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September 30, 2016

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

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Dear Sirs/Mesdames:

RE: Consultation Paper 33-404 Proposals to Enhance the Obligations of Advisors, Dealers and Representatives Toward Their Clients ("Consultation Paper")

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (**CSA**) on the Consultation Paper.

Fidelity Investments Canada ULC (**Fidelity Canada, we** or **our**) is the 4th largest fund management company in Canada and part of the Fidelity Investments organization in Boston, one of the world's largest financial services providers. Fidelity Canada manages over $125 billion in mutual funds and institutional assets and offers approximately 200 mutual funds and pooled funds to Canadian investors. Millions of Canadians entrust us with their savings and we take their trust very seriously.

For 70 years, including 25 years in Canada, Fidelity Investments has strived to help clients achieve their financial objectives. Because helping clients is fundamental to our business, we applaud the CSA's goal of improving outcomes for investors and we support the CSA's work to achieve this goal.

We thank the CSA for addressing many of the concerns raised by Fidelity Canada and other commenters on CSA Consultation Paper 33-403 – *The Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients* (the **2012 Consultation Paper**).

INTRODUCTION

Fidelity believes that investors deserve professional and unconflicted advice from all registrants - dealers, financial advisors and fund managers. Fidelity also believes that financial advisors in Canada generally do a wonderful job of helping investors invest wisely and save for retirement. We believe that it is critical to Canadians that the independent advice channel continues to flourish. Much research has been done to show that financial advice results in greater savings and improved investment outcomes. There is always room for improvement and Fidelity supports initiatives that will improve outcomes for investors while continuing to ensure that all investors have access to financial advice.

As an investment vehicle, mutual funds have helped millions of Canadians save for important life goals such as retirement and their children's education. Mutual funds are an efficient and cost effective way for the average Canadian to access the global financial markets through professional investment management. Mutual funds allow the average Canadian and those with smaller amounts of assets to have access to professional advice both at the level of the financial advisor and professional portfolio management. Mutual funds have been a key driver of Canadian retirement savings and it should be a goal for the industry and regulators alike that regulations not diminish the health of the mutual fund product, and therefore the health of Canadian retirement savings.

Fidelity also believes that Canadians are best served by a marketplace that offers choice. We mean many aspects of choice. Canadian should have the ability to choose independent fund manufacturers and dealers. The health of an independent channel should be considered when contemplating new regulations like a best interest standard. It is important to ensure that any enhanced standard adopted continues to promote choice of products, particularly products that are offered in an unbiased and unconflicted manner. Lastly, Canadians should be able to buy their product of choice in a range of alternatives that should include both fee based and embedded fee options.

Fidelity supports a best interest standard that is clearly and reasonably defined and that is practical and workable for registrants and their clients. We would suggest that if a best interest standard is adopted, it be accompanied by clear guidance so that financial advisors and dealers understand clearly what is expected of them. Likewise, it should be clear and easy for investors to understand concretely what they can expect of their advisors and dealers under a best interest standard.

However, we find the British Columbia arguments against a best interest standard compelling. There is a real danger that the standard will be vague or interpreted by courts in ways that are unintended or impractical. A best interest standard that is not common to all provinces will not serve the Canadian marketplace well.

Because we believe that any standard should be adopted uniformly across Canada, we are proposing a compromise that might work well with the targeted reforms. The compromise is to adopt a fairness standard that requires advisors and dealers to treat clients fairly, manage conflicts of interest fairly, and take all reasonable care to ensure suitability.

We think that many of the targeted reforms have merit. However, in total and added to existing regulation, it would be difficult for advisors today to complete all of the work necessary to service a client and practically impossible to service investors with less assets. We would urge the CSA to review the totality of requirements for dealers and advisors servicing investors, including the targeted reforms, and rationalize them so that there is a workable and practical model for advice.

A. GENERAL COMMENTS

1. The Value of Advice

Several research studies have shown that Canadian investors who receive professional financial advice save more, accumulate more wealth and feel better prepared for retirement than non-advised individuals with similar socio-economic characteristics.[1] Studies have also indicated that advised households accumulated 1.58 times as much wealth as did non-advised households after four to six years and 2.73 times after 15 years.[2]

We are concerned that the cumulative effect of the proposed best interest standard and the targeted reforms (plus other recent reforms like CRM 2 and pre-delivery at the point of sale) will decrease access to financial advice. We applaud the efforts of the CSA to study CRM 2 and point of sale to determine the impacts on the marketplace. This is indicative of a cautious and prudent approach.

Just this year alone, we have seen a significant decrease in net sales of mutual funds. We are predicting that by the end of 2016, the industry's net sales will have fallen by 50%. Normally, when we see this trend, it is as a result of market declines. In fact, we are not aware of another year when net sales have fallen off without market declines. We believe that this decrease in net sales is at least in part a result of the impact of the potential regulatory changes in the marketplace. We believe this because of the many conversations we have with financial advisors and their concern and negative outlook for the industry as the regulations continue to evolve. In addition, we worry about the negative rhetoric investors hear about the mutual fund product in the media and from

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[1] See Claude Montmarquette & Nathalie Viennot-Briot, "Econometric Models on the Value of Advice of a Financial Advisor" (2012), online: CIRANO <http://cirano.qc.ca/pdf/publication/2012RP-17.pdf> [*Econometric Models*]; Terrance Martin & Michael Finke, "A Comparison of Retirement Strategies and Financial Planner Value" (2014) 27:11 Journal of Financial Planning 46; Claude Montmarquette & Nathalie Viennot-Briot, "The Gamma Factor and the Value of Financial Advice" (2016), online: CIRANO <https://cirano.qc.ca/files/publications/2016s-35.pdf>.

[2] *Econometric Models* at 19.

regulators themselves. We believe this is having an effect on investor psyche and their propensity to invest in mutual funds or invest at all.

We urge the CSA to be cautious when designing these regulatory reforms to ensure that they do not result in financial advice becoming unavailable to some investors. Should financial advice become too costly or unavailable, access will be limited and, consequently, savings rates will fall. This would be contrary to the CSA's goal of achieving better results for Canadians.

2. The Average Canadian Investor

A reduction in access to advice will have the most dramatic effect on the investor with fewer assets to invest. The average Canadian investor invests less than $100,000.[3] On its own, a best interest standard probably will not reduce access to advice for small investors, initially. But taken with the totality of regulation and if embedded feels are banned, there is absolutely no doubt in our minds that these investors will not have the same level of access to investing that they have today. In addition, the targeted reforms introduce significantly more work for financial advisors which will raise the costs of servicing investors. We would not want to see an advice gap emerge, similar to what is being experienced in other jurisdictions.[4]

At least some regulators argue that Canadians with fewer assets can always invest through the bank branches. This is true. However, this does not take into account the importance of a healthy independent and unconflicted advice channel. Not surprisingly, Canadians who go to their bank branches are offered only that bank's funds. They are not offered a range of investment options, nor is it explained to them that there may be better investment options elsewhere.

3. The Value of Choice

While the CSA's motivation behind the Consultation Paper is to improve the client-registrant relationship, we respectfully submit that it has, perhaps inadvertently, created a

[3] Advocis, "Sound Advice: Insights into Canada's Financial Advice Industry" (2014) at 2, online: Advocis <http://www.advocis.ca/sareport.pdf>.

[4] In the U.K., the number of advisors has declined from over 40,000 in 2011 to over 31,000 in October 2014 as a result of the Retail Distribution Review (RDR) (See Financial Conduct Authority, "Financial Advice Market Review: Final Report" (2016) at 18, online: Financial Conduct Authority <https://www.fca.org.uk/publication/corporate/famr-final-report.pdf>). Andrew Bailey, the chief executive of the Financial Conduct Authority (FCA), confirmed at the FCA's annual public meeting on July 19, 2016 that the RDR has "contributed to an advice gap opening up for the less well-off and those in need of single event type of advice. Some firms do not provide these services because they are concerned about potential liability and uncertainty around regulation" (See "Chief Executive speaks at APM about recent work and future challenges" *Financial Conduct Authority* (20 July 2016), online: Financial Conduct Authority <https://www.fca.org.uk/news/speeches/chief-executive-speaks-apm-about-recent-work-and-future-challenges>). In Australia, there is evidence that due to recent regulatory reforms, advisors have left the industry or accelerated their date of retirement (See Australian Securities & Investments Commission, "Report 407: Review of the financial advice industry's implementation of the FOFA reforms" (2014) at 20, online: <http://download.asic.gov.au/media/1845586/rep407-published-17-september-2014.pdf>).

strong division throughout the paper between registrants that sell proprietary products (**Proprietary Firms**) and those that sell mixed and proprietary products (**Mixed Firms**), with more burdensome requirements for the Mixed Firms. The practical consequence of these reforms will be for registrants with proprietary products to consider narrowing their product shelves significantly or offering only proprietary products. The way the targeted reforms are written currently, there will be much more work for a firm that tries to be open architecture along with its own proprietary products.

Fidelity Canada strongly believes that Canadians should have the ability to choose where and how their assets should be invested. A move towards proprietary business models will result in demonstrably less choice for Canadians. Other jurisdictions have or are struggling with the public policy issues of proprietary products, conflicts of interest and choice. We understand that countries like Belgium and the Netherlands are working to ensure that their citizens are offered both proprietary and independent options. The Markets in Financial Instruments Directive (also known as MiFID II) requires advisors in proprietary channels who want to continue to receive commission payments to offer funds from third-party firms.[5]

In addition, regulators should not assume that every Canadian wants a financial plan. There are some who will not want a plan and simply want to buy a security. The targeted reforms should not eliminate this aspect of choice for Canadian investors.

As well, regulators should be cautious not to eliminate choice of business models. A healthy independent fund manufacturing and dealer network is an important public policy goal. We are already seeing significant consolidation in our industry. A lack of choice will not be the best outcome. Canadian investors deserve a healthy competitive industry that fosters competition and independence.

4. Product Arbitrage

We respectfully submit that should the proposals outlined in the Consultation Paper be adopted, it is critical that they be applied to all investment products and not just securities products. If there is not a level playing field, investors and advisors may move to products that are not governed by the CSA, such as banking and insurance products that are not securities. As we mentioned in our response to the 2012 Consultation Paper, if the primary goal of the CSA is investor protection, driving advisors to competing products with less regulation will not have the result of increasing investor protection. This issue is ignored by governments and regulators alike. In other countries that have tackled these issues, they have been across competing products. Canada is quite unique in this respect and this is not to be forgotten in the debate around what has worked in other jurisdictions.

[5] Madison Marriage, “Banks told to stop pushing own funds”, *The Financial Times* (2 May 2016) online: The Financial Times <http://www.ft.com>; See Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU [2014] OJ L173/1, recitals 70-106, art 24-30.

The mutual fund product has been the driver in many respects of savings in Canada. You, as regulators, often cite statistics about the dominance of mutual funds as the investment vehicle of choice. Mutual funds allow investors with fewer assets to have access to professional advice both at the level of the financial advisor and portfolio management. The services offered to these investors are numerous and certainly often worth more than the investment itself generates in profits. This investment choice should continue to thrive in a healthy and unbiased way in order to continue to see Canadian retirement savings thrive.[6]

We would also ask you to be mindful of competing securities products that seem to be less regulated, less transparent and more expensive. We note an increasing trend to sales of separately managed accounts (SMAs) and unified managed accounts (UMAs). By and large, these are more expensive than mutual funds, are not subject to many of the regulations that impact mutual funds and are less transparent (performance numbers are not readily available publicly for most of these products).

5. Active vs. Passive

The Consultation Paper quotes research[7] which found that a large sample of MFDA registrants influence investors' trading choices but that their recommended portfolios slightly underperform passive investment benchmarks, taking into account fees for service and advice and the underlying advisory and administration costs associated with the underlying investments recommended. There is much research on both sides of this issue; but there are also a number of research studies that find that investors who have worked with a professional advisor have better financial outcomes overall and are better prepared for retirement than those who do not work with a professional advisor. The research referred to by the CSA also explicitly states that it did not evaluate the value of other financial planning services, effectively and implicitly attributing all costs of advice to relative investment return alone. Further, the research does not explore whether investors acting on their own investment decisions – without the benefit of professional investment advice – would have experienced better or worse investment outcomes than those informed by advice.

In addition, we have concerns that taken in aggregate, the targeted reforms may have the unintended consequence of placing too much emphasis on advisors' formulation of investment recommendations on relatively small absolute differences in cost at the expense of a rational assessment of value for money. The reforms, as proposed, may compel advisors to choose slightly lower cost passively-managed investment vehicles over professionally actively-managed ones which have the potential to deliver significantly higher levels of wealth generation and considerably better risk-adjusted return over a full

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[6] See Pierre Lortie, "A Major Setback for Retirement Savings: Changing How Financial Advisers are Compensated Could Hurt Less-than-Wealthy Investors Most" (2016), online: Social Science Research Network <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2804696##>.

7 Foerster et al, Retail Financial Advice: Does One Size Fit All? (2014), online: http://www.usc.edu/schools/business/FBE/seminars/papers/F_10-3-14_LINNAINMAA.pdf. This study draws on a large data set comprised of account-level data for a large group of Canadian investors and their representatives.

retirement savings cycle, albeit at slightly higher explicit cost. Many active investment managers have demonstrated an ability to materially outperform passive market tracking investments at lower levels of risk. It does not follow that if the average active investment fund fails to outperform passive market indices after accounting for all fees, that all do. Indeed, there is considerable variation in active investment outcomes from one asset class to another and even from one geographic investment universe to another. As such, we would strongly recommend that the reforms more explicitly emphasize the need for an assessment of value-to-cost over cost alone when formulating investment recommendations for investors. In no other selection of products or services is cost considered independent of an assessment of expected value and we strongly recommend that the reforms not suggest that it should be so here.

B. BEST INTEREST DUTY

1. Overview

As we mentioned in our comment letter on the 2012 Consultation, Fidelity Canada is supportive of a best interest standard that is carefully and reasonably defined. It is vital that it be clear to dealers and financial advisors what it means for them in their day to day working lives. And it is important that investors have a clear understanding of what they should expect under a best interest standard.

However, we find the concerns expressed by British Columbia around a best interest standard to be compelling. We also believe that a fragmented standard across Canada would be unworkable.

2. Regulatory Conduct Standard

While we appreciate that the CSA has tried to define the best interest standard narrowly as a regulatory conduct standard, we believe that it will become the legal standard that courts will look to in evaluating conduct. As a result, there is the potential for uncertainty. We also expect an increase in regulatory complaints and litigation. Perhaps that is a desirable outcome from the perspective of regulators and investors where outcomes have not been desirable for investors. However, it may eventually add to the potential for an advice gap for investors with fewer assets.

3. Proposed Fairness Standard

In the United Kingdom, the Law Commission declined to recommend a regulatory fiduciary standard and instead recommended that the common law continue to apply as determined by the courts. However, in the Law Commission's report[8], the Commission did reference some Principles of Business used by the Financial Conduct Authority as the

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[8] The Law Commission, *Fiduciary Duties of Investment Intermediaries Report* (United Kingdom: Williams Lea Group, 2014), online: The Law Commission <http://www.lawcom.gov.uk/wpcontent/uploads/2015/03/lc350_fiduciary_duties.pdf>.

basis of enforcement. They seem quite applicable to a regulatory best interest standard. They include[9]:

1) A firm must pay due regard to the interests of its customers and treat them fairly (Principle 6).
2) A firm must manage conflicts of interest fairly, not between itself and its customers and between a customer and another client (Principle 8).
3) A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment (Principle 9).

On the basis of these principles, we would offer this compromise: adopt a fairness standard that requires advisors and dealers to treat clients fairly, manage conflicts of interest fairly, and take all reasonable care to ensure suitability.

We believe that a fairness standard would be well understood and acceptable to the industry and investors. In addition, it has the benefit of not being a legal standard like a fiduciary duty or best interest duty. And along with certain reasonably defined targeted reforms, a fairness standard reaches the goal of the regulators across Canada.

Our strongly held view is that a best interest standard that is not common to all provinces will not serve the Canadian marketplace well.

4. Institutional Clients

We believe that a best interest standard is not appropriate when dealing with institutional clients since these clients have the sophistication and resources (and in many cases specialized consultants) to help them choose investments that are in their best interests. There is already differential treatment proposed for institutional clients in other parts of the Consultation Paper and we believe that it would be equally appropriate here.

C. TARGETED REFORMS

1. Overview

As previously mentioned, we applaud the CSA's objective to improve the client-registrant relationship. We believe that enhancing the obligations owed to clients in the targeted reform areas is a good way to achieve this objective.

We speak to advisors and dealers regularly. The most common theme is the incredible pace of regulatory change and the inability to keep up with the work associated with all regulations in totality. While we are supportive of the targeted reforms, we would also be supportive of a review of all regulations applicable to financial advisors and dealers with a view to rationalizing them. We would urge the regulators to decide what the regime should look like in total and then implement the regime that allows for the best outcomes

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[9] *Ibid* at 149.

for investors. This would include rationalizing existing regulation, rather than adding onto it.

In addition, the CSA seems to have made the assumption that investors want a full financial planning model when, in many cases, they may just want to purchase a security for a specific goal. As such, the CSA should provide for a scalable system of advice that lets investors choose the services that they want and allows dealers and advisors to offer them a waiver so that they do not have to provide personal and private information if that is their choice.

We are concerned that the cost and amount of work required to implement and operationalize the targeted reform requirements will be considerable. It will require, at minimum, a technology build, training programs, testing and an enhanced compliance regime. These increased costs will have an impact on the cost of advice. In addition, small and medium sized dealers may not be able to afford the costs of implementing the reforms and supporting the required infrastructure to service clients. This may lead to dealer consolidation, as seen in the Netherlands,[10] which may result in fewer advisors available to provide investment advice. If the cost of advice increases and the number of advisors decrease, there will be less access to advice and a gap will emerge.

The targeted reforms also place a difficult burden on advisors and firms with respect to know your product (**KYP**) and suitability obligations by requiring the advisor or the firm to determine the option that is "*most likely to achieve*" or "*most likely to meet"* the client's investment needs and objectives. How does a registrant document that it picked the best choice? A client can always challenge this after the fact and, with the benefit of hindsight, it may not look like the advisor or firm recommended the option that is "most likely to achieve" the client's needs. This creates immediate litigation exposure. The targeted reforms also place a difficult burden on advisors because of their deeply prescriptive nature and the long list of items that must be considered and satisfied with each reform. This will also increase litigation risk for advisors as it will be almost impossible to prove that they covered every single item outlined in the reforms and met their obligations.

2. Conflicts of Interest

We are supportive of a requirement to respond to material conflicts of interest (**COI**) in a manner that prioritizes the interests of the client ahead of the interests of the firm or representative. We think a fairness standard could also work well with resolution of conflicts of interest.

National Instrument 81-105 - Mutual Fund Sales Practices (**NI 81-105**) was designed to regulate the sales practices of industry participants and reduce COI between the interests of investors and those of registrants. We believe that NI 81-105 addresses the most fundamental conflicts that exist in the mutual fund industry. We also believe that NI 81-

[10] Rijn van der Linden, "Banning Protection Commissions – the Netherlands Experience" (August 2014) RGA Quarterly: Europe 2 at 3, online: RGA International Reinsurance Company Limited <http://www.rgare.com/SiteCollectionDocuments/European_Quarterly.pdf>.

105 should extend beyond the distribution of publicly offered mutual funds to other products such as exchange traded funds and insurance products. We respectfully submit that if the CSA and the SROs more stringently enforced NI 81-105 then many of the conflicts with sales practices would cease to exist. We do not believe at this time that the SROs include NI 81-105 in their audit programs. We also see very little evidence that IIROC dealers have compliance programs around NI 81-105. We often find that it is the fund companies who educate advisors as to what is permitted or not permitted for the dealers themselves. The perception exists that this rule only applies to fund managers, when clearly, it equally applies to dealers and advisors.

We appreciate that the Ontario Securities Commission (**OSC**) has included in their 2016/2017 Statement of Priorities (**Statement of Priorities**) that it will work closely with the self-regulatory organizations (**SROs**) to coordinate compliance efforts on common issues such as sales incentives and related COI. The Statement of Priorities also indicates that the OSC will be completing their analysis of advisor compensation practices to identify those practices that appear inconsistent with NI 81-105. We believe that, based on the outcome of these reviews, it will be abundantly clear that registrants are engaging in prohibited sales practices that could be addressed by the enforcement of NI 81-105.

We are also unsure how the COI principles outlined in the targeted reforms will apply to the sale of proprietary products versus third party products? Accordingly, we request that this be clarified.

Lastly, it is not clear to us how a dealer and an advisor will ensure that clients can and do understand conflicts of interest. Certainly, that is an excellent goal. But the outcome is not certain. Clear disclosure, orally and verbally, should be the standard. Doing a good job of helping the investor to understand the conflict is also a good goal. But guaranteeing that the investor will pay attention, take the time, or even care to understand the conflict is not a realistic outcome.

We are fully supportive of the differential treatment articulated for institutional clients in the recognition that disclosure alone is sufficient for institutional clients. However, the definition of institutional client generally only applies to those clients that have waived the suitability requirement pursuant to subsection 13.3(4) of *National Instrument 31-103 – Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). This means that it would only apply to pooled fund clients and not discretionary separate account clients which we doubt was the intention. Since institutional separate account clients are sophisticated and in a position to make an informed decision, these clients should also be able to rely on disclosure alone.

3. Know Your Client

We believe that providing more guidance for the KYC process is a good initiative. In doing so, however, the CSA needs to be cognizant of the different business models and, as mentioned above, consider the practical reality that not all clients are looking for a financial planning service. We respectfully submit that the CSA should consider whether every client will actually want to provide all of this detailed personal information relating to

their net worth, income, current investment holdings, liquidity needs and basic tax position. Has the CSA surveyed investors to see how they feel about delivering all of this information? Has the CSA considered the privacy implications of providing all of this information? It may take investors quite a bit of time to collect the vast amount of prescribed information. Will it be so much work that investors will avoid making investments and therefore not have access to advice? We doubt that this is the desired result. Thus, we recommend that the CSA design a waiver process so that clients can opt out of the requirements to provide this information.

We also respectfully submit that it should not be necessary to collect the same level of KYC information for institutional clients. Institutional clients are sophisticated and have their own resources and advisors to help determine their investment needs and objectives. In addition, many of the KYC items outlined in the Consultation Paper do not apply to institutional clients.

4. Know Your Product

We support making KYP an explicit stand alone requirement for firms and we agree that firms must have sufficient knowledge of a product to support a suitability analysis. However, it appears that the CSA has unintentionally created a higher standard of KYP for Mixed Firms since it has imposed additional obligations on Mixed Firms. Rather than achieving the CSA's intended outcome of Mixed Firms offering a broad range of products, we believe that it will have the opposite effect and will either result in Mixed Firms offering fewer products or will create incentives for firms to stop offering non-proprietary products so that they can fit within the definition of a "proprietary firm". A reduced shelf will have many unintended consequences. First, it will result in less choice for the investor. Second, smaller independent dealer firms and fund managers may not survive this reduction. Third, banks may end up putting investors into their own products which may not be as good as those offered by an independent third party. We have seen evidence of this in the EU and the U.S. where large banks have directed their clients towards poorly performing in-house asset management products as opposed to offering their clients better performing funds offered by third-party asset management firms.[11] Lastly, a smaller shelf may limit an advisor's ability to service a client's evolving needs or a new client's investment objectives. While the CSA has a laudable goal of ensuring a broader selection of products for clients, we respectfully submit that this goal should apply equally to both Proprietary Firms and Mixed Firms.

We respectfully suggest that the requirement for representatives to understand each product in which their firm trades is impractical. Advisors should be able to rely on their firms' infrastructure in choosing products. Should this requirement be implemented, firms will have to maintain smaller shelves which will have the consequences outlined above.

[11] For example, as early as last year, JP Morgan Bank was ordered to pay a $307 million dollar penalty for failing to disclose to its clients that it was funneling them into their own investment products rather than those investment products offered by third-parties. See Madison Marriage, "Banks told to stop pushing own funds", *The Financial Times* (2 May 2016) online: The Financial Times <http://www.ft.com>; Madison Marriage, "Banks' self-serving fund sales must be stopped", *The Financial Times* (1 May 2016) online: The Financial Times <http://www.ft.com>.

5. Suitability

We agree that the suitability obligation is a fundamental obligation owed by firms and representatives to their clients. We are fully supportive of choosing products that are suitable for the client and that have a proven track record of superior performance. We also agree that advisers should consider the impact of any compensation paid to registrants before making a recommendation or accepting an instruction. However, we respectfully submit that this should be expanded to also include any incentives paid to registrants.

We would appreciate it if the CSA would provide more clarity around how suitability will work for Proprietary Firms. Will they just need to review proprietary securities on their recommended list and in the clients' portfolios?

We are concerned that the Consultation Paper requires advisors to identify a target rate of return that clients will need in order to achieve their investments needs and objectives. This is a complex analysis and conducting suitability based on a targeted rate of return may be construed by a client as a guarantee of returns. While this is likely to lead to increased litigation risk for advisors, it is also likely to lead to misunderstandings by clients of how the markets will impact this "target".

The Consultation Paper also states that where a client does not want to dispose of an unsuitable investment, it may be appropriate to recommend changes to the other investments within the account to ensure the overall portfolio is suitable. We are unsure how this would work in practice. What would happen if a client didn't want to dispose of a poorly performing investment but all other securities in the portfolio were performing really well? We recommend that the CSA consider the practical application of this requirement.

6. Relationship Disclosure Document

We are supportive of requirements to make disclosure more meaningful to clients. However, we find the disclosure requirements outlined in the Consultation Paper too prescriptive and lengthy. We recommend that the CSA consider creating a summary disclosure document, similar to a fund facts document, that will outline the key disclosure items that clients should consider prior to making an investment decision.

We agree that firms should disclose whether they offer proprietary products only or are a Mixed Firm. However, it would be extremely helpful for Proprietary Firms to also disclose the proportion of proprietary products that they have sold, and not just the proportion that they have offered.

We find it curious that Proprietary Firms merely have to state in their relationship disclosure document that they do not have to consider whether non-proprietary products would be better, worse or equal in meeting the client's investment needs and objectives. If the CSA is truly concerned about investor protection, it should be making sure that all firms look to a broad range of well performing products to meet client needs.

7. Proficiency

We agree with new proficiency requirements that require representatives to understand product costs and investment strategies and how they impact investment outcomes for clients.

8. Titles

We appreciate the concern prompting the recommendation for standardized titles in the industry. We agree that there should be a limited number of client-facing titles used that are clear and not confusing. However, we recommend that the CSA be cautious with how it assigns titles and should ensure that the titles accurately reflect the work that the registrant is authorized to do. New Zealand recently announced that their research showed that investors did not understand the titles being used in New Zealand, which were surprisingly similar to those being proposed. They have recently reverted to the use of “financial advisor” and “agent”. We find this an interesting development.

We think the goal should be standardization, simplicity and be easy for investors to understand. We don’t really think that the titles offered will accomplish that goal.

We do agree that IIROC discretionary advisors should have a title that is different from a securities salesperson. However, we have noticed a trend for these advisors to call themselves portfolio managers. We think that a portfolio manager with a CFA and managing pooled assets should be differentiated from discretionary financial advisors.

It would, of course, be helpful if advisors selling competing products like insurance segregated funds also had the same titles and they were standardized across both industries. We urge the CSA to speak to insurance regulators about standardization of titles across all investment products.

D. INTERNATIONAL CONSIDERATIONS

As discussed in the Consultation Paper, there have been regulatory reforms recently adopted and/or being considered in the U.S., U.K., Australia and the European Union (“EU”) regarding the client-registrant (or equivalent) relationship. All of these jurisdictions have either implemented, or are proposing to implement, increased conduct and proficiency obligations for registrants.

Canada is in an enviable position; we can wait to see the impact of international reforms before making changes in Canada, especially the impact of the Retail Distribution Review (“RDR”) in the U.K. There is no evidence coming out of the U.K. that investors are getting better value for their money or better financial advice. There is, however, evidence of an advice gap due to a dramatic reduction in the number of advisors and an increase in the cost of advice.[12] A recent academic article found that there is a lack of clarity experienced

[12] *Supra* note 4.

by both consumers and financial advisors concerning the nature of “advice” post RDR resulting from the use of an array of regulatory and non-regulatory terms. While RDR enhanced professionalism and reduced commission bias, RDR is failing to address the needs of many financial consumers – identified by many as an “advice gap”.[13]

In addition, reforms in the U.K. and Australia have been applied uniformly across competing products so regulatory arbitrage has not been permitted and investor protection has been provided among all competing products. We think this is very important and we urge the CSA to consider the implications of regulatory changes like a best interest standard to only one type of investment product.

CONCLUSION

We at Fidelity agree with the overarching goal of the protection of investors. We urge the CSA to bear in mind the additional goals of protecting access to advice for the average Canadian, not detrimentally impacting savings rates for Canadians, and the health of the Canadian economy.

We are in favour of a best interest standard that is carefully and reasonably defined so that financial advisors, dealers and investors know exactly what is required. However, we find the arguments made by B.C. compelling – there is the potential that a vague standard will not serve the industry well and will increase litigation rather than addressing the problem it was intended to address. Therefore, we have argued that a fairness standard would be a good middle ground. Fairness is a standard that already exists in securities legislation and is likely to be palatable to both the industry and to investors.

Further, we would ask the CSA to consider the totality of regulations applicable to financial advisors and dealers taking into account the targeted reforms on top of an already burdensome regulatory system. We would urge the CSA to consider reviewing the total regulatory regime to determine what rules would be the most effective for investors and rationalize them so that they are workable and effective for the industry and investors alike. We think this would mitigate the issue of investors with less assets not being serviced, and in any event, makes much common sense.

We would ask the CSA to ensure that the targeted reforms do not advantage proprietary funds over independent funds on open architecture platforms, or drive open architecture platforms to close. It is important that Canadian investors be able to choose the best product available and not just the proprietary products that closed architecture firms choose to sell. It is equally important that Canadians investors are not driven away from securities products to products that are less regulated. Canadian investors should also have the choice of independent fund manufacturers or dealers. Driving wealth management to large financial institutions solely will not be good for investors or a healthy and competitive industry.

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[13] See Patrick King, “The Retail Distribution Review: Retail Financial Services; Regulation; Financial Advice Market Review” (2016) 24:2 Journal of Financial Regulation and Compliance 140.

Lastly, we firmly believe that most significant conflicts that the CSA are trying to address are already covered by NI 81-105. We believe that if NI 81-105 was part of the compliance regime of the SROs and IIROC dealers, and if it was enforced, that many of the CSA's concerns would be eliminated.

We thank you for the opportunity to comment on the Consultation Paper. We attach as Appendix A to this letter Fidelity's specific responses to the questions posed in the Consultation Paper. As always, we are more than willing to meet with you to discuss any of our comments.

Yours truly,

Robert Strickland
President

Encl.

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Appendix A

A. REGULATORY BEST INTEREST STANDARD	
CSA Question	**FIC Comments**
36. Please indicate whether a regulatory best interest standard would be required or beneficial, over and above the proposed targeted reforms, to address the identified regulatory concerns	36. Fidelity supports a best interest standard that is clearly and reasonably defined and that is practical and workable for registrants and their clients. If a best interest standard is adopted, it should be accompanied by clear guidance so that financial advisors and dealers understand clearly what is expected of them. It should also be clear and easy for investors to understand concretely what they can expect from their advisors and dealers under a best interest standard. However, we agree with British Columbia that the best interest standard may be too vague a standard. In order to bridge the very different views of the regulators on this topic, we would propose a standard of fairness as outlined in our comment paper.
37. Please indicate whether you agree or disagree with any of the points raised in support of, or against, the introduction of a regulatory best interest standard and explain why.	37. While we are supportive of a carefully and reasonably defined best interest standard, we agree with the following concerns expressed by British Columbia (BC): - A regulatory best interest standard may exacerbate misplaced trust and overreliance by clients on registrants - The adoption of a broad best interest standard will create uncertainty for registrants and may be unworkable in the current regulatory and business environment - A salesperson of proprietary products will be unable to act in a manner that is truly in an investor's best interest - The proposed best interest standard will not prohibit certain fundamental conflicts including that registrants will be: (i) able to sell a limited range or type of investment products, and (ii) owned by, or affiliated with, the businesses that create the investment products they sell. We encourage the best interest standard consulting jurisdictions to seriously consider these concerns and take them into account in deciding whether to proceed with a best interest standard.

	Alternatively, we think a standard of fairness as outlined in our comment letter could bridge the gap between BC and Ontario.
38. Please indicate whether there are any other key arguments in support of, or against, the introduction of a regulatory best interest standard that have not been identified above.	38. While we appreciate that the CSA has tried to define the best interest standard narrowly as a regulatory conduct standard, we believe that it will become the legal standard that courts will look to in evaluating conduct. As a result, there is the potential for uncertainty and increased regulatory complaints and litigation. Perhaps that is a desirable outcome from the perspective of regulators and investors where outcomes have not been desirable. However, if increased litigation results, advisors may not want to take on investors with fewer assets and may increase the costs of providing their services, both of which would reduce the number of investors serviced. This would lead to an advice gap and a decrease in Canadian savings rates. In addition, Canada is at the cutting edge of regulation with the recently implemented requirements for CRM2 and POS 3. The CSA just announced a multi-year research project to measure the impacts of CRM2 and POS 3, which will specifically measure outcomes related to investor knowledge, attitude, behavior, registrant practices and product offerings. We recommend that the CSA await the outcome of this research before introducing a best interest standard.
65. Should the Standard of Care apply to unregistered firms (e.g., international advisers and international dealers) that are not required to be registered by reason of a statutory or discretionary exemption from registration, unless the Standard of Care is expressly waived by the regulator?	65 The Standard of Care should apply to international advisers and international dealers since Canadian clients should be able to expect the same standard of care from any party that provides like registrable services. Without a consistent Standard of Care, an expectation gap and investor uncertainty will continue to prevail. If the same Standard of Care does not apply to unregistered firms, it is possible for Canadian firms to sub-contract/sub-advise their services to a foreign entity that is not subject to the same Standard of Care.
68. Do you think this expectation is appropriate when the level of sophistication of the firm and its clients is similar, such as when firms deal with institutional clients?	68. We believe that the best interest standard is not appropriate when dealing with institutional clients since these clients have the sophistication and resources (and in many cases specialized consultants) to assist.

B. CONFLICTS OF INTEREST	
CSA Question	**FIC Comment**
1. Is this general approach to regulating how registrants should respond to conflicts optimal? If not, what alternative approach would you recommend?	1. We are supportive of a requirement to respond to material conflicts of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm or representative. We think a fairness standard could also work well with resolution of conflicts of interest. In addition, this general approach is already present in MFDA Rule 2.1.4 and IIROC Rule 42.2(3). Codifying this in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). NI 31-103 would be a valid approach. We also strongly urge the regulators to enforce existing regulations like National Instrument 81-105 – *Mutual Fund Sales Practices* (NI 81-105) that already regulate conflicts of interest in a very meaningful way. We note that we do not see compliance reviews around NI 81-105 by the SROs and sweeps done by the OSC are not published in some cases (e.g., the sweeps recently conducted around compensation practices for the sale of proprietary products). The perception exists that this rule only applies to fund managers, when clearly, it equally applies to dealers and advisors. We find that some of the requirements are quite prescriptive and will be costly to implement and difficult to supervise. For example: - the requirement that the disclosure about conflicts must be sufficient to be meaningful to the client such that the client “fully understands” the conflict is an impractical standard to measure. Clear disclosure, orally and verbally, should be the standard. Doing a good job of helping the investor to understand the conflict is a good goal; however, guaranteeing that the investor will pay attention, take the time, or even care to understand the conflict is not a realistic outcome. - the requirement for disclosure to include all outside business activities of the firm and applicable representatives is excessive since much of this disclosure may not have any bearing on the client or their account. In addition, we think that there is an element of privacy that seems to be ignored. An advisor's personal life should not be required to be disclosed to

	clients where the activities are not relevant to the advisor's advice to the client.
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?	2. It would be helpful if the CSA provided further guidance as to what would be expected of registrants to meet this obligation beyond what is done today. It is a difficult task to identify the less obvious conflicts of interest. Specific guidance is critical in this area.
3. Will this requirement present any particular challenges for specific registration categories or business models?	3. We are unsure how the conflicts of interest principles outlined in the targeted reforms will apply to the sale of proprietary products versus third party products. Accordingly, we request that this be clarified.
44. Is it appropriate that disclosure by firms be the primary tool to respond to a conflict of interest between such firms and their institutional clients?	44. We are fully supportive of the differential treatment articulated for institutional clients in the recognition that disclosure alone is sufficient for institutional clients.
45. Are there other specific situations that should be identified where disclosure could be used as the primary tool by firms in responding to certain conflicts of interests?	45. It would be helpful to be more specific about the conflicts of interest that concern the regulators. While we are aware of the obvious conflicts of interest that exist, we are not sure what the exhaustive list would include in the regulators minds. In our view, fundamental conflicts of interest are already highly regulated. Again, we cite the example of NI 81-105, which covers many fundamental conflicts of interest, but which is not, in many cases, really enforced or monitored by the regulators.
46. Is this definition of "institutional client" appropriate for its proposed use in the Companion Policy? For example: (i) where financial thresholds are referenced, is $100 million an appropriate threshold?; (ii) is the differential treatment of institutional clients articulated in the Companion Policy appropriate?; and (iii) does the introduction of the "institutional client" concept, and associated differential treatment, create excessive complexity in the application and enforcement of the conflicts provisions under securities legislation? If not, please explain and, if applicable, provide alternative formulations.	46. The definition of institutional client only applies to those clients that have waived the suitability requirement pursuant to subsection 13.3(4) of NI 31-103. This means that it would only apply to pooled fund clients and not discretionary separate account clients which we doubt was the intention. Since institutional separate account clients are sophisticated and in a position to make an informed decision, these clients should also be able to rely on disclosure alone. The introduction of the "institutional client" concept and associated differential treatment will likely create excessive complexity. We propose that "non-individual permitted client" be used instead. Please see our response for #47 below.

47. Could institutional clients be defined as, or be replaced by, the concept of non-individual permitted clients?	47. We do not see the need to create a separate "institutional client" definition. For consistency and clarity, non-individual permitted client should be used, unless there is a policy rationale for having different categories or asset thresholds from the current definition of permitted client (with the exclusion of individuals).
48. Are there other specific examples of sales practices that should be included in the list of sales practices above?	48. In addition to the sales practices mentioned in the consultation paper, we are concerned about commission grids, or other hard or soft incentives that favour proprietary products. These practices influence the behavior of investment advisors with the potential to improperly influence recommendations. We believe that these inappropriate practices are already covered in NI 81-105. Therefore, either the provisions in NI 81-105 need to be more explicit, or the regulators need to enforce the provisions that already exist.
49. Are specific prohibitions and limitations on sales practices, such as those found in NI 81-105, appropriate for products outside of the mutual fund context? Is guidance in this area sufficient?	49. NI 81-105 was designed to regulate the sales practices of mutual fund industry participants and reduce conflicts between the interests of investors and those of registrants. We believe that NI 81-105 addresses the most fundamental conflicts that exist in the mutual fund industry. We also believe that NI 81-105 should extend beyond the distribution of publicly offered mutual funds to other products such as separately managed accounts, exchange traded funds and insurance products. We recommend that further guidance be provided that contemplates all the sales practices that have been observed by the OSC and the SROs in their current analysis of sales practices. Guidance is helpful, but definitely not sufficient. There needs to be active compliance monitoring by the SROs of NI 81-105 and firms should have specific compliance programs to comply with NI 81-105.
50. Are limitations on the use of sales practices more relevant to the distribution of certain types of products, such as pooled investment vehicles, or should they be considered more generally for all types of products?	50. So as to avoid any type of product arbitrage, the limitations on the use of sales practices should be considered more generally for all types of products.
51. Are there other requirements that should be imposed to limit sales practices currently used to incentivize representatives to sell certain products?	51. We believe that if the CSA and the SROs more stringently enforced NI 81-105 and provided additional guidance on all the inappropriate sales practices currently used to incentivize representatives that fall under the ambit of NI 81-105 then many of the conflicts with sales practices would cease to exist. Specifically, there should be no incentives - soft or hard - to sell proprietary products over third party products. A registrant's recommendations to clients should be based on the product that is most likely to meet the investment needs and objectives of the client

	qualified by reasonableness (i.e., the advisor would be required to conduct a reasonable review of the products on their dealer's shelf and choose a product that is most likely to meet the investment needs and objectives of their client by making a reasonable decision. There could be several products that meet the investment needs and objectives of the client and the advisor should only be required to choose the product that is considered "most likely" to meet the investment needs and objectives of the client based on a reasonable decision making process. Assessing whether the advisor discharged their suitability obligation should not be based on whether the product chosen in fact turned out to be the best product, but rather should be based on whether the advisor's decision making process was reasonable.
53. Should further guidance be provided regarding specific sales practices and how they should be evaluated in light of a registrant's general duties to his/her/its clients? If so, please provide detailed examples.	53. Yes. The OSC has provided good guidance over the years concerning the application of NI 81-105 to certain practices. For example, the industry is well informed of what can and cannot be done to support a dealer conference, or the rules that apply to fund company conferences. The rules that apply to the provision of non-monetary benefits and support to dealers and advisors are well understood. However, there has been absolutely no guidance concerning the fundamental conflicts that pertain to the sale of proprietary products vs. third party products on a mixed product shelf. While NI 81-105 is very clear that compensation structures must not favour one over the other, there has been no guidance explicitly from the regulators. The SROs should have compliance programs to audit to NI 81-105. We see very little evidence that IIROC dealers have compliance programs around NI 81-105. We often find that it is the fund companies who educate advisors as to what is permitted or not permitted for the dealers themselves. The perception exists that this rule only applies to fund managers, when clearly, it equally applies to dealers and advisors. Beyond simply looking at compensation grids and giving guidance around those, the regulators should understand and give guidance around other kinds of incentives that may not be obvious but nevertheless pressure or incent the advisor to sell a particular product, which may be inferior to other products on the firm's shelf.
C. KNOW YOUR CLIENT	
CSA Question	**FIC Comments**

4. Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of this information raise any issues or challenges for registrants or clients?	4. First, you may wish to take into account that many clients will not wish to divulge their basic tax position to their advisor. If that is the case, and if you proceed with this requirement, there should be a corresponding requirement that allows dealers and advisors to offer clients a waiver from providing personal and private information. Second, it is hard to argue that registrants do not have the proficiency to understand "basic" tax positions. However, clients do not always have simple or basic tax positions: therefore, it would be unreasonable to expect all registrants to understand all their clients' tax positions.
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?	5. The CSA should not codify the specific form of the document, or new account application form that is used to collect the prescribed KYC content. It would be helpful if the CSA provided guidance on the type of KYC information that might apply to different client-registration relationships; however, not every client will be well served if single or even scaled templates were set in regulations.
6. Should the KYC form also be signed by the representative's supervisor?	6. This is unnecessary and administratively burdensome. A registered representative should be able to execute the KYC form.
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?	54. See comments above for #4. If the product being recommended has tax benefits, then we do agree that the registrant should understand whether or not they are suitable for his or her client. We think that obligation already exists today.
55. To what extent should a representative be allowed to open a new client account or move forward with a securities transaction if he or she is missing some or all of the client's KYC information? Should there be certain minimum elements of the KYC information that must be provided by the client without which a representative cannot open an account or process a securities transaction?	55. What is needed is a regulatory approach that allows scalable services to be provided and that ensures the relevant KYC information is collected for these services. A representative should not be allowed to move forward with a securities transaction if that representative does not have the KYC information requisite to support a suitability determination for that transaction. However, depending on the type of transaction and business model of the registrant, the KYC information that should be required could be very basic in nature. The client-registrant relationship is personal in nature and should be kept fluid enough to allow for individually-tailored services or information collection. The current KYC requirements appear to reflect this reality. The proposed KYC requirements appear to be more appropriate in a client-registrant relationship that requires full financial planning services. Beyond the need to have the information necessary to ensure suitability, there should be circumstances in which a client can waive the obligation to provide

	information. For example, an advisor cannot compel his client to disclose their tax position or their debt levels. The client should have the ability to sign a waiver acknowledging that they have declined to provide the information to their advisor. Where the client has declined to provide such information, the advisor should not be held responsible for not tailoring his or her advice to the client's specific tax or debt circumstances.
56. Should additional guidance be provided in respect of risk profiles?	56. Additional guidance would be useful. Complex risk profiles should not be required or should be reserved for those who provide full financial planning services or discretionary investment management since the process for creating a risk profile proposed by the CSA is onerous and lengthy. It is uncertain what the CSA means by a "thorough exploration of the relevant subjective and objective factors" that must be assessed by the representative to ascertain the client's relationship towards risk. What are these factors? The CSA recommends the use of charts, graphs and examples so the representative can assess these "subjective and objective factors". We would argue that this detailed approach to risk is, in general, not practical for the vast majority of investors. It is important to understand the client's attitude to risk, but detailed questionnaires and psychological assessments of aversion to risk or loss are impractical and unnecessary.
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?	57. As currently contemplated in NI 31-103, the collection of KYC information should be proportionate to the service provided by a representative/firm. The CSA needs to be cognizant of the different business models and consider the practical reality that not all clients are looking for a financial planning service. For example, it would be impractical to require a registrant to collect detailed KYC information from a client where the client has a transactional-type relationship with the registrant and perhaps places a trade once a year. The CSA should consider whether every client will actually want to provide all of this detailed personal information relating to their net worth, income, current investment holdings, liquidity needs and basic tax position. Has the CSA surveyed investors to see how they feel about delivering all of this information? Has the CSA considered the privacy implications of providing all of this information? It may take investors quite a bit of time to collect the vast amount of prescribed information. Will it be so much work that investors will avoid making investments and therefore not have access to advice? We doubt that this is the desired result. We

	recommend that the CSA design a waiver process so that clients can opt out of the requirements to provide this information. We also respectfully submit that it should not be necessary to collect the same level of KYC information for institutional clients. Institutional clients are sophisticated and have their own resources and advisors to help determine their investment needs and objectives. In addition, many of the KYC items outlined in the consultation paper do not apply to institutional clients.
D. KNOW YOUR PRODUCT - REPRESENTATIVE	
CSA Question	**FIC Comments**
7. Is this general approach to regulating how representatives should meet their KYP obligation optimal? If not, what alternative approach would you recommend?	7. The requirement for representatives to understand each product in which their firm trades is impractical. Some firms have extensive product shelves so it would be unreasonable for a representative to know every product in detail but for the product being sold. Representatives should be able to rely on their firm's infrastructure in choosing products and should have proficiency in the product that is sold. Should this requirement be implemented, firms will have to maintain smaller shelves.
E. KNOW YOUR PRODUCT - FIRM	
CSA Question	**FIC Comments**
8. The intended outcome of the requirement for mixed/non-proprietary firms to engage in a market investigation and product comparison is to ensure the range of products offered by firms that present themselves as offering more than proprietary products is representative of a broad range of products suitable for their client base. Do you agree or disagree with this intended outcome? Please provide an explanation.	8. Fidelity strongly believes in choice for investors so we agree in principle with an intended outcome that is meant to offer investors a broad range of products. However, we believe that the way the paper is constructed, that it is much more onerous to offer a shelf that has proprietary and non-proprietary products (Mixed Firms) or fully non-proprietary (Non-Proprietary Firms). We think that the proposals in the consultation paper will drive Mixed Firms to close their shelves and become firms that sell proprietary products only (Proprietary Firms). There is just too much liability and work proposed in the consultation paper for those firms to continue. We think this raises serious public policy issues concerning product choice and availability for Canadians. If Mixed Firms do not revert to a closed architecture structure where proprietary products are offered solely, then we expect to see the narrowing of their product shelf. The result is likely to be that an already struggling

	independent channel will come under even more pressure. We do not think that this is the best outcome and we urge the CSA to consider the health of the independent channel as well as choice for Canadians.
9. Do you think that requiring mixed/non-proprietary firms to select the products they offer in the manner described will contribute to this outcome? If not, why not?	9. While the CSA's motivation behind the consultation paper is to improve the client-registrant relationship, we respectfully submit that it has, perhaps inadvertently, created a strong division throughout the paper between Mixed Firms/Non-Proprietary Firms and Proprietary Firms. Consequently, rather than achieving the CSA's intended outcome of Mixed Firms offering a broad range of products, we believe that it will have the opposite effect and will result in Mixed Firms offering fewer products. This is because the capacity of every adviser to understand every product on a firm's shelf and every product in relation to every other product on a shelf is limited. In order to ensure the requirements are met the shelf will naturally be narrowed.
10. Are there other policy approaches that might better achieve this outcome?	10. We are in favour of a model that requires dealers and advisors to recommend products based solely on their merits and potential to perform for their clients. This standard should apply regardless of whether the product is proprietary or not. Dealers and advisors should be in search of the products that are most likely to meet the investment needs and objectives for their clients based on a reasonable review of the products available and a reasonable decision making process. You cannot expect a dealer to understand the "universe" of products as is currently outlined in the consultation paper. We think dealers should be obligated to consider a reasonable cross section of products and then choose what they reasonably consider to be the products that are most likely to meet the investment needs and objectives of their clients. A "reasonableness" qualification is absolutely necessary. By way of example, if an advisor who works for a bank is looking for a Canadian equity product, he or she should have a range of products on the shelf to choose from which can include proprietary or non-proprietary products. However, the dealer should really only put the products most likely to meet the investment needs and objectives of its clients on its shelf after doing a reasonable review of the products available in the industry. A dealer's recommended products should be determined without regard to the profitability of the product to the dealer firm – a conflict of interest that is inherent in the decision made by the dealer firm.

11. Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges.	11. Yes, this requirement would create challenges for Mixed/Non-Proprietary Firms. The way the targeted reforms are written currently, there will be much more work for a firm that tries to be open architecture along with its own proprietary products. We urge the CSA not to drive Mixed Firms to become closed architecture or drive Mixed/Non-Proprietary Firms to consider narrowing their shelves. The CSA must consider the public policy issues surrounding these outcomes.
12. Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products?	12. The practical consequence of these reforms will be for registrants to narrow their product shelf significantly or will create incentives for firms to stop offering non-proprietary products so that they can fit within the definition of a "proprietary firm". These changes will be at the expense of Canadians since there will be a limited choice of security products available to investors. Canadians should have the ability to choose where and how their assets should be invested. A move towards proprietary business models will result in demonstrably less choice for Canadians. A reduced shelf will have many unintended consequences: - First, it will result in less choice for the investor. - Second, smaller independent dealer firms and fund managers may not survive this reduction. We are already seeing significant consolidation in our industry. - Third, firms that offer proprietary products may end up putting investors into their own products exclusively which will not result in as positive outcomes as if they were able to choose the best funds in an unbiased way. We have seen evidence of this in the EU and the U.S. where large banks have directed their clients towards poorly performing in-house asset management products as opposed to offering their clients better performing funds offered by an independent third-party.[14] - Lastly, a smaller shelf may limit an advisor's ability to service a client's

[14] Banks told to stop pushing own funds, Madison Marriage, Financial Times, May 2, 2016 and Banks' self-serving fund sales must be stopped, Madison Marriage, Financial Times, May 1, 2016. For example, as early as last year, JP Morgan Bank was ordered to pay a $307 million dollar penalty for failing to disclose to its clients that it was funneling them into their own investment products rather than those investment products offered by third-parties.

	evolving needs or a new client's investment objectives. Some regulators have argued that Canadians with fewer assets can always invest through the bank branches. This is true. However, this does not take into account the importance of a healthy independent and unconflicted advice channel. Not surprisingly, Canadians who go to their bank branches are offered only that bank's funds. They are not offered a range of investment options, nor is it explained to them that there may be better investment options elsewhere.
13. Could these requirements create incentives for firms to stop offering non-proprietary products so that they can fit the definition of proprietary firm?	13. Yes. The more burdensome requirements that apply to Non-Proprietary Firms or Mixed Firms will create an incentive for Mixed Firms (like the big banks) to revert to a proprietary product list. We have heard that at least two banks are considering this option in light of this consultation paper. See # 12 above.
14. Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products?	14. To avoid the unintended consequences mentioned above, Proprietary Firms should also be required to engage in a market investigation and product comparison process if that is the requirement that is ultimately imposed by the CSA. If the firm is unable to meet the investment needs and objectives of its clients based on the products available on its shelf, then the firm should be required to refer the client elsewhere. However, in fairness, we think the standard should not be that Proprietary Firms need to consider every last product in the marketplace. We think the standard should be one of "reasonableness".
15. Do you think that categorizing product lists as either proprietary and mixed/non- proprietary is an optimal distinction amongst firm types? Should there be other characteristics that differentiate firms that should be identified or taken into account in the requirements relating to product list development?	15. We believe that investors should be made aware if a product list or product is proprietary. However, we see lots of examples where disclosure does not solve potential conflicts. Investors already have trouble understanding that a proprietary fund may not perform as well as a non-proprietary fund and that they may not be getting advice that gives them the choice of the better performing fund. We think that Proprietary Firms should be required to offer third party funds as well and they should be required to consider a "reasonable" set of third party alternatives when determining what their shelf should look like. The determination of what products to offer should be based on whether the product is the most likely to meet the investment needs and objectives of the client (qualified by reasonableness). The obligation to offer better performing products should of course be part of the requirement so that they understand the inherent conflict that exists when an advisor recommends/sells such a product.

58. Should we explicitly allow firms that do not have a product list to create a product review procedure instead of a shelf or would it be preferable to require such firms to create a product list?	58. We would be in favour of both structures as long as the firm is required to review a reasonable set of competing products and choose the products that are most likely to meet the investment needs and objectives of its clients, regardless of whether they are proprietary or not.
59. Would additional guidance with respect to conducting a "fair and unbiased market investigation" be helpful or appreciated? If so, please provide any substantive suggestions you have in this regard.	59. We are in agreement with the "fair and unbiased market investigation" as long as the requirement to review products is reasonable. Also, guidance would be helpful. We believe the guidance should focus on how to find the product that is most likely to meet the investment needs and objectives of the client (acting reasonably) in an unbiased way - i.e., without regard to the profitability of the product to the firm, compensation or other potential conflicts of interest.
60. Would labels other than "proprietary product list" and "mixed/non-proprietary product list" be more effective? If so, please provide suggestions.	60. The average investor is unlikely to understand these labels. Perhaps "Recommended List of Products" might be better as long as the rules require the firm to search for the products most likely to meet the investment needs and objectives of clients using a reasonable process to find them and without regard to profitability or other conflicts. There should be absolutely no way for a firm to offer proprietary products over third party products if there are better third party products available. Of course, the determination of what is better will always be subjective, but the onus should be on the firm to prove that their deliberations were reasonable and that the choice was reasonable and aligned with the search for the products most likely to meet the investment needs and objectives of their clients.
61. Is the expectation that firms complete a market investigation, product comparison or product list optimization in a manner that is "most likely to meet the investment needs and objectives of its clients based on its client profiles" reasonable? If not, please explain your concern.	61. Please see #59 and 60 above. Also, the expectation that firms complete a market investigation, product comparison or product list optimization in a manner that is "most likely to meet the investment needs and objectives of its clients based on its client profiles".is unreasonable. How does a registrant document that it picked the best choice? A client can always challenge this after the fact and, with the benefit of hindsight, it may not look like the advisor or firm recommended the option that is "most likely to achieve" the client's needs. This creates immediate litigation exposure. The targeted reforms also place a difficult burden on advisors because of their deeply prescriptive nature and the long list of items that must be considered and satisfied with each reform. This will also increase litigation risk for advisors as it will be almost impossible to prove that they covered every single item outlined in the reforms and met their obligations.

F. SUITABILITY	
CSA Question	**FIC Comments**
16. Do you agree with the requirement to consider other basic financial strategies?	16. The proposed suitability requirements, including the requirement to consider the client's basic financial strategies makes more sense in a full financial planning-type relationship. The proposed requirements seem excessive in the circumstance of a small client that doesn't require sophisticated advice or financial planning services. Transactional-only type relationships could be exempted from this requirement as well as the corresponding KYC requirement to collect information on the amount and nature of all assets and debts.
17. Will there be challenges in complying with the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives?	17. Requiring the advisor or the firm to determine the option that is "most likely to achieve" or "most likely to meet" the client's investment needs and objectives is concerning. This is too high a standard and focuses on outcomes which are always uncertain. We think this standard should be qualified by reasonableness and "most likely" should not be understood to mean that there is only one product in every circumstance that is appropriate. Focusing on predicting the outcome will likely lead to false expectations by the client, potential misunderstandings and eventual challenges after the fact. With the benefit of hindsight, it may not look like the advisor or firm recommended the option that is "most likely to achieve" the client's needs. This creates immediate litigation exposure and many complaints for regulators and OBSI. The targeted reforms also place a difficult burden on advisors because of their deeply prescriptive nature and the long list of items that must be considered and satisfied with each reform. Overall, it will likely be much more costly for registrants to provide advice to retail clients if all of these suitability requirements are implemented. That may well adversely affect the ability of investors to obtain advice on a cost effective basis. This will also increase litigation risk for advisors as it will be almost impossible to prove that they covered every single item outlined in the reforms and met their obligations.

18. Should there be more specific requirements around what makes an investment "suitable"?	18. Yes. Suitable should include a reasonable search for the product that is most likely to meet the investment needs and objectives of clients taking into account performance and other factors. It should specifically not allow a consideration of factors like additional compensation or incentives. And to be clear, this should go beyond mutual funds. When an advisor can choose an SMA over a mutual fund, it should be because it is the better product, not because the dealer charges more or the advisor is paid more or the product is more profitable to the firm.
19. Will the requirement to perform a suitability assessment when accepting an instruction to hold a security raise any challenges for registrants?	19. Of course it will. It will create a host of unnecessary work for advisors. In practice, advisors have regular discussions with clients, but where a holding is doing its job, the advisor should not be required to have a discussion about that holding or a client should not be required to re-instruct the advisor regularly for a holding that is performing well and as expected.
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?	20. This requirement would raise the time commitment that a financial advisor spends on suitability. This has the potential to limit the number of clients that a financial advisor is able to accept, which could lead to clients with less money not having access to advice since the advisor will need higher net worth clients to survive financially. It is not reasonable to require a yearly suitability analysis for clients that have a transactional relationship with a firm. These clients can provide updated KYC information before the transaction is effected to support the registrant's suitability analysis, which is currently contemplated in NI 31-103. A requirement to update the KYC each year may be unnecessary for clients with modest balances and where no changes have occurred in client circumstances.
21. Should clients receive a copy of the representative's analysis regarding the client's target rate of return and his or her investment needs and objectives?	21. We are, in principle, opposed to the requirement to give clients a target rate of return. We think that this is a recipe for misunderstanding and disappointment. We think the focus should be on the client's target rate for savings and finding suitable products for the client. Of course, a sound plan includes an understanding of what a client needs at retirement and there should be projections around how to get there based on various market assumptions. A target is likely to lead to increased litigation risk for advisors and misunderstanding by clients of how the markets will impact this "target". A target rate of return simply ignores the realities of the markets over time and is misleading.

62. What, if any, unintended consequences could result from setting an expectation in the context of the suitability obligation that registrants must identify products both that are suitable and that are the most likely to achieve the investment needs and objectives of the client? If unintended consequences exist, do the benefits of this proposal outweigh such consequences?	62. We think the focus should be on suitability plus the obligation to offer the product that is most likely to meet the investment needs and objectives of clients after a reasonable process is followed to identify that product. Products that are "most likely to meet the investment needs and objectives of clients" should not mean lowest price but should take into account all factors, particularly performance of the product over shorter and longer term periods as well as other factors relevant to the determination like risk ratings.
63. Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?	63. Suitability obligations for "holds" should not be ongoing. If required, they should only apply upon client direction or initiative. If the proposed reforms are to be implemented thereby requiring a suitability analysis with ongoing decisions to hold a position, then further guidance should be provided. Would this require the representative to conduct a daily/weekly suitability analysis on the security that is being held?
64. Should we provide further guidance on the frequency of the suitability analysis in connection with those registrant business models that may be based on one-time transactions? For example, when should a person or entity in such a relationship no longer be a client of the registrant for purposes of this ongoing obligation to conduct suitability reviews of the client's account?	64. Further guidance should be provided on the frequency of the suitability analysis, especially for those registrant business models that may be based on one-time transactions. The frequency of the suitability analysis should correspond to the services provided by the registrant.
G Relationship Disclosure	
CSA Question	**FIC Comments**
23. Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not?	23. We agree with the proposed disclosure required for firms registered in restricted categories of registration. Clients should be informed about the services that the firm is registered to provide and that the suitability analysis conducted is limited in the case of a firm in a restricted category of registration.
24. Do you agree with the proposed disclosure required for firms that offer only proprietary products? Why or why not?	24. We agree that firms should disclose whether they offer proprietary products or a mix of proprietary and non-proprietary products. However, it would be extremely helpful for Mixed Firms to also disclose the proportion of proprietary products that they have sold, and not just the proportion that they have offered. We find it curious that Proprietary Firms merely have to state in their relationship disclosure document that they do not have to consider whether non-proprietary

	products would be better, worse or equal in meeting the client's investment needs and objectives. If the CSA is truly concerned about investor protection, it should be making sure that all firms look to a broad range of well performing products to meet client needs. In addition, a plain language definition of "proprietary" should be provided to assist clients in understanding the meaning of this term. If a proprietary product is offered, the client should understand that there were other choices. The proprietary offering should be accompanied by a statement that the product was, in the opinion of the dealer, the product most likely to meet the investment needs and objectives of clients after performing a reasonable search of a reasonable number of competing third party products.
25. Is the proposed disclosure for restricted registration categories workable for all categories identified?	25. Yes. Mutual fund dealers, exempt market dealers and scholarship plan dealers as well as their representatives are restricted in the products and services they can offer to clients. Disclosing this to clients at the time of account opening should not pose any problems.
26. Should there be similar disclosure for investment dealers or portfolio managers?	26. Sure. Clients should be made aware of the nature of the client-registrant relationship, which includes the types of products and services that a registrant can provide to that client.
27. Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful?	27. Yes. We are supportive of requirements to make disclosure more meaningful to clients. However, we find the disclosure requirements outlined in the consultation paper too prescriptive and lengthy. We recommend that the CSA consider creating a summary disclosure document, similar to a fund facts document, that will outline the key disclosure items that clients should consider prior to making an investment decision. In the alternative, additional guidance should be provided on how to provide this disclosure in simple terms.
H. Proficiency	
CSA Question	**FIC's Responses**
28. To what extent should the CSA explicitly heighten the proficiency requirements set out under Canadian securities legislation?	28. We agree with the new proficiency requirements that require representatives to understand product costs and investment strategies and how they impact investment outcomes for clients. Registrants should have the appropriate education, experience and training to deal with clients.

29. Should any heightening of the proficiency requirements for representatives be accompanied by a heightening of the proficiency requirements for CCOs and UDPs?	29. We would not be opposed to heightening the proficiency requirements for UDPs and CCOs. In particular, experience should be an explicit component of the proficiency requirements for UDPs. However, we find the wording of the obligations for UDPs rather strong. We don't think UDPs should be required to "ensure" outcomes. Please see #34 below.
I. Titles and Designations	
CSA Question	**FIC Comment**
30. Will more strictly regulating titles raise any issues or challenges for registrants or clients?	30. We appreciate the concern prompting the recommendation for standardized titles in the industry. There should be a limited number of client-facing titles used that are clear and not confusing. We recommend that the CSA be cautious with how it assigns titles and should ensure that the titles accurately reflect the work that the registrant is authorized and proficient to perform. We suggest that the CSA tests the titles to determine if investors can and will understand the differences in the titles. We note with interest, that New Zealand recently moved away from titles similar to what is being proposed. They found that investors did not understand them and have reverted to "financial advisor" and "agent" as easier concepts for their investing public to understand. We think the goal should be standardization, simplicity and be easy for investors to understand. We don't really think that the titles offered will accomplish that goal.
31. Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around representatives' roles and responsibilities?	31. We believe that any proposed titles should be tested with investors to determine if the average investor will understand them. We believe in simplicity and standardization. We don't think the proposed titles quite met those standards. However, we acknowledge that choosing the correct titles is a challenge. We do agree that IIROC discretionary advisors should have a title that is different from a securities salesperson. However, we have noticed a trend for these advisors to call themselves portfolio managers. We think that a portfolio manager with a CFA and managing pooled assets should be differentiated from discretionary financial advisors.

32. Should there be additional guidance regarding the use of titles by representatives who are "dually licensed" (or equivalent)?	32. Yes. Clients should be made aware of the dual license of their representative. It would, of course, be helpful if advisors selling competing products like insurance segregated funds also had the same titles and they were standardized across both industries. We urge the CSA to speak to insurance regulators about standardization of titles across all investment products.
33. Should we regulate the use of specific designations or create a requirement for firms to review and validate the designations used by their representatives?	33. We are not sure that you, as securities regulators, are able to regulate the use of specific designations that are outside of your purview. However, adopting a standard that designations must be accurate and not misleading would be helpful.
I. ROLE OF THE UDP AND CCO	
CSA Question	**FIC Comment**
34. Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, why not.	34. The proposed clarifying reforms are consistent with typical UDP and CCO practices, except for the expansion of the UDP role to "ensure" that material conflicts are avoided, etc. This is an extremely high standard and may unfairly increase litigation risk for the UDP which is unnecessary. In addition, the clarifying reforms are not necessary since NI 31-103 already has broad requirements for the: (1) UDP to supervise the activities of the firm that are directed towards ensuring compliance, and promote compliance, with securities legislation; and (2) CCO to establish and maintain policies and procedures for assessing compliance with, and to monitor and asses compliance with, securities legislation. Consequently, the obligation should be to ensure that the firms have reasonable policies and procedures and to design appropriate compliance programs to address compliance and conflicts of interest. The current requirements would bring under the ambit of UDP and CCO practices, any changes that resulted from the targeted reforms.

K. STATUTORY FIDUCIARY DUTY WHEN CLIENT GRANTS DISCRETIONARY AUTHORITY	
CSA Question	**FIC Comment**
35. Is there any reason not to introduce a statutory fiduciary duty on these terms?	35. We agree that a statutory fiduciary duty for registrants with discretionary authority is appropriate. Discretionary authority introduces a greater level of responsibility and trust which is appropriate to attract a fiduciary duty.
L. IMPACT ON INVESTORS, REGISTRANTS AND CAPITAL MARKETS	
39. What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on compliance costs for registrants?	39. We are concerned that the cost and amount of work required to implement and operationalize the targeted reform requirements will be considerable. It will require, at minimum, a technology build, training programs, testing and an enhanced compliance regime. Before the proposed targeted reforms and/or a regulatory best interest standard is implemented, we think the regulators should adopt the goal of looking across all of the requirements that apply to registrants in their dealings with clients and consider rationalizing the requirements so that they are effective but also reasonable. IFIC has done a good job of quantifying all of the requirements, which could serve as a starting point for this work. The current requirements should be looked at in conjunction with the proposed targeted reforms and an analysis should be done to determine what can be brought together, eliminated or rationalized. This could result in a far better outcome for the industry and allow advisors to continue to service average Canadian investors.
40. What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on outcomes for investors?	40. We believe that the cumulative effect of the proposed best interest standard and the targeted reforms will be to significantly curtail access to financial advice, particularly for the average Canadian or small investor. The concerns of the industry have been heard loud and long - we worry about consolidation, the demise of independent fund managers and dealers, the reduction in choice of products and distribution channels, the cost of advice for the average Canadian or small investor and whether they will continue to have access to advice, the cost of implementing additional requirements (instead of streamlining and rationalizing standards that achieve the regulatory goals).

	We believe that the research conducted by IFIC on the value of advice and the impact of advice on savings rates is irrefutable. Investors with advisors have better longer term outcomes and rates of saving for retirement. We urge the CSA to be very cautious when designing these regulatory reforms. Whatever consequences there are should not lead to a detrimental impact on the potential for investors to get advice or detrimentally impact the savings rates of Canadian investors.
41. What challenges and opportunities could registrants face in operationalizing: (i) proposed targeted reforms? (ii) a regulatory best interest standard?	41. Please see #39 above.
42. How might the proposals impact existing business models? If significant impact is predicted, will other (new or pre-existing) business models gain more prominence?	42. On their own, the targeted reforms simply raise the workload for advisers and dealers and therefore increase the likelihood that the average Canadian and smaller investors will get less advice. They also introduce additional liability - for example, the targeted rate of return, the depth of understanding of risk, the need to offer alternatives like paying down debt rather than saving for retirement or buying securities. Certainly, without rationalizing other existing requirements, the targeted reforms will increase costs and the time to service clients. Those that can afford the time will survive. In other words, smaller dealers may struggle to meet the workloads and the standards. As mentioned above, the targeted reforms make it more difficult to offer a product shelf that is mixed/non-proprietary rather than solely proprietary. We believe that this will drive dealers to closed architecture models. In other words, a bank will only offer bank funds. The liability associated with trying to review the universe of products to find the products that are “most likely” to meet the investment needs and objectives of clients (without a reasonability qualification) is simply fraught with risk and liability and banks certainly will be reticent to take on additional risk or liability. Introducing a best interest standard in addition to the targeted reforms will absolutely increase litigation and complaints. Is this what the regulators are trying to achieve? If a best interest standard is introduced it must be carefully constructed

	and reasonably defined with explicit guidance for interpretation or there is the potential for courts to interpret the standard akin to a fiduciary duty or according to pre-existing case law that defines a standard that is inappropriate for application to the client-registrant relationship. We believe that the best interest standard will drive dealers and advisors to competing and less regulated products. We continue to see a general decline in the sales of mutual funds, particularly those of independent fund managers. We believe this is largely driven by the impact of regulatory reforms to date and the threat of significant regulatory reforms in the future.
43. Do the proposals go far enough in enhancing the obligations of dealers, advisers and their representatives toward their clients?	43. We do not think you can look at these proposals in isolation. The totality of regulatory reform over the past 10 years has been considerable. We are at the crescendo now with the implementation of POS 3 and CRM 2. Add to this the increase in SRO regulation, the current consultation on best interest/targeted reforms and the looming consultation on embedded commissions. In total, the regulators' proposals are excessive and incommensurate with what would be needed to better align the interests of registrants and their clients. So, our answer would be yes. There's not much more that could be done to enhance the obligations after an examination of the totality of what has been done and is being proposed. We think the regulators should keep in mind the wonderful work that the vast majority of advisors and dealers do every single day for clients. They give them financial advice, but more importantly, they hold their hands through life events and care about clients. All of that seems lost in these regulatory reforms. The implication is always that the industry has not done a good job for clients, which is simply not true. Regulating higher standards makes a lot of sense. Training makes a lot of sense. Ensuring better outcomes for clients makes a lot of sense. However, driving investors away from advice and reducing choice and independence are not sound regulatory outcomes.