September 30, 2016

To:

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

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario,
M5H 3S8
Fax: 416-593-2318
E-mail: 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
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

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

Boyle & Co. LLP is writing in response to the request for comments on the Consultation Paper Proposals.

Background - Boyle & Co. LLP

Boyle & Co. LLP is a law firm in Ontario practicing exclusively in securities law. Our partners have designed and implemented Canada's only direct internet distribution of securities, founded the Canadian Securities Exchange, designing both the original regulatory and market models and are founders, principals and chief compliance officer of an exempt market dealer. Our clients include, among others, non-bank owned investment dealers, exempt market dealers, issuers,

25 ADELAIDE STREET EAST SUITE 1900 TORONTO ONTARIO M5C 3A1
JIM BOYLE DESK: 416.867.8800 X1 CELL: 416.720.1819 EMAIL: JIM@BOYLECO.COM

advisers and institutional investors. We are well positioned to observe and comment on securities regulation and on the relationship between clients and their advisers, dealers and representatives.

The Most Pressing Issue

We take this opportunity to draw to your attention the most pressing issue facing investors, advisers, dealers, representatives, clients, capital markets and securities regulators: regulatory conflict of interest.

Regulatory conflict of interest is inherent in the delegation to securities regulators of the legislative function through rule making authority.

Regulatory conflict of interest describes the relationship between public officials (regulators) and matters of interest or benefit to them (more regulation). In a rule making authorized regulatory environment, the regulator is its own principal client and beneficiary of regulation as the administrator of the self-made regulations. The relationship between rule making authority and expansion of regulation is the core of regulatory conflict of interest.

Absent responsible, perceptive, active and meaningful checks and balances in the rule making function, despite well intentioned stated goals, whether investor protection or confidence in capital markets, the only certainty is increased regulation.

Regulatory conflict of interest must be identified, must be disclosed, must be avoided and at the least must be managed if unavoidable.

Checks and Balances Needed

In democratic, capitalist states constitutional or traditional checks and balances guard citizens from the overreaching state apparatus. In the UK, by tradition, elected, hereditary/appointed and judiciary check and balance. In the US elected, executive and judiciary branches check and balance constitutionally.

The constitutionally designated separation of powers amongst the legislature, senate and judiciary give Canadians a historically tested 3 pillar system of checks and balances. Delegated rule making authority disrupts this foundational constitutional principle, adding a fourth regulatory pillar, without any checks and balances, traditional or constitutional.

Checks and balances are absent in the delegated rule making legislative function, attenuating regulatory conflict of interest.

Consultation Paper Proposals Considered

The Consultation Paper Proposals must be considered keeping in mind the fundamental regulatory conflict of interest inherent in the rule making function.

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The Consultation Paper Proposals are a prime example of regulatory conflict of interest. The unarticulated assumption underlying targeted regulatory (i.e. micro regulated) proposals is that targeted micro regulatory enactments will best achieve the stated desired outcome.

Undoubtedly, the Consultation Paper Proposals will result in more regulation and extensive targeted regulatory actions (information gathering, providing guidance, articulating expectations, surveillance and compliance reviews).

Otherwise, simply considered, do the Consultation Paper Proposals represent the best designed approach to achieve desired outcomes? Unfortunately, the answer is no, both the stated desired goals and the proposed targeted mechanism are flawed by the impact of unrecognized regulatory conflict of interest.

Call For Action to Securities Regulators

The CSA must become self-aware and acknowledge the danger that regulatory conflict of interest presents to efficient and effective securities regulation. Securities regulators risk completely losing sight of their responsibility to investors and capital markets otherwise.

It is incumbent upon the CSA, as Canada's securities regulator, to propose, implement and conduct effective, efficient, principles-based regulation appropriate to Canadian capital markets and investors. Only you have the resources and capacity to create enlightened, elegant securities regulation. We are confident you will rise to the challenge.

Yours very truly,

Boyle & Co. LLP

per: Jim Boyle

JPB/tc

25 ADELAIDE STREET EAST SUITE 1900 TORONTO ONTARIO M5C 3A1