



Suite 150,1209 - 59 Ave SE
Calgary, AB T2H 2P6
P) 403.685.9652/ 1.888.452.2652
F) 403.685.9682
www.amba.ca

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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

Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West, 22nd
Floor
Toronto, Ontario,
M5H 3S8
Fax: 416-593-2318
E-mail:
comments@osc.gov.on.ca

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
Fax: 514-864-6381
E-mail: consultation-en-ours@lautorite.qc.ca

Re: CSA Consultation Paper 33-404, Proposals to enhance the obligations of Advisors, Dealers, and Representatives towards their Client

The Private Mortgage Lenders Form (the "PMLF") is pleased to provide comments in connection with the Canadian Securities Administrators ("CSA") Consultation Paper 33-4404 Proposals to Enhance the Obligations of Advisors, Dealers, and Representatives towards their Clients (the "Consultation Paper") as set out below.

Private Mortgage Lenders Forum

The PMLF is composed of 24 private mortgage lenders including Mortgage Investment Corporations (“MIC”) and syndicators located in the provinces of Alberta and British Columbia. The members represent more than \$1.3 billion in private mortgage lending in Western Canada.

The PMLF is a committed association of industry members providing the private mortgage lending industry with leadership in the areas of compliance, standards of excellence, education, information, and networking. The organization began in 2010 and has actively been engaged in working within and out of its industry to ensure the health and benefits of its members, regulators and the public.

The mandate of the group is:

The Private Mortgage Lenders Forum (PMLF) will provide leadership in the areas of compliance, standards of excellence, education, information, and networking. In addition, the mandate of the Forum will be to promote ethical, professional and consistent industry practices that will foster a healthy and sustainable industry.

The following is a list of the objectives of the group: Forum Objectives

1. Create a forum that will allow industry members to openly discuss industry related issues;
2. Develop best practices for the industry;
3. To work with provincial and federal regulators to develop legislation, rules and regulations that will:
 - a. Protect Canadian investors, consumers and borrowers from unfair, improper and fraudulent practices;
 - b. Promote best practices for transparent and reliable disclosure; and
 - c. Ensure the health and vitality of the private mortgage lending industry for the benefit of all Canadians.
4. Assist members in understanding and adhering the regulatory requirements of registration in their particular situation and jurisdiction;
5. Create effective communications for politicians, consumers, and other industries practitioners, regarding the private mortgage lending industry by identifying the benefits and value provided to Canadians, the economy and the real estate industry;
6. Advocating for the health and vitality of the Private Mortgage Lending industry and the Canadian economy.

Reference

http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20160428_33-404_proposals-enhance-obligations-advisers-dealers-representatives.htm

Response to Questions

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

The PMLF believes there is insufficient guidance to assist industry members to respond to conflicts of interest. Our experience from regulators examinations is that there is a desire for exempt market dealer members to provide an exhaustive list of conflicts and there is no materiality that is required to address conflicts of interest that have a risk related approach to addressing these know and unknown conflicts.

The PMLF believes there needs to be a further dialog to understand where the gap exists and address deficiencies based on direct finding where the industry has failed to appropriately address conflicts of interest.

The PMLF also cautions regulators to apply standards to the market space where it is not appropriate. There is a significant difference in the business models of an IIROC dealer than an exempt market product. If EMD's has a proprietary product and is able to effectively communicate the limitations of its product offering to the public and appropriate disclosure are provided then there should be some flexibility in the regulation model to allow the market to develop and create proprietary options for the market.

- 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?**

The PMLF is of the opinion that EMD's do have the requirement to prioritize the interest of the client ahead of their firms. We believe the suitability assessment if appropriately administered can be effective in providing the level of conduct that is required to correctly protect the public.

The PMLF would note that the suitability requirement is still in its infancy with respect to adoption of the interest and awareness continues to improve in the industry understanding the expectations of regulators.

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

The PMLF believes that there needs to be a customized approach to managing, disclosing and confirming conflicts of interest with potential investors. It is not reasonable to assume that every potential conflict of interest is disclosed and disclosed to the same degree. A measured response is required to ensure that where there is a particular need for disclosure it is given an appropriate level of disclosure to the appropriate risk level signed. Treating all conflicts equally for all industries is not appropriate or reasonable.

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?

The PMLF believes that it is not appropriate for EMD's to be providing tax advice to their clients. This is a special skill set that requires an in-depth knowledge of individual personal financial circumstances. It places a high level of responsibility on the Dealing Representative to situations that individuals either have experienced professionals providing that advice or should be seeking that advice. Recommendations can be made for individuals to seek the advice of professionals but regulators should not be requiring EMD's to be experts in what they are not.

The nature of EMD's is to be specialists in specific areas that allows for customized products that are servicing a very specific need. It should not be more than it is really is and should not try to be everything to everyone. Accountants, tax planners, financial planners, Financial advisors have their role and their expertise that they provide. For regulators to determine that EMD's need to be a jack of all trades to perform their specific capacities in the market will not serve the public or the industry.

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?

The PMLF does not see the need to codify the KYC. It would be appropriate for regulators to communicate through a principles-based approach what is required and how the regulators believe certain information is relevant to collect. There are many different business models that are performing very specific investments that require customized information to ensure that investors meet the business models test of suitability for specific products.

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

The PMLF believes that it is appropriate and reasonable to have internal processes that ensure the quality of the information that is provided on KYC form. There is value to having more than one individual review and identifying deficiencies or challenges with the documents. This allows for a good compliance culture and process.

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

The PMLF is primarily composed of proprietary products and the ability to access information from other private products to make suitable comparisons are difficult. It is important that a registrant has the ability to demonstrate a full understanding of their product, the risks, conflicts and challenges with investing in their products. We believe there should be greater standards placed on issuers to communicate and disclose their product offering to allow third parties and/or investors to be able to perform a comparative analysis.

We believe it is not appropriate to place an expectation that in a private market where there is no method (eg. Market terminals) that can allow for accuracy and disclosure of information.

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.

The PMLF does not agree there are many reasons why an EMD may not have access to a broad range of products or have the knowledge or expertise to evaluate a range of products. There are industry experts who have specific industry background and have the ability to make investments available based on the knowledge they have. Requiring registrants to broaden their product base into investment products where they do not have the ability to perform the necessary due diligence is risky for the industry and to the public.

Even large financial institutions as the banks are not required to provide a product mix outside of their own company mutual fund products.

Large investment firms that have the due diligence resources and have sourced industry experts who are qualified in specific industries to perform and provide a product listing have a business model that should appropriately allow customers to identify those capacities. An expectation that EMD's have the business model, skills, capacities and ability to perform that level of analysis is dangerous and unreasonable.

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?

The PMLF believes that it is important to have flexibility in the method by which EMD's choose to select their products to the skills and abilities of the organization. Assuming that a 'one size fits all' model will serve the industry and the public is not reasonable. There are industry experts that have a particular skill or ability to invest in certain fields of investment and not all capacities are transferable. The ability to select and appropriate real estate investment is not the same and selecting an appropriate oil well to be drilled. If a consumer is looking for market specific products there should be an ability for them to select EMD's that have to demonstrate an ability to select investments in that category.

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

The PMLF believes that the existing rules have the ability to address the concerns presented in the proposal. The PMLF would like to encourage greater consultation and dialog with industry members to bridge the gaps outlined as opposed to creating additional rules.

The PMLF does support additional reporting and disclosure requirements of reporting issuer to ensure that there are sufficient transparency and disclosure in the exempt market.

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

The PMLF primarily offers proprietary product and it is very difficult to get access to comparable information from other products. There is a significant cost associated with having a third party perform a due diligence on products and it is not appropriate or reasonable to assume that mixed product EMD's would want to invest time and resources into the due diligence of competing products on the shelf. For issuers to have multiple EMD's perform independent research is time and cost prohibitive and does not make sense for the return that an issuer would get in being on multiple shelves.

For the PMLF to rely on only mixed product EMD's to sell their products creates a significant risk to the issuer whose existing shareholders are relying on the operations of the EMD to provide liquidity for their market products. There are very different business models for existing EMD's who may not have certain industry knowledge and experiences to perform appropriate due diligence.

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?

The PMLF believes that requiring mixed-product EMD is a very ineffective cost model for both the issuers and the EMD's. AS smaller firms that provide limited scope product offerings it is not reasonable to assume that the KYP reforms would be conducted in a timely, efficient and reasonable manner. This will force smaller more customized issuers and EMD's out of the business and provide fewer product options on the shelf.

In the private mortgage lending business, there is a significant need for small market communities that are not able to attract larger firms to those markets to have small fund options for local areas, Smaller communities in Norther Alberta do not attract larger private lenders, this provides local lenders an opportunity to service that market. These markets need local solutions that are cost effective.

In the experience of the PMLF, we have seen that the more successful Dealing Representatives are the ones that have very specific industry knowledge and are able to communicate that product effectively to potential investors. Requiring DR's to have a broader product knowledge is not their competitive advantage and does not necessarily make them more effective in working with their clients.

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

The PMLF has a number of members that have proprietary products. The reasons why many have adopted this model is to protect the viability, liquidity and maintain the relationship with its investors. Relying on third parties to ensure the viability of your business is not effective. The initial cost of becoming licensed is a factor, but the challenge in getting on a shelf as a start-up or as a small cap business is a challenge as well.

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

The PMLF adamantly opposes a requirement in an exercise where there is no sufficient ability to meet the requirement. The nature of the exempt market is a private market where information is not openly shared as it is in the public markets. This allows business operators the ability to maintain a competitive advantage in not having to disclose their business models.

Requiring firms to investigate in market comparisons when there is very limited information and the quality of the information is difficult to confirm. It only encourages poor dissemination of market information and would be subject to inconsistencies that would not produce the desired result.

Due to the variance in business models and the lack of comparisons, there is a risk that comparisons are made between very different risked products which can create unfair and unreasonable comparisons.

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?

The PMLF agrees that it is important that EMD is disclosing the model and method by which they operate. It is critical that investors understand if an EMD is offering a proprietary product, mixed/non-proprietary. It is important to know if the EMD specializes in certain industries or fields of study.

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

The PMLF does not agree with the requirement to consider other basic financial strategies. It is our belief that industry members should be given the opportunity to focus their skills talents and abilities to very specific areas of focus and to perform those task to the benefit of investors. Broadening the scope of responsibility to considering other financial strategies creates an expectation from regulators and investors that are detrimental to the certified financial advisers that are educated and trained to perform that function. If investors are looking for a financial strategy they should be seeking that from those industry experts that have that. We should not be putting those that are not experts into that space.

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?

The PMLF is of the opinion that the current KYC and suitability allow the industry to determine the basic investment objectives of the clients and to determine if there is alignment in the strategy that the investor is looking for.

There are no guarantees with investing and it is not the purpose of regulators to determine what is a good investment or a bad investment.

18. Should there be more specific requirements around what makes an investment "suitable"?

The PMLF encourages further dialog with regulators in developing and improving the methods and comprehension of "suitability". The more guidance and information the better industry members will be able to ensure consistency within the industry and better standards and results in the market.

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

The PMLF believes that the suitability assessment in its current form has been effective in meeting the goals of regulators. While there continues to be adjustments to improving the process, we believe that the interests of investors can be served under this model.

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 PMLF believes that it is appropriate for suitability analysis to be conducted at every trade and not on an annual basis. For investors that are making long-term investments in the EMD market in depth review and analysis is frustrating and annoying for investors. Many investors invest in a variety of market products and to be inundated with a number of EMD's is repetitive and challenging.

The position of EMD's to collect additional information in a transaction where the investor is not looking for something is not advantageous. When the investor is looking to make a trade that is the point in the relationship where the DR has the ability ask for additional information and the investor is more likely to comply. When the investor is not looking for information they are less willing and less likely to provide good information.

EMD's with proprietary products should continue to offer their services to perform reviews at the investors request and there should be continuous disclosure to investors that if circumstances of the investor change to notify their DR to assist and answer any questions they may have.

Good service is a service that is available when the client is looking for assistance. Bad service is calling when the are not interested and don't want to be bothered. This is comparable to telemarketing calls at dinner time!!

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?

The PMLF does not agree that EMD's should be providing target rates of return. While an issuer has the ability to perform a degree of this analysis it is not reasonable to place third parties in a position where they are required to make subjective analysis with the limited information that is available in the private markets. There are a lot of risk factors that are not disclosed in other investment products and for those investors that are looking at a large number of investment products, there are challenges in performing a portfolio analysis.

There are professionals in the financial industry who are qualified to perform a more accurate analysis and have the training to service this function better than the EDM market. Once again it places a gap in expectations of the regulators and the public that cannot be properly serviced by the EMD market.

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?

The PMLF would like to communicate that in situations where regulators are requiring EMD's to perform a suitability in situations where there is not an opportunity to sell, redeem or exchange due to redemption terms of the issuer, it is important that the expectations of the investor are well understood. While it is important that information that is available with respect to a product is well disclosed and a recommendation by a DR may be counter to what would be in the best interest of the issuer on shareholders over-all.

Example, in the event of a down-turn in of a real estate market, where real estate values can be impacted, a suitability assessment may be to suggest a redemption for a particular investor. As a fund manager if there was a liquidation of the fund there is no opportunity for the fund manager to properly manage and preserve the equity and value of the fund. In these situations, many issuers may have placed redemption limits to control the outflow of equity. This allows the manager to protect the entire value of the fund and recover the most for all investors. This can create a conflict of interest that will the DR is indicating a redemption may be in the best interest of one investor, the best interest of all investors is to hold and manage the fund appropriately through a real estate down-turn.

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

The PMLF agrees that firms should be required to disclose their registrations and limitations.

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

The PMLF supports the disclosure requirements for firms that are offering only proprietary products.

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

Yes, it is workable for the private mortgage lending industry.

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

The PMLF believes that it is in the best interest of the entire financial industry to support good disclosure with respect to what function and what services the registrant is looking to provide to the public, the better able we are to make clear distinctions the greater the opportunity we have to meet those expectations by regulators and the public.

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

There should be appropriate parameters by which industry members are able to use to assist in informing the public as to their business model and how they intend to work with investors. There should be flexibility to allow operators to have some flexibility within one business model to another.

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

The PMLF is very concerned that the CSA sets proficiency requirements that are not appropriate or reasonable. It is important that proficiencies are focused in the areas that will be of value to the individual business model and the investors that the business model is attempting to serve.

The best method by which to address this is through continuing education credits. As an example for the private lending industry, there are relevant real estate courses that would assist individuals in our field of study to become more knowledgeable with the respect to the industry we are working in.

The CSA would not be assisting investors by placing requirements to have our industry members taking courses related to mutual fund analysis or something related to publicly traded stocks.

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

The PMLF believes that there is a current gap between the proficiency requirements and what is available to industry members to properly assist in the actual function of each of the roles.

It is critical that proficiency is designed and implemented in a way that supports good knowledge development that will be in service of the industries it is trying to serve. Current CCO courses are designed for an IIROC style business model which is not representative of the skills are requirements of running either a mix or proprietary EMD. Regulators should work with industry professionals in developing education, courses, and seminars that are useful and relevant. A good education is the foundation for good compliance.

The PMLF does not believe that a UDP should have extensive proficiency requirements. This is the individual that is responsible for the business and the operations of the company. They should have the ability to select qualified individuals to assist with compliance and not have to be compliance experts.

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

The PMLF believes that titles have the opportunity to provide clarity when they are used in a consistent manner. It is important to note and for regulators to be aware that in many industries (including real estate) there can be a number of different titles that we are required to be disclosed including Realtor, Mortgage Broker, or Mortgage Associate.

It is important that regulators understand that other regulators may require other titles to be disclosed along with any CSA titles.

We do not believe that it would be appropriate to use “sales person” as it is not specific enough to assist in proper identification. Should incorporate terminology as “exempt” or “restricted” to highlight that there are limited capabilities of services and functions that are offered.

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?

The PMLF believes that the use of titles should be limited to the areas where registrants are performing registered functions. Where individuals are holding multiple titles to the public it is advantageous that multiple titles are not used to confuse the public as to the role the individual is performing.

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

The PMLF believes that representatives be granted flexibility in the use of titles to appropriately match the role that they are playing in dealing with the public. For small business models, it is a requirement that individuals have the ability to hold multiple designations and titles.

In no way to multiple titles detract from the individual’s ability to perform a registered activity. What is important is that where an industry member is performing a licensed activity they are clearly communicating that to the public and representing themselves in a professional manner.

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?

At this time, it is not appropriate or reasonable to suggest specific designations. The industry needs to mature and determine appropriate business models that could support this level of interest and action.

Yes, it is reasonable to assume that firms are reviewing and validating the designations used by their representatives.

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

The PMLF would like to encourage CSA to be flexible in predetermining the role that each individual should play within a firm. We believe it is important for registrants to properly consider their business models and determine the compliance reporting structure that will encourage that highest and best result to meeting the compliance standards.

Example: in some firms, the CEO may not be the most qualified individual to be the UDP, this role may better align to a President or Chief Operating Officer that has a more hands-on approach to building and supporting the compliance culture of the firm.

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

The PMLF does not agree that introducing a statutory fiduciary duty on the terms suggested is reasonable or appropriate. The exempt market should be designed to provide limited product offerings based on exemptions, conduct adequate product due diligence, and sufficient suitability assessment.

We believe that fiduciary duty is the role that should be limited to professional financial advisors that offer a higher standard and have the training and resources to meet that level of duty and care.

The exempt market by its nature does not have the infrastructure, resources, systems or transparency to provide the level of fiduciary duty that an IIROC member is able to provide. There should not be the same expectations on these two business models which product offerings are completed designed differently.

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.

The PMLF does not agree that “best interest standards” is an appropriate method of regulating the exempt market. The belief that the standard of fairness, honest and good faith is not adequate to ensuring a healthy industry. There has been a significant change that has resulted from the establishment of the current rules and regulations.

Regulators in Alberta have been very successful in working with the industry to improve the capacities and abilities of our industry to appropriately serve the qualified investors.

Our industry continues to seek methods of improving our business models to address both regulator and public concerns.

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.

The PMLF does not believe that the regulatory best interest standard would “close the expectations gap”. There is skills and knowledge gap in what a member of the public can receive from an IIROC member compared to an exempt market member. There is a discrepancy to the type of education, knowledge, and skills that is required from an IIROC member compared to an individual in the EMD space.

The EMD’s offer a very specific and narrow product space which requires specific knowledge and can offer a different set of skills than an IIROC member. Both offer value and both offer a different value proposition. What should not happen is individuals of the public believing that they can receive the same value for each.

The PMLF believes that the current regulatory standard offers an appropriate level of duty of care to the client that their interests are not properly severed. We believe there is sufficient capacity for regulators to ensure that registrants are acting in the interests of their clients and not acting for their own personal benefit at the expense of investors.

A principle-based approach will not allow for greater flexibility as the standard will impose a standard that is not reasonable for EMD’s to effectively administer, further limit their product, create exceptionally high insurance premiums, and create unrealistic expectations that will produce legal implications.

The PMLF believes that it is the responsibility of the industry and industry associations to focus on the professionalization of advisers and dealers. The best place to inspire and create change is within the industry itself. There are committed industry members in both the EMD space as well as specific industries like the PMLF that are committed to raising the bar for the betterment of our industry.

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.

N/A

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

The PMLF believes that there would be a significant increase in the cost of acquiring insurance for both the corporation and board of directors. There would also be significant limitations from insurance providers that would increase the risk and exposure to employees and board members.

A significant time, energy and resources would be required to even attempt to address the “best interest standard”. The word best would imply that all measures are taken to ensure that standard is met.

In the mortgage industry, the terminology of “best” interest rate, is not used because it is not reasonable to assume that there is any one mortgage product that can offer the “best” and the best may not be the most appropriate for an individual. A mortgage broker can get a borrower the best interest rate, but it may not have the most appropriate terms that are of particular value to the client.

To find the best investment is to assume that industry members have access to the full universe of products, that it is able to get all of the required information on those products, is able to appropriate identify and measure those investments with a limited history or knowledge of the market.

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

The PMLF believes that these target reforms will not serve in providing investors with better results in the investment of the exempt market. For individual investors that are seeking alternative investments, there is a specific set of criteria that has generated an interest or a desire to looking to this investment segment. The best from an IIROC criteria of investing is much different than for an exempt market product, which has very different, risk profiles, liquidation terms, invest criteria or time horizons.

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

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?

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

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?

The PMLF believes that it is reasonable and appropriate that method of disclosing for all parties including institutional clients. Registered firms need to be diligent in their disclosure of conflict of interest and appropriately communicate items that would be particularly relevant for the audience they are communicating with.

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?

The PMLF believes that the CSA should provide a reasonable measure based on the audience that a registrant is working with. We do not believe that retail should include accredited investors and there should be separate measures for permitted, accredited and eligible investors, based on their knowledge and understanding of the market in which they are considering an investment.

It is the experience of the PMLF that accredited investors have access to professions including accountants, advisers, insurance provider that can give them better information than an undesignated individual.

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.

The PMLF does not see a need to further categorize an institutional investor from a permitted investor.

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

The PMLF does not see a need to further categorize an institutional investor from a permitted investor.

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

N/A

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?

N/A

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?

The PMLF believes that there is no need for specific sales practices for certain types of products like pooled investment vehicles.

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

The PMLF does not believe there is a need for any other limits.

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?

N/A

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.

N/A

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?

The PMLF does not believe it is an appropriate requirement for EMD's to conduct an analysis and advise on tax related issues. It is very dangerous for regulators to place a responsibility on a registrant that is not within the scope of its business. There are accounting firms that are designed specifically to provide that service. Providing an opinion without full knowledge of tax law creates a risk that individuals do not seek proper advice that they rely on an unsophisticated opinion.

There is a lot of education and experience that is required to conduct a sufficient analysis and an uneducated opinion can create more harm than good.

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?

The PMLF in principle believes that KYC provides a necessary component of the completion of its compliance obligation. It is not possible to conduct a suitability without essential information that would allow a Dealing representative to ensure an appropriate trade has been conducted.

It is appropriate that regulators allow for flexibility where there are reasonable grounds to allow the CCO and UDP to appropriately conduct their duties in a responsible manner.

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

The PMLF believes that it is essential for both industry and regulators to continue to dialog and enhance standards where appropriate. We do not believe that a prescribed method of guidance is required as there are different products that have different risk models that require some flexibility in how Dealing Representatives categorize risk.

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?

The PMLF believes that the responsibility lies with the CCO and UDP to ensure that the dealing representatives are collecting the necessary data that is required to conduct a trade. We do not see the need for more detailed guidance in this area.

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?

The PMLF believes that EMD's that choose to operate with a proprietary product should be performing a review procedure or an internal due diligence analysis that would sufficiently communicate and identify that the firm has document a full analysis that would accurately respond to a third party due diligence summary.

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.

The PMLF would encourage dialog with regulators to enhance best practice standards within the industry. We believe that education and information session would improve the quality of market investigations.

It is not appropriate to standardize the approach as there are very specific industry components that are not transferable to another.

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

The PMLF believes these are appropriate labels.

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.

The PMLF believes that the appropriate method of conducting a market investigation is to review the product and as part of its conclusion identify investor profiles that would meet the products characteristics.

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?

The PMLF is concerned that the implications of placing this level of responsibility are either realistic or reasonable. The use of the terminology of "most likely" places an expectation that is difficult to assess and based on a measure that is difficult to anticipate.

We also believe that this expectation has the potential to place legal risk and exposure and make it difficult to obtain appropriate insurance.

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

The PMLF would encourage further dialog with regulators to improve our ability to conduct proper suitability.

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?

The PMLF believes that a suitability analysis is required at the time of the trade. For those non-proprietary EMD's who do not have access or a relationship to the issuer it is very difficult to conduct any level of suitability. For proprietary dealers, there is a greater level of knowledge and relationship that would require a higher level of analysis and consideration.

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?

N/A

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

N/A

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.

N/A

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?

N/A

Again we would like to thank the Canadian Securities Administrators for providing our industry an opportunity to participate in this dialog and look forward to future communications on this topic.

Sincerely,

Dean Koeller
Chair of the Private Mortgage Lenders Forum