ACUMEN
CAPITAL PARTNERS

Via Email

September 29, 2016

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

Attention: Robert Blair, Secretary (Acting)
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec, H4Z 1G3
consultation-en-cours@lautorite.qc.ca

Dear Sirs / Mesdames:

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

Acumen Capital Finance Partners Limited ("Acumen") appreciates the opportunity to provide comments on Consultation Paper 33-404 regarding targeted reforms and a best interest standard. Acumen supports initiatives to improve the client-registrant relationship and promote a high standard in the investment industry. However, we have concerns with some of the proposals in the paper and would like to take this opportunity to express our concerns with those specific initiatives. We did not address all 66 consultations questions from Appendix I of the consultation paper and instead are focusing on the questions which we feel are most relevant to our organization.

Conflict of Interest Disclosure (Questions 1,2, and 3)

As an IIROC Dealer Member ("DM"), we are already governed by IIROC Rule 42 which addresses conflict of interest. Under Rule 42, Acumen is required to identify conflicts of interest and disclose them to clients. IIROC DM's are also required to have procedures in place regarding how to deal with conflicts of interest and a designated supervisor to monitor them. IIROC also has specific rules for DMs regarding advisors and outside business activities. These activities must be reported to and be approved by the DM and reported to IIROC. Advisors are discouraged from undertaking outside business activities that can lead to a conflict of interest, and any unavoidable conflict must be disclosed, supervised, and managed by the DM.

We have concerns on the vagueness of the proposed standard as written. For example, many firms have retail sales and underwriting departments. Is it now going to be a conflict of interest for advisors to

recommend issues that the DM's underwriting group is offering? Could this lead to clients not being able to purchase a security that is actually in their best interest due to the mere possibility of a conflict? The impact on capital raising could be immense. It is uncertain how the standard to "prioritize" the interest of a client over the firm would be met, especially in a for-profit DM. Another concern relates to how to determine "informed" consent is obtained before entering into a transaction in a fast-paced business environment.

Conflict of Interest management and disclosure was a component of the Client Relationship Management ("CRM") initiative recently undertaken by IIROC. As a result, all IIROC DMs are required to have adequate procedures in place for conflict of interest management. In addition, IIROC has recently focused on compensation-related conflicts of interest with DMs. We feel that conflicts of interest are addressed to a satisfactory level by IIROC rules and guidelines.

Know your Client (Questions 4, 5, 55, and 56)

Currently, under IIROC Rule 1300.1, as a DM we are required to learn the "essential facts" for every client before opening their account or executing any order. These facts in include a client's age, income, net worth, risk tolerance, and investment objectives at a minimum. We are concerned about the recommended requirement to learn all the details about clients' debt including knowing the interest rate a client is paying on a loan. Clients are very conscious of their privacy and will be reluctant to provide the additional information proposed in the KYC changes and, in many cases, this level of detail will not be an "essential fact". As per IIROC Rule 1300, we are unable to open an account without receiving the information required. Therefore, the proposal to increase the KYC information we are required to collect may result in more situations where firms such as ours have to turn away business from clients if we are unable to obtain all the information under the proposed legislation.

We have questions about the requirement for advisors to understand the client's basic tax situation. How will this be defined? Advisors have basic tax knowledge from the course they are required to take: Canadian Securities Course, 90-day training program, Wealth Management Essentials. If the expectation of advisors is going to be a deeper understanding of a client's tax situation, we are concerned that advisors will be expected to act as financial planners or tax specialists, thereby adding to legal exposure.

Regarding the question on whether an advisor should be able to open an account with missing KYC information, this is covered under IIROC Rules 2500 and 1300. As stated in these rules, no account should be opened up if missing the minimum required KYC information. Regarding whether a supervisor's signature be required on KYC forms, current IIROC rules require a supervisor to review all new accounts within a day of the first transaction. In most cases, the KYC form is part of the NCAF which the supervisor signs to evidence their review. Therefore, this requirement is already being met by IIROC DMs. We would be in favour of this proposed standard if it would bring the entire securities industry up to the standard which IIROC firms must currently maintain.

Know Your Product ("KYP") (Question 7)

Currently IIROC Rule 18.3(b) states that DMs must ensure that advisors are proficient and understand the products they trade or advise their clients on. New products are required to go through a due diligence procedure where the DM evaluates the potential new product and determines training requirements before the product is offered to clients, the risk profile of the product, whether there are

other products available that can achieve the same goal which may be less expensive to clients, identify any conflicts in offering the product to clients, etc. We feel that the current IIROC standard adequately covers this area.

We feel the concept that **all** advisors employed by a firm must be proficient in **all** the products offered by the firm is an unreasonable standard. We agree that an advisor must be proficient in all the products they offer to clients. However, the breadth of products available is substantial, and not all advisors offer every product available at the firm. Also some advisors may specialize in a type of product such as derivatives that other advisors do not trade. It would be unfair for an advisor who does not trade and is not licensed to trade in a specific financial instrument to be expected to have the same level of knowledge of that instrument as an advisor who does trade it and offer it to their clients.

The proposed market investigation, product comparison, and optimization process is unworkable in its present form. The exercise would be extremely costly, and would simply serve to reduce product diversity and arrest innovation. We believe the current IIROC KYP standards adequately address requirements in this area.

Titles (Questions 30, 31)

We are in agreement that the various titles that advisors currently use can be confusing to clients. IIROC currently has Rule 18.16 and 29.7 in place stating no Approved Person should hold himself out to the public in any manner that could be misleading, including by the use of a business title or designation of qualification. IIROC also issued Guidance Notice 14-0073 expecting Members to implement policies and procedures relating to the use of business titles and financial designations. We would be in favour of title classifications which accurately describe the advisor's proficiencies and what they offer.

We are opposed to Alternative 2 in the proposal which states that an advisor who is not registered as a Portfolio Manager at an IIROC firm can only use the title "salesperson". We feel advisors who are not Portfolio Managers do offer valuable advice to their clients regarding specific securities and overall investment strategies. The title "salesperson" does not adequately describe the service these advisors provide for their clients. We find this alternative to be entirely too restrictive. We also find Alternative 3 unappealing as the titles under this scenario would be meaningless to investors.

Suitability (Questions 16, 17, 19, and 20)

Currently under IIROC Rule 1300, advisors are required to determine that an investment is suitable before recommending it to a client or accepting an order from a client. Factors the advisor considers include: the client's current financial situation, time horizon, risk tolerance, investment objectives, investment knowledge, and current investment portfolio composition and risk level. It is our position that this current IIROC rule adequately covers suitability requirements for trades and recommendations.

We have concerns about the proposed changes to consider other basic financial strategies such as paying down debt, putting the money into a bank savings product, purchasing an insurance product etc. Similar to our concern about collecting detailed information about a client's other debts, tax situation etc., we feel that this type of advice is beyond the scope of an advisor. This would fall under the responsibility of someone holding themselves out as a credit counselor, financial planner, tax specialist, or insurance specialist. These items go beyond the proficiency of the regulatory category of Dealing

Representative, certainly creating additional legal exposure. We further are concerned with how an advisor would be assessed in meeting the standard in any given situation.

Relationship Disclosure (Question 27)

The CRM initiative requires all IIROC members provide clients with a relationship disclosure documentation at the time of account opening. As stated in IIROC rule 3500, the relationship disclosure document has to describe the products and dealers offered by the member, the nature of the account relationship, and the process used to assess investment suitability. Also, the relationship disclosure document should be in plain language.

We have concerns about the requirement that an advisor should have "a reasonable basis for concluding that the client understands the implications and consequence of the relationship disclosure document". We have heard from information sessions that having a client sign an acknowledgement that they understand the document will not be sufficient to demonstrate the client's understanding. We do not see how an advisor or firm will be able to keep record of such a subjective requirement.

Proficiency (Questions 28 and 29)

Under Rule 2900, IIROC has specific proficiency and experience requirements for advisors depending on what category they wish to be registered in. Also under Rule 2900. registrants are required to keep their proficiencies up to date via specific continuing education and professional development requirements. We feel that the IIROC standards are sufficient for advisors with no new requirements necessary. If the proposal's intent is to bring others in the industry up to the standard that IIROC advisors are held, we are in favour of "levelling the playing field".

The same holds true for proficiencies for CCOs and UDPs. There are specific proficiencies and experience required for anyone registered in that category.

Statutory Fiduciary Duty (Discretionary accounts) (Question 66)

It is unclear to us what the CSA envisions to be the difference between a statutory fiduciary duty and a regulatory best interest standard. Some provinces, such as Alberta where we are registered, have a statutory provision already in place for discretionary managed accounts. We believe statutory fiduciary duty and a best interest standard will result regulatory overlap, and it is unclear how the standards would be applied and interpreted together.

Best Interest standard (Questions 35-41)

Dealers and advisors are required under current IIROC and SRO requirements to follow the duty of acting "honestly, fairly, and in good faith". IIROC firms recently underwent major changes such as incorporating CRM and Point of Sale ("POS") requirements. These changes required a major undertaking for IIROC firms in areas such as developing new systems and processes, adding staff, etc. Regulators have not yet assessed the impact of these changes and their efficacy. We believe the results of this assessment should be known before considering the addition of a sweeping best interest standard.

We believe the proposed best interest standard is still unclearly defined and vague. We believe the current proposal would allow for many interpretations, creating more uncertainty in the client-advisor

relationship and in the capital markets in general. Advisors and firms will be forced to deal more cautiously with investors, reducing the scope of advice, services and investment products, and reducing the ability for smaller clients to access advice. We believe a best interest standard would result in a widening of the expectation gap with clients. Clients will place all of their reliance on their advisor, eliminating any client responsibility for investment decisions.

We request that the CSA complete a cost-benefit analysis. Other jurisdictions that have imposed a similar standard have experienced high costs as well as many amendments, alongside a reduction of access, selection options, and reasonably priced investment advice. Let's not repeat those mistakes.

Final Thoughts

Acumen supports the concept of improving the client-advisor relationship with high standards and the elimination of regulatory arbitrage. We see overlap between many of the proposed requirements and current IIROC rules and guidance, leading to regulatory overlap, confusion, and increased costs. Perhaps a "carve-out" or exemption for IIROC DMs should be considered.

Firms in the securities industry vary based on factors such as size of the firm, products offered, type of registration, and business model. Clients also vary in their investment knowledge, financial means, amount of advice needed, and many other demographic factors. Based on these different types of firms and clients, we do not feel applying a one-size-fits-all approach will adequately serve Canadian investors.

The proposals as currently written will have negative consequences for firms, advisors, clients and capital markets in general. In particular, the proposed best interest standard will lead to more uncertainty and misunderstanding on the part of advisors and clients and a larger expectation gap for clients. We then believe that litigation and legal costs will rise.

There will most certainly be many costs to implement all of the standards proposed. This will have a major impact on the industry, especially smaller firms. The industry has just undergone significant regulatory change with CRM, POS and other initiatives. Firms have invested a lot of resources to implement these existing requirements. It would be prudent to study the effect of these initiatives before introducing new requirements. A cost-benefit analysis needs to be undertaken to quantify the 33-304 proposals. Ultimately many of the costs related to the proposed reforms will be passed on to clients. We see no evidence that a "net benefit" will be achieved through a sweeping best interest standard.

Once again we would like to thank you for the opportunity to respond to the 33-404 initiatives. We look forward to further dialogue in the upcoming round-table sessions.

Yours truly,

ACUMEN CAPITAL FINANCE PARTNERS LIMITED

Govind Achyuthan

Chief Compliance Officer