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**VIA EMAIL**

September 30, 2016

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

**Attention:** Josée Turcotte, Secretary  
Ontario Securities Commission  
20 Queen Street West  
Suite 1900, Box 55  
Toronto, ON  
M5H 3S8

Me Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, rue du Square- Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal, Québec  
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Dear Sir/Madame:

**Re: Canadian Securities Administrators Consultation Paper 33-404 - *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward their Clients***

Franklin Templeton Investments Corp. (“FTI”) welcomes the opportunity to make a submission with respect to the Canadian Securities Administrators (“CSA”) Consultation Paper 33-404 - *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward their Clients* (the “Consultation Paper”).

FTI is registered in most provinces and territories in Canada as an adviser, investment fund manager, mutual fund dealer and exempt market dealer. FTI is a wholly owned subsidiary of Franklin Resources, Inc., a global investment organization operating as

Franklin Templeton Investments. Through its subsidiaries, Franklin Templeton Investments provides global and domestic investment advisory services to the Franklin, Templeton, Franklin Bissett, Franklin Mutual Series, and Franklin Quotential funds and institutional accounts. In Canada, FTI has more than 500 employees providing services to nearly 500,000 unitholder accounts and over 100 pension funds, foundations and other institutional investors.

FTI believes in placing the interests of investors ahead of the interests of registrants and we support regulatory initiatives that achieve this objective. We believe in the value of financial advice and that such advice should play a critical role in investors' investment decision making - investors who have access to financial advice have better financial outcomes. The best way for investors to achieve their financial objectives is to have access to a wide variety of investment products coupled with access to professional financial advice in areas such as investments, tax and estate planning.

FTI is a member of the Investment Funds Institute of Canada ("IFIC"). We have reviewed and generally support in principle the comments made by IFIC (although not necessarily each of its specific comments) in its letter dated September 20, 2016. In addition, FTI wishes to provide its own comments on the proposed targeted reforms outlined in the Consultation Paper (the "Targeted Reforms") and the introduction of a regulatory best interest standard (the "Best Interest Standard").

### **General Comments**

There are some good ideas in the Consultation Paper. For example, FTI supports the Targeted Reforms that increase proficiency requirements for registrant representatives and clarify the roles of the Ultimate Designated Person and Chief Compliance Officer. However, we do have some concerns with certain of the proposed Targeted Reforms and the Best Interest Standard.

We are concerned that some of the Targeted Reforms outlined in the Consultation Paper offer a "one-size fits all" solution for enhancements to the Canadian regulatory framework. Advisers and dealers have many different business models. While the Targeted Reforms may be appropriate for some, they should not apply equally to all; instead, they must be tailored to the different business models that exist in our industry. For example, the Targeted Reform addressing suitability seems to require registrants to complete a full financial plan for their clients irrespective of the clients' needs or desired level of service. Any enhancements resulting from the Targeted Reforms should give firms the flexibility to develop solutions that are appropriate for their business model and meet the needs of their clients.

Our specific comments with respect to certain Targeted Reforms and the Best Interest Standard are as follows:

## **Targeted Reforms**

### ***Know Your Product - Representative***

It is unrealistic for dealer representatives to understand the features of every product on their firm's product list. Under current rules of self-regulatory organizations, dealers are required to be the gatekeeper for products offered for sale by their representatives. Dealers typically have a product review process to satisfy this requirement. Making representatives responsible for understanding the features of every security on their firm's product list would impose an enormous burden on those representatives and ignores the role that dealers play in the product review process. This impractical reform may lead many firms to a proprietary model or reduce their product shelves. Either option would be detrimental for investors since it would reduce their access to investment products and limit their choices.

### ***Know Your Product – Firm***

The CSA's intended outcome is to ensure firms present a broad range of products suitable for their client base. We are concerned that this Targeted Reform could, in fact, have unintended consequences counter to the CSA's intended outcome. The imposition of these new requirements on registrants will make the approval process for new products more onerous and costly for registrants and will likely cause registrants to reduce their product shelves. This would have the effect of limiting investment choice for investors.

Since there are differing requirements which depend on whether registrants have a proprietary product list or a mixed/non-proprietary product list, this Targeted Reform may also influence the type of business model that registrants choose. A more onerous and costly approval process may result in registrants moving to a proprietary model, which would have the effect of reducing access to investment products and further limiting investor choice. FTI believes the product approval process for both proprietary and non-proprietary products should be the same.

Whether product shelves are narrowed or registrants move to a proprietary model, investor choice and access to third party products will be reduced. The Consultation Paper states that the Canadian registrant regulatory framework requires enhancements to improve outcomes for clients but we do not see how reduced product shelves and/or access to products will improve outcomes for investors.

In addition, we believe that the requirement for firms to determine products that are "most likely" to meet the investment needs and objectives of clients is an attempt to regulate investment outcomes and will lead to unrealistic expectations from clients. How will this be regulated or enforced? Will firms be questioned about their choice of products by regulators and/or clients with the benefit of 20/20 hindsight? The phrase "most likely" should not be part of the rule.

### **Best Interest Standard**

We share the concerns expressed by the British Columbia Securities Commission ("BCSC") regarding the Best Interest Standard in the Consultation Paper, including that:

- Registrants have made significant effort and investment to implement the CSA’s Client Relationship Model (“CRM2”) and point of sale (“POS”) reforms. In the Consultation Paper, the CSA indicated its commitment to measuring the impact of these initiatives to determine their effectiveness in achieving greater investor understanding of mutual fund fees, registrants’ compensation and individual investment performance. Recently, the CSA announced a multi-year research project to measure the impact of phase 2 of CRM2 and POS initiatives. We believe it is important to see what the outcome of this research is and whether these regulatory initiatives are effective before proceeding with significant new reforms such as the Best Interest Standard. The basis for securities regulation has always been full disclosure and transparency for investors. CRM2 and POS initiatives seek to enhance the disclosure and transparency investors receive – moving ahead with the Best Interest Standard without determining the effectiveness of these reforms seems to be contrary to that view; and
- It is unclear from the Consultation Paper how the Best Interest Standard will work in practice and we believe this will create legal uncertainty. We are concerned that the introduction of the Best Interest Standard could establish a fiduciary duty, which is not appropriate in all registrant-client relationships. Despite comments made by the CSA in the Consultation Paper, we question whether regulators or courts will interpret the Best Interest Standard in a way that imposes a fiduciary duty on registrants.

Furthermore, given the extensive changes proposed through the Targeted Reforms and the prescriptiveness of such changes, it is unclear to us what additional benefit the Best Interest Standard would provide. By acting as a governing principle, would registrants who comply with the Targeted Reforms still have to be concerned that they are not meeting the Best Interest Standard?

We also believe the imposition of a Best Interest Standard could have unintended consequences. Similar to the comments we provided above about the *Know Your Product – Firm* Targeted Reform, we are concerned that a Best Interest Standard could cause registrants to move to a proprietary business model (which is expressly permitted under the Targeted Reforms) to mitigate or eliminate the conflict that exists in having a mixed/non-proprietary product list. It could also restrict investor access to individual financial advice.

Finally, it is clear from the Consultation Paper that CSA jurisdictions have differing views on the introduction of the Best Interest Standard. The CSA has a stated objective of improving, coordinating, harmonizing regulation and achieving consensus on policy decisions affecting Canada’s capital markets. We urge securities regulators to adopt consistent rules across all jurisdictions. For investors, it will be very confusing if jurisdictions do not have a consistent position. And for registrants, it will be more difficult to deal with their clients if they are subject to different standards across jurisdictions. If the Best Interest Standard is not going to be adopted in all jurisdictions, we believe it should not be adopted in any jurisdiction.

If the CSA does proceed with the Best Interest Standard, we encourage it to provide clear guidance in the rule or its companion policy about what it is intended to be. Specifically, we think that the factors and practices set out in Part 8 of the Consultation Paper should be codified as should the CSA's view that such standard does not establish a fiduciary duty.

### **Conclusion**

As noted above, we are concerned that certain of the Targeted Reforms (i.e., *Know Your Product – Representative* and *Know Your Product – Firm*) and the Best Interest Standard could have unintended consequences. Whether product shelves are narrowed or dealers move to a proprietary model, investors' access to investment products would be reduced. This cannot improve outcomes for investors. Either development would have a negative impact on independent fund managers like FTI who compete for shelf space on dealers' product shelves and have already seen their market share reduced as a result of the trend toward the sale of more proprietary products.

We are also concerned about the "one-size fits all" approach which is inherent in many of the Targeted Reforms.

As a global investment organization with business operations in 36 countries and mutual fund distribution in over 150 countries, FTI has seen first-hand how other reforms have led to unintended consequences in other markets such as the United Kingdom. We, therefore, urge the CSA to take the time needed to evaluate the experience in other jurisdictions before embarking on additional changes.

Thank you for your consideration of this submission. We look forward to participating in further consultations on this very important topic. Please feel free to contact me at 416.957.6010 should you have any questions or wish to discuss our submission.

Yours truly,

**FRANKLIN TEMPLETON INVESTMENTS CORP.**



Brad Beuttenmiller  
Senior Associate General Counsel