PORTFOLIO Strategies

By E-Mail to *comments@osc.gov.on.ca* & *consultation-en-cours@lautorite.qc.ca*

September 30, 2016

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3

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

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

Portfolio Strategies Corporation ("PSC") is a Calgary-based dealer that is a member of the Mutual Fund Dealers Association of Canada and registered as a mutual fund dealer and exempt market dealer in Alberta, British Columbia, Saskatchewan, Manitoba, Ontario, and Québec, and as an investment fund manager in Alberta and Ontario.

We appreciate the opportunity to provide comments on the CSA's Consultation Paper 33-404 (the "Consultation Paper"). Below we provide our overall comments followed by our responses to the 68 questions posed in the Consultation Paper.

Overall Comments

Regulator Disagreement

We note that the *Autorité des marchés financiers*, British Columbia Securities Commission, Alberta Securities Commission, Manitoba Securities Commission, and Nova Scotia Securities Commission have all expressed concerns with the proposed best interest standard including that:

- the standard may widen the expectation gap between clients and registrants;
- the standard will create new legal and enforcement issues due to its lack of clarity; and
- investors may expect all registrants to have a duty to act in their best interest at all times despite some conflicts still being permitted, which can cause some confusion.

The fact that many members of the CSA have these concerns is a clear indication that the best interest standard as proposed will not provide a better and more meaningful code of conduct and indeed, a best interest standard may be unnecessary.

Canada already suffers from a fragmented regulatory system and registrants bear substantial additional costs from having to deal with different requirements in different provinces and territories. We believe that none of the proposals should be implemented unless they can be implemented in an identical manner in all jurisdictions.

Scope and Cost of the Proposals

The proposals in the Consultation Paper represent a broad overhaul of the regulatory scheme for registrants. Although the Consultation Paper includes some references to investor research, we do not believe that the research cited supports the scope of proposed change. In particular, substantive new obligations for all registrants to engage in what amounts to a full financial planning or debt counselling and management process for all clients is not warranted. We also do not believe that such obligations are within the mandate of securities regulators and would be better left to legislatures if the respective provincial and territorial governments believe that a full regime to regulate financial planning is required.

The research cited does not consider the costs involved, nor does the Consultation Paper discuss costs in relation to specific proposals. We believe that any changes should be supported by a rigorous quantitative cost-benefit analysis before they are implemented. There are many techniques to perform such quantitative analysis and the economists on staff at different regulators may be engaged to design it. We do not believe that using vague statements, such as that the CSA “believe the benefits outweigh the costs” is appropriate or helpful.

We believe that the CSA needs explicitly to consider the costs involved with the proposals since ultimately clients have to pay the costs, and additional costs will be barriers to investors being able to receive qualified financial advice.

Prescriptive Regulation

We are concerned that in many respects the Consultation Paper proposes a return to overly prescriptive regulation that would remove flexibility in achieving regulatory outcomes. We believe that clients and registrants would be better served by adopting a more principles-, or outcome-, based regime that allows flexibility for different business models.

Best Interest Standard

We believe that it is clear that regulators themselves do not have a clear concept of what "best interest" would mean other than in a discretionary relationship. As evidence of this problem, we note that the term "best interest" is used in the definition of "best interest" ("guiding principles" in Appendix H), making the definition circular and recursive.

We also note that Appendix H gives a number of examples of what the best interest standard is *not* intended to be: not the lowest cost product, not the highest return product, not a guarantee against an investment losing value. A concept can't be defined by excluding what it isn't and the attempt to do so reinforces our conclusion that regulators do not have a clear concept of what a best interest standard *does* mean.

We are concerned that regulators have not identified substantive examples of transactions or recommendations that are permissible under the current "suitability" regime that would not be permissible under a "best interest" standard. Without a variety of examples, the best interest regime appears to be a solution in search of a problem. (If there are only one or two examples, it would be clearer and more cost-effective to address the specific issues rather than adopting a significant, broad, and unclear regulatory change.)

We are further concerned that this appears to be an attempt to apply the concepts from discretionary relationships to non-discretionary, advisory relationships. At present, a representative may propose several different investments to a client, describe the benefits, costs, and risks of each, and then the client selects the investment. We ask the CSA to describe how a best interest standard would apply in these circumstances: how would a representative be expected to propose, for example, three different investments each of which is purportedly in the client's best interest? These seem to be mutually-exclusive concepts. Further, when the client is making the final investment decision under a best interest standard, what is the respective responsibility of the client and the representative for the final decision?

Clarity of the Proposals

The Consultation Paper refers throughout to clients not receiving "intended outcomes" but does not specify what the CSA means by that term. Since this appears to be a fundamental concern for the CSA, we believe that the CSA should define or clarify what it is intended to mean to allow appropriate comments.

Implementation Issues

The CSA do not appear to have considered how the proposals could be implemented, how a compliance regime could be designed for them, and whether it is even possible to implement a cost-effective compliance regime. If, after assessing the comments on the Consultation Paper, the CSA decides to continue consideration of the proposals, we believe that the CSA should also develop and publish its conclusions about implementation and compliance regimes for the proposals.

Regulatory Arbitrage

On page 7 of its response (https://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/com_20040916_33-901_ssibold.pdf) to the Ontario Securities Commission's Fair Dealing Model Concept Paper in 2004 the Alberta Securities Commission stated that those proposed changes would be a boon for the insurance industry due to the insufficient regulation of segregated funds at the retail level. In our experience the ASC's comments from 12 years ago are still valid and those same concerns apply to the proposals in the Consultation Paper. We believe that steps should be taken to repeal the exemption for segregated funds from the definition of "securities" that exists in securities legislation to ensure that investors in substantially similar products receive the same regulatory protections. Our concerns in this regard are heightened in view of recent revelations of the number of individuals who have been banned from the securities industry but who continue to hold an insurance license and who can therefore continue to deal in segregated funds.

PART 7 – PROPOSED FRAMEWORK FOR THE PROPOSED TARGETED REFORMS

Conflicts of Interest – General Obligation

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

We support the general approach but have concerns regarding the proposed requirement that firms and representatives must have a "reasonable basis for concluding that a client fully understands the implications and consequences of the conflict".

We believe that the requirement should instead be for the registrant to provide the client disclosure that is reasonable and sufficient to allow the client to understand the implications and consequences of the conflict before a transaction is entered into or a course of action is undertaken. The disclosure should be in plain language and include:

- all outside business activities of the firm and applicable representatives identified by the firm as potential conflicts of interest with respect to the proposed transaction;
- any additional fees that will be earned by the firm or representative for the proposed transaction, whether or not paid out of client funds;
- any additional expenses to be paid by the client for the proposed transaction.

The disclosure may be evidenced by obtaining the client's written acknowledgment and consent.

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?**

We do not believe that the requirement is clear enough and is far too broad and overreaching as stated. We also think it is unnecessary since we believe that the requirements described in

section 13.4 Identifying and Responding to Conflicts of Interest of Companion Policy 31-103CP more accurately describe the manner in which conflicts should be handled by registrants. Specifically, "Registrants must avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, registrants should avoid the conflict if it is sufficiently contrary to the interests of a client that there can be no other reasonable response.

For example, some conflicts of interest are so contrary to another person's or company's interest that a registrant cannot use controls or disclosure to respond to them. In these cases, the registrant should avoid the conflict, stop providing the service or stop dealing with the client."

3) **Will this requirement present any particular challenges for specific registration categories or business models?**

If the requirements are more extensive than the ones we proposed in our response to Question 1, we believe it will be very difficult for dealers and representatives to determine that there is a reasonable basis for believing that clients fully understand the implications and consequences of the conflict between the firm or representative and the client.

A potential unintended consequence of the "reasonable basis" requirements is that due to the challenges of being able to prove what a client understood, firms and representatives may not propose certain transactions that are suitable and beneficial for a client.

Know Your Client

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?**

We would like the CSA to comment about whether they believe that this is, in fact, necessary.

We believe that registrants have to understand and disclose the basic tax implications of *transactions* that they propose to clients, but they do not need to know and understand the client's basic overall tax position. To understand tax implications of transactions, a registrant would have to understand issues such as the client's income and marginal tax rate, potential old age security ("OAS") claw backs, and the effect on the client of tax-structured investments such as flow throughs.

We do not believe that all registrants necessarily have the proficiency to understand every client's overall basic tax position: there are many factors and events influencing the client's position that are unrelated to investments with the registrant and for a wealthy or sophisticated client even their "basic tax position" may be very complex.

To meet the requirement registrants would also need to know such things as the client's realized and unrealized capital gains on securities, real estate, and other non-securities investments held outside the firm. Clients are very sensitive to privacy issues and we believe

that many clients would be resistant to providing information to a registrant beyond information related to the client's investments with the registrant.

Mandating this requirement may lead clients to believe that firms are providing tax services beyond their scope of expertise, which is contrary to the regulators' expressed concern that clients should have a clear understanding of their relationship with the registrant.

In addition, dealers would incur significant costs to train registrants and to implement processes for the monitoring and documenting of a client's tax position. The cost of professional liability insurance could also increase dramatically for both individual registrants and firms.

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?

We believe that providing guidance on prescribed KYC content is sufficient and a prescribed new account application form is not required. We have refined our KYC over 20 years to meet changing client, business, and regulatory needs. We believe that a prescribed form is unlikely to be suitable for all dealer registration categories or even for all mutual fund dealers. A new prescribed form would require dealers to incur significant costs with respect to system changes, implementation, and training registrants to use the new prescribed forms.

We also do not believe that a prescribed form will provide any material benefit to clients.

6) Should the KYC form also be signed by the representative's supervisor?

We believe that this requirement should apply to all representatives, although we believe that unless there is a concurrent transaction with the KYC update a slightly longer review timeframe, such as two or three days, would be more appropriate. (We expect that words like "signed" will be able to be interpreted in line with current technology and would allow, for example, an on-line review and approval rather than requiring a signature on a physical piece of paper.)

Know Your Product – Representative

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

For our firm the MFDA already has detailed requirements and processes for mutual fund dealers that require them to conduct due diligence on new products, and for representatives to understand the products they recommend to their clients. Accordingly, we believe that the MFDA is in the best position to develop rules and monitor compliance for mutual fund dealers. We recommend that National Instrument 31-103 should include equivalent requirements for dealers that are not members of an SRO.

We believe that any new requirements beyond those already in place may result in mutual fund dealers reducing their approved product shelf, due to the cost and administrative effort required to meet such requirements.

In addition, we believe that some regulators have the misconception that the proposed requirement ("representatives understand and consider the structure, product strategy, features, costs and risks of each security on their firm's product list"), is already being met by registrants. It is our experience that this is not the case, primarily because it is simply not feasible. Mutual fund dealers typically have thousands of mutual funds on their product list and it is both unrealistic and unachievable to expect registrants to fully understand the structure, product strategy, features, costs and risks of each one. For example, if a dealer has 6,000 funds available, including the various options on different series of funds, 10 minutes to be familiar with each fund, and to document the effort to be familiar, would require an individual representative to spend 1,000 hours per year on product shelf knowledge before being able to deal with any clients.

The requirement should be limited to the specific products that the representative recommends to investors, or a small reasonable sample of similar products. It is not reasonable to require a representative to be intimately familiar with, for example, 500 different Canadian equity funds but it may be reasonable to expect the representative to be familiar with 10 of them.

Know Your Product – Firm

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.**

We agree with the intended outcome. We believe that firms should be required to clearly disclose the types of products and services they provide to potential clients. Full disclosure should make a firm's range products apparent to investors.

Notwithstanding the above, we also believe that the intended outcome is already in place for most dealers as the competitive nature of the existing business environment requires dealers to currently offer a broad range of products suitable to their client base. Unless dealers offer products that their clients need and want, the dealer will not have a viable business model. Accordingly, we do not believe it is necessary to require mutual fund dealers to complete market investigations and product comparisons.

We believe that this is one area where prescriptive regulation may be indicated and that dealers should not be allowed to offer different compensation to representatives for the sale of proprietary products compared to non-proprietary products.

As stated in our response to Question 7, we believe that any new requirements beyond those already in place, may result in mutual fund dealers reducing their approved product shelf due to the additional expense and administration.

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?

We do not agree that any new KYP requirements are needed for the reason described above. The proposed market investigation and product comparison, beyond a few choices in a given assets class, would be another new expensive and resource-demanding obligation for mutual fund dealers, who are already experiencing significant costs due to the many regulatory changes recently completed or underway.

We believe that the most likely impact of imposing a market investigation and product comparison would be for dealers to actually reduce rather than expand their product shelves due to these additional expenses and demands on resources.

10) Are there other policy approaches that might better achieve this outcome?

As noted above, we believe the outcome has already been achieved for most dealers and therefore, we do not have any other policy recommendations. We would prefer that regulators follow a principles-based approach in this area.

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

As stated above, the requirements would be another new expensive and resource-demanding obligation for mutual fund dealers who are already experiencing significant costs due to the many regulatory changes recently completed or underway. The requirements are not at all practical for exempt market dealers since many products are created exclusively for a particular dealer and are not available to other exempt market dealers.

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?

As stated above, the most likely impact of imposing a market investigation and product comparison would be for dealers to actually reduce rather than expand their product shelves. This has the additional unintended consequence of reducing the investment choices available to investors. Due to the significant costs involved, it will not result in firms offering more products.

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

We believe that this is a possibility. Conversely, proprietary firms may add products to fit the definition of mixed / non-proprietary firms but still continue to operate in a proprietary firm manner. To avoid firms categorizing themselves as mixed / non-proprietary through minimal sales of non-proprietary products, we suggest a guideline of a firm being categorized as "proprietary" if more than 80% of its sales are of proprietary products.

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

It isn't clear what the purpose of such requirement would be. It is unrealistic to require a firm that only offers proprietary products to recommend that prospective clients buy products that that firm doesn't sell.

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?

We believe that clients should know whether they are dealing with a firm that offers only, or primarily, proprietary products or whether the firm is able to offer a broader range of products. This information should be part of the firm's client relationship disclosure.

Suitability

16) Do you agree with the requirement to consider other basic financial strategies?

We do not agree that the process for assessing the suitability of a transaction for a client requires the consideration of other basic financial strategies.

In many cases, other financial strategies such as real estate investing, life insurance, and tax and estate planning require specific proficiencies and registrations that representatives, their supervisors, and the firm may not have and should not be required to have. This may lead to the unintended consequence of representatives, supervisors, and firms inadvertently acting outside of their registration and proficiency.

We also anticipate that clients may not welcome such considerations and may not fully understand them.

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?

We believe that "most likely" presents numerous challenges and is inherently unworkable.

As a starting point, we believe that the "most likely" requirement evidences a misunderstanding of the fundamentals of the investment process, including a lack of understanding of modern portfolio theory. Few clients hold a single investment, which means that clients are not relying on any one product to achieve their investment needs and objectives; rather, they are relying on the portfolio effect to reduce risk while at the same time raising possible returns (the "efficient frontier"). Investments must be considered in concert with each other which prevents any reasonable assessment of whether a particular investment is "most likely" to meet the client's needs and objectives.

In addition, a “most likely” requirement may require firms and representatives to consider products or strategies not offered by the firm and that are beyond the firm’s and representative’s registration or expertise.

As a result of the above, we believe that “most likely” may cause firms to reduce their product shelves in order to reduce KYP due diligence costs and to reduce the risks of being challenged on decisions made.

Given that the future outcome of investments is unknowable, we also believe that a regulatory position that any particular investment is “most likely” may mislead clients about the inherent risks of investing in securities. The 2009 IOSCO report, *Guidelines to Emerging Market Regulators Regarding Requirements for Minimum Entry and Continuous Risk-Based Supervision of Market Intermediaries*, makes the point that regulation should not be expected to remove risk from the markets. The returns that clients receive on investments are the rewards for accepting market risks: clients need to take responsibility for the investment risks that they accept.

All of the above could also result in an unintended consequence of firms needing to charge higher fees, reducing their product shelves, and becoming much more selective about accepting clients.

18) Should there be more specific requirements around what makes an investment “suitable”?

Regulators, both through policies and through enforcement actions, have provided considerable guidance about suitability. We do not believe that more specific requirements are not necessary.

If regulators believe that there are legitimate concerns about investments that are harmful to clients despite being “suitable”, we believe that regulators should articulate those concerns clearly and provide specific examples. Otherwise, this appears to be a solution in search of a problem.

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

We do not believe that a full suitability review is required when accepting an instruction to hold a security. Notes documenting an overall review of the client’s portfolio should be sufficient in this situation.

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?

The MFDA's suitability policies provide detailed and well thought out triggers about when a suitability analysis is required. These are consistent with the trigger events proposed by the CSA, with the exception that the MFDA does not have a trigger for the "occurrence of a significant market event affecting capital markets to which the client is exposed". We believe this proposed trigger is unnecessary, too vague, and of no benefit to investors.

Most client situations stay the same for years and imposing an arbitrary requirement to assess the suitability of every product in a client's portfolio every year – in the absence of any triggering event – is excessive and imposes costs without any corresponding benefits. In many cases clients resist what they see as unnecessary review meetings when they know that there has been no material change in their circumstances. Such a requirement would have a direct result of increasing costs to clients.

Further, for illiquid products such as certain exempt market products there is no benefit to an annual suitability review since no change can be made in the holding. Once the suitability assessment has been made at the time of initial investment, there is no benefit to prescribing an annual review.

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?

We support the requirement to provide clients with a copy of any representative's analysis regarding the client's rate of return, investment needs, and objectives. We would not support a requirement for all representatives to perform such an analysis for all clients since not all accounts are based on achieving particular rates or return. For example, where the client's objective is preservation of capital there is no need to perform a rate of return analysis or for a supervisor to review it.

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

We believe that the MFDA's suitability policies provide detailed and well thought out triggers about when a suitability analysis is required. We believe that for all dealers a suitability review should only be required:

- for each order accepted or recommendation made for any account of a client;
- when a client transfers securities into a new or existing account at the firm;
- when a firm or the representative becomes aware of a material change in the client's KYC information; and
- when a client is reassigned from one representative of the firm to another representative of the firm.

We do not believe that a suitability review or supervisory review is required for recommendations such as not to invest in order to preserve the client's cash for a home purchase, paying taxes, or similar reasons.

Relationship Disclosure

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

We believe that the current requirements for disclosing a firm's products and services to clients are sufficient. Accordingly, we do not agree with the proposed disclosures that are aimed at firms registered in restricted categories of registration, apart from a category such as scholarship plan dealers. We believe that disclosures such as the following would be both confusing and unwanted by investors:

- can "only offer… a limited range of products";
- suitability analysis "…does not consider the full range of securities products…";
- "Whether such other types of products are better, worse or equal in meeting the client's investments needs and objectives."

These types of disclosures may lead clients to believe that a firm with a restricted registration cannot meet their investment needs and objectives even though the client may substantially benefit from the lower cost structures of firms with restricted registrations.

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

We believe that there are benefits to clients in disclosing that a firm offers only proprietary products.

25) Is the proposed disclosure for restricted registration categories workable for all categories identified?

Yes. Please refer to our response to Question 23.

26) Should there be similar disclosure for investment dealers or portfolio managers?

We do not believe these categories of registration should require similar disclosure for the same reasons as noted above.

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

No. We believe that section 14.2 of Companion Policy 31-103CP already provides detailed and sufficient requirements.

Proficiency

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

We support heightened proficiency standards for all registrants including CCOs and UDPs, provided that the requirements are targeted to those roles such as ethics and regulatory changes.

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

Please refer to our response to Question 28.

Titles

30) Will more strictly regulating titles raise any issues or challenges for registrants or clients?

We support stricter regulation on the use of titles but we do not support a short list of prescribed titles. We believe that a principles-based approach is appropriate with a focus on ensuring that titles are not misleading. We note that new limitations on titles will require many firms to incur potentially significant costs to change business cards, stationary, signage, internet and social media holding out by their registrants.

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?

We are not supportive of any of the three proposed alternatives as we find all of them to be much too restrictive and in some senses the proposed titles are demeaning. We recommend that a broader list of titles be developed.

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

We do not believe additional guidance is required.

Designations

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?

We support a requirement for firms to review and validate the designations used by their representatives. We believe that a principles-based approach is appropriate with a focus on ensuring that any designations used have substantive proficiency requirements and are not misleading.

Role of UDP and CCO

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

We believe the proposed clarifying reforms are consistent with typical current UDP and CCO practices.

Statutory Fiduciary Duty when Client Grants Discretionary Authority

35) Is there any reason not to introduce a statutory fiduciary duty on these terms?

We support the introduction of a statutory fiduciary duty when a client grants discretionary authority to a firm or registrant.

PART 8 – PROPOSED FRAMEWORK FOR A REGULATORY BEST INTEREST STANDARD

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.

We do not believe there is any need or benefit to introducing a regulatory best interest standard over and above the proposed targeted reforms, subject to our comments elsewhere. The current statutory duty to act "honestly, fairly and in good faith", SRO rules, and proposed targeted reforms provide a very high standard of investor protection.

We also believe that the imposition of a regulatory best interest standard could be both confusing and misleading to investors with respect to their understanding of their own responsibilities and accountabilities for their investments.

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.

Please refer to the discussion in our General Comments and in our response to Question 36.

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.

Please refer to the discussion in our General Comments and in our response to Question 36. We are particularly concerned that, as described, the best interest standard appears to be an attempt by regulators to shift all responsibility in non-discretionary relationships to the registrant and to absolve clients from the risks and responsibilities of making the final investment decisions.

PART 9 – 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?

We believe that the proposed targeted reforms and/or regulatory best interest standard will significantly increase compliance costs for all dealers by requiring:

- additional compliance staff and / or the need to engage third party information / analysis providers;
- system enhancements across the industry;

- deeper and more frequent inquiry / analysis;
- additional training and implementation for representatives and compliance staff;
- replacement of existing presentation, disclosure, and holding out materials;
- additional investigation and legal costs with respect to best interest complaints and / or claims; and
- increased premiums for professional liability ("errors and omissions") insurance or, more likely, professional liability insurance no longer being available to firms and representatives.

In particular, compliance staff would have to be able to assess the tax recommendations, cash flow analysis, investment recommendations, portfolio holdings, for every client and account, and would have to do so more frequently than is required under current regulatory requirements. Given the breadth and depth of required expertise, we do not believe that adequate staffing resources would be available to firms to meet the proposed regulatory obligations and that the resulting cost pressures would be prohibitive. Like all costs, these would have to be passed along to clients.

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

We believe that the proposed targeted reforms and / or regulatory best interest standard will have the following impacts on investors:

- firms may consolidate which can disrupt existing relationships;
- firms may reduce the number of their registrants resulting in less choice for investors due to increased minimum revenue requirements;
- firms may reduce their product shelves resulting in less choice for investors or unwanted investor fragmentation of their investments amongst multiple firms – fragmented holdings will likely cost more overall for clients than consolidated holdings;
- firms may compensate for additional costs by:
    - increasing fees for advice;
    - increasing or adding new administrative and servicing fees;
    - introducing minimum client investment requirements that will preclude many clients from obtaining their services;
    - reducing or eliminating free research, consulting and investment education tools offered by firms;
- investors may switch to self-directed investing to avoid fees even when it may be a poor choice given the client's knowledge and circumstances; and

- investors seeking low cost advice may be more vulnerable to fraudulent schemes because they are not able to obtain independent professional financial advice.

However, we do not believe that there are substantive reasons to believe that the proposed changes would produce better investment outcomes for clients; rather, due to the increase in costs and qualified advice becoming less available, we believe that the changes would result in worse outcomes for a large majority of clients.

41) What challenges and opportunities could registrants face in operationalizing:

(i) the proposed targeted reforms?

(ii) a regulatory best interest standard?

In addition to the increased compliance costs identified in our response to Question 39 and the investor impacts identified in our response to Question 40, we see the following challenges:

- the ability to engage client cooperation with respect to lengthier and more frequent interaction;
- the ability to engage client cooperation in providing personal and confidential tax information;
- the ability to engage client cooperation in providing detailed information about investments held outside of the firm; and
- the ability to discourage clients from choosing to self-invest despite being ill-equipped to do so

We did not identify any opportunities.

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?

As noted in our previous comments, firms may:

- consolidate and / or reduce the number of representatives due to increased minimum revenue requirements, resulting in less choice for investors;
- reduce their product shelves resulting in less choice for investors or unwanted investor fragmentation of their investments amongst multiple firms – fragmented holdings will likely cost more overall than consolidated holdings;
- compensate for additional costs by:
  - increasing fees for advice;
  - increasing or adding new administrative and service fees;
  - introducing minimum client investment requirements that will preclude many clients from obtaining services;
  - reducing or eliminating free research, consulting, and investment education tools.

We believe that firms providing low cost, advice-free self-investing, will benefit significantly at the expense of firms that do provide advice. Such firms may be the only alternative for smaller investors even though this may not ultimately be in the smaller investor's best interest.

PART 10 – INTERNATIONAL DEVELOPMENTS

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

We believe that the proposed targeted reforms sufficiently enhance the obligations of dealers, advisors, and representatives and the proposed imposition of a best interest standard is an unnecessary step that will not provide any material additional investor protection.

We do not believe that the adoption of particular reforms by foreign jurisdictions should lead to Canadian regulators adopting the "same" changes in Canada since many of the changes in other jurisdictions have been based on the peculiarities of the local laws and do not correspond to identified or identifiable problems in Canada. Further, changes in local securities laws in other jurisdictions articulate with a particular jurisdiction's other laws in ways that may not produce the same results in Canada.

APPENDIX A

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?

Yes. We believe that it is appropriate to allow sophisticated clients to make their own decisions.

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?

We have no comment on this question.

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.

We do not support adding additional investor types. We also question whether financial thresholds are appropriate in this regard.

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

We do not support adding additional investor types.

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

We would consider including the making of charitable donations on behalf of a registrant.

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?

We have no comment on this question.

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?

We have no comment on this question.

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

We have no comment on this question.

52) 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?

We question why this type of disclosure wouldn't be required for all types of products.

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.

No. Further guidance is not required. We believe that this should be an area for principles-based regulation.

APPENDIX B

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?

We do not believe that there should be a KYC obligation to collect tax information about the client other than when the transaction is being recommended specifically to satisfy a tax strategy proposed by the representative. Otherwise, clients typically only provide tax information to persons completing a financial plan or providing tax advice. Collection of tax information in any other circumstance is likely to be unwanted by clients and may mislead them about the expertise or services provided by a registrant.

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?**

We believe that a firm should be permitted to open an account if some of the client's KYC information is missing but there should be guidance on minimum KYC elements that must be obtained prior to doing so. Accounts with missing KYC should restrict transactions to liquidating trades until fully completed KYC information is received. There should be enough information for supervisors to be able to perform a suitability assessment before any other type of trading is permitted.

56) **Should additional guidance be provided in respect of risk profiles?**

We do not support the introduction of a prescribed risk profile form as we do not believe that one can be developed that is suitable to all client type and firm business models. We do support additional guidance as to minimum key risk profile characteristics that firms must obtain in order to ascertain a client's risk tolerance.

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?**

We do not believe that there are circumstances where it is appropriate for a representative to collect less detailed KYC information.

APPENDIX D

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?**

We believe all firms should have product review procedures and a product list, but there should also be recognition that the review procedure for heavily-regulated products such as prospectus-qualified mutual funds will be different from review procedures for other types of products.

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.**

As noted in our response to Question 8, we do not believe it is necessary to require firms to complete market investigations and product comparisons. Accordingly, we do not believe additional guidance is necessary.

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

We believe that clients would benefit from clear disclosure that a firm offers only, or primarily, proprietary products.

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.**

No. As noted in our response to Question 8, we do not believe it is necessary to require firms to complete market investigations and product comparisons.

As described in our response to Question 17, we believe that the "most likely" description evidences a misunderstanding of fundamental investment concepts and would be misleading to clients.

APPENDIX E

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?**

As noted in our response to Question 17, we believe that this expectation will likely cause firms to reduce their product shelves. The additional risk and client complaint exposure for firms could also result in firms charging higher fees and being much more selective about taking on clients. This is also problematic for exempt market dealers that do not sell other investment products.

We believe that the potential negative unintended consequences decidedly outweigh any intended benefits of this proposal.

63) **Should we provide further guidance on the suitability requirement in connection with ongoing decisions to hold a position?**

As noted in our response to Question 20, we believe that the need to perform a suitability analysis every 12 months regardless of any trigger event, is excessive, of no foreseeable value, and would increase costs. We also believe that clients would not welcome them. Accordingly, we do not believe any guidance is needed.

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?**

As noted in our response to Question 20, we believe that the need to perform a suitability analysis every 12 months regardless of any trigger event, is excessive and of no foreseeable value. We also believe that clients would not welcome them. Accordingly, we believe that no further guidance on the frequency of suitability analysis apart from any further guidance on trigger events is necessary. We question the benefit of prescribed suitability reviews when a client only holds long-term illiquid products.

APPENDIX H

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?**

Yes.

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

It is difficult to say whether the Standard of Care is inconsistent with current legislation without a precise definition of Standard of Care. We believe that such a standard will likely impose greater accountability and responsibility on firms and registrants than currently is in place under existing securities regulation.

67) **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.**

We have no comment on this question.

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?**

We have no comment on this question.

Thank you for the opportunity to provide our comments. We would be pleased to discuss our comments further if the CSA have any questions on our comments or would like further clarification of them.

Yours truly,

"*Mark Kent*"	"*Kenneth Parker*"
Mark S. Kent, CFA President & CEO	Kenneth Parker, CA Vice President, Compliance & Finance