September 30, 2016

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

Submitted via email: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

Re: CSA Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients

Dear Sirs and Mesdames,

CIBC welcomes the opportunity to comment on CSA Consultation Paper 33-404 (the "**Paper**"), pursuant to which the CSA is consulting on specific targeted amendments to National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") (the "**Targeted Reforms**") and the potential imposition of an over-arching regulatory best interest standard on all registrants (the "**BIS**"). CIBC subsidiaries are engaged in all aspects of the provision of financial advice to clients, from advising clients, to providing dealer and portfolio management services, to offering mutual funds and other financial products. Several of CIBC's lines of business will be directly impacted by the CSA's proposal in the Paper.

CIBC has participated in working groups established by the Investment Industry Association of Canada, the Portfolio Management Association of Canada, the Canadian Bankers Association and the Investment Funds Institute of Canada to study the Paper, and we share many of the comments and concerns raised in the IIAC, PMAC, CBA and IFIC responses with respect to unintended costs and consequences arising from, and additional guidance required before implementing, the Targeted Reforms. Significant resources have gone into preparing the industry responses and CIBC encourages the CSA to consider the comments and issues raised in those letters when considering any potential further consultation papers relating to the Targeted Reforms.

In our response, we will not be addressing the individual questions posed in the Paper as these are dealt with in great detail in the various industry group responses. Instead, we will focus on, what are in our view, a few of the more significant issues raised in the Paper.

Best Interest Standard

CIBC provided the CSA with comments to its previous consultation paper on a statutory best interest duty that was issued in October 2012 ("**CSA Consultation Paper 33-403**"). CIBC's previous comments to CSA Consultation Paper 33-403 also apply to the BIS proposed in the Paper:

CIBC believes that advisers and dealers should act in their clients' best interests at all times. Indeed, in CIBC's view, advisers and dealers are already obligated to act in their clients' best interests – as a Canadian investor would understand this term – under the current robust legal and regulatory regime. The CSA's proposed best interest duty is a technical legal duty which may be difficult for clients, regulators and the courts to quantify or understand, and might not lend itself to integration with the existing Canadian legislative and regulatory regime. In addition, the proposed duty could have the unintended consequence of harming investors by creating uncertainty and limiting access to products and services. CIBC is concerned that this potential harm may come with no corresponding benefit to investors, and that the proposed duty will not effectively address the CSA's investor protection goals. CIBC agrees that [the Paper] raises some legitimate investor protection issues that regulators and the industry should consider. However, if legislative or regulatory change is the most effective means to address such concerns, we suggest they be addressed through thoughtful amendments to existing regulation. [emphasis added]

In our view, the proposal in the Paper for an "over-arching" BIS is not materially different from the statutory best interest duty proposed in CSA Consultation Paper 33-403.

In addition, it appears that the proposed BIS lacks the support of industry participants and most provincial securities regulators. CIBC agrees with the BC Securities Commission that the BIS will create uncertainty for registrants. CIBC strongly urges the CSA to proceed only with the Targeted Reforms at this time, not the BIS. Moving forward with the BIS at this time has the potential to add commercial uncertainty to an already complex and highly regulated industry. It could also result in a fractured regulatory environment in one of the only areas of Canadian securities law that is relatively harmonized. This becomes particularly challenging for a bank whose securities subsidiaries operate across Canada.

Targeted Reforms

Consistent with CIBC's position that thoughtful amendments to existing legislation are preferable to imposing a vague and uncertain general principle, we appreciate that the CSA has suggested the Targeted Reforms in the Paper. Although the approach of several of the Targeted Reforms will require further refinement and additional regulatory guidance, CIBC is of the view that several of the proposed Targeted Reforms could represent a positive step forward in enhancing the regulation of our industry. In our view, the CSA should avoid a one-size-fits-all approach to registrant regulation in an effort to preserve a diversity of service delivery models that can continue to serve the best interests of investors.

In particular, we note that the Paper does not address how the Targeted Reforms would apply to order-execution only discount brokerages ("**OEO Dealers**"). Our view is that OEO Dealers that are currently exempt from the suitability obligation should not be subject to any of the Targeted Reforms that would be inconsistent with the current principles of how these businesses are regulated. Notably, the Targeted Reforms relating to enhanced KYC, KYP and suitability obligations would in many cases be incompatible with an OEO Dealer's current business model and regulatory obligations. If the CSA does not intend for most or all of the Targeted Reforms to apply to OEO Dealers then we request that this be made explicit. Our view is that the Paper lacks clarity in this regard and this uncertainty makes it difficult to appropriately analyze and comment on the potential impact of the Targeted Reforms with respect to the various business models currently employed by OEO Dealers, including CIBC Investor's Edge.

The following are some high level comments that CIBC suggests should be addressed in subsequent guidance or further consultation papers relating to implementing the Targeted Reforms.

Conflicts of Interest

In our view, as currently drafted the Targeted Reforms relating to Conflicts of Interest could confuse investors and may not materially enhance the existing conflict of interest regulations, particularly for participants regulated by IIROC or the MFDA. In our view, the most clear and principled method of ensuring conflicts are appropriately avoided, managed and disclosed is to enforce existing conflict of interest rules. The current rules require that clients be informed of how advisers and dealers are compensated and that conflicts must be addressed in a fair, equitable and transparent manner and consistent with the best interests of the client. CIBC is of the view that the current rules adequately protect investors in a way that allows for reasonable commercial certainty with respect to enforcement and civil liability, a goal shared by industry participants and clients alike.

Further, the Paper is not clear as to how these proposed Targeted Reforms relating to conflicts of interest would be applicable to a proprietary business model. In particular, it is not clear whether embedded compensation is itself a conflict of interest that must be avoided. CIBC respectfully submits that the question of whether or not embedded mutual fund compensation will be banned in Canada is directly relevant to the questions posed in the Paper. Although this issue is being considered in a separate consultation by the CSA, knowing the outcome of the mutual fund fees consultation and specifically the planned treatment of embedded compensation, is desirable in order to fully appreciate and comment on the implications of the Targeted Reforms.

Additionally, the Conflicts of Interest Targeted Reforms may prove too restrictive when it comes to conflicts at the firm level. It would be difficult and very costly to ensure compliance for even medium sized firms, not to mention diversified financial services entities such as CIBC.

Finally, the proposed guidance requires a reasonable basis for concluding that a client "fully understands" the implications and consequences for the client of the conflict being disclosed. We request that the CSA provide specific guidance as to the form of a signed client acknowledgment that would satisfy the proposed standard.

Know Your Client

The type of information registrants would be required to collect about their clients' financial circumstances (eg. all assets and debts, tax position, spousal and dependent information, etc.) would move these requirements beyond the current standard and would, in our view, be inconsistent with typical commercial circumstances in all but a minority of cases. Additionally, assessing a client's tax position or advising on non-investment uses for cash (eg. paying down debt) may not be consistent with the proficiency level of many registrants. Clients may believe that they are receiving tax or financial planning services from a registrant that asks for this type of information and our view is that this may serve to increase the expectations gap, not decrease it as intended..

Further, the Paper is not clear on how the Targeted Reforms requiring enhanced KYC would apply to a proprietary or purely transactional business model since clients choosing this type of service delivery method would be less likely to want to share information at this level of detail and would not expect advice that would require such information. Additional guidance in this regard is requested in order to fully evaluate these proposals.

Know Your Product and Suitability

Categorizing firms as proprietary versus mixed/non-proprietary will create a more complex regulatory environment without, in our view, adequately addressing the CSA's concerns. Our view is that the CSA should instead ensure that there are no incentives to sell proprietary rather than third party products that are similar. This would decrease the potential for investment recommendations being made based on differences in compensation and better align the interests of advisors and their clients.

Requiring advisers and dealers to offer as broad a suite of products from as broad a range of manufacturers as possible, or be branded as "salespersons", will potentially lead to a substantial change to the business models of many advisers and dealers.. While this could provide an advantage to larger market participants who have the capacity to offer a considerable depth of products, it will likely result in a reduced number of advisers and dealers, and reduced choice for the investing public.

Imposing an obligation that compels full service firms to broaden their product offerings runs counter to advisers' and dealers' obligations to conduct sufficient due diligence to satisfy their duty to "know their product". However, in the Paper, the CSA appears to be simultaneously increasing both of these requirements for firms that wish to sell non-proprietary products. The natural effect of increased product diligence requirements would be two-fold. For full service firms that want to remain as such, the likely result would be a reduction in the number of products that ultimately make it onto a firm's "shelf" as these firms work to ensure that they are able to fully meet their regulatory obligations. Additionally, many firms that currently sell third party products will conduct a cost benefit analysis and may ultimately decide that they are unable to bear the increased regulatory burden and will voluntarily convert to proprietary-only firms. Full service firms have a natural commercial incentive to have broad and representative product shelves that meet the wishes of their clients. Layering a regulatory obligation on top of this only adds uncertainty and potential liability with no clear benefit to investors.

The obligation requiring advisers to be familiar with every investment product available at his or her firm has the potential to lead to a decreasing product shelf at full service dealers. We request further guidance on this Targeted Reform as well as on how a recommendation might be suitable for a client and not "most likely to meet" the client's objectives.

We respectfully suggest that the proposed KYP requirements may reduce the variety of business models and limit investor choice. While some firms may stop offering third party products so that they can meet the definition of proprietary firm, the scope of proposed KYP obligations also has the potential to cause full service firms to reduce the diversity of their product shelves so as to limit potential regulatory and civil liability and conserve resources.

Similar to the KYC Targeted Reforms, the Paper is not clear as to how the Targeted Reforms requiring enhanced KYP and suitability are applicable to either a proprietary business model or when providing simply transactional advice with indirect payment mechanisms such as embedded commissions. Further guidance in this regard is requested in order to fully evaluate these proposals.

Conclusion

CIBC supports the CSA's continuing efforts to foster fair and efficient capital markets, and provide investors with protection from fraudulent and unfair practices.

CIBC agrees with the BC Securities Commission that the CSA should not adopt the BIS and instead focus efforts on moving forward with the Targeted Reforms. Implementing specific Targeted Reforms to directly address the issues identified by the CSA in the

client-registrant relationship is preferable to adopting an over-arching BIS that would potentially require numerous exceptions in practice.

Although it is being considered in a separate consultation by the CSA, it is our view that the outcome of the mutual fund fees consultation, and the treatment of embedded compensation in particular, should be considered together with legislative amendments implementing many of the Targeted Reforms. In our view, comments on the Targeted Reforms could be materially different depending on whether embedded compensation is going to be banned.

Finally, the Paper does not distinguish among business models and registration categories and the differing rules under which registrants are governed. In particular, IIROC and the MFDA have clear and specific rules that already govern many of the concerns that the Targeted Reforms are meant to address. Rather than introduce new rules to satisfy the Targeted Reforms, we suggest that existing SRO rules be strengthened if necessary and more effectively enforced by the SROs. In respect of those registrants that are not members of an SRO we recommend the CSA implement and enforce equivalent rules to achieve the objectives of the Targeted Reforms. A "one size fits all" approach to the Targeted Reforms would be a departure from the current regulatory environment and we suggest that the CSA should consider a more tailored approach to the Targeted Reforms.

CIBC appreciates the opportunity to comment on the Paper and looks forward to participating in further consultations relating to the issues raised therein.

Yours truly,

Steve Geist
SEVP and Group Head
CIBC Wealth Management