, and may in fact confuse clients further by thinking Counsel mutual funds are managed by in-house portfolio managers rather than providing access to third-party portfolio management, which is subject to independent manager research, selection and monitoring. We therefore would prefer, if the CSA insists, that the CSA look to labels that convey the breadth and diversity of a firm’s product list and solutions, which we believe is more relevant to advisors and their clients in demonstrating the firm can meet their investment needs and objectives. Whether this can be achieved by proprietary or non-proprietary products is not, in our view, what matters, given that all registrants are subject to the same suitability and conflict of interest obligations under the proposals in the Consultation Paper.

Terminology
The Consultation Paper refers to a firm’s product “shelf”, “product list” and “approved product list”. We encourage the CSA to define these terms as well as provide greater uniformity in their usage going forward. For the purposes of our comments, we refer to a firm’s product list and shelf interchangeably, as the full list of products and securities on a firm’s platform accessible to all representatives.

It is impracticable for representatives to know all products on a firm’s product list
Our IIROC and MFDA member firms, IPCSC and IPCIC, have access to products and securities through our carrying brokers. With National Bank Correspondent Network (NBCN), for example, IPCSC has access to over 13,000 separate fund codes and over 200 product manufacturers on our product shelf. This is in addition to banking and deposit products from over 20 financial institutions and a range of securities. To expect any advisor, as proposed in the KYP obligations under the Consultation Paper, to understand the specific structure, features, product strategy, costs and risks of each product the firm trades or advises on, including an understanding of how the products compare to each other, in light of this breadth of products and securities, is quite simply, unrealistic and impracticable.

A firm’s product list (and approved list) is constantly evolving, as new and innovative products come to market. Firms will often have an expansive shelf that not only reflects the range of products most likely to meet its client profiles, but that also reflects the varying philosophies and product preferences of its advisors for meeting the investment needs and objectives of their client base. Product lists that offer a breadth of product and investment type options are arguably the optimal way to ensure all advisors of a firm are able to meet their suitability analysis with respect to their specific clients. For IPC, this is particularly relevant as we have grown our business through acquisitions of different independent IIROC and MFDA firms, whose advisors have a range of investment philosophies and preferences and a range of client profiles. Our product list, of course, is also shaped by our firm’s carrying brokers.[9]

[9] NBCN and B2B Bank Securities Services Inc. are the carrying brokers for IPCSC, while IPCIC has B2B Bank Financial Services Inc. as its carrying broker.

It appears from the KYP requirements that the CSA proposes that advisors know and compare even those products and securities the advisor has no intention to ever recommend to their clients. What about non-traditional or more differentiated products specifically meant for some, but not all, clients currently on a firm's product list? It is also not clear if the CSA would expect a comparison by investment structure (direct security vs. ETF vs. index mutual fund), fee structure, CIFSC category or further by administrative features and benefits. A comparison of the potential impact of fees and expenses across the firm's product shelf, on new issuances of securities, non-redeemable investment funds and mutual funds, also gives rise to new challenges for firms in how to ensure that their advisors understand these factors and then how to evidence their review.

Today, we know that advisors are decreasing the number of fund companies they are working with for a variety of reasons, which include product quality, performance, specific product features and wholesaler support and customer service.[10] Accordingly, to preserve product choice on a firm's shelf but also facilitate compliance by individual advisors, we recommend to the CSA that the KYP obligation for advisors be more narrowly defined, to focus on the securities that they buy and sell for, or recommend to, their clients. In the absence of such a change, we anticipate that firms will have no other option but to significantly narrow their product lists to facilitate advisor compliance with the KYP requirement.

Need for greater flexibility in product list development and analysis

Overall, we find the proposals for firms which intend to offer a mixed/non-proprietary product list related to the market investigation, product comparison and product list optimization requirements to be overly prescriptive, and seem to promote a large product shelf which we find at odds with the pressures of the KYP requirements for advisors.

There are many factors in determining the suitability of an investment to meet the investment needs and objectives of a client. The risk of placing too much emphasis on outperformance or underperformance as part of a firm's benchmarking exercise, or on price, in terms of what products are offered on a firm's product list, in our view may lead to suboptimal outcomes for many investors. Emphasis on criteria such as performance and price should only come into consideration after addressing such other fundamental factors as investment strategy/philosophy (active, enhanced-index, or passive), asset class (equity, fixed income, cash, alternatives) and investment style (momentum/value/growth/blend). Other factors such as firm and advisor confidence in the portfolio management, the depth of the manager's team (including changes of investment personnel), the size of assets under management, as well as in-flows or out-flows of the product, are all factors that can have a significant bearing on the product's risk and results in the short, medium and long term that we believe must also be considered when developing a product list and in making recommendations to clients. If firms and advisors are required to focus their evaluation criteria with a heavy emphasis on performance and price, it may lead in our view to performance chasing behavior, and would always favour the lowest cost products and investment strategies irrespective of these other important and fundamental considerations.

We believe a firm's product list should take a long term view, and not chase short-term performance which has been shown to be elusive in practice.[11] Benchmarking on performance and costs as part of a firm's product comparison also fails, in our view, to recognize the importance of ensuring a firm's product list maintains the ability to provide representatives and their clients

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[10] Environics Research, *2015 Adviser Perceptions in Canada: A focus on the Future & Consumers.*

[11] Vanguard, *Quantifying the Impact of Chasing Fund Performance*, July 2014.

with a variety of products for diversification, asset allocation and risk mitigation. It is also not clear from the guidance what the CSA expects of firms when conducting the product list analyst for new products with no performance metrics.

We encourage the CSA to allow firms with a mixed/non-proprietary product list to have greater flexibility to develop their product shelf, provided of course that the firm can still demonstrate its product list meets the investment needs and objectives of its clients based on its client profiles. While the guidance specifies a market investigation need not take into account the entire universe of products that the firm is registered to advise on and/or trade in, it is not clear just how broad or narrow the CSA expects such an investigation and ultimately, a firm's product list to be.

Impact of new KYP will be narrower product lists and dramatically less product choices for investors

As we have already indicated, we anticipate that the proposed KYP requirement for advisors as well as the onerous product list development requirements on firms with a mixed/non-proprietary product list will inevitably cause firms to have to consider significantly narrowing their product shelf in order to meet advisor and firm compliance. We frankly see no other way to meet the proposed KYP obligations. For firms like IPC, with third-party carrying brokers, there will be the added issue of the cost to customize a narrower product list; an additional consequence that may not be a viable option for smaller firms. For example, currently NBCN has almost 100 clients (introducing brokers and ICPMs) with one security master shared by all clients.

We would expect a reduced product list would likely have to reflect the investment needs and objectives of the broadest segment of a firm's clients based on its client profiles. This would likely mean firms will generally be reluctant to include new products without a track record of performance and more innovative products and strategies that are suitable for a smaller client base segment. Of course, the uncertainty of compliance for a firm with a mixed product list may further prompt some firms to consider the option of moving exclusively to a proprietary business model.

At risk with both these potential scenarios is the possible reduction of third-party product manufacturers on firm product lists, and overall dramatically fewer product choices and solutions available for clients. Ultimately, we submit that it is the client who loses; with potentially fewer product manufacturers and ultimately the potential for a less competitive and innovative financial services industry in Canada, as some third-party manufacturers who are unable to retain sufficient distribution may have to exit the market.

Reconciling the conflicts of interest requirement with the KYP requirements for firms

Perhaps most significant to IPC, as we discuss under Conflicts of Interest, is that it remains unclear how a firm with a mixed product list will be able to effectively demonstrate or evidence KYP compliance with having a "fair and unbiased" market investigation when a proprietary or affiliate mutual fund is chosen; especially if the CSA will continue to view firms that trade in or advise on proprietary products as having a material conflict of interest.

Unless there is greater clarity by the CSA on this point, we do not see how we will be able to effectively sustain a mixed product shelf. As we have noted, at risk is that this will lead to some firms with a mixed product list simply choosing to become a proprietary firm, while others may unduly limit proprietary products from their product list that would otherwise meet the needs of their clients. Neither scenario, we submit, achieves the CSA's objective of improved outcomes for clients.

Know Your Client ("KYC")

The proposals in the Consultation Paper introduce new requirements for information as part of the KYC and suitability not currently mandated under CSA, MFDA and IIROC rules nor captured through current account opening and supervisory processes, such as the client's basic tax position, amount and nature of all debts, liquidity needs and investment constraints. As a result, compliance and supervisory systems, including account opening documentation and client information systems will need to be updated - a considerable expense to be borne by firms and which will require significant time to implement. Notwithstanding the cost and time associated with this exercise, the perceived benefits to clients are not abundantly clear when weighed against a number of challenges and unintended consequences which we believe will arise, as set out below.

1. One-size fits all approach does not work

It is not clear whether this new approach to KYC is warranted or appropriate for all clients in all circumstances. In our view, the current standard with respect to the collection of KYC information encourages consumer choice and competition. Today those clients seeking more sophisticated financial planning services and advice have the option to seek out advisors who offer such services, while those clients with lower investable assets or with more limited investment needs are able to gain access to the level of financial advice and services sought at a comparable cost. We believe that the proposals, as currently drafted, do not readily allow for this customization. As a result, we anticipate that the proposals will ultimately increase the cost of advice, with the unintended consequence of causing advice to potentially become prohibitive for more modest investors or those investors who are seeking more streamlined advice or have more tailored investment needs.

2. Client privacy concerns and expectations gap may arise

In our experience, some clients are uncomfortable with providing the detailed information surrounding their income and net worth, which is requested under today's KYC, and are, on occasion, unwilling to provide advisors with this information. We anticipate that these types of reservations will only magnify under the new requests for information in the Consultation Paper, with many prospective clients viewing the new KYC information as unnecessary and even invasive. The result will be that even for those clients who will be able to afford this more 'one-size fits all' approach to advice, some investors will likely shy away from obtaining such advice due to the added level of inquiry, and what they'll perceive as the accompanying increased burden and complexity to engage with an advisor and/or to proceed with a trade.

We are also concerned with the potential expectations gap which may unintentionally be created by requesting some of this new KYC information. For example, asking for "basic tax information" may cause clients to incorrectly assume that their advisor will be providing (or are proficient to provide) broad tax planning services and advice, something that we would today approve as an outside business activity only if the advisor had the requisite proficiency and experience to undertake this service explicitly. Further guidance is therefore needed from the CSA on what is considered within the scope of understanding the client's basic tax position, and particularly how far the collection of basic tax information goes; what forms part of a client's basic tax situation? It is our view that for corporate accounts and trusts, basic tax information would not need to be requested.

3. Proficiency requirements and supervision will need to be addressed

Finally, we believe that the minimum proficiency standards for registrants today are likely not appropriate for all advisors across all registrant categories to be able to thoughtfully consider the new KYC information proposed to be collected in the Consultation Paper, which in our view is more aligned with broad financial planning services. While some of our advisors are certified as financial planners today, many do not. Additionally, the proficiency standards for supervisors will also need to be considered and enhanced, not simply the proficiency of the CCO and UDP, who may not necessarily conduct the daily trade and account supervision themselves, such as at our firm. We also note that the proposals do not seem to delineate between material and non-material KYC changes. Supervisors are required to sign off on material KYC changes under current requirements. We are not clear how the current standard is insufficient and also do not believe that deviating from this standard will add to investor protection.

While we support continuing education reforms, we urge the CSA to work collaboratively with the MFDA and IIROC, and allow them to consult with their members in the identification and development of any needed proficiency changes to registrant categories in order to meet the new KYC requirements and proposals generally.

Suitability

Basic Financial Suitability

As we have discussed under KYC, we do not believe the CSA should proceed with these new elements to the KYC and the suitability analysis that seem predicated on a "one-size fits all" approach to the client-registrant relationship, which in our view may not be warranted or appropriate for all clients. We also anticipate this will come at increased expense, which may alienate many investors from engaging with an advisor. We therefore urge the CSA to allow for greater flexibility in the gathering of KYC information and the suitability analysis, to accommodate more tailored client-registrant relationships suited to the specific investment needs and objectives of the client on an individual basis.

Investment Strategy Suitability

The proposals introduce both the requirement on the advisor to determine a targeted rate of return and to provide recommendations that 'most likely' will meet the clients' needs and objectives. We believe further guidance is required concerning the term 'most likely' if it is to be retained, as it is not clear to us what the CSA will expect in terms of the advisors' reasonable level of confidence concerning future outcomes; is 'most likely' based on past returns, the use of Monte Carlo simulations or some other standard? We encourage the CSA to reconsider the introduction of this term.

We also do not believe a target rate of return should be mandated as part of the suitability analysis. Firstly, we believe this will easily be misconstrued as a performance guarantee, which may cause confusion for clients in addition to voiding errors & omissions insurance coverage. As we have already noted, this "one-size fits all" approach also does not recognize that some clients may not have a specific time bound goal, or may be seeking advice on a more limited or transactional basis, without a need for a target rate of return. We also believe that identifying a target rate of return may lead to further conflict: *targeted rate of return vs. risk appetite*. In our experience, clients generally seek average returns with low volatility. Accordingly, if asked, a client is likely to specify a target rate of return which may be unsuitable to their risk profile. Are advisors to default to a client's risk profile in making product recommendations or recommend products which may be more appropriate to meet the target rate of return? The reforms, as currently drafted, seem to suggest the latter. We are concerned that setting a target rate of return may cause some clients to deviate from their risk profile, as well as potentially lead to an expectations gap with clients who will incorrectly assume that the target rate of return is a guarantee.

Product Selection Suitability
As we have discussed under KYP, we do not believe it is realistic or practicable to expect advisors to understand the specific structure, features, product strategy, costs and risks of all products and securities the firm trades or advises on, including an understanding of how each of the products compare to each other, as part of KYP or the advisor's recommendation. As noted above, we also are unclear as to what the CSA will expect in terms of the advisor's reasonable level of confidence (and evidence) concerning future outcomes with any product recommendation now having to ensure the security 'most likely' meets the client's needs and objectives.

Frequency
We believe greater flexibility is needed with respect to a suitability analysis being triggered in each instance of a recommendation to "hold", particularly for clients in a buy-and-hold strategy. Completing and documenting a full suitability analysis for such a strategy after the initial suitability analysis and determination has been made (and absent a material change in the client's KYC information) we submit will be onerous and costly, and will not have a corresponding benefit to the client. We again encourage the CSA to work with the MFDA and IIROC so that there is consistent guidance on this topic.

We also do not believe it is necessary for a significant market event to trigger a suitability analysis in all instances where the client is exposed, nor in all instances where there has been a material change in the risk profile of a particular issuer in the client's portfolio. What defines a significant market event? For example, markets have been highly volatile in recent years and we expect this trend to continue; would multiple suitability reviews therefore be required each time a certain level of market volatility is reached? Aside from the cost, the practicality of this requirement and the corresponding benefit to clients is not clear to us. With proper KYC, which includes a risk profile, we believe clients should have some capacity to withstand exposure to the markets in times of fluctuation or distress. It is unlikely, for example, that a market event, even a significant market event, will have changed the nature of the risk profile of a particular fund or the client's portfolio. Similarly, a material change in the risk profile of a single issuer should not, in a portfolio that is suitable, be cause for an immediate suitability analysis in all instances. We therefore recommend that these triggering events in the Consultation Paper for a suitability analysis not be mandated.

Relationship Disclosure
As we have indicated elsewhere with respect to the new disclosure obligations proposed in the Consultation Paper, we believe that the CSA must indicate specifically what it expects beyond today's documentation by registrants in order to demonstrate they have a "reasonable basis" for concluding that a client fully understands the disclosure being provided.

For all of the new disclosure proposed, we encourage the CSA to look for opportunities to harmonize and simplify the information so that it is meaningful and accessible, is not duplicative, and does not cause the introduction of new, stand alone disclosure documents. Before proceeding with new disclosure requirements, we would encourage the CSA to complete its post implementation review of POS and CRM2 first, to determine the effectiveness of these disclosures, so that any identified gaps or improvements may be incorporated into any new disclosure requirements.

5015 Spectrum Way, Suite 300, Mississauga, ON L4W 0E4
Tel: 1-877-212-9799 Fax: 1-844-378-6244
Web: www.ipcc.ca

Proficiency
As we indicate in our discussion of KYC, we strongly encourage the CSA to work collaboratively with the MFDA and IIROC to achieve a single, harmonized approach across registrant categories to proficiency and continuing education.

As currently drafted, the proficiency requirements would also seem to extend to a general knowledge of all types of products and securities, including exempt products, whether or not the advisor is even eligible to recommend such products and/or whether such products are on a firm's product list. In our view, any new proficiency requirements should relate to the category and type of registrant and be focused on the firm's product list.

We agree that any the proficiency requirements for CCOs must appropriately align with the proficiency requirements imposed on advisors. However, we believe there should be more flexibility in the proficiency requirements of UDPs. In our view, the UDP does not need to have the same proficiency requirements as representatives or the CCO in order to ensure that the firm has the appropriate policies and procedures in place to have an effective compliance management system and compliance culture. As we note under KYC, the proficiency standards for supervisors will also need to be considered and potentially enhanced to meet the new requirements.

Titles and Designations
We support the focus on client-facing titles, and agree that there needs to be some discipline imposed on the number and variety of business titles. However, we stress that any mandated titles must be based on the advisor's proficiency and registrant category, and should not be tied to the nature of the firm's product list.

We are also supportive of having specific requirements for firms around the use of designations by advisors. To the extent that there are certain designations that exist through approved credentialing organizations, such as the CFP designation or, in Québec, the F.Pl. certification, or the Chartered Investment Manager for example, we believe the CSA should rely on these organizations and permit advisors who have such designations to use them in client-facing communications.

Proposed Framework for a Regulatory Best Interest Standard
We agree with the merits of establishing a principled foundation for the client-registrant relationship.

As recognized by the CSA, responding to conflicts of interest is a key area of focus of any best interest standard. We believe the explicit over-arching obligation that material conflicts of interest be prioritized in favour of the client, as set out in the targeted reforms, substantially achieves the objectives of a best interest standard in providing a principle to guide all registrant conduct, including in situations that fall between specific rules or that are novel.

We continue to have a concern that the best interest standard has the potential to introduce uncertainty for registrants and clients in how the standard can be met within existing restricted categories of registration and the current range of business models.

Ultimately, should the decision be made to move forward with a best interest standard, we cannot emphasize enough the importance that this standard be national in scope. Absent a standard applicable to all registrants across the CSA, the complexity and legal uncertainty for firms and representatives who carry on business across the country and most importantly the potential confusion that different standards of conduct could create for Canadian investors, in our view significantly negates the potential benefits of such a standard.

Conclusion

We anticipate that each of the 11 targeted reforms and best interest standard will require considerable implementation time for firms to review current systems, policies and procedures and to then develop and implement new systems to comply with the various management systems, supervision, processes and disclosures as proposed in the Consultation Paper. Taking a lesson from CRM2 implementation, we urge the CSA to work collaboratively and early with the MFDA and IIROC and with all registrants as the consultation process continues, so that there is a shared appreciation of the timeframes needed. For example, we believe further consideration will be needed as to what the CSA would expect regarding the transition to the new KYC requirements with respect to each client, and whether or how advisors will be required to demonstrate they've completed a suitability analysis of each client's portfolio in light of the new information collected.

We would also encourage the CSA to consider a staged approach to implementation, as we saw for POS and CRM2, which would assist registrants and the CSA in ensuring a smooth transition. A staged approach to implementation would also allow the opportunity for the CSA to measure and consider the impact of the POS and CRM2 initiatives to inform the necessity and development of each of the targeted reforms. We fully support the CSA project underway to measure the impact of these reforms and strongly urge the CSA to consider the findings from this project.

Finally, as we noted at the outset, as the CSA continues to contemplate changes to mutual fund fee models, we urge the CSA to be mindful that discontinuing embedded commissions may have the unintended consequence on modest investors of limiting access to, and increasing the cost of, the very advice contemplated by the CSA in the Consultation Paper to help Canadian investors achieve their long-term investment needs and objectives.

We thank you for the opportunity to provide comments on the Consultation Paper. Please feel free to contact me if you wish to discuss this further or require additional information.

Yours truly,
Investment Planning Counsel, Inc.

John G. Novachis
Executive Vice President, Corporate Development
President, IPC Investment Corporation
President, IPC Securities Corporation