MD Financial
Management
CMA Companies

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

Attention:

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

Dear Ms. Turcotte

Re: CSA Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisors, Dealers, and Representatives Toward their Clients (the "Consultation Paper"))*

We are writing to provide you with our comments with respect to the Consultation Paper 33-404 published on April 28, 2016.

Introduction

As a member-based organization wholly owned by the Canadian Medical Association ("CMA") and focusing on providing sound financial advice and products to our clients, CMA members and their families, we fully support initiatives designed to provide the best outcomes for our clients. In general we think that principle-based regulation is the best approach as it enables industry to appropriately tailor their practices to what makes the most sense for their clients and the business realities that they face. We support the overall principle of putting the client's interests ahead of those of the firm and the advisor; however, we have concerns about potential unintended impacts of some of the reforms proposed. In particular we are concerned that the reforms will result in increased consumer focus and expectations over performance and will

open the door to complaints and legal action when an investment fails to provide the returns that the client hoped, Additionally we find that some of the reforms appear to fail to take into account the reality that not all clients want or need the same type of service from their advisors.

Unique Nature of MD

MD Management Limited and MD Private Investment Counsel (an operating division of MD Financial Management Inc.) (MD) are unique in that we are owned by the Canadian Medical Association and we provide services only to Canada's physicians and their families.

MD has more than 45 years of physician-focused experience and, because of this long-standing relationship, physicians rely on MD for more than investment performance. They also depend on us for comprehensive financial planning, advice and solutions that are specific to every stage of their career, from medical school to practice and through retirement.

Physicians have unique financial needs at each career stage, so MD provides personalized advice in the areas of financial planning, investing, insurance, estates and trusts, access to banking and borrowing, as well as guidance on medical practice incorporation.

MD's advisors work on salary, not commission. Without incentives to sell any particular product, our advisors provide objective advice that we believe is in our clients' best interests. Our priority is for our clients to meet their financial goals, not for us to maximize corporate profits.

Overall Comments

MD appreciates the CSA's ongoing commitment to investors and the opportunity to provide input to the proposed reforms. We share the CSA's desire to ensure that Canadian investors are well-served by their advisors.

It is our opinion that, while some of the proposed reforms are positive, overall they are premature. We encourage the CSA to postpone implementation of the proposed reforms until the industry has had time to fully implement the Fund Facts delivery (POS) and Client Relationship Model Phase 2 (CRM2) initiatives and has had an opportunity to measure the impact of these initiatives to determine whether they have been effective in fulfilling their objectives.

MD also feels that the proposed reforms fail to consider the evolving nature of the industry and the new and innovative business models that are being introduced through technological advances and changing client demographics. None of these developments, such as online digital advice solutions, were addressed in the Consultation Paper and, for some of the proposed reforms, adoption in the context of these newer, more innovative business models may be problematic.

MD is opposed to proposals which unduly focus on returns while ignoring the other significant value-added contributions that registrants provide to their clients. While it may not have been the intent, we feel that the end result is that the regulators will be regulating investment

outcomes and we don't think that this is appropriate. As well, we also have concerns that the targeted reforms will add complexity to the client/advisor relationship without achieving the desired end result.

With regards to the implementation of a **regulatory best interest standard** we are not clear on what distinguishes this from a fiduciary standard. The law in this regard appears to be unsettled as noted in the Consultation Paper. Our recommendation is that the CSA remain with the current standard of care and wait for the CRM2 and POS changes to be fully implemented before revisiting the need to regulate further in this area.

Our comments are divided into two segments:

- Comments on the proposed regulatory best interest standard
- Comments on the proposed targeted reforms.

A. Regulatory Best Interest Standard

It is our opinion that the current industry standard requiring registered advisors and registered dealers to "act fairly, honestly and in good faith" towards clients, coupled together with the due diligence obligations of assessing suitability for each individual client, with due regard to all relevant facts surrounding the client's personal objectives, risk tolerances and personal circumstances, adequately protects clients. Adding to those existing requirements, the recent regulatory changes introduced under CRM2 and POS, clients' interests are well-protected. We agree with the opinion of Laura Paglia (Partner, Torys)[1] where she concluded that the current standards for investment advisors in Canada are fulsome and do not depend on the imposition of a statutory best interest standard. We disagree with the position of the BIS Consulting Jurisdictions that the introduction of a regulatory best interest standard will "*materially enhance the effectiveness of the proposed targeted reforms and strengthen the principled foundation of the client-registrant relationship*".

While the principle of a regulatory best interest standard ("BIS") as proposed by the CSA is conceptually admirable, the mandatory application of a BIS in all cases is, in our view, not workable. The imposition of a BIS across all financial advisors fails to take into account the complexity of the financial services industry which includes a wide range of financial advice provided to retail clients ranging from full discretionary advice offering a wide range of products and services, to smaller boutique firms offering a limited product shelf or only proprietary products. While a fiduciary standard is appropriate in the discretionary context, it is our opinion that to impose a regulatory BIS in the context of non-discretionary advice is not appropriate – the current standard that requires advisors to act honestly, fairly and in good faith, provides the flexibility needed depending on the particular circumstances of any client situation. .

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[1] "*Canadian Securities Administrators Consultation Paper 33:403: Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients",* Laura Paglia, Tory's LLP.

Not only does a BIS ignore the complexity of the industry, but it also fails to recognize that clients may have multiple advisors at different firms – some of whom they may want to engage deeply with – while others they may not wish to. To impose the same standard of care on each of a client's advisors is inappropriate and inequitable. The current regime recognizes that the degree of engagement as between the client and the registrant, should drive the level of liability imposed and properly links the liability of the advisor to the nature of the relationship and the degree of reliance placed upon the advisor.

Furthermore, the lack of alignment amongst provincial regulators on the topic of a statutory BIS, may create uncertainty in the marketplace and confusion amongst investors. Until there exists unanimity on this issue we would recommend that the standard not be adopted.

As previously mentioned, rather than introduce a regulatory BIS at this time, we suggest that the CSA retain the current standard of care and wait for the CRM2 and POS changes to be fully implemented. At that time a re-evaluation by the CSA should be done to determine if the investor protection concerns have been adequately addressed before revisiting the need to regulate further through a BIS. If however the CSA felt it necessary to take some proactive measures in the interim, it is our view that detailed guidance on "*de minimus*" expectations by CSA within the current standard of care would be of valued assistance to industry participants in administering their current operations and compliance regimes.

B. Proposed Targeted Reforms

We have grouped the topics together and, where we have input on a particular question we have identified that question separately. Otherwise, our comments are at a topic-level.

Conflicts of Interest (Q.1-3, 44-47)

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

Question 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?

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

Questions 44 to 47: MD is a member-based organization and does not have significant institutional clients. Accordingly, these questions are not being addressed.

Response:

It is our opinion that the existing common law standard, working together with the regulatory requirements under various IIROC Rules and Guidance Notices, adequately protects clients

from conflicts of interest by requiring dealer members and advisors to act in a fair, equitable and transparent manner that is consistent with the best interests of clients.

In particular, IIROC Rule 42 specifically requires that advisors "*consider the implications of any existing or potential material conflicts of interest"* and address them *"in a fair, equitable and transparent manner, and* ***consistent with the best interests of the client or clients****"* [Emphasis added]. In the event that the conflict of interest cannot be addressed in a manner that is consistent with the best interests of the client(s) it must be avoided. It is our opinion that the language being added under the proposed reforms is unclear and ambiguous. We disagree that the current requirements under Rule 42 are inadequate and believe that the introduction of the term to "**prioritize**" the interests of the client does not add any significant value to the regulations.

Rules 38 and 42, read together, provide firms and representatives with clear guidance on how to identify and manage conflicts of interest situations, including an appropriate escalation methodology.

With respect to the issue of disclosure, we do not feel that the addition of the language proposed will be effective. Rule 3500, Relationship Disclosure, contains clear direction that all disclosure must be understandable to the client and provided in a "***meaningful way***". This Rule is clear in its meaning and application and places a responsibility on the advisor to ensure that any conflicts are communicated clearly. It is our opinion that to extend this requirement to include that the representative must "have a reasonable basis for believing that clients fully understand" introduces a subjective element to the requirement which would be difficult to meet.

We do agree that the provisions of NI 31-103 with respect to conflicts of interest can be strengthened in line with the guidance from the SROs.

Sales Practices (Q 48 – 53)

Questions 48 to 53: Based on our product shelf, compensation model, and sales practices, the issue that the proposal is intending to solve for would not be applicable at MD. Our advisors are salaried, and not incented on the sale of any particular investment products.

KYC process (Q.4-6, 54-57)

Question 4) Do all registrants currently have the proficiency to understand their client's basic tax position? Would requiring collection of the information raise any issues or challenges for registrants or clients?

Question 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?

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

Question 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?

Question 55) To what extent should a representative be allowed to open a new account or move forward with a securities transaction if he or she is missing some or all of the 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?

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

Question 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?

Response:

While we support the CSA's initiative to ensure firms are collecting sufficient KYC information to make informed suitability determinations, it is our opinion that the proposals fail to recognize the different types of services retail clients may want to receive from their advisor and may discourage firms from offering targeted services to clients who have fairly simple investment needs and from investing in technology to serve the needs of clients with smaller amounts of money to invest. The amount of detailed information a client may want to provide to an advisor may depend on the level of financial advice they are seeking from the firm / representative and/ or the life cycle of the client. Like most other industry participants, MD has a wide range of clients whose needs range from debt management through to more advanced wealth management services. Clients may have multiple advisors at different firms and should have the discretion to determine what level of engagement suits them best with each of their advisors. As a result, in some circumstances a client may not wish to discuss tax strategies with one advisor, if they are receiving similar advice elsewhere. Any rules which become overly prescriptive in this area may have the unintended consequence of forcing clients to disclose more personal information than they wish to disclose to an advisor.

At MD, we believe our advisors have the necessary proficiency requirements and are capable of identifying what information is required in order to assess our clients' suitability. Where full financial planning is being provided to the client, the representative gathers a wide array of information on the client's financial circumstances, goals, needs, and objectives, including their basic tax situation. Where only investment recommendations are provided by the representative, it is our opinion that the current KYC framework engages clients adequately in a meaningful dialogue to obtain a solid understanding of the client's investment needs and objectives.

With respect to codifying the specific form of the KYC document, it is our opinion that the CSA should provide minimum criteria for any forms required but that members be permitted latitude in the ultimate design of the document. For example, IIROC provides guidance for its dealer members in this area and we feel that this level of guidance is appropriate.

With respect to the timing of the KYC documentation and its completeness at the time of account opening or transactions, MD agrees that it would be helpful for the CSA to issue guidance following a principled-based approach that would provide firms the flexibility to tailor its approach based on the needs of its client base..

MD currently requires that a licensed supervisor, or their delegate, sign off on the KYC forms. This is the process that works for us, however as noted above, we feel that firms should have the flexibility to develop their internal controls to meet regulatory requirements based on their specific business needs.

KYP – representative (q.7)

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

Response:

MD agrees that the KYP obligation is a fundamental obligation owed to clients and is one of the cornerstones of investor protection. It is reasonable to expect advisors to understand the range of options available to clients but to require each advisor to "understand and consider the structure, features, product strategy, costs and risks of **each** security on their firm's product list" is impractical. To require advisors to be knowledgeable about products they may not sell, or be licensed to sell, is overly burdensome for the business. Also, securities may end up on a firm's product shelf due to a client's request to hold a particular security in their investment account as opposed to an active decision by the firm to sell / promote this particular fund to its broader client base. We do not expect all advisors to be knowledgeable about all aspects of these products. If such a broad requirement is imposed, it may cause firms to narrow their product offerings which would reduce options available to investors.

KYP – firm (q.8-15, 58-61)

Question 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.

Question 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?

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

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

Question 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?

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

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

Question 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?

Question 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?

Question 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.

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

Response:

Currently, firms are required to clearly disclose the products and services they offer to clients prior to entering into a relationship with the client. It is the opinion of MD that the “proprietary product list” and “mixed/non-proprietary product list” distinction will not provide any additional helpful information to investors. The titles may imply that a “proprietary product list” is more limited than a “non-proprietary product list”, which may not be the case.

MD’s approach to product development is closely tied to the financial needs of our clients. The product development process should allow a firm to consider the needs of its clients, the business’ ability to add new products to its shelf, including the capacity of its salesforce to learn any new products being delivered, and the cost of the product development and sale to the firm itself. It is the opinion of MD that the proposed reforms requiring that firms conduct (and document) a full and unbiased market investigation, product comparison and product list optimization in the development of its product shelf is overly prescriptive and does not provide adequate flexibility to the industry. The product development requirements as described in the proposed reforms will cause undue work and burden on firms with little value. Furthermore, the proposals fail to recognize that, in some instances, firms may focus on a niche market and intentionally choose not to have a wide-ranging product shelf available. It is the opinion of MD that product development decisions and trends are best left to the business and market, respectively, and should not fall within the control of regulators.

Suitability (q.16-22, 62-64)

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

Question 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 needs and objectives?

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

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

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

Question 20) Will the requirements 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 determine whether a firm should perform ongoing suitability assessments?

Question 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?

Question 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 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.

Question 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?

Response:

It is the opinion of MD that the existing requirements under IIROC Rule 1300 and IIROC Guidance Note 12-0109 provide robust guidance on KYC and suitability. While NI 31-103 contains clear KYC and suitability we suggest that the IIROC Rules already meet a number of the standards the Consultation Paper is proposing and we recommend that the existing standards be adopted. The current regime clearly requires that advisors use due diligence to ensure investments are suitable for clients based on a number of factors including the client’s current financial situation, investment knowledge, investment objectives and time horizon, risk tolerance and the account or accounts' current investment portfolio composition and risk level.

MD feels that these factors are sufficient to protect clients and ensure that advisors are acting in the interests of their clients.

The proposed reforms imply that financial planning will be conducted for all clients regardless of the size of the account or the relationship with the client. The reforms fail to take into account the unique needs of each client and the various business models - both of which may impact the level of client engagement and depth of suitability analysis conducted.

The introduction of the requirement that the product must be "**most likely**" to achieve the client's needs and objectives is unclear and does not provide guidance as to what criteria would be used to assess this requirement. The requirement may have the unintended consequence of increasing the focus on past performance, which may not be determinative of whether the product is likely to achieve the client's objectives going forward.. We are very concerned that this requirement could create expectations of guaranteed outcomes in clients. We believe that regulators should focus their regulatory efforts with the investment process adopted by registrants and not attempt to regulate in areas of nvestment outcomes, which is an area that can't be controlled by regulation as it is impacted by and subject to market forces.

Conducting a suitability assessment after a "market event" discourages buy and hold strategies. Investment recommendations should not be based on current market conditions, but instead on whether the fund is suitable for the clients' risk tolerance and objectives. To require suitability assessments in relation to "market events" may encourage market timing strategies at the expense of long-term investment objectives and goals.

Relationship Disclosure (q.23-27)

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

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

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

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

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

Response:

MD does not support the registration categories as proposed in the Consultation Paper.

MD questions what the underlying concerns are that have prompted the registration categories. National Instrument 31-103, section 14.2, requires that registrants disclose a "general description of the products and services that it offers to their clients". It is the opinion of MD that

the registration categories, as identified by the CSA in its Consultation Paper, will not provide any further meaningful disclosure to clients and also fail to adequately reflect the complexity of the industry. It is our opinion that, should this disclosure be required, it will imply that firms that offer only proprietary products are not able to meet client needs and objectives, which we feel is a false assumption.

Titles and Designations (q.30 - 33)

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

Question 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?

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

Question 33) Should we regulate the specific designations or create a requirement for firms to review and validate the designations used by their representatives.

Response:

MD supports limiting the number of titles and designations a firm and advisor may have in an effort to reduce confusion in the marketplace; however, we believe a principle-based approach should be adopted and the titles should reflect the services offered by the firm / advisor. In particular, we do not support the title of "securities salesperson" for representatives that offer only proprietary products and do not feel that it reflects the nature of the services such representatives offer to clients which may include financial planning and advice. We would encourage the CSA to support the industry, working with the SROs, to develop consistent titles and designations.

Conclusion

Thank you for the opportunity to provide input and feedback on the Consultation Paper. We trust that you will find these comments helpful in your review of the proposed reforms.

Sincerely,

MD Financial Management Inc.

Daniel Labonté
Executive Vice-President, Member Experience

cc. Brian Peters, Chief Executive Officer and UDP
Diane Woollard, Chief Compliance Officer