NICOLA
WEALTH MANAGEMENT

5th Floor–1508 West Broadway
Vancouver, BC V6J 1W8
Phone: 604.739.6450
Fax: 604.739.6451
Toll Free: 1.800.219.8032
www.nicolawealth.com

September 30th, 2016

*BY E-MAIL:* ***comments@osc.gov.on.ca*** ***and*** ***consultation-en-cours@lautorite.qc.ca***

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 Client**

We are a Portfolio Manager whose head office is in B.C. We are also an Exempt Market Dealer and an Investment Fund Manager in several provinces. We market different classes of securities of a number of proprietary non-reporting investment funds to our clients and the clients of a registrant in which we have an equity interest. The overwhelming majority of the purchasers of these securities are fully managed accounts.

We believe the CSA's proposed targeted reforms may be indicative of a possible shift from a principles-based regulatory system to a prescriptive one. We are concerned about this, as we believe the principles-based system provides the needed flexibility to respond to changes in the securities industry, and takes into account that some jurisdictions hold different views on how rules should be interpreted, regulated and enforced.

**CONFLICTS OF INTEREST- GENERAL OBLIGATIONS**

**Issues stated:**

- No explicit requirement to prioritize the interests of the client when responding to conflicts
- No explicit requirement that disclosure related to conflicts of interest is fully understood by the client, including the implications and consequences of the conflict and that registrants must have a reasonable basis for concluding that a client understands such disclosure
- Only explicitly applies to firms, not representatives
- Part 8, the Paper states there is no intention to prohibit firms from charging clients for services or offering proprietary products;
- **Requires registrants to disclose "material" conflicts of interest**

- **Requires registrants to address conflicts of interest:** Conflicts of interest must either be avoided or disclosed and controlled. When they cannot be disclosed and controlled in a manner that **prioritizes the interests of the client ahead of the interests of the firm and representative, conflicts of interest must be avoided." (CSA Paper, page 30)** and also under the BIS "Avoid or control conflicts of interest **in a manner that prioritizes the client's *best interests*" (CSA Paper, page 19)**

***Impact Assessment:***

We agree that client interests **must** be prioritized and that any disclosure given to a client must be prominent, specific, clear and sufficient to be meaningful to the client so that the client understands the conflict and its implications.

The primary problem is that it fails to take into account the myriad of business models that registrants have, and that some of them have systemic conflicts that cannot be "responded" to in a manner that "prioritizes the interests of the clients ahead of the interests of the firm..." without negatively affecting the firm. **We note that this language differs from the description of Guiding Principle 2 of the proposed Standard of Care,** which appears to be the building block for a "Regulatory Best Interests Standard". That Principle states the registrant is to: "avoid or control conflicts of interest in a manner **that prioritizes the client's best interest",** without mentioning **"ahead of the interests of the firm".**

It is these latter words that are in need of attention because there can be, and in fact are, circumstances in which the client's interest and the firm's interest, while conflicting on the surface, are actually mutually compatible. This is likely true for many other registrants.

At NWM, our business model is, among other things, to provide a suite of non-reporting issuer investment products that can be purchased for our clients, based on suitability, KYC, etc. Each of these products is an investment fund, non-redeemable investment fund or other proprietary product that charges management fees (and in some cases, a performance fee) payable to NWM, as compensation for managing its products. These fees are indirectly payable by the client. As previously stated, most of NWM's clients are managed account clients, who pay a fee to NWM calculated as a percentage of the dollar value of the clients' account as compensation for managing the account. The design of these pooled products provides clients with access to various asset classes at a lower cost than would be incurred if the assets were held directly (via reduced trading fees, for example) and these products also provide clients access to alternative products often inaccessible to retail clients due to high minimum investment requirements; the use of pooled funds which allow clients to hold smaller positions than the minimums and access this otherwise inaccessible opportunity for diversification and investment growth.

While NWM can and does explain the implications of it investing client assets in its own investment products and what the management fees are, and obtains the clients' acceptance and consent to this conflict, it is not possible to "respond to each materiai conflict of interests in a manner that prioritizes the interests of the client ahead of the interests of the firm..." as opposed to "the best interests of the client" unless the acceptance and consent of this conflict by the clients is sufficient . This is unclear from the language in the proposal. Otherwise, we would have to restructure our entire pooled fund architecture to eliminate this perceived conflict (**which we see as an aggregate**

**benefit to our clients** and believe amounts to a mutuality of interests, rather than a conflict of interests). The resulting overall cost of executing our investment advice for NWM investors is lower because of this structure, in comparison to industry standard fund management fees, but the fees are still payable, indirectly, by the client as would the direct costs of transactions if we did not use our proprietary products (pooled funds with management fees) to deliver our investment recommendations and execute our advice to clients.

In addition, the Consultation paper refers to "material" conflicts (as does NI 31-103 currently) without providing a clear definition of what is "material". By way of example, would Outside Business Activities always be considered material conflicts? Appendix A presumes so; however, while they might be, given certain circumstances, an OBA such as being a director of a religious, social or any other non- business entity might not.

We have concerns about registrants, rather than their firms, having responsibility for the identification of conflicts of interest. This is an area that firms obtain legal advice on. Expecting a registrant whose expertise lies in financial advising to identify every possible legally defined conflict and to address or avoid it is a significant request with regulatory consequences for failure. This sets an expectation that may be beyond the skillset of a financial, rather than a legal, professional to the significant disadvantage of a client.

**Recommendation:**

As is required of Directors of Corporations in Canada, conflict situations should be dealt with through full, true and plain language disclosure to client, confirmed understanding and **either** acceptance or rejection of the conflict. We recommend deleting the words" ahead of the interests of the firm and/or representative" and replacing them with the language "in the best interests of the client" as found in, and to be consistent with, the Standard of Care- Guiding Principle **2** (for the reasons stated above) to allow both the registrant and the client to have a relationship based on trust, honesty, and fair dealing while enabling the registrant to conduct its business in a way that benefits both parties.

**KNOW YOUR CLIENT**

**Issues stated:**

- No explicit requirement to collect certain key elements of investment needs and objectives and financial circumstances (e.g., amount and nature of debts)

- No explicit requirement around developing risk profiles for clients

- No explicit requirement that registrants take reasonable steps to update KYC information at least once a year

Section 13.2 of NI 31-103 would be amended by adding requirements that registrants must:

- ensure that the KYC process results in a thorough understanding of the client;

- ensure that KYC forms and a record of the risk profile, both at initial account opening and upon material changes, are dated and signed by both the client and the representative and a copy is provided to the client

***Impact Assessment:***

We approve of the regulators' intention to address the need for all industry participants to fully understand and respect their clients' financial objectives, investment time horizon, liquidity needs and risk tolerance. As to whether the CSA should codify a specific form of KYC document, we believe a principles-based approach to regulation in this matter allows firms to customize their client experience better than a rules-based approach. Firms like ours collect far more information than that prescribed to date for KYC, in order to best serve our clients' needs.

We note, however, the trend in the CSA document towards looking for scientifically validated risk assessment methodology and this implies that firms both large and small will face the expense of obtaining external assistance in this document design. If this is a regulatory requirement, then a standard set of questions meeting this standard of scientific validity produced by the CSA that can be included in a customized KYC document would be requested.

With respect to the detailed new KYC categories proposed by the targeted reforms such as 'basic tax position' and 'the nature and amount of all assets and debts', we have concerns that registrants without the CFP, RFP, PFP or a CA designation will lack adequate expertise in the assessment of a complex tax position and will a) give clients a false sense of their expertise, b) be holding out an expertise inappropriately, c) make an error and be found responsible for applying this information with their limited expertise inappropriately. Rather, we believe that, as they do now, Advisors should refer clients for tax advice to tax professionals and partner with their clients' professionals as is appropriate.

On the topic of whether a registrant's supervisor should sign the KYC, we would ask whether the CSA intends to create a new layer of registered supervisor similar to the IIROC model. Currently, the KYC accompanies the account opening documents and all account openings are (as per the Companion Policy to NI 31-103) authorized by the Chief Compliance Officer, a registrant, and/or their delegated Compliance Officers. If this responsibility is to be re-assigned, we would object on the basis that this would create an unnecessary burden on firms and create an additional hiring expense that will only result in higher client fees which are a drag on investor performance returns.

**Recommendation:**

In addition to the above, we suggest a standard set of questions meeting the expected standard of scientific validity produced by the CSA that can be included in a customized KYC document would be needed.

We would ask the CSA to be specific as to their concerns and to contemplate such matters as how firms and registrants will remain aware of new KYC requirements not previously imposed on advisors in securities, such as high interest debt balances if they change more frequently than every KYC update (i.e. weekly). For example, what criteria should be employed to identify 'good debt' versus 'bad debt' for each unique investor (is a boat loan at Prime + 6% good debt or bad debt?),

what proportion of debt to income or debt to net worth level is appropriate and is to be targeted; when Advisors should decline to invest a client's assets and recommend the cessation of credit use; and how clients who decline their advice should be addressed with respect to their investment activities. We are mindful that prospective and current clients may not seek this advice and may find these assessments of their personal spending habits to be intrusive. Additionally, we'd ask the CSA to add specifics around when clients can or should or should not employ investment leverage; when and how it is suitable and when it should be withdrawn in order for firms to act appropriately and to ensure compliance in the context of the overall opening of discussions around KYC and borrowing as this is another missing element in guidance from the CSA.

**KNOW YOUR PRODUCT- REPRESENTATIVE**

**Issues stated:**

- Although KYP is a key element of the suitability analysis, it is not an explicit, standalone requirement (currently embedded for representatives as an element of proficiency that applies only when a recommendation is made, but not explicitly when the client initiates the order)

- No explicit requirement for representatives to know about all the products on their firm's product list, how each product compares to the others, and all fees, costs and charges connected to the product, the client's account and the product and account investment strategy

- No explicit role for the firm in meeting the KYP requirement

- No explicit requirements for shelf development by the firm

**Recommendation:**

We support the proposal to codify the requirement that a registrant, prior to recommending a security, know all the features, benefits, costs and risks of an investment. This is the foundation of the services provided by firms such as ours but the absence of this in NI 31-103 limits the accountability of registrants and we agree the proposal is rational. We would ask what kind of evidence regulators seek to prove this product knowledge.

**KNOW YOUR PRODUCT – FIRM**

**Issues stated:**

Part 13 of NI 31-103 would be amended by explicitly requiring that firms:

- Ensure, through policies and procedures, training tools, guides or other methods, that their representatives have the information and ability to comply with their KYP obligation; and

- Identify whether they have a proprietary or mixed/non-proprietary product list.

- Mixed/non-proprietary firms would be required to select the products they offer in accordance with policies and procedures that include a fair and unbiased market

investigation of a reasonable universe of products that the firm is registered to advise on or trade in;

- Firms would be required to do a product comparison to determine whether the products the firm offers are appropriately representative of the reasonable universe of products most likely to meet the investment needs and objectives of its clients, and
- An optimization process where the firm makes any necessary changes to the range of products it offers to achieve a range of products that is appropriately representative of the products most likely to meet the investment needs and objectives of its clients, based on the securities products that the firm is registered to advise on or trade in.

***Impact Assessment:***

We must make clear that we do not have a complete understanding of the terminology that is used to describe the various products.

For firms such as ours, "managed account pooled funds" are what we have created and what we generally invest our managed account clients in. This definition of these funds carves out a fund whose portfolio securities "are selected using the process set out for a mixed/ non- proprietary product list" and the definition also carves out funds for which there are "no fees, charges or commissions payable by the client with respect to the pooled fund". As stated earlier, the NWM managed investment funds charge management fees to the funds, which are indirectly paid for by the clients. We anticipated being included as a manager of pooled funds and are concerned by this exclusion. Did you mean to carve out only funds that charge fees etc. to clients directly?

This goes to the core of the duty of portfolio managers to act fairly and in the best interests of our clients under a statutory fiduciary duty. We recommend our own proprietary products as we created them to efficiently, and at a lower cost, access and transact securities to create the asset mix we recommend for the benefit of our clients.

However, we do not offer funds in all asset classes (we do not offer a money market "pooled fund" for example, but note our pools as mentioned above do NOT meet the definition). As a result we trade in other issuers' money market funds and therefore NWM would be considered to be in the "mixed/non- proprietary" category of firms. We would (as a result of being excluded from being considered 'pooled funds', for one, and being considered 'mixed/non-proprietary', for another, both of which we believe to be out of alignment with our business model) therefore be required to spend considerable time and money to investigate products that we would not necessarily buy for our clients solely to comply with this requirement. Other issuers' products in asset classes similar to our own are not custom tailored to the investment outlook and asset mix recommendations we have arrived at based on an already fulsome analysis of the universe of investment products to create our non-definition pooled funds.

In addition, and this is a broader industry issue not specific to NWM, there is a lack of understanding in the CSA analysis of client decision-making. Clients do understand that conflicts arise in business situations and are not deterred by them. Additionally, many clients prefer to invest in the same portfolios/holdings as their advisor. It gives them confidence that the advisor is offering the BEST solution for them as their individual interests are aligned. The finding that the impact of disclosure and its failure to deter clients from conflicted situations along with the perception that parallel

investing were cause for concern is a sign of an underlying negative perspective on advisor integrity, one we would argue is not fully justified, does not respect client decision-making and is too negative. We do support the CSA and the other regulators in providing guidance to investors on how to allocate their trust appropriately perhaps with embedded guidance in marketing materials and new investor documentation.

**Recommendation:**

**We don't believe this proposal should proceed without extensive further work.**

1. We believe this proposal to be excessively prescriptive.
2. We do not believe the analysis has been done to identify the entire impact to the industry.
3. We do not see evidence of how the regulation and attendant investment by firms in these processes will benefit investors or the public interest.
4. We believe firms will incur great expense in order to comply with the requirements with no identified investor or public benefit.
5. We believe this approach will significantly diminish innovation in the creation of new product in the industry.

There is no "one-size fits-all" approach to security selection or portfolio construction. The drain on every single firm's financial and talent resources, the complexity of complying with this requirement and the lack of choice and customization it permits will diminish the development of new and be :ter alternatives for clients and firms. This is a costly exercise that takes a punitive view of proprietary products and the firms that sell them, a view that is not warranted when other safeguards initiated under NI 31-103 are effectively applied.

This will not result in a healthier, more client-centric industry. In a dynamic marketplace, variation and choice (of fee models, investment strategies, relative cost: benefit) are what create effective outcomes. These should be driven by innovation, by knowledgeable advice from the firm and registrants, combined with well-informed client preferences.

***Question 15***

Do you think that categorizing product lists as either proprietary and mixed/non-proprietary is an optimal distinction amongst firm types? **No.** 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 the concept of compartmentalizing firms into categories with differing KYP obligations is not in the public interest, and would make regulation and business operations expensive and difficult with no resulting client benefit.** In the absence of more material guidance, the requirements seem to imply that some product offerings should be discarded/"optimized" in favor of last year's best performers (net of fees) when we all know that past performance is not an indicator of future returns.

**SUITABILITY**

**Issues stated:**

A registrant must ensure that, before it makes a recommendation to (or recommendation not to), or accepts an instruction from a client to, buy, sell, hold or exchange a security, or makes a purchase, sale, hold or exchange of a security for a client's managed account, such purchase, sale, hold or exchange (or decision not to purchase, sell, hold or exchange in the case of a recommendation not to take any of these actions) satisfies the following three elements, as applicable:

- Basic financial suitability: by identifying whether there are any other basic financial strategies, such as paying down high interest debt or directing cash into a savings account, that are more likely to achieve the client's investment needs and objectives than a transaction in securities;

- Investment strategy suitability: by identifying a basic asset allocation strategy for the client (and evaluating any other proposed investment strategy) that is most likely to achieve the client's investment needs and objectives. This would include identifying a target rate of return the client will need to achieve his or her investment needs and objectives, assessing the target rate against the client's risk profile and resolving any mismatches. If the risk required to achieve the investment needs and objectives is higher than the client's risk capacity, the registrant must revisit the investment needs and objectives with the client; and

- Product selection suitability: by ensuring that the purchase, sale, hold or exchange of the security (or the decision not to purchase, sell, hold or exchange) is both:

    o suitable for the client, and

    o most likely to achieve the client's investment needs and objectives, given the client's financial circumstances and risk profile, based on a review of the structure, features, product strategy, costs and risks of the products on the firm's product list.

***Impact Assessment:***

We agree that:

- product selection suitability and
- investment strategy suitability
- suitability reviews when portfolios move out of balance

are reasonable requirements of any investment professional, this is the CORE of providing good advice.

The provision of good advice is critical to the satisfaction and success of the client and the advisor alike. We would prefer a principles-based approach to a rules-based approach to these obligations.

**Recommendation:**

We recommend that the CSA provide more extensive details of how they will adjudicate compliance with this requirement, that the CSA outline the proficiencies required and what is expected of registrants.

*Questions 17-22, 24-27, 62-64*

In our view, it would be a mistake to change Section 13.3 of NI 31-103 and replace it with another procedural checklist to determine suitability. Taking "reasonable steps" is a task that requires more engagement than performing a prescribed list of rote tasks, given the existing duty of a registrant in BC and other jurisdictions ***to "deal fairly, honestly and in good faith" with the clients of the registrant. We discuss this further under the Best Interest proposal.***

**RELATIONSHIP DISCLOSURE**

**Issues stated:**

- No explicit requirement for firms to provide disclosure about the general nature of the client-registrant relationship in easy to understand terms

- No explicit requirement for firms to provide disclosure about the nature and impact on the client of the firm's approved product list or restricted category of registration, as applicable

***Impact Assessment:***

We believe the disclosures already required in NI 31-103 address these requirements when implemented effectively. Clients should already be made aware of any basic investment services that the client's investment adviser/dealer cannot perform, or any investment products that the investment adviser/dealer cannot provide under NI 31-103.

**Recommendation:**

We believe these requirements are too prescriptive for no evident benefit to the investor or the public interest, in particular as it is dependent on proposals we recommend should be reconsidered/that need further work. We believe the principles-based approach already embedded in the requirements of NI 31-103 already addresses the underlying concerns expressed here.

**PROFICIENCY**

**Issues stated:**

- No explicit requirement for firms to provide disclosure about the general nature of the client-registrant relationship in easy to understand terms

- No explicit requirement for firms to provide disclosure about the nature and impact on the client of the firm's approved product list or restricted category of registration, as applicable

- Increased proficiency for representatives, including standards that explicitly incorporate the knowledge elements required for compliance with the proposed targeted reforms, including that all representatives must generally understand the basic structure, features, product strategy, costs and risks of all types of securities, such as equities, fixed income, mutual funds, other investment funds, exempt products, and scholarship plan securities;

- In particular, increased proficiency regarding how product costs and investment strategies (e.g. active vs passive) can impact investment outcomes for clients;

***Impact Assessment:***

There is already a requirement under CSA Staff Notice 33-336 that all registrants be in possession of ALL the relevant facts about a product:

- KYC, KYP and suitability obligations are among the most fundamental obligations owed by registrants to their clients, and are cornerstones of our investor protection regime. The CSA has repeatedly recognized that these requirements are basic obligations of a registrant, and a course of conduct by a registrant involving a failure to comply with them is a serious matter.

There is no accompanying analysis that suggests registrants are deficient in their currency with industry education, knowledgeability or designations although we believe that all registrants need to maintain and update their expertise routinely to be effective for clients and competitive in the industry. This is also implied by the fiduciary duty imposed on many registrants by virtue of their category of registration. We note that later in the Consultation Paper, however, the CSA proposes there are too many designations being pursued by registrants and that some of these designations/CE programs are lacking in quality. This suggests a need for analysis of the intent of this additional, prescriptive requirement.

**Recommendation:**

Regulators should ensure the effective application of CSA Staff Notice 31-336 rather than applying new prescriptive requirements to firms that incur costs. CE should be required by the regulator to the extent that it matches/codifies the obligations imposed on a registrants to maintain their qualifying designations for registration categories (the CFA, CIM, and given the suggestion we make below to restrict the use of the term Financial Planner to those with the designation required, the CFP or RFP or PFP). All of these have annual CE requirements already that we feel enhance and update the knowledge of registrants appropriately. We note that CE offerings across the industry vary in quality and that the imposition of a requirement to obtain CE does not automatically ensure an increase in proficiency.

TITLES

**Issues stated:**

A new requirement would be added to NI 31-103 that explicitly requires that all client-facing business titles for representatives be prescribed. Three alternatives were proposed in the Consultation Paper.

***Impact Assessment:***

Nicola Wealth Management Ltd. believes that the titles are unsuitable as we don't beiieve the suggested titles provide clarity or sound guidance to an investor.

Most investors do not know what 'securities' are and do not seek 'securities' as a reason to contact a financial advisor. They wish, for example, to receive advice on their finances and to have someone manage their portfolio (discretionary services) or recommend investment strategies to them for their consideration (non-discretionary). The nature of this advice can range widely depending on whether the advisor offers managed account services, financial planning, tax planning, insurance, derivatives strategies, commodities, etc. They would have no idea what a 'dealing representative' is and so there is no benefit to the investor or the public of applying this or the other alternatives. To try to fit all these categories into cumbersome, uninformative and inaccurate titles is short-sighted in our opinion.

**Recommendation:**

As the titles are not reflective of the services, expertise and standards identified in NI 31-103 or this Consultation Paper, we suggest that the following titles be subject to restriction:

**Portfolio Manager:** this term should be held in reserve for those individuals registered as an Advising or Associate Advising Representative, or the IIROC equivalent.

**Financial Planner:** this term should be held in reserve for those individuals holding the corresponding designation: C.F.P, R.F.P or P.F.P.

In addition, we feel that **Financial Advisor** is a category that encompasses the standards of knowledge and service to which all industry registrants are held under NI 31-103. This term applies to all registrants and we would not want to see associate portfolio managers with additional life insurance designations restricted from representing themselves as overall financial advisors, for example.

We believe that disclosures made under NI 31-103 already require registrants to identify the natures and extent of their available services.

**DESIGNATIONS**

**Recommendation:**

We believe that the educational merits of designations vary from provider to provider. If the regulators wish to restrict the use of designations they believe do not describe or represent adequate educational merit, they should create a certification process for educational entities to ensure the quality of educational products meets a minimum standard and ensure the meaningful designation of skills and competencies, rather than effectively halting innovation and the development of new and valuable educational courses as the industry evolves.

**STATUTORY FIDUCIARY DUTY WHEN CLIENT GRANTS DISCRETIONARY AUTHORITY**

**Issues stated:**

- Limited guidance that explains what regulators' expectations are and how this standard is used separately from, and together with, more targeted obligations

***Impact Assessment:***

First, we are a portfolio manager whose principal office is in BC, whose business model is wealth management of high net worth clients who prefer to have their accounts managed by professional advisors and therefore, our responses to the questions emanate from that perspective. Rule 14 of the Securities Rules (Fair Dealing with Clients) judicially has been interpreted as elevating registrant-client relationships such as the ones that apply to us, to a fiduciary level where the client reposes trust and confidence in the broker and relies on the broker's advice in making business decisions. When the broker seeks or accepts a client's trust and confidence and undertakes to advise, the broker must do so fully, honestly and in good faith. The failure to advise clients of significant material facts concerning investments breaches this duty. To advise a client fully about an investment, the registrant must inform the client of all the material factors relating to the investment, both positive and negative.

Securities Rules (and National Instruments) have the force of law and therefore portfolio managers who have primarily managed account clients as the base of their business, are already subject to a statutory fiduciary duty.

**Recommendation:**

We support the concept as we agree with the existing legal interpretations of duties imposed on registrants but believe further analysis of the desired intent is warranted.

**BEST INTEREST STANDARD**

**Issues Stated:**

A regulatory Best Interest Standard **would require "that a registered dealer or registered adviser shall deal fairly, honestly and in good faith with its clients** and **act in its clients' best interests"**, and that a representative of a registered dealer or registered adviser shall deal fairly, honestly and in good faith with his or her clients and act in his or her clients' best interests. The conduct expected of a registrant in meeting her, his or its standard of care would be that of a prudent and unbiased firm or representative (as applicable), acting reasonably.

In complying with the standard of care, registrants would be guided by the following principles:

1. Act in the best interests of the client

2. Avoid or control conflicts of interest in a manner that prioritizes the client's best interests

3. Provide full, clear, meaningful and timely disclosure

4. Interpret law and agreements with clients in a manner favourable to the client's interest where reasonably conflicting interpretations arise

5. Act with care

**However, it is explicitly stated in the proposal that this is not intended to create a fiduciary duty.**

***Impact Assessment:***

In our opinion, there must be uniformity of securities regulation in all CSA Jurisdictions. In addition, we believe the proposed standard would create conflicts with existing fiduciary duties already applicable to certain registrants. There is substantial case law relating to fiduciary duty; it is unclear how the Best Interest Standard would be adjudicated outside the courts in order to offer redress to clients in the same manner as the legal framework of a fiduciary duty. We are further of the view that many clients would be confused and misled into believing a fiduciary duty exists under a Best Interest Standard. We would ask why the language in most Securities Acts does not serve the purpose of the regulators as this language (which is subject to regulatory enforcement) states that it is the duty of any registrant ***"to deal fairly, honestly and in good faith with the clients of the registrant."*** We believe a registrant's obligation to deal fairly with the client could potentially be used by regulators as a tool to remedy the many of the concerns raised in their proposal. We further believe the Best Interest Standard proposal will be costly to implement as it would require a substantial re-thinking of business strategies and approaches for many registrants.

Regarding the requirement to interpret law and agreements with clients in a manner favourable to the client's interest where reasonably conflicting interpretations arise, we are also unsure as to how laws can be interpreted in any manner that is not consistent with judicial interpretations on the same matter that have gone before. Is there any reason why the principles of disclosure, and acceptance or rejection of conflicts cannot be used in the context of a client-registrant relationship, as long as the test of understanding the nature and extent of the conflict by the client is met?

**Recommendation:**

For the reasons stated above, we oppose the introduction of a standard described as a Best Interests Standard. We agree with the B.C. Securities Commission that time should be taken to assess the impact of the Point of Sale and CRM2 initiatives.

We believe the aims of the CSA are to be applauded and appreciate this Consultation Paper is provided to explore better solutions to the important issues identified through the work of the CSA and other regulators and we thank you for the opportunity to comment.

Sincerely,

***Dannielle H. MacDonald, CIM CAMS***
***Chief Compliance Officer***
Direct: 604.235.2549
dmacdonald@nicolawealth.com