LONGBOW
CAPITAL INC.

September 27, 2016

To:

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

Via email: comments@osc.gov.on.ca
consultation-en-cours@lautorite.qc.ca

Re: Comments on CSA Consultation Paper 33-404

Longbow Capital Inc. ("Longbow") is a Portfolio Manager for a series of closed-end funds dedicated to investments in the equity securities of private issuers. It is registered as an Exempt Market Dealer for the purpose of selling securities in these proprietary funds. Longbow is an important intermediary for investors and small issuers in the Canadian oil and gas industry, assisting in capital formation for 19 years.

On April 28, 2016, the Canadian Securities Administrators (the "CSA") issued a consultation paper #33-404 regarding "Proposals to enhance the obligations of advisers, dealers, and representatives toward their clients". We are writing this response to provide our comments regarding those proposals.

We have significant concerns regarding these proposed changes to the Canadian securities regulation regime, particularly as they relate to Suitability and Know Your Client. The proposed regulations attempt to include all dealers in Canada in a one-size-fits-all model which does not adequately consider: 1) the needs and interests of all investors; or 2) the substantial differences in dealers' business models. We believe that application of the proposals to a transaction oriented dealer that focuses on proprietary investment funds will be particularly problematic, for both the registrant and its investors. If implemented, the proposal will also have a negative effect on the ability of small and medium sized businesses to raise capital.

We have structured our comments to provide specific responses to certain of the consultation questions and arranged them under the applicable "Proposed Targeted Reforms" categories.

Conflicts of Interest – General obligation

2) Is the requirement to respond to conflicts "in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative" clear enough to provide a meaningful code of conduct? If not, how could the requirement be clarified?

Longbow response:

No, we do not believe that the proposed requirement is clear enough to provide meaningful guidance for conduct. The requirement is a general statement of an **objective**, but it is open to conflicting interpretations when applied to real-life business situations. As stated in Part 3 of the consultation paper, most attendees at the OSC Town Hall Meetings believed they already act in their client's best interest. If the CSA believes that is not true, it will need to provide clear guidance as to why and under what circumstances that belief is not correct in order to change the behavior of firms and representatives in the manner desired.

If more detailed guidance is not provided, the final determination of: 1) what are the interests of the client or investor in a particular circumstance; 2) whether and how those interests actually conflict with those of the representative or firm; and, 3) what detailed actions must be taken to "prioritize" the client's interests, will be determined with benefit of hindsight, on a case by case basis, by hundreds of individual field examiners working for different securities commissions. Eventually the CSA would need to provide detailed guidance just to reconcile these differing positions.

Based on the "guidance on specific conflict of interest situations" in the consultation paper, it appears that the CSA's primary concern is negative incentives created for firms and representatives by certain forms of commission-based compensation. If that is the case, we ask that you address those issues directly with specific requirements that can be easily understood, reasonably debated, and consistently applied.

We believe that the general obligation and related guidance proposed are far too vague to be reasonably applied, particularly for dealers with business models that do not fit neatly into a stereotypical advisory relationship between securities dealers and retail investors.

Know Your Client

5) Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content?

No, if KYC information is to be relevant to the trade recommendation it must be tailored to the investment product type and business model of the registrant. A standard CSA KYC form could not possibly prescribe all the information necessary to gather appropriate information for every conceivable type of investment decision. Attempting to create such a document will result in an overwhelmingly large form (much of which will be inapplicable in many cases), which will be hugely time-consuming and expensive to complete for both the registrant and the investor. And it would still be incomplete in many circumstances.

54) To what extent should the KYC obligation require registrants to collect tax information about the client? For example, what role should basic tax strategies have in respect of the suitability analysis conducted by registrants in respect of their clients?

Longbow response:

No, we do not believe that registrants should be required to collect tax information, and therefore be required to incorporate tax planning and compliance into the advice provided to investors. Requiring the collection of such information would cause investors to believe that they are receiving, or entitled to receive, tax advice from registrants. Tax laws and regulations are too complex to allow all representatives to have the skills and knowledge necessary to understand all the detailed and inter-related implications of tax planning and compliance. A system of partial or "basic" tax advice will mislead and confuse investors. We believe that regulations should allow for and encourage registrants who have the necessary proficiency to provide combined tax and investment advice, to the extent demanded by investors. Investors should be able to select such specialist advisors if the services meet their needs, or continue to use professional tax advisors in parallel with their investment advisors if they prefer.

Know Your Product – Firm

14) Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products?

Longbow response:

No, proprietary firms in the exempt market should not be required to engage in a market investigation and product comparison, because such market information to complete a full product investigation is unlikely to be available to the registrant. There is no publicly available database of exempt market investment products and no practical way to create one.

Suitability

16) Do you agree with the requirement to consider other basic financial strategies?

No, we believe such a suitability requirement is not in the best interests of many investors. The proposal document contemplates only a simple arrangement in which a retail investor deals with a single representative or firm and relies entirely on their advice to develop an investment strategy and build a portfolio.

However, many investors develop their own investment strategy, often in collaboration with an independent advisor, and deal with multiple financial counterparties to purchase suitable investments. The consultation paper contemplates a one-size-fits-all approach which assumes that all retail investors require every registered financial counterparty to fully (re)assess their entire investment strategy and the composition of their portfolio. This regulatory burden is particularly expensive in the case of proprietary dealers or those with a "transactional relationship" with the investor. In such cases the investor already has arrangements for their investment plan and requiring another representative to duplicate those activities represents an expensive and counterproductive burden for the investor and the dealer. We believe that a regulatory regime that encourages specialist dealers with more detailed knowledge of particular industries or securities is in the interest of investors.

57) Are there circumstances where it may be appropriate for a representative to collect less detailed KYC information? If so, should there be additional guidance about whether more or less detailed KYC information may need to be collected, depending on the context?

Yes, there should be recognition that there is a significant part of the market that is legitimately based on "transactional" relationships, which are not advisory in nature. Investors are making their own decisions and the dealer is acting as a financial counterparty. We believe that for such investors, suitability should consist of basic financial suitability and an assessment of whether the proposed investment meets the goals and objectives of their existing investment strategy.

Current securities regulations already recognize that investors have different needs for assessment of suitability. By creating explicit carve-outs of suitability requirements for institutional investors and users of order-execution-only services, securities regulators have already acknowledged that investors needs and goals cannot be met by a one-size-fits-all regulatory structure.

20) Will the requirement to perform a suitability analysis at least once every 12 months raise challenges for specific registrant categories or business models? For example, a client may only have a transactional relationship with a firm. In such cases, what would be a reasonable approach to determining whether a firm should perform ongoing suitability assessments?

The suitability requirement should not apply when there is no transaction or advice contemplated. For transaction-based relationships where no ongoing account is maintained, ongoing suitability requirements are a time consuming and costly exercise which provide no benefit to the investor. In such situations, we believe that the appropriate time between suitability analyses is the greater of: 1) prior to every transaction; or, 2) once every 12 months.

Relationship Disclosure

23) Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not?

Yes, we agree. Firms and representatives must be allowed to provide the specialized services and products demanded by investors, so it is important that those services and products are clearly and accurately disclosed to clients.

Proficiency

We agree with explicit proficiency requirements relating to key securities regulatory obligations. However, we believe that the CSA-set standards for compliance with the targeted reforms need to be adapted to the particular business model of each firm. Each firm should develop a plan for proficiency that is adapted to its business model and focuses the needs of its particular clients.

Role of UDP and CCO

34) Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, please explain.

The UDP is required to be the Chief Executive Officer of the company. In some circumstances it is more appropriate to assign the UDP role to another individual in the firm who is more involved in daily operations.

Thank you for your consideration of our comments.

Yours very truly,

Longbow Capital Inc.

"*Wiley Auch*"

Wiley Auch
VP Finance and Chief Compliance Officer