National Bank of Canada Wealth Management's Position Statement on the CSA's Consultation Paper 33-404 entitled *Proposals to Enhance the Obligations of Advisers, Dealers and Representatives Toward Their Clients*

September 30, 2016

1. Summary

This document presents National Bank of Canada Wealth Management's (NBCWM) responses to the questions included in the Canadian Securities Administrators' (CSA) *Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients* (the "Proposals" hereafter), published on April 28, 2016. Our answers merge the points of view of National Bank Investments (NBI), National Bank Discount Brokerage (NBDB), and National Bank Financial - Wealth Management (NBFWM). Given its unique positioning within the industry, National Bank Correspondent Network (NBCN) will issue a separate document focusing on its perspective.

We have always been supportive of the principle of placing the best interests of the client ahead of the interests of the registrant. To that end, for instance, NBI has 100% of its assets managed by third-party managers. We are in favour of improving the investment process and the related client/registrant relationship, but we consider the current regulatory and self-regulatory environments with which we already comply are largely sufficient to address most of the issues raised by the Proposals.

Our opinion on the Proposals can be summarized as follows:

1. We strongly support the general objectives of the Proposals to the extent that, in many aspects, they aim to level the playing field among registrants. However, some of the Proposals have a very different impact on different business models, including our different business lines. In other words, the Proposals seem to create a "one size fits all" standard which will make it difficult to accommodate different business models and services to meet client needs. Not all clients have the same needs, and the industry has evolved to meet those differing needs. We are very concerned by the fact that these Proposals would make it more difficult to meet specific client needs, as it is impossible for any one entity to be "all things to all people."

2. We consider that many issues raised in the Proposals are addressed by the current regulatory and self-regulatory environments with which our different entities already comply. We think it should be possible to reach many of the CSA's goals by adjusting current regulation.

3. We consider that some elements of the Proposals need clarification.

4. Although we already implement processes and controls that meet most of the proposed standards, the cost of eventually implementing some of the proposed requirements is of great concern, especially in light of the limited benefits anticipated.

5. We have significant apprehension that the full implementation of the Proposals (especially sections about KYP) could lead to considerable rationalization of the industry, either with fewer firms remaining in the market, the remaining firms offering a narrower range of product, or a combination of both. We think this would not be in line with the CSA's objective of fostering fair and efficient capital markets.

6. The Proposals come at a moment when the securities industry is just about to implement measures resulting from a number of new regulations (CRM2, for example), and we think the CSA should wait to see how things evolve before going ahead with the Proposals.

Section 2 below presents our responses to most of the questions appearing in the Proposals.

Best regards.

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2. Answers to Questions

2.1 Topic: Conflicts of Interest – General Obligation

Q1: Is this general approach to regulating how registrants should respond to conflicts optimal? If not, what alternative approach would you recommend?

NBCWM Answer to Q1: If the CSA defines "optimal" as "adding the most value at a minimum cost" we cannot agree that this general approach is optimal, as it adds to an already-existing body of rules which properly covers most issues addressed in the Proposals. If there is a strong consensus on improving some aspects of the registrant-investor relationship, we recommend amending the current rules, particularly those of IIROC Rule 42, MFDA Rule 2.1.4, and/or National Instrument 31-103.

Q2: 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?

NBCWM Answer to Q2: We agree with its principle, but this proposition is redundant with the dispositions of the Civil Code of the Province of Quebec which explicitly state that representatives and their firms (if registered in Quebec) must prioritize the clients' best interests. Most firms not registered in Quebec must comply with either IIROC standards (see IIROC Rule 42) or MFDA standards (see MFDA Rule 2.1.4) which are largely compatible with the guiding principles presented in Appendix A of the Proposals.

Q3: Will this requirement present any particular challenges for specific registration categories or business models?

NBCWM Answer to Q3: We do not think this requirement presents particular challenges for specific registration categories or business models, as IIROC and MFDA Dealer Members already commit to prioritize the interests of the client ahead of their own. The only challenge we recognize is that of enabling representatives to conclude that a client "fully" understands the implications and consequences of disclosed conflicts – this may be a very difficult standard to achieve in practice.

2.2 Topic: Know Your Client

Q4: 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?

NBCWM Answer to Q4: This proposition assumes that clients will be (1) sufficiently well informed about their own tax position and (2) willing to share that information with their representative, two conditions that seem far from obvious to us. Tax planning is provided at a significant cost, and may not add value to the great majority of investors who require basic service offerings. In addition, many representatives do not have sufficient knowledge to deliver suitable tax planning advice (which is mostly given by financial planners for investors who need it). Lastly, not all clients need or want the same type of service. Many sophisticated clients (certainly, many high-net-worth clients with dealer representatives) already have their own tax advisors and already have set out a financial plan. Such clients neither want nor need this kind of advice. Requiring all registrants to have that kind of expertise and to provide that service would significantly increase the costs of delivering any part of an investment solution to all investors.

Q5: 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?

NBCWM Answer to Q5: A mandated new account application form (NAAF) with prescribed KYC content should be avoided. For example, we are hesitant that the CSA's KYC specifications may not be fully aligned with the New Client Application Form IIROC is working on. Eventual incompatibilities could be eliminated, but at additional costs. So, we therefore question the added-value of additional CSA KYC requirements to the client of an IIROC Dealer Member. The SROs can monitor this activity and provide further guidance as needed. At a more general level, we consider that different types of registrants should have different information gathering requirements, unless required to obtain the same detailed level of documentation. We do not think "one size fits all."

Q6: Should the KYC form also be signed by the representative's supervisor?

NBCWM Answer to Q6: We believe this specific requirement should be left to the SROs to determine, and would support the CSA setting this out in its guidance as an example of controls that can be used by firms to address perceived KYC issues within a firm. For instance, in a complex dealer environment, the IIROC Dealer Members' New Client Application Form already requires the representative supervisor's signature.

2.3 Topic: Know Your Product - Representative

Q7: Is this general approach to regulating how representatives should meet their KYP obligation optimal? If not, what alternative approach would you recommend?

NBCWM Answer to Q7: Again, our position depends on what the CSA means by "optimal." It appears to us that the general approach outlined in the Proposals will very likely increase most firms' and representatives' costs of doing business, which may be detrimental to investors, as some of these costs will be charged back to investors and/or some investment products may no longer be offered (or may become less accessible), and hence limit their investment universe. In our opinion, this latter possible consequence is a major one. We therefore question the value added by this proposal, especially given that IIROC and the MFDA each have rules and/or notices which are already based on the 'firm as gatekeeper' of products offered by their representatives. Also, many representatives in the industry, regardless of registration category, specialize in certain segments of the market and, as specialists, are extremely knowledgeable in those sectors. Clients will seek out those Advisors to provide advice in these areas (e.g. using a portfolio manager with a reputation and track record for North American value stocks).

Requiring these registrants to broaden the scope of their knowledge will result in a dilution of their expertise of what differentiates them in the marketplace today. We cannot see how that will benefit the end-client of the registrant. Meeting this requirement may also prove problematic for representatives working in bank branches, for example, where the level of client sophistication varies tremendously, and products offered by representatives differ accordingly. It is a registrant firm's responsibility to ensure their processes result in clients meeting with representatives who know the products that are suitable for any given client. We agree that representatives must know the products they offer, but we believe the standard should not be that each representative is fully knowledgeable about every product on its firm's shelf, as many different products are likely to meet the investment needs and objectives of clients.

2.4 Topic: Know Your Product – Firm

Q8: 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.

NBCWM Answer to Q8: We strongly agree with this intended outcome, because we consider that a firm better serves its clients by not forcing its representatives to offer them only proprietary investment products. For instance, as mentioned, the proprietary products offered by NBI are all managed by third-party managers. Therefore, a complete market investigation is conducted on an ongoing basis on all of the managers selected. However, given the wide range of external investment solutions offered, an in-depth comparison of *all* similar products would constitute a tremendously heavy burden. Depending on what level of details is demanded, such investigation could be quite costly. Also, running a good comparative performance analysis of similar investment products requires a certain level of technical knowledge that some registrants may not have nor have access to. What would be considered 'valuable' comparative analysis also raises questions. For instance, would a comparison of the past performance be acceptable? Also, would there be standards regarding the treatment of currency risk (if applicable)? For these reasons (cost, burden, and undefined acceptability criteria of detailed comparative analysis), we fear that some registrants may decide to significantly narrow the range of their respective offerings, which would not serve the best interests of investors. Stated differently, it may be that only the largest firms in the industry would have the capability and resources to accomplish this task. However, for the smaller independent firms who have already been undergoing a very challenging number of years (if only from a regulatory pace perspective), this type of obligation is of a magnitude that would likely put some of them out of business. This would mean that investors looking for independent thought would have less choice, either due to fewer firms *or* fewer firms offering anything beyond proprietary products.

Furthermore, we believe that small dealers are critical to the proper operation of capital markets, as firms looking to raise money in public markets do not start at levels that will attract the attention of the large firms; independents fill that need. Without them, the efficient operation of raising funds in well-regulated markets (as opposed to crowd-funding) will be compromised. We believe that representatives and their firms should be knowledgeable in the products and services they intend to provide. We fully support *this* level of requirement across all registrant categories with appropriate regulation.

Q9: 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?

NBCWM Answer to Q9: As mentioned in our answer to Question 8, the objective of this proposal is noble, but the actual outcome may be detrimental to investors who could be charged additional fees (to cover the cost of in-depth comparative analysis) and/or face a narrower scope of product offerings. This is an initiative that would be better served and resolved through a cost/benefit analysis. Performing a full cost/benefit analysis before implementing changes of this magnitude is critical to ensuring the viability of the investment industry, especially that of independent investment firms.

Q10: Are there other policy approaches that might better achieve this outcome?

NBCWM Answer to Q10: Yes. If the objective of the Proposals is to reduce the fees paid by investors for a given level of services or raise the quality of services for a given level of fees, we think another policy approach could consist of trying – without loss of control – to simplify, rather than adding to the regulatory environment so that the cost of complying would be lower, and ultimately benefit investors.

Q11: Will this requirement raise challenges for firms in general or for specific registration categories or business models? If so, please describe the challenges.

NBCWM Answer to Q11: Please refer to our answers to Questions 8 and 9. We think that this requirement could have a significant impact on current practices of all dealing representatives and/or their respective firms, and be counter-productive to the intended outcome. We would also like to point out that the application of this proposal to discount brokers is not obvious and may require an exemption.

Q12: 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?

NBCWM Answer to Q12: For the bigger "mixed/non-proprietary" firms, this requirement is not likely to contribute to any rise in the number of different products offered and, if so, it would be at a cost ultimately borne by investors. We are also worried that smaller firms may not be able to fully meet the additional KYP burden resulting from this requirement. On the other hand, it may result in "mixed" firms focusing predominantly on proprietary product or product from a handful of issuers, as these may be the only ways they can limit their product shelf to a manageable size. This would likely result in fewer options for the investor. As for "proprietary" firms, some may wish to open their shelves to avoid being labeled as "biased." In such a situation, either (1) the recommendation of a non-proprietary product that is not well understood may not constitute sound advice, or (2) the non-proprietary product will not be used at all and therefore this requirement would result in useless additional costs. If the CSA decides to go ahead with this proposal, the CSA should make sure all firms who currently exclusively use proprietary products develop sufficient levels of competency to properly select non-proprietary products, and implement proper due diligence processes.

Q13: Could these requirements create incentives for firms to stop offering non-proprietary products so that they can fit the definition of a proprietary firm?

NBCWM Answer to Q13: It could indeed be the case, as some firms may have no other choice. Also, please refer to our answer to Question 8.

Q14: Should proprietary firms be required to engage in a market investigation and product comparison process or to offer non-proprietary products?

NBCWM Answer to Q14: Market forces generally operate to ensure "proprietary" firms offer an adequate suite of products to their clients, and different business models have emerged to address the perceived strengths and weaknesses of this type of product offer. NBI has determined that all of its "proprietary" products should be advised by third-party managers, Regarding whether these products should still be considered as "proprietary," please see our answers to Questions 15 and 60. We nevertheless remain of the view that, to the extent conflicts of interest are adequately disclosed and controlled, regulation should not prescribe what products "proprietary" firms should offer, nor how these firms should assess the market.

Q15: 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?

NBCWM Answer to Q15: There should be other differentiating characteristics, given that firms operating with an open architecture format such as NBI should be characterized differently, as their "proprietary products" follow a full due-diligence and market comparison process when the external manager is selected. Furthermore, IIROC Dealer Members, for example, are already required to disclose proprietary products to clients. In that context, would such an additional rule add any value? An alternative approach would be to require firms to make available a document in which they explain how their comparative analysis process is conducted. Polarizing terms such as "proprietary" and "non-proprietary" appear overly simplistic, and could be misleading in many situations.

2.5 Topic: Suitability

Q16: Do you agree with the requirement to consider other basic financial strategies?

NBCWM Answer to Q16: The principles underlying this requirement are worthwhile, but we are disquieted that their practical implementation would be difficult, if not impossible. For instance, the client may decide not to provide the information required to the firm/representative. It also assumes that the majority of dealer representatives know the best answer for each of their clients, which is far from obvious. Many representatives may not have the necessary knowledge to provide proper advice on various other topics, such as when more complicated issues (like tax planning) may make a client's situation more complex. Very often, it can be argued that different solutions can have common merit; such situations appear to us to be difficult to regulate. Also, this requirement assumes that all registrants are attempting to provide the same service to the client. The registrant should be providing the services the investor has retained the registrant to provide; if that is a full review of their client's entire financial position accompanied by various possible financial strategies, then the registrant should do so. The registrant should clearly describe the services they are capable of providing, and if the registrant is incapable of providing such a service, they should be obliged to disclose that fact.

Q17: 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?

NBCWM Answer to Q17: The standards associated with this requirement are not well defined. The expression "most likely" refers to an assessment of future market returns that are not under the registrants' control and that are over the relevant investment horizon (which may be long). Hence, we are not convinced that it will be possible to set realistic and meaningful standards for this requirement.

Q18: Should there be more specific requirements around what makes an investment "suitable"?

NBCWM Answer to Q18: Registrants of the SROs are currently held to detailed and well-developed suitability rules designed to ensure that their recommendations achieve their clients' investment needs and objectives. We consider there to be plenty of applicable requirements, and that adding more would not be productive (i.e. costly without significant added value). This is especially true for dealer registrants who must comply with either IIROC Rules (Rule 1300 and Notice 12-0109) or MFDA Rules (Rule 2.2.1, Policy No. 2 and MR-0069) regarding this assessment.

Q19: Will the requirement to perform a suitability assessment when accepting an instruction to hold a security raise any challenges for registrants?

NBCWM Answer to Q19: Not for dealer SRO members; however, please also refer to our answer to Question 18.

Q20: 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?

NBCWM Answer to Q20: This requirement would likely not be an issue for regularly active clients of SRO Members as Members already meet such standards. However, investment fund clients with less active accounts, for instance, those who "buy and hold" in RRSP accounts, may not engage with their representatives every year (and rightfully so, if no changes in circumstances have occurred). Requiring registrants to invite clients to update their KYC information at least once every 12 months, and requiring registrants to assess suitability on this basis, would prove more realistic.

Q21: 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?

NBCWM Answer to Q21: Properly communicating the notion of a "target return" is far from obvious. We consider it is pertinent to do so when this notion is put into perspective of the rate of savings (for investors in their accumulation phase) or the rate of withdrawal (for those in decumulation phase). It is also important to remember that all clients will receive an annual report with respect to performance, which will provide them with the ability to self-assess their investments' performance and ask their registrant for additional analysis, if warranted. Over time, the industry develops and changes its approach to investment objectives.

Goal-based investing is becoming more prevalent in the industry and, in some respects, this makes a target rate of return less important. Ultimately, a client should receive information that is pertinent to the service being provided, but not all services can or should be the same for all clients.

Q22: Will the requirement to perform a suitability review for a recommendation *not* to purchase, sell, hold, or exchange a security be problematic for registrants?

NBCWM Answer to Q22: The documentation of these recommendations would very likely add substantially to the administrative burden of most registrants, but likely not for dealer SRO members.

2.6 Topic: Relationship Disclosure

Q23: Do you agree with the proposed disclosure required for firms registered in restricted categories of registration? Why or why not?

NBCWM Answer to Q23: We continue to support the plain language relationship disclosure that is presently required by the SROs and NI 31-103.

Q24: Do you agree with the proposed disclosure required for firms that offer only proprietary products? Why or why not?

NBCWM Answer to Q24: In the case of NBI, categorizing it with terms such as "restricted" or "proprietary" would be overly simplistic and would not account for the role of our open architecture in the product offerings we make available to Canadians, given that all of our solutions are advised by third-party managers. Also, the requirement to provide the percentage of proprietary to non-proprietary product seems unworkable for many firms. This percentage varies constantly. Should it be based on the value of assets on book or simply a numerical count? We are concerned that there is really no clear way to make this meaningful for investors; were a cost/benefit analysis to be performed, it would be difficult to determine the benefit.

Q25: Is the proposed disclosure for restricted registration categories workable for all categories identified?

NBCWM Answer to Q25: This appears to be a workable proposal, provided that it does not prescribe the use of language that could be misleading or overly simplistic, such as "restricted/ proprietary/non-proprietary."

It suggests that a registrant discloses the services offered and the potential limitations of those services. We support full, true and plain disclosure of a registrant's offering to clients and potential clients. This proposal acknowledges that there may be different business models and offerings. However, we do submit that this is in conflict and not consistent with other aspects of the Proposals.

Q26: Should there be similar disclosure for investment dealers or portfolio managers?

NBCWM Answer to Q26: Yes. Investment dealers and portfolio managers should be subject to the same disclosure requirements.

Q27: Would additional guidance about how to make disclosure about the relationship easier to understand for clients be helpful?

NBCWM Answer to Q27: No, at least not for SRO Dealer Members who, under SRO rules, are required to disclose relationships in a written document that uses simple and meaningful wording. Furthermore, we consider that CRM1 and CRM2 standards correctly address this issue.

2.7 Topic: Proficiency

Q28: To what extent should the CSA explicitly heighten the proficiency requirements set out under Canadian securities legislation?

NBCWM Answer to Q28: We agree that any entity susceptible to providing any form of investment advice should demonstrate its proficiency. We consider that the Continuous Training requirements IIROC imposes on its members (Rule 2900) are sufficient to maintaining acceptable levels of investment knowledge and related skills, and know that the MFDA is also working toward implementing appropriate continuous education requirements. However, advisors should only be required to be knowledgeable in the areas and about the services they provide; any additional work would result in costs that would not provide corresponding benefit.

Q29: Should any heightening of the proficiency requirements for representatives be accompanied by a heightening of the proficiency requirements for CCOs and UDPs?

NBCWM Answer to Q29: Proficiency standards should also apply to CCOs and UDPs, which is the case for SRO members (see answer to Question 28).

2.8 Topic: Titles

Q30: Will more strictly regulating titles raise any issues or challenges for registrants or clients?

NBCWM Answer to Q30: Prescribing titles for representatives of a firm based entirely on the firm's product shelf has limitations. As we have noted in our explanation of NBI's open architecture, proprietary firms could offer a broader array of products and services, including access to third-party portfolio management. We do not support the use of the title 'salesperson.' The mandate should not restrict representatives who, for example, are financial planners to being labelled "salespersons," especially as the standards for advice keep getting higher. We also wonder what the impact would be on discount brokers. For instance, would their representatives become "salespersons" as well?

However, we do recognize that there is a large range of titles across the industry today and would support some form of standardization as long as it enhances clarity for investors. The Proposals do not achieve this end, but we believe a consortium of industry members could create workable solutions through collaboration.

Q31: 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?

NBCWM Answer to Q31: As previously mentioned, we support putting in place a rigorous framework around the use of titles and financial designations in order to enhance clarity for investors. NBC would support mandated titles that are consistent across registrant categories and based on proficiency - not on the product shelf. The industry will work with SROs to develop rules that manage the usage of titles.

Q32: Should there be additional guidance regarding the use of titles by representatives who are "dually licensed" (or equivalent)?

NBCWM Answer to Q32: We agree that additional guidance could help clarify some aspects of the use of titles.

2.9 Topic: Designation

Q33: Should we regulate the use of specific designations or create a requirement for firms to review and validate the designations used by their representatives?

NBCWM Answer to Q33: We consider that IIROC Members must comply with very good standards regarding designations, and we are in favour of imposing and extending such standards to all types of investment professionals.

2.10 Topic: Role of UDP and CCO

Q34: Are these proposed clarifying reforms consistent with typical current UDP and CCO practices? If not, please explain.

NBCWM Answer to Q34: We observe that practices vary across the investment industry, but a recent survey of IIROC Members reveals that these roles are well defined. We support clarifying the language defining the roles and in enhancing the proficiency requirements of the UDP and CCO.

2.11 Topic: Statutory Fiduciary Duty when Client Grants Discretionary Authority

Q35: Is there any reason not to introduce a statutory fiduciary duty on these terms?

NBCWM Answer to Q35: For entities registered in the Province of Quebec such additional requirements are not needed since the Civil Code of the Province of Quebec already imposes a fiduciary duty for discretionary mandates. Outside of Quebec, introducing a fiduciary standard in addition to a best interest standard could create confusion. Also, it is not clear how it would overlap or differ from the fiduciary duty established by Common Law. Investors are unlikely to understand the reason for the difference, and are also unlikely to understand what additional obligations, if any, this would impose on their advisor.

2.12 Topic: Proposed Framework for a Regulatory Best Interest Standard (Part 8 of the CSA document)

Q36: 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.

NBCWM Answer to Q36: We believe that the current regulatory standard of care, and the SRO Rules and Guidance which govern our members in all aspects of business conduct and conflict management, are designed to put the interests of clients ahead of the interests of registrants. Also, as previously mentioned, IIROC (Rule 42), the MFDA (Rule 2.1.4), and the Quebec Civil Code already sufficiently regulate the best interests of clients. Moreover, we are concerned that there has been no cost/benefit analysis for this proposal. Additionally, we do not believe that it will close the experience gap for clients, as there are too many unanswered questions in the proposal. For example: How with this apply to OEO registrants? Will there be too much paperwork required when a small client wants to deposit funds to a registered plan account? Will the best interest standard be set against an industry where conflicts are allowed? How will this be managed? And, so on. Ultimately, we are concerned that clients could absolve themselves of any responsibility for their investment decisions.

Q37: 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.

NBCWM Answer to Q37: We consistently agree that the client's interests must come first. But in addition to the current regulatory standard of care, there are also extensive IIROC and MFDA rules in place for managing conflicts of interest. These rules, and their associated compliance and enforcement, already act to ensure high level of conformity with a best interest standard in the SRO channels.To the extent that there remain uncertainties about this obligation in certain aspects of the client-advisor relationship, we believe that the appropriate approach would be to further clarify rules and guidance to meet these objectives through targeted reforms. A regulatory best interest standard, if not fully clarified as to its compliance and legal impact, would create uncertainties in application and unknown consequences for the provision of services to investors.

Q38: 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.

NBCWM Answer to Q38: We share the views expressed in the Proposals by the "Jurisdictions with Concerns about a BIS" in this respect.

2.13 Topic: Impact on Investors, Registrants and Capital Markets (Part 9 of the CSA document)

Q39: What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on compliance costs for registrants?

NBCWM Answer to Q39: We believe that incorporating these proposed reforms could prove to be very costly. A cost/benefit analysis should be performed to document that issue.

Q40: What impact would the introduction of the proposed targeted reforms and/or a regulatory best interest standard have on outcomes for investors?

NBCWM Answer to Q40: We believe that the proposed reforms would establish clearer rules for some players of the industry (though likely not for SRO Members), but the precise impact of specific "outcomes" (this latter notion needs clarification) for investors is difficult to forecast.

Q41: What challenges and opportunities could registrants face in operationalizing: (i) the proposed targeted reforms? (ii) a regulatory best interest standard?

NBCWM Answer to Q41: As mentioned in our answers to many of the previous questions, we are very apprehensive that the proposed reforms could be costly to implement (a cost that would ultimately be paid by investors) without having significant added value, especially for clients of SRO Members (IIROC Rule 42 and MFDA Rule 2.1.4). Also, in order to avoid some of these additional costs, some entities may decide to narrow the range of their investment product offering, which would be detrimental to investors.

Q42: How might the proposals impact existing business models? If significant impact is predicted, will other (new or pre-existing) business models gain more prominence?

NBCWM Answer to Q42: We believe that if the proposed reforms are implemented, the additional costs and related impact will have greater consequences for smaller entities. This could put some of them out of business and/or constrict the creation of new firms, thereby reducing the level of competition in the investment advisory industry. Beyond the issue of competition, there is also the real likelihood of negative impact on the process of capital formation in the Canadian markets. As pointed out in our response to Question 8, smaller dealers are essential to enable the raising of capital for smaller firms (small and micro-cap companies). Without these independent dealers to assist in the creation and growth of entrepreneurial entities that have been success stories in Canada, we believe the Canadian economy will lose some of its momentum for innovation. This lack of formation of new IIROC dealers, along with the closure or amalgamation of others, can be seen in the 20% shrinkage in the number of IIROC members over the past decade. Additionally, we are worried that this proposal could ultimately impact smaller clients who could find it more difficult to access advice. And, lastly, it is not clear how the implementation of this proposal would apply to discount brokers; here again, an exemption might have to be considered.

Q43: Do the proposals go far enough in enhancing the obligations of dealers, advisers and their representatives toward their clients?

NBCWM Answer to Q43: We consider that the current regulatory framework imposes standards which go far enough in serving this objective. Imposing additional requirements could ultimately have adverse consequences, as argued in our answers to other questions above. This proposal seems to us to be inappropriate for discount brokers who serve autonomous investors, especially the more active ones.

2.14 Topic: Question appearing on the CSA document's Appendix A

Q44: 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?

NBCWM Answer to Q44: Big institutional clients have (or are expected to have) their own extensive due diligence processes which they would apply or exercise before a business relationship is established, and the smaller ones have the possibility to hire consultants to assist them in this regard. Hence, we believe that disclosure by firms is sufficient for such clients; clients will ask questions if they suspect they were not being provided enough information about possible conflicts of interest.

Q45: 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?

NBCWM Answer to Q45: There is a wide variety of specific situations that can occur, and we doubt that it is possible to identify and define all of them in advance. Hence, we think that a better approach is to make sure that the principle of disclosure of conflicts of interest is profoundly understood and widely embraced by the industry.

Q46: 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.

NBCWM Answer to Q46: The above propositions have some value, but we prefer the definition of Institutional Client appearing in Rule 1 of the IIROC Rulebook.

Q47: Could institutional clients be defined as, or be replaced by, the concept of non-individual permitted clients?

NBCWM Answer to Q47: Please refer to our answer to Question 46.

Q48: Are there other specific examples of sales practices that should be included in the list of sales practices above?

NBCWM Answer to Q48: The proposed list of sales practices appears to us to be quite exhaustive. However, limiting the scope of the proposed regulation to that list opens the door to other, innovative practices which could fall outside its reach. Hence, establishing a more general principle based on sound judgment appears to us to be a better approach in dealing with this topic.

Q49: 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?

NBCWM Answer to Q49: Please refer to our answer to Question 48: we believe that trying to be exhaustive in listing all current and future sales practice is somewhat futile. Experience in applying NI 81-105 over the years has proven that the industry evolves and regulation through specific rules makes for some difficult situations where a general principle would have had more appropriate consequences.

Q50: 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?

NBCWM Answer to Q50: IIROC Rule 29 deals with that issue. We think they should be considered more generally for all types of products.

Q51: Are there other requirements that should be imposed to limit sales practices currently used to incentivize representatives to sell certain products?

NBCWM Answer to Q51: A strong general (i.e. not restricted to a list of known practices) principle is the preferred approach, rather than adding to such a list of requirements.

Q52: What type of disclosure should be required for sales practices involving the distribution of securities that are not those of a publicly offered mutual fund, which are already subject to specific disclosure requirements?

NBCWM Answer to Q52: If the principles underlying the requirements applied to mutual funds are considered by the CSA to be the most appropriate, these should apply to all types of "similar" investments, including those offered in the insurance industry.

Q53: 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.

NBCWM Answer to Q53: No; adding specifications would only limit the scope of the proposal.

2.15 Topic: Question appearing on the CSA document's Appendix B (54 to 57)

Q54: 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?

NBCWM Answer to Q54: Please refer to our answer to Question 4.

Q55: 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?

NBCWM Answer to Q55: We consider that both IIROC Rule 1300 and MFDA Rule 2.2.1 properly deal with this issue. More generally, regulations must allow registrants to trade when they consider they have sufficient KYC information in order to avoid unnecessary delays, which could otherwise be highly detrimental in certain situations (like last minute RRSP account openings).

Q56: Should additional guidance be provided in respect of risk profiles?

NBCWM Answer to Q56: We consider that the process of establishing a risk profile can hardly be codified, as the matter is too complex. As we have suggested for sales practices, we would advocate a judgment-based, more general approach to deal with this issue. IIROC's rule 1300 and MFDA Rule 2.2.1 are two such examples: they both address this topic using quite general, but still precise enough, language.

Q57: 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?

NBCWM Answer to Q57: We believe the requirements on KYC information to be gathered by the representative should be adapted to the status of the client (i.e. retail vs. institutional).

2.16 Topic: Question appearing on the CSA document's Appendix D (58 to 61)

Q58: 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?

NBCWM Answer to Q58: We consider that a well-defined product review procedure constitutes a crucial element of a representative's - and his/her firm's - responsibilities. Whether the result of that procedure takes the form of a product list is of secondary importance.

Q59: 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.

NBCWM Answer to Q59: Again, we would favour judgment-based general guidance rather than adding specifications to guidance, as it appears to us that it is difficult to well define what "fair and unbiased market investigation" means. Also, we do not agree that conducting a market investigation would add value beyond what is already performed today. One unintended result could be that any new products brought to market, no matter how inappropriate, would require investigation and, as with the recommendations made in connection with Question 8, this would add significant cost with no added value. By way of a parallel example, the proliferation of alternative marketplaces in Canada require that firms become members of many different marketplaces to ensure best execution. However, in many of these marketplaces volume has been so small that dealers have been forced to pay monthly fees without being able to demonstrate or any added value for the client. Changes are now being made that require alternative marketplaces to achieve a certain volume or be closed down, which recognizes the issues with earlier regulation that forced membership. The same issue would likely occur with the "market investigation" proposal.

Q60: Would labels other than "proprietary product list" and "mixed/non-proprietary product list" be more effective? If so, please provide suggestions.

NBCWM Answer to Q60: Please refer to our answer to Question 15.

Q61: 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.

NBCWM Answer to Q61: We respectfully consider that regulators should not determine whether or not a firm offers a product list that is most likely to meet the needs of its clients. We think this is a matter to be determined by the firms. Firms have strong incentive to do so: those offering a better product list will enjoy more successful business. Also, we are concerned about how exactly the CSA plans to implement these requirements. Finally, we think this proposal (which somewhat echoes the UK standards) may have weaknesses which are well addressed and explained in the *Financial Advice Market Review* published by the Financial Conduct Authority in March 2016.

2.17 Topic: Question appearing on the CSA document's Appendix E (62 to 64)

Q62: 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?

NBCWM Answer to Q62: Please refer to our answers to Questions 8, 12, 14 and 17.

Q63: Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?

NBCWM Answer to Q63: No. Please refer to our answers to Questions 8, 12, 14 and 17.

Q64: 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?

NBCWM Answer to Q64: No. Please refer to our answers to Questions 8, 12, 14 and 17. The CSA should also consider the impact of that proposal on special situations like last minute RRSP account openings where time may be of the essence. More clarity should be provided to enable registrants to have the necessary flexibility to deal with real-life issues in the best interests of clients.

2.18 Topic: Question appearing on the CSA document's Appendix H (65 to 68)

Q65: 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?

NBCWM Answer to Q65: We believe that investors will gain if all types of entities that provide a form of investment advice face the same regulatory requirements.

Q66: Do you believe that the Standard of Care is inconsistent with any current element of securities legislation? If so, please explain.

NBCWM Answer to Q66: We believe that the CSA is better positioned than us to answer this question.

Q67: Do you agree that the Standard of Care should not apply to the underwriting activity and corporate finance advisory services described above? If not, please explain.

NBCWM Answer to Q67: We would agree that the Standard of Care should not apply.

Q68: 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?

NBCWM Answer to Q68: We think this expectation is not appropriate when firms deal with institutional clients.