September 29, 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

**DELIVERED BY EMAIL:** comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

**RE: CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients**

Dear Sirs / Mesdames,

This letter is in response to your request for comments on CSA Consultation Paper 33-404 and is made on behalf of YTM Capital Asset Management Ltd. ("**YTM Capital**").

**Background**

YTM Capital is registered with the OSC as an Investment Fund Manager, Portfolio Manager, and Exempt Market Dealer. It offers three debt-focused funds pursuant to Offering Memorandums and fixed-income sub-advisory services to institutional investors. YTM Capital has more than $200 million in assets under management.

**Comments**

We applaud the overall direction proposed by the CSA. We do, however, have serious concerns related to one aspect of the proposed changes to the KYP regime from the perspective of an investment fund manager.

*Question 7*

The proposals would obligate each representative to "understand the specific structure, features, product strategy, costs and risks of each product their firm trades or advises on". This obligation on a representative to understand a firm's entire universe of investment products ("**Total Shelf KYP Obligation**") is unprecedented and counter to investors' best interests.

In the abstract, it has appeal: shouldn't a representative have a strong working knowledge of every single fund on a dealer's shelf in order to pick the best option for his or her client?

The reality is that dealers, especially larger IIROC dealers, have created comprehensive, deep shelves in order to serve a large and diverse investor base in many different communities. For example, a dealer might approve a similar strategy run by reputable investment managers in several different cities so that representatives across the country can establish strong relationship with their local investment manager, including giving investors direct access to those investment managers. A large shelf also serves to mitigate risk for investors and the dealer through diversification of managers. More choice is good for investors.

In our experience, representatives use the initial due diligence conducted by the dealer during the shelf approval process as a starting place. They then supplement it with their own due diligence, thoroughly vetting fund managers. The choices made a result of that double due diligence process serve clients well. A double due diligence process would be practically impossible to conduct on an entire shelf of funds.

Even if the due diligence process was less time consuming, it is not realistic to expect a representative to conduct an extensive review of an entire shelf. Any representative attempting to do so would be forced to sacrifice investor service levels. And it isn't necessary for a representative to have an encyclopedic knowledge of every fund offering. He or she must be able select funds that suit investor needs and ensure that they have not overlooked a similar fund offering with a strong comparative advantage.

In response to the Total Shelf KYP Obligation, representatives will either reduce their own due diligence process or they will not engage in a deep dive on every fund on the shelf. The first result is bad for investors; the second is bad for dealers from a regulatory risk perspective. These practical realities are well understood by dealers. We strongly expect that the Total Shelf KYP Obligation will cause large IIROC dealers to limit the number of investment choices on their shelves in order to reduce liability.

Much of the volume of retail securities transactions is concentrated in a few large dealers. A limitation by those dealers on investment choice will have an out-sized impact on investment fund managers. We submit that the requirement on dealers to offer a "reasonable universe of products" is a difficult standard to apply and enforce and consequently will not have an impact on an inevitable shelf culling.

In other words, ***the number of investment funds offered to Canadian investors will shrink significantly***. Limiting investment choice is an unintended consequence. It is directly contrary to the spirit of the proposed rules. Investors offered less choice are subject to: (i) higher fees; (ii) worse performance; (iii) less variety and lack of manager diversification; and (iv) reduced innovation. And, the investment fund managers most likely to be impacted are those that offer a small number of funds. That is because the due diligence process is made much more efficient for the dealer if it can conduct one manager review and then offer 100 funds. The funds offered by smaller investment managers are often the most innovative and arguably deliver the best value to investors.

Instead of subjecting investors to these risks, we submit that the CSA should obligate dealers to create summary comparisons within discrete investment categories of all funds on its shelf. Representatives would be obligated to consider these summaries in determining what funds to examine more closely and in conducting periodic reviews of their fund choices. In this way, the risk of a representatives overlooking similar funds with strong comparative advantages is diminished. This dealer obligation is consistent with the dealer's obligations under the proposals. The obligation on representatives is incremental to their obligations today and is consistent with a meaningful and effective KYP review, but avoids the unintended consequence triggered by the Total Shelf KYP Obligation.

We'd be pleased to discuss these comments in more detail if it is helpful to you.

Sincerely,

David Burbach
Partner