September 30, 2016

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

VIA EMAIL TO:

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Dear Sirs/Mesdames:

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

Mandeville Holdings Inc. ("**Mandeville**") is pleased to submit its comments regarding the Canadian Securities Administrators' ("**CSA**") Consultation Paper 33-404 – *Proposals to Enhance the Obligations of Advisors, Dealers, and Representatives towards their Clients* (the "**Consultation Paper**") as set out below.

Who We Are

Mandeville Holdings Inc. is the parent company of the Mandeville group of companies which includes Mandeville Private Client Inc. ("**MPC**") and Portland Investment Counsel Inc. ("**Portland**"). The Mandeville group of companies is committed to providing clients with outstanding personal service and high quality products. Mandeville offers a differentiated

approach to wealth creation by providing traditional investment products as well as private and alternative investment opportunities. Mandeville's goal is to democratize these private and alternative investment opportunities for wealth creation and, where appropriate, provide clients with the same investment techniques used by ultra-high net worth and institutional investors.

MPC is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and is registered as an investment dealer in all provinces across Canada. MPC provides a full range of investment wealth creation services to retail investors.

Portland is an investment management firm registered as an investment fund manager, portfolio manager, exempt market dealer and mutual fund dealer in various jurisdictions across Canada.

For more information about Mandeville, please visit our website at www.mandevilleinc.com. For more information about Portland, please visit our website at www.portlandic.com.

It is with this view of wealth creation and our goal of democratizing investment opportunities for all investors that we provide these comments.

GENERAL COMMENTS

Mandeville has significant concerns about the regulatory burden which a number of the proposed targeted reforms and the regulatory best interest standard may have on our firm and other registrants. The statement regarding the burden of regulation made by the Expert Panel on Securities Regulation in its Final Report and Recommendations in January 2009 (at p. 9) bears repeating: "[r]egulation **simply cannot** be developed without assessing the burden it will have on market participants" [emphasis added].

We are deeply concerned by the lack of assessment regarding the burden that the proposed targeted reforms and the regulatory best interest standard will have on registrants.

Our securities regulators, from the commissions to our SROs, consistently acknowledge that their mandates include maintaining fair and efficient markets yet at the same time they tell us that they acknowledge the increased regulatory burden on registrants and the increasing cost of this burden. The regulatory burden and downstream effects, including to investors, appears to us to be acknowledged and seemingly then disregarded.

The CSA's comment that "the status quo must change" implies that there is something significantly wrong with the client-registrant relationship. We disagree. We also don't think that this can yet be concluded particularly when the impact that CRM2 and point of sale reforms have not yet been determined. Has the CSA already assumed that these reforms have not achieved what they had intended?

One of the areas of the client-registrant relationship that needs to be enhanced is the financial literacy of clients. The proposed targeted reforms and the regulatory best interest standard continue to put the full onus and responsibility on the registrant in the relationship. We believe that more needs to be done to involve clients in the client-registrant relationship and their own

financial well-being. This begins with financial literacy. We feel that financial literacy should be part of the education curriculum. We do not agree that registrants should be expected to, nor can they continue to be required to, compensate for the current lack of financial literacy within the Canadian population.

MANDEVILLE'S TARGETED COMMENTS

Mandeville's various subsidiaries are members of, and active participants in, industry groups and associations, including the Private Capital Markets Association of Canada ("**PCMA**"), the Portfolio Management Association of Canada ("**PMAC**"), the Investment Funds Institute of Canada ("**IFIC**") and the Investment Industry Association of Canada ("**IIAC**"). Senior members of Mandeville have been involved in various comment letters by those groups regarding the Consultation Paper. We generally agree with their submissions and the concerns they have raised. Given this, we do not propose to comment on each of the targeted reforms but instead will primarily focus on those that most significantly affect the Mandeville registrants. These are: the proposed framework for the proposed targeted reforms in respect of Know Your Client ("**KYC**"), Know Your Product (**"KYP**"), suitability and titles/designations and the proposed framework for a regulatory best interest standard.

I. PROPOSED FRAMEWORK FOR THE PROPOSED TARGETED REFORMS

KYC, KYP and suitability are the cornerstone of the client-registrant relationship. While there may always be some room for minor improvement and evolution in the area of KYC, KYP and suitability to keep up with changing times and marketplace realities, we do not believe that the proposed targeted reforms in these areas improve those requirements, but rather, impose significant burdens on registrants and may create inappropriate client reliance on registrants as the proposed KYC and suitability targeted reforms go beyond securities-related strategies.

1. <u>Know Your Client</u>

We are concerned about the CSA codifying an annual update of KYC information. Registrants should have the flexibility to determine the frequency with which they update KYC information. Annual full KYC updates may frustrate investors.

When a relationship is transactional in nature, accurate KYC information is required to determine the suitability of the trade. Transactions may occur more than once a year or could occur two years or more. If the client holds a security with a long term hold period, requiring an annual full KYC update may not be well received.

When a relationship is discretionary, there is a fiduciary duty and registered advisors should have an open line of communication with their client. An annual full KYC update would be potentially seen as unnecessary by clients.

Q.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?

Requiring basic tax knowledge by registrants could lead to a greater expectation gap, as investors would think the registrant has some expert knowledge in tax. Tax matters can be extremely complex and registrants should not be encouraged through regulation to give advice or opine on tax planning or strategies when they do not have that expertise. A requirement to collect this information may well result in investors not seeking independent tax advice from experienced tax or accounting professionals and simply relying on the registrant.

Further, we know that clients do not tell their advisors everything in respect of their financial matters, whether knowingly or unknowingly. As such, requiring a registrant to collect this information would place an unfair and unreasonable expectation on registrants. When it comes to tax matters, proper advice requires all relevant information even for those that have the required expertise.

Q. 5. Should the CSA also codify the specific form of the document, or new account application form, that is used to collect the prescribed KYC content?

We do not believe there is a great deal of value to mandating a KYC form. A standardized KYC form would not allow registrant firms to tailor their KYC process based on their business models. For instance, some registrant firms automate the KYC and account opening process and collect supplemental information from the client which is used to populating other account-related forms. The ability to adapt the KYC process enables registrants to reduce the amount of paperwork a client must complete.

If regulators identify gaps in the KYC information collected by registrants, CSA Staff Notices are an appropriate tool for providing guidance.

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

We recommend that the representative's supervisor or a member of the registrant's compliance team review and sign the KYC form.

Q. 54. To what extent should the KYC obligation require registrants to collect tax information about the client? For example, what role should basic tax strategies have in respect of the suitability analysis conducted by registrants in respect of their clients?

We recognize that each individual's tax situation is different and that clients should consult with their own tax or accounting professionals prior to investing. We do not believe that basic tax information should be collected in all cases, such as clients who have only cash accounts.

Basic tax information is already collected when a client invests in a registered plan such as an RRSP or TFSA as registrants don't want an investment to cause tax issues for their clients. Even when this basic information is collected, issues can arise as clients may not be forthcoming with their investments at other registrant firms and may inadvertently over-contribute. This is one example of the potential issues that can arise even when collecting basic tax information.

A client's tax situation must be their responsibility and we anticipate mandating this data collection may result in increased in investor complaints if clients now come to expect that their advisor is involved in their tax strategies or even their basic tax situation.

Q. 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 answer to this question is highly fact driven. However, there is no case in which a trade should be made where all of the KYC information is missing. The minimum amount of KYC information collected should be the amount that allows a registrant to assess whether a client is eligible to make an investment in a particular security and determine if the trade is suitable.

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

We do not believe in a mandatory risk profiling process. Risk questionnaires that may be used to determine a client's risk profile can vary widely and can be subjective. A client can fill out a questionnaire and the technical scoring may result in determining a risk tolerance that may be different, even significantly different, from what the client feels their risk tolerance is. Given the subjective nature of the process and the judgment that should be used by the registrant based on their knowledge of their client we feel determining risk tolerance should remain a principles-based process.

We believe that additional effort should be made to educate investors about risk and reward through financial literacy education. It would also be helpful to have guidance with respect to explaining this information to clients.

Q. 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?

See response to Question 55 above. In our view, the collection of KYC information should remain principles-based.

2. <u>Know Your Product</u>

We are concerned by the proposed expectations on representatives and firms in respect of products. Dealers are currently required by SRO rules to be the gatekeeper of products offered by their representatives. Relationship disclosure information, among other things, requires representatives to disclose who they are, their relationship with any product manufacturer, and the products and services that they offer. In our view, further expecting a representative to fully understand every product on their dealer's shelf is unrealistic. We are concerned the impact that the KYP proposals would have not been fully considered.

We are of the view that investments in securities (such as publicly listed securities) that are not investment pools should not be categorized as 'products'. We are aware that a representative must know and understand an investment such as a publicly listed security and ensure that the security is suitable for the client. However, we don't feel these types of securities should be considered in the context of proprietary and mixed/non-proprietary products as discussed within the Consultation Paper. Our responses below reflect this perspective.

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

This is not optimal and in our view, is undue interference by the CSA into the business models of registrants. This is not tweaking or providing a more explicit KYP obligation but rather a fundamental change of business for registrants.

If the targeted reform for KYP as proposed is adopted, registered representatives would have to spend a significant amount of time knowing each product on their firm's shelf. IIROC firms generally carry every mutual fund on their shelf as they have an open architecture. As investment fund managers create new funds, generally the new funds are automatically added to the firm's shelf as long as the investment fund manager has been approved by the firm. This would leave little time for registered representatives to focus on their clients and determine which products are suitable.

There is no searchable database of fees associated with products for registered representatives to easily compare or even a method to determine every product that has the same feature. Currently, registered representatives are familiar with the products they discuss with their clients and have a good understanding of the professionals who manage the product and the features of the product. The KYP obligation as proposed appears to be daunting and unrealistic.

Q. 8. The intended outcome of the requirement for mixed/non-proprietary firms to engage in a market investigation and product comparison is to ensure the range of products offered by firms that present themselves as offering more than proprietary products is representative of a broad range of products suitable for their client base. Do you agree or disagree with this intended outcome? Please provide an explanation.

We question the benefit or necessity of conducting prescriptive market investigations and product comparisons. IIROC issued a guidance notice in respect of a firm's KYP obligations and further, NI 31-103 includes language which requires a registrant to understand the features and risks of each security recommended to a client. Your requirements may well result in a narrowing of the product shelf which we do not believe serves the best interests of the investing public.

Q. 9. Do you think that requiring mixed/nonproprietary firms to select the products they offer in the manner described will contribute to this outcome? If not, why not?

For the reasons set out above in Question 8, we anticipate a defensive position to be adopted by firms and a narrowing of the product shelf.

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

We believe the current approach of allowing market forces to determine what is on a dealer's shelf is fair and efficient.

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

Mandeville is a proudly independent firm and we expect this requirement will lead us and others to severely limit access to non-proprietary products. We have limited financial resources which must be carefully allocated.

Q. 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?

We could see the proposed new requirements resulting in firms who sell mixed/nonproprietary products limiting their shelf to only proprietary products due to the time, money and resources that would be required to meet the proposed new requirements. For smaller firms that sell mixed/nonproprietary products, the proposed new requirements may force them out of the business or act as a barrier to entry.

We believe a reduction in the number of registrant firms or the change from mixed/ nonproprietary products to proprietary only would not be in the interest of investors or issuers. From an issuer perspective, we anticipate that small to medium enterprises ("**SMEs**") who raise capital in Canada may not expand their business or may even reconsider whether or not they should start new businesses. This may also lead to SMEs seeking to raise capital outside of Canada and possibly moving business and employment opportunities out of Canada as well.

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

Yes, as noted above in our response to Question 12, if a firm must commit the time, money and resources to pursue the proposed new requirements, then they may cease offering non-proprietary products so they may fit the definition of a proprietary firm.

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

No, we do not believe there is anything wrong with selling only proprietary product. There are conflicts of interest however they can be satisfactorily addressed by way of client disclosure. Larger dealers may not put an issuer on their shelf until the product or issuer has reached a

certain size or has an operating history/established performance. If those issuers don't distribute their own product, how will they raise capital?

Registrant firms that only sell their own product should provide investors with disclosure so they understand the relationship and the inherent conflict. This is common in other areas of the financial industry such as banking and insurance. Banks sell their own products and do not offer products of other banks.

Q. 15. Do you think that categorizing product lists as either proprietary and mixed/non-proprietary is an optimal distinction amongst firm types? Should there be other characteristics that differentiate firms that should be identified or taken into account in the requirements relating to product list development?

We believe investors want to know whether a registrant is a boutique firm, offers proprietary and/or non-proprietary product or a mix of both. They want to know the number and types of products available and what fees they have to pay. They want to know about the firm itself and their past performance.

Q. 58. Should we explicitly allow firms that do not have a product list to create a product review procedure instead of a shelf or would it be preferable to require such firms to create a product list?

We believe the CSA should continue with a principles-based approach product review.

Q. 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.

We believe the CSA should continue with a principles-based approach to regulation and not require a market investigation.

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

These labels may not be meaningful or understandable to investors, particularly "mixed/non-proprietary". Perhaps an alternative would be to simply note when a firm sells only proprietary products.

Q. 61. Is the expectation that firms complete a market investigation, product comparison or product list optimized 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.

We believe the CSA should continue with a principles-based approach to regulation which would enable firms to respond appropriately and immediately to frequent changes in the product marketplace.

3. Suitability

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

No. We believe that this may result in registrants providing advice in areas where they do not have the required expertise. This may also inadvertently increase reliance by clients on a registrant. We also feel that this is a paternalistic approach to treating investors. When was the last time a consumer walked into a car dealership and was told they should consider buying a bicycle instead?

Q. 17. Will there be challenges in complying with the requirement to ensure that a purchase, sale, hold or exchange of a product is the "most likely" to achieve the client's investment needs and objectives?

We are concerned that "most likely" could be seen as a guarantee against investment risk and that this standard will put the onus of investment failures, or the failure of a particular investment to meet its objectives, on registrants.

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

We support more guidance, not regulatory requirements, in relation to the expectations of regulators particularly in assessing the suitability of investments in a continuation of principles-based regulation.

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

No, this is the requirement in the current rule.

Q. 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?

SROs such as IIROC and the MFDA have Rules which require members to conduct a suitability analysis given specific triggering events. We are wondering why and how 12 months was selected by the CSA? We are concerned that the cost of implementing such a program would be considerable.

For some firms, their clients may invest in a security with a long-term hold period with no ability to redeem or sell the investment. In these instances, clients would be frustrated if registrants requested yearly updates to their KYC information.

Q. 21. Should clients receive a copy of the representative's analysis regarding the client's target rate of return and his or her investment needs and objectives?

We do not agree with the proposed requirement to have a targeted rate of return. Not all registrants have the proficiency to create an asset allocation or calculate a target rate of return. A targeted rate of return may be perceived by investors as an investment guarantee and may result in more client confusion, frustration and complaints.

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

We do not believe that this requirement will be problematic since generally speaking, a suitability review will result in a decision to buy or not buy, or hold or not hold because the investment is suitable or not suitable.

Q. 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?

We are concerned that the term "most likely" can be seen as a guarantee against investment risk and that this standard will put the onus of investment failures, or the failure of a particular investment to meet its objectives, on registrants. As noted above, this change could also result in an increase in client confusion, frustration and complaints. We also believe that requiring registrants to have knowledge of other financial strategies, create asset allocation plans and have omniscient product knowledge will further exacerbate the expectation gap.

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

The current rule requires a suitability analysis to be conducted on a hold recommendation.

Q. 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 suitability requirement should not apply when there is a transactional relationship with a client. These clients may have several transactions with a registrant but the products may have lock-up requirements or a long term time horizon. Suitability should continue to be required at the time of each transaction.

4. Proficiency, Titles and Designations

Mandeville is generally supportive of enhanced proficiency requirements with appropriate transition periods. We are also supportive of reasonable continuing education requirements for registrants which are mindful of the cost to registrants of ongoing education proficiency requirements.

Mandeville is of the view that titles need to be better managed and that titles that are misleading or confusing must not be used. In our view, this ought to be done in a principles-based manner and we would welcome guidance from the CSA regarding the use of titles. However, the proposed alternatives are too prescriptive and do not advance client understanding with respect to their advisor's particular registration and/or particular limitations on his or her registration. We believe the industry should work directly with the SROs to develop appropriate titles. Further, we strongly disagree with the use of the title "salesperson", particularly where certain jurisdictions are considering imposing a regulatory best interest standard on such individuals.

With respect to designations, Mandeville agrees that it would be appropriate for the regulators to regulate the use of specific designations to avoid any investor confusion and to level the playing field for all registrants. In our view, CFA Institute, CSI and CFP designations should be permitted.

II. PROPOSED FRAMWORK FOR A REGULATORY BEST INTEREST STANDARD

The jurisdictional disharmony or "unharmony" in respect of an overreaching standard of care is troubling to Mandeville as it conducts business across the country and deals with investors in different provinces. In the same way in which we advocate for democratization of investment opportunities, we do not wish to see different standards applied to investors based on the province in which they may reside. Further, in our view, this would cause confusion and uncertainty for dealing representatives who reside in one province and deal with clients in other provinces where a regulatory best interest standard may or may not be imposed. This would also result in challenges (and resulting additional costs) in terms of supervision by compliance departments.

Registered representatives are currently required to act fairly, honestly and in good faith with their clients. Further, current IIROC and MFDA Rules speak to conflicts of interest which require resolution in the best interests of the client. In addition, advising representatives have an existing fiduciary duty.

The CSA, with a regulatory best interest standard, is seeking to compel registered representatives to operate at a higher standard while stopping short of calling it a fiduciary standard. However, the CSA has not defined "the best interests of clients" and it is unclear as to how this standard would be interpreted. What constitutes the best interests of a client? How does this differ from the suitability requirement and the conflicts of interest requirements?

Further, a standard of care has been developed through common law which is inherently more appropriate than a one-size-fits-all approach like the CSA has proposed. The common law standard of care considers the actual investor (sophistication, experience, participation, vulnerability, etc.) and determines the registered representative's standard in that particular instance. Isn't that what advisors are expected to do as it relates to KYC, KYP and suitability – consider the individual investor's particular circumstances? It would naturally flow then, that the advisor's particular standard of care ought to be determined in respect of each individual investor as well and not a blanket, one-size-fits-all standard when that may not necessarily be appropriate given the particular circumstances and relationship.

We share and echo the concerns raised by IFIC in its comment letter dated September 20, 2016 regarding the regulatory best interest standard.

All in all, we see the proposed regulatory best interest standard as unnecessary, costly and confusing.

CONCLUSION

The stated goal of the CSA in respect of the proposed targeted reforms and regulatory best interest standard is to enhance the obligations of advisers, dealers and representatives toward their clients and that such enhancements are needed now to address issues identified by the CSA in the client-registrant relationship. In our view, enhancements is a misnomer; the proposed targeted reforms and regulatory best interest standard are significant regulatory reforms rather than mere "enhancements".

We do not believe that it is appropriate to undertake any such reform at this time given that no meaningful assessment has been done with respect to the regulatory burden and given that the impact that CRM2 and point of sale reforms have on the client-registrant relationship have not yet even been considered. The conclusion that "the status quo must change" is premature at this time.

* * * *

We thank you for considering our comments and we would be pleased to respond to any questions or meet with you to discuss our comments.

Yours truly,

"Nadine Milne"	*"Alison Fletcher"*	*"Julie A. Clarke"*
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