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February 22, 2013

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Attention:

John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1900, Box 55
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, Tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs / Madames:

Re: CSA Consultation Paper 33-403: The Standard of Conduct for Advisers and Dealers – Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients

We are writing to provide you with comments on behalf of the Members of The Investment Funds Institute of Canada ("IFIC") with respect to the Canadian Securities Administrators' ("CSA") *Consultation Paper 33-403 – The Standard of Conduct for Advisers and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients* (the "Consultation Paper" or "Paper"), published on October 25, 2012.

We appreciate the opportunity to participate in the CSA's review of Canada's standard of conduct framework for dealers and advisors, and commend the CSA for issuing a consultation paper so as to draw a broad and fulsome range of comments on the appropriateness of adopting a statutory best interest duty. Based on our review of the Consultation Paper, the impact on registered dealers and dealer representatives will be significant. As such, the bulk of our comments are directed to the implications for dealers and dealer representatives. Although we expect the implications for registered portfolio management firms to be more limited, the potential effect on them of product substitution and reduced investor access to advice, which we discuss throughout this letter, are difficult to assess. Throughout this comment letter we refer to dealer representatives as "advisors", which is the term most frequently used in the Canadian securities industry, where we are referring to or quoting from the CSA Paper, we have left it as "adviser".

We are in agreement with the overall principle that the best interest of the investor must guide the provision of financial services to clients, and believe that a careful review will show that the current standard of conduct for dealers and advisors imposed by Canadian regulation is designed to obtain that outcome for investors. A more careful comparison of the Canadian framework to rules being applied or considered in other jurisdictions will also show that Canada is among the leaders when it comes to investor protections.

We support the continuous review and enhancement of the regulatory framework in order to enhance investor protection. Examples of the positive evolution of the regulatory structure are the new disclosure rules introduced, but not yet fully implemented, including the Client Relationship and Fund Facts initiatives among others. We also support diligent enforcement of the current regulatory compliance regime to obtain the best results for investors. We are of the view, however, that a legislated fiduciary standard as appears to be outlined in the Consultation Paper, is not the appropriate solution to the stated investor protection concerns of the CSA.

An important consideration for regulators in assessing the appropriateness of a best interest standard is whether or not it would apply equally across all sectors where financial products or investment advice is provided to retail investors. If a best interest standard were to be applied unequally across the spectrum of financial services and products that Canadians own, it would impose different levels of legal risk across providers of those services and products and set up product and regulatory arbitrage that could result in investor decision-making based on incomplete or faulty product comparisons, driving business in the direction of the lower standard to the disadvantage of investors.

The consultation paper poses a number of questions for comment – we provide our responses in Appendix A. In this letter we comment on those issues we see as the most important, and provide some suggestions for further analysis that should be done to inform the discussion before any further concrete action is contemplated.

Adequacy of Current Rules

Currently, Canada has a robust regulatory framework governing the provision of investment advice to retail investors. Client interests are protected through the duty of dealers and advisors to act fairly, honestly and in good faith within a system of detailed rules for:

- suitability,
- relationship disclosure,
- referral arrangement disclosure,
- compensation disclosure,
- continuous product disclosure,
- trade and account review and supervision,
- complaint handling,
- dispute resolution,
- compensation and incentive restrictions for the sale of most mutual funds,
- performance reporting, and
- plain language requirements.

The existing comprehensive securities legislative and regulatory framework for the protection of investors purchasing mutual funds is described in detail in Appendix B. These rules serve the Canadian investor well and are continuing to evolve in the direction of strengthening client protections and increasing investor knowledge through client relationship disclosure reforms, enhancements to dispute resolution provisions, and the Fund Facts document.

The concerns raised in the Paper with respect to the existing standard, if substantiated, can and should be addressed first within the detailed and evolving system of rules and policies that make up our regulatory framework as follows:

Principled foundation: The current duty of care supported by prescriptive prohibitions and disclosure requirements, when fully implemented, provides the required principled foundation. If, in the future, a more careful analysis reveals deficiencies, a first consideration should be given to whether or not they could be addressed within the current framework. In Canada's multi-jurisdictional framework, adaptation of current rules will always be the preferable means to achieve uniform application of a principle, delivering clarity for investors and cost-effectiveness for the industry.

Financial literacy asymmetry: Knowledge asymmetry is not, in and of itself, an indicator of a problem requiring resolution; rather, it is a characteristic of all client/service provider relationships. In the case of advisor/investor relationships, research shows that investors are most likely to improve their financial literacy through engagement in the investment process with an advisor. Any regulatory change which would interfere with those relationships by limiting access to advice, or removing incentives for investors to be interested in and take responsibility for their own investment decisions, risks increasing the existing asymmetries. Incremental enhancements to the existing model would lessen the likelihood of this occurring.

Expectation gap: As with asymmetry, the possible existence of an expectation gap has not been shown to affect investor outcomes. It is possible that most investors believe that their advisor or dealer is legally required to act in their best interest because, in fact, a high level of legal protections is in place, and advisors operating within this framework are providing valued services. The research findings of the Investor Education Fund, among others, confirm that there exists a high level of trust in advisors. This trust is not misplaced – independent research in Canada and worldwide confirms that investors in advisory relationships gain significant value over those who choose to invest without advice.[1] In addition, Canadian courts have not hesitated to establish that, in the appropriate circumstances, a *de facto* fiduciary duty can exist between an advisor and client, and appropriate remedies have been provided when that duty was not met.

Suitable investment not in the client's best interest: Evidence has not been provided in the Consultation Paper of instances of suitable recommendations not being in the best interest of clients – best priced among suitable alternatives is not a viable standard. If opportunities exist in the current framework for placing the manager or advisor's interest ahead of the client's, these could be closed by tighter rules or improved processes and enforcement. A clearer identification by regulators of specific existing gaps in the suitability process, if any, and the harm being created by those gaps, is required to inform a discussion as to whether significant rule changes are required.

Application: None of the alleged deficiencies suggested in the Consultation Paper – misinterpreted rules, embedded fees, or connected issuers – represents a fundamental or systemic flaw that is not being addressed within the current regulatory framework. If there are gaps in those rules, they should be clearly identified and appropriate specific solutions considered.

A Strong Savings Culture

After years of development, a robust regulatory framework for retail investment services exists today in Canada. It has allowed Canadians to develop a strong savings culture through unparalleled access to advisory services at all income and age levels. Advice is shown to support the well being of Canadians, in particular through its impact on improved savings behavior.[2] The results are evident: Canada's retirement savings system, both public and private, has promoted the achievement of one of the lowest senior poverty rates in the world. The OECD reports that Canada outperforms the U.K., the U.S. and Australia by a wide margin – Canada is reported to have only 5.9% of its population aged 65 years and older with incomes less than 50% of median household disposable income. In the U.K. the same measure is 10.3%, in the U.S. 22.4% and in Australia 26.9%.[3] In addition, Canadians today are much better prepared for retirement than citizens of many other developed countries. In 2011, Canadians had a projected replacement rate of current income in retirement of 44.4%,

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[1] IFIC Value of Advice Report, 2012 at https://www.ific.ca/Content/Document.aspx?id=7506&LangType=1033.
[2] Claude Montmarquette and Nathalie Viennot-Briot, *Econometric Models on the Value of Advice of a Financial Advisor,* Centre for Interuniversity Research and Analysis of Organizations (CIRANO) Working Paper, July 2012 available at http://www.cirano.qc.ca/pdf/publication/2012RP-17.pdf.
[3] OECD (2012), OECD Pensions Outlook 2012 – Statistical Annex (Table A9: Income poverty rates), OECD Publishing.

compared to 31.9% in the U.K. and 39.4% in the U.S. Of these four jurisdictions, only Australia, which has mandatory savings in superannuation accounts for all Australian employees, achieves a slightly higher ratio than Canada at 47.3%.[4]

As individual Canadians are increasingly expected to assume more responsibility for their retirement savings, the importance of affordable and readily-available advisory services, that create a stronger savings discipline, is more important today than ever before. In light of this, we recommend that all new regulatory initiatives be assessed against the expressed broader public policy objective articulated by both federal and provincial governments to encourage Canadians to increase their level of personal and retirement savings.

Defining a Best Interest Standard

Notwithstanding the above-noted successes, the CSA Paper asks whether the addition of a higher standard, a statutory best interest standard, might be appropriate for Canada's advice markets. The Paper does not offer a clear definition for a proposed standard, presumably in order to generate broad discussion; however, without a precise and internally consistent definition of "best interest", this is a difficult question to answer.

On the one hand, the Paper states that a fiduciary duty *"does not require the fiduciary to act as 'guarantor' or 'insurer' in respect of his or her advice*" [5]. On the other hand, the Paper provides an interpretation that places an emphasis on product cost in determining whether or not a recommendation would be in a client's best interest[6], and describes the best interest duty as an ongoing obligation[7]. Setting these latter qualifications in law would clearly have serious repercussions for the markets and for investors.

The concept of something being "best" in securities regulation has been considered by the CSA in the context of "best execution". In its original consultation paper on best execution and soft dollar arrangements [8] the CSA acknowledged that a purely objective definition of "best execution" was very difficult because there are many factors that are relevant in assessing what constitutes the "best execution" in any particular circumstance. However, based on the feedback to that consultation paper, the CSA adopted a definition of "best execution" as set out in National Instrument 23-101 *Trading Rules* – i.e. "most advantageous execution terms reasonably available under the circumstances"; and also provided additional guidance in Companion Policy 23-101CP by setting out specific elements that a firm may consider when seeking best execution[9]. This is illustrative of how elusive the definition of "best" is, and consequently how difficult it would be for the industry to comply with a "best interest" requirement without an appropriate framework around the meaning of "best interest" against which a firm can assess its actions.

A framework for "best interest" is present in the corporate context. The statutory duty to act honestly and in good faith with a view to the best interests of the corporation, and the duty to exercise the

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[4] OECD (2012), OECD Pensions Outlook 2012 – Statistical Annex (Table A5: Gross pension replacement rates from mandatory pensions by earnings), OECD Publishing.
[5] CSA Paper (2012) 35 OSCB, p. 9561
[6] The Paper states that "*there may be a large number of potentially suitable investment products, but the question is whether the advice to the client must identify a smaller range of products that are, in the advisor's view, in the client's best interest. One consideration in giving that advice would be the relative cost to the client of the product*." p. 9568. Also see Concern 4, p. 9581.
[7] The Paper states that "*the duty would be an on-going duty in the case of advisers and dealers other than exempt market dealers and scholarship dealers*" p. 9583.
[8] CSA Consultation Paper 23-402 *Best Execution and Soft Dollar Arrangements*, February 4, 2005
[9] Section 1.1.1 of Companion Policy 23-101CP states "In seeking best execution, a dealer or adviser may consider a number of elements, including (a) price, (b) speed of execution, (c) certainty of execution, and (d) the overall cost of the transaction." It then adds that these "four broad elements encompass more specific considerations" and then proceeds to list examples of specific considerations.

care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances set out in corporate legislation[10] is interpreted and applied by courts with consideration of the business judgement rule. Generally, Canadian courts will not second-guess business decisions that are: made independently, without conflict of interest, in good faith, on a reasonably informed basis, based on information available at the time, and within a range of reasonable options available at the time. The courts will look to see that the directors of a corporation made a reasonable decision in the circumstances, not a perfect decision.

The process of defining a best interest standard also requires a thorough review of the case law around fiduciary duty to delineate clearly the factors that must exist before a court will determine whether such a duty exists, and the consequences of the fiduciary not meeting his/her standard of care. Although the Consultation Paper does provide some analysis of the case law, the analysis is insufficient to support a view that a standardized one-size-fits-all fiduciary duty is necessary or even appropriate to apply to all advisors, whether they provide full discretionary investment management services or single product type advice and recommendations.

The Consultation Paper suggests that one possible interpretation of best interest would be a requirement to recommend the lowest cost product. By identifying price as a key consideration in terms of what constitutes "best interest", the decision process among alternative investment choices would become much more linear and may favour outcomes less advantageous to investors than the more holistic processes currently in place. A more expensive product that provides additional value to a client due to specific tax needs, or better meets longer or shorter-term objectives, or that provides appropriate risk exposures, for example (and is therefore more suitable for that client), might be set aside in favour of a product more easily documentable as being at lower cost. It also assumes that one can completely align a range of products in order to determine that one is lower cost than the other, all other factors being equal.

This narrower objective would appear to create an obligation on a product-by-product basis rather than on a broader portfolio basis, whereby appropriate asset allocations are assessed given objectives, timeframes, risk appetites, etc. of individual clients. For those firms that sell only proprietary products, it seems to suggest that they should only sell their lower priced products irrespective of the merits of other products that may have higher associated costs.

Even a more broadly-defined standard linked to outcomes would be unfeasible, since outcomes are only known in retrospect and are largely measured against a client's stated objectives at the outset of the investment. Such a concept would appear to set up advisors and dealers for endless and potentially frivolous litigated claims against which it would be impossible to defend.

"Best Interest" as an Ongoing Obligation

An ongoing best interest obligation would be difficult, and perhaps impossible, to apply. At present, there are relatively clear standards concerning product review, know your client assessment, suitability review, trade review, and account supervision. It would be problematic if the standard were to become one that requires the "best" product (however "best" is defined), out of a range of products that would be suitable for a client, to be at all times in the customer's account. There will be good arguments to support a range of options at any point in time. The determination of "best" product will always depend on a subjective assessment of many qualitative and quantitative factors, including, product cost, fees, performance, investment strategy, experience of the portfolio management team, stability and history of the fund manager, in addition to the investment objectives, risk tolerance and time horizon of each investor at the time the product recommendation is made. Reasonable people will disagree on which product may be the "best". The application of such a standard to daily trade supervision will be difficult and uncertain. It risks undermining the goal of establishing long-term investment discipline among investors as it seems to require a constant re-set of the product-mix, and

[10] For example, *Ontario Business Corporations Act*, s. 134(1).

it risks compromising suitability requirements if investments are made with a short-term focus, potentially subjecting investors to additional trading fees and charges. In addition, the application of the standard to complaint handling and resolution will result in uncertain results and increased disagreement and conflict.

Training and Supervision

The imposition of a best interest standard would also require significant changes to dealer and advisor processes. As an example, new advisors are currently trained to ensure transactions are suitable to a client's know-your-client information based on well understood interpretations of how that is to be applied. With a new standard, dealers would be required to develop and incorporate new training techniques and to educate advisors as to how to accommodate a best interest standard initially, and possibly for several years, without the benefit of a clear set of guidelines or precedents.

Existing proficiency requirements for dealing representatives may need to be enhanced if advisors need to have sufficient knowledge of all available products. This may create onerous educational implications similar to the existing proficiency requirements for advising representatives of portfolio managers, which include a CFA or CIM designation.

In respect of collecting know-your-client information from a client, it is unclear what additional information would need to be collected to assist a dealer or advisor to determine what product would be best for a client. It could also be difficult for compliance to supervise trades to ensure the trade satisfies the best interest obligation. Compliance processes and tools would need to be modified. Changes to process requirements would require significant modifications to back office procedures, compliance controls, IT systems, resourcing requirements, and training for staff and advisors. Dealers would likely have to invest significant resources in these changes. To the extent these modifications can be made, these costs would be absorbed by the dealer and/or passed on to clients. It is equally plausible that dealer firms would choose to exit the market due to the significant high cost of continuing in business (which has already occurred in other jurisdictions), which will diminish the accessibility of advice for investors and potentially contribute to product arbitrage opportunities.

Implications for Product Shelves

In theory, to meet a statutory best interest standard, a dealer would need to have a completely open product shelf and have perfect knowledge of all available products, in order to recommend the "best" product. This is clearly not possible or desirable. In fact, distributors currently are bound by Know Your Product (KYP) regulation, which is intended to limit the products on a dealer shelf to include only approved products. The purpose of this KYP process is to protect investors by ensuring that distributors vet products before distributing them, and advisors understand the products they are selling.

The imposition of a narrow standard could also insert the regulator into the role of dictating what, and at what pricing, financial products should appear on a dealer's shelf, and may expose the regulator to litigation by investors who may feel that their choice of products is being unreasonably restricted.

Implications for Clients of Dually Licensed Advisors

A best interest model, as outlined, and applied only to securities, would also create difficulties for an advisor licensed to sell multiple products, such as an advisor who is licensed to sell mutual funds and insurance products. These advisors would be subject to one standard when discussing mutual funds with clients and another standard when discussing other products. The existence of two different standards could confuse or mislead clients. It is unclear how this might affect the sale of insurance products. For example, would an advisor, by default, be expected to also advise the client to buy the lowest-priced insurance product? Or would they be expected to advise the client to buy the lowest-priced product that they are licensed to sell? Such unclear expectations could create product arbitrage opportunities and produce unfavourable outcomes for both the industry and investors.

Availability of Advice

Recruiting advisors has become increasingly difficult for dealers. Under the suggested model, the risks associated with being an advisor would increase. Errors & Omissions insurers may exclude from coverage any breach of such a standard given the complexities associated with complying with the standard. Alternatively, premiums for coverage may become unaffordable. There are also onerous remedies associated with a breach of a legislated best interest duty, which may include the return of all invested funds and commissions earned on the investments along with payment of opportunity costs to the client. A legislated best interest standard would be more easily evaluated only in retrospect and, therefore, dealers and advisors would be unfairly subject to additional risk of lawsuit and damages for outcomes that could not have been foreseen at the time of investment.

Given the potential significant increase in the risks associated with being an advisor, fewer individuals may choose to become advisors. With fewer advisors, investors may have limited access to obtain advice on financial products. As noted in the Consultation Paper, improving Canadians' levels of financial literacy is an important public policy goal. With fewer advisors, fewer Canadians will be in a position to invest their money in an informed way or at all. Many may choose to move to a do-it-yourself model which has been shown to yield fewer durable economic benefits and leave such investors less well off than those who work with an advisor.

Uniform Application

As described in the Paper, the obligation would be statutorily imposed in 13 jurisdictions; however, it would be impossible to ensure that a common principle would be adopted across all jurisdictions, and be applicable to all competing products in any particular jurisdiction. Creating a single compliance and supervisory oversight framework for those products with national distribution would be problematic, with the likely result that Canadians would find themselves being treated differently on a regional basis, with investors in smaller provinces at the greatest risk for reduced choice and access.

Additionally, as another context point, we note that the regulators in Australia and the U.K. who are implementing qualified best interest standards are implementing these standards simultaneously across securities, insurance and banking product distribution channels, and not, as proposed in Canada, to be applied first over securities products, and then perhaps across other products if the regulators of those industries can be persuaded to do so. The product arbitrage opportunities that this will create are significant, especially given that products from each sector are often seen by investors as being interchangeable.

Canada's Regulatory Framework Relative to the Rest of the World

The Consultation Paper suggests that maintenance of the current suitability framework would place Canadians behind other jurisdictions in terms of investor protection. To support this position the Paper cites recent reforms that have occurred in the U.S., U.K., Australia and the E.U.. This assertion would have been more informative if the Paper had presented a detailed assessment of the initiatives in those countries; for example, the current regulatory framework, retirement savings policy, and the market failures identified by those regulators is important context – this has not been presented, or compared to the Canadian framework. In addition, the Consultation Paper does not acknowledge that the U.K. and Australia each have a single regulator for securities, banking and insurance, thereby making it possible to apply new initiatives as appropriate across all competing product platforms without creating opportunities for product arbitrage. And where uniform rules are not applied, those regulators can monitor for regulatory arbitrage and act accordingly. Because of its narrow regulatory responsibility, the CSA would not only be unable to act on regulatory arbitrage activity, but would also likely be unaware that it was occurring.

Furthermore, the concept of "best interest duty" as articulated in the Consultation Paper seems to be a higher standard than that which is being implemented in these other jurisdictions, without exploring why a higher standard would be necessary or appropriate for Canada. Through our contacts in those jurisdictions we have been able to collect some of that information and present it in Appendix C. It provides a broader perspective by examining the context and application of these reforms in each of the jurisdictions. We encourage the CSA to conduct further research in these areas.

In the U.S., the concept to implement a fiduciary standard is limited only to those situations where broker/dealers are providing personalized investment advice to clients, and therefore are acting as advisors who are already subject to a fiduciary standard. It is not intended as a broad-based application to all product distributors, not even to broker/dealers when they are conducting transactions on behalf of clients. Also it remains a concept; it is not as close to being implemented as the Paper suggests.

The Consultation Paper's characterization of U.K. reforms arising from the Retail Distribution Review ("RDR") is fairly portrayed, but omits the fact that these reforms are being adopted as a result of a number of mis-selling incidents related to pension, mortgage and structured products. Similar conditions do not and have not existed in Canada.

The Consultation Paper is factually correct with regard to developments in Australia, but again, the discussion fails to note context. The Australian financial advice industry is the beneficiary of a mandated requirement that every Australian employee must contribute 9%, soon to be 12%, of his/her salary to a superannuation fund, creating a mandated large pool of clients for advisors. The dealer/advisor provides advice to individuals as to which of a set of investment options, often from a single provider, they should choose. Since the government essentially eliminated the competitive factors that would normally help manage the marketplace, it has put in place additional rules to support its policy framework. No such mandatory program exists in Canada. Here, the financial services industry operates in a competitive, retail environment where individuals' choices among competing products and providers are broad. Without mandatory retirement savings contributions, advisors must persuade individuals to open retirement savings accounts, and then to continue to make regular contributions to build their retirement savings. Further, the Australian rules apply across a broad spectrum of financial products, thereby mitigating the potential for regulatory arbitrage. The Consultation Paper notes that fiduciary duty in Canada would apply only to securities products and not the broader array of financial products Canadians own.

In the E.U., the initiative is limited to creating a set of high level principles which individual countries can adapt to suit their domestic regulatory structure. There are important differences between this initiative and what is proposed in the CSA Paper for Canada. The MiFID statutory requirement "to act honestly, fairly and professionally in accordance with the best interests of the client, when providing investment services or ancillary services to clients", applies to the investment firm and not the individual advisors as is proposed in the CSA paper. Moreover, each Member State has a fair degree of flexibility in how it implements the principles in the Directive; this has occurred with the application of the equivalent of the Fund Facts requirement across E.U. Member States. Actual implementation, therefore, is key to understanding what is going on in the jurisdictions the CSA chooses as comparators.

When the implementation and contextual considerations are examined, it is difficult to conclude that international initiatives point to Canada lagging other countries in providing a robust framework for investor protection or falling down on considering the investor's best interest. Experience, in fact, suggests that Canada has a well-regulated financial sector, where market failure has not occurred and where investors enjoy high levels of regulatory protections and have financially benefitted within the current advisor-led model. Furthermore, the rationale for introducing tighter market regulation in some of the countries highlighted in the Consultation Paper is related to evidence of market failure or systemic mis-selling in these countries. Such evidence does not exist in Canada; a further indication that the current rules are highly effective and appropriate to the Canadian market. If regulators are of the view that a market-failure exists, evidence of such failure should be laid out clearly so that the appropriate targeted solutions can be found.

The CSA Paper rightly points out that the impact of the new regulatory regime in the countries cited is not known and suggests that monitoring outcomes is important. We agree with this sentiment, and support full monitoring of developments and impacts of the new regimes to determine whether they are having the intended effect or creating issues of regulatory arbitrage, reduced access to advice, higher costs for investors, etc.

Benefits of an Evolved Standard of Conduct Model

Canada's current Standard of Conduct Model continues to evolve in the direction of providing better protections for investors. This evolutionary process must be allowed to play out, in terms of implementing rules under development, before a full assessment can be made of the adequacy of the Standard of Conduct Model.

The current framework already:

- Addresses in what situations a fiduciary duty will appropriately be found to exist between a financial advisor and his or her client.
- Provides extensive investor protections through detailed rules and regulations of securities commissions and self-regulatory organizations ("SROs"). Current regulations include:
    - A requirement to deal fairly, honestly and in good faith with clients;
    - A requirement to observe high standards of ethics and conduct in the transaction of business with clients;
    - Proper disclosure and handling of conflicts of interest;
    - Prohibited sales practices;
    - Supervision of activity in client accounts;
    - Background checks of advisors (such as police, credit, employment, education and proficiency course completion) before licensing;
    - Industry-specific education requirements;
    - Compensation disclosure; and
    - Insurance and bonding.

This framework is robust and is working. It is evolving through new rules already introduced, or in the process of being implemented, in the areas of Fund Facts Disclosure, Compensation Disclosure and Performance Reporting, and Dispute Resolution. It is also evolving through other SRO initiatives.

The current framework could be further enhanced and made more effective by making compliance the same across all distributor registrant categories, and by providing better guidance / training / education for advisors and supervisors in the collection of KYC, the explanation of risk, and the application of KYP.

Further Research/Analysis

The question of a fiduciary standard is a complex one. We hope that the CSA will devote the resources required to fully understand and fully cost the implications for investors and for the investment industry of any proposed change. We provide in this letter some of the considerations involved, but would note that we have only scratched the surface. We hope that our analysis will provide some guidance regarding the issues involved and the questions that remain to be answered.

Among the research and analysis we recommend be conducted to inform the discussion is:

- if regulators are of the view that market-failure or systemic gaps exist, evidence of this should be laid out clearly so that the appropriate targeted solutions can be found;
- an examination in greater detail of the context in which the countries cited introduced their respective initiatives, and a comparison with Canada to fully determine whether comparable conditions exist that would suggest similar solutions should be considered;

- monitoring outcomes in the jurisdictions cited to determine whether the new regimes truly work to enhance protection of the investor's best interest, or instead are creating unintended negative consequences;
- a collaboration with the SROs to consider whether the current compliance regulatory regime is being implemented with the level of rigor intended, and if not, consider what needs to be done to get the most of our current regime;
- a review by regulators as to whether the standard of care that exists for investment funds extends across the spectrum of financial services and products Canadians own. This review will also allow for an assessment of where regulatory arbitrage could occur absent a broadly similar set of best interest standards; and
- a full and complete cost-benefit analysis, undertaken by qualified professionals, of any major change contemplated.

Conclusion

Thank you for providing us with an opportunity to comment on this important issue. We look forward to our continued participation in any further public consultation on this topic and would be pleased to discuss our input in greater detail with you. Should you have any questions or wish to discuss these comments, please contact me directly by phone at 416-309-2300 or by email at jdelaurentiis@ific.ca or Jon Cockerline, Director of Policy and Research by telephone at 416-309-2327 or by email at jcockerline@ific.ca.

Yours truly,
THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Joanne De Laurentiis
President & CEO

Enclosures : Appendices A, B, C

APPENDIX A

CSA CONSULTATION PAPER 33-403: *STATUTORY BEST INTEREST DUTY – 52 Questions*

#	Question
	Consultation Questions on Investor Protection Concerns
1	**Do you agree, or disagree, with each of the key investor protection concerns discussed above with the current standards applicable to advisers and dealers in Canada? Please explain and, if you disagree, please provide specific reasons for your position.**
	The CSA has identified 5 investor protection concerns that should be studied to determine if the current regulatory framework addresses investor protection issues. Inadequate principled foundation: We do not agree with this characterization of the current standard of conduct duty. The underlying principle of acting honestly, fairly and in good faith supported by prescriptive prohibitions and key disclosure requirements supports a high level of investor protection. The debate is whether moving to a best interest standard will improve outcomes for investors. Financial information asymmetry: The current standards applicable to advisors and dealers have fostered strong investor protections in Canada while developing a strong advice-based financial services industry. Strong advisor relationships provide the most trusted and reliable means through which investors improve their financial literacy. The CSA could consider complementing this with other financial literacy initiatives, but should avoid regulatory means that would risk diminishing the availability of advice for investors generally. Expectations gap: The expectations gap is presumed from a survey result which is influenced by the language used in the question. If investors were asked if their advisor's existing duty to act fairly, honestly and in good faith protected their best interests, they may also have responded affirmatively. Suitability – best interest gap: Further study is required to determine what gap exists, if any, between suitability and "best interest". The example of a higher fee product that is exactly the same as a lower fee product is a theoretical and incomplete construct. There may be many instances where higher cost investments *are* in a client's best interest – either because they provide superior outcomes in terms of risk and return, or because they provide features and ancillary services that consumers want, or uniquely fit their portfolio needs. Conflict rules ineffective: In our view it is premature to determine if the conflicts of interest regime is functioning as it is intended. New conflicts of interest rules have been put in place in NI 31-103, and by the MFDA and IIROC. These new rules should be allowed to be fully implemented before they are declared to be ineffective. Moreover, if on closer examination of the fully matured system it is concluded that there are gaps, then consideration should be given to improving the effectiveness of the current regime by, for example, making compliance the same across all distributor registrant categories, and by providing better guidance / training / education for advisors and supervisors in the collection of KYC, the explanation of risk, and the application of KYP.

#	Question
2	**Are there any other key investor protection concerns that have not been identified?**
	The Consultation Paper does not address the risk of non-registrants creating investor protection issues. A potential outcome of increased regulation of a sector could be an increased risk of investor harm as activities are shifted to less regulated sectors. Investors face risks from non-registrants both in Canada and from international regimes where Canadian consumer protections do not apply. The application of “do not call” rules in Canada, for example, resulted in non-compliant activities being shifted to jurisdictions outside the realm of Canadian law. As such, the CSA has not meaningfully addressed the risk of possible regulatory arbitrage and product substitution that may be created by the move to a best interest standard applicable only to securities, and by the CSA regulators’ limited regulatory jurisdiction over competing products, as contrasted with the financial regulators in Australia and the United Kingdom. Their narrow regulatory responsibility not only prevents the CSA regulators from being able to act on regulatory arbitrage activity, but also makes it unlikely they would even be aware that it was occurring.
3	**Is imposing a statutory best interest standard on advisers and dealers the most effective way of addressing these concerns? If not, would another policy solution (e.g., changes to one or more of the existing statutory standard of conduct requirements) offer a more effective solution?**
	It would be more effective to address and fix deficiencies in the current structure. Given the potential implications of a “best interest” standard and the impact it could have on industry participants, including investors, as indicated in questions 5, 8, 23 and elsewhere in this response, we believe that a legislated “best interest” standard is not the most effective way to address the key investor protection concerns identified by the CSA. With more effective enforcement and appropriate guidance on, or minor amendments to existing rules relating to know-your-client, know-your-product, suitability, conflicts of interest, standard of conduct, Fund Facts, etc., investor protection concerns could be addressed in a better way.
4	**Do you believe that some or all of these concerns are inapplicable (or less significant) in any CSA jurisdiction as a result of its current standard of conduct for advisers and dealers?**
	In general, the distribution channels under NI 31-103, and those under SRO supervision, are required to meet high standards. MFDA and IIROC dealers and advisors are already subject to rules relating to know-your-client, know-your-product, conflicts of interest, standard of conduct, and suitability rules as identified in Appendix B. MFDA and IIROC dealers and advisors are audited by their regulators and, in the case of non-compliance subject to enforcement proceedings. Imposing a “best interest” standard which is not clearly defined may not have the effect of addressing the investor concerns noted above while at the same time may create negative practical implications for dealers, advisors, and clients. In Quebec, the Securities Act and the Civil Code already have requirements applicable to the conduct of advisors and dealers.

APPENDIX A
CSA CONSULTATION PAPER 33-403: *STATUTORY BEST INTEREST DUTY – 52 Questions*

#	Question
	Consultation Questions on the Statutory Best Interest Standard
5	**Should securities regulators impose a best interest standard applicable to advisers and dealers that give advice to retail clients? Why or why not?**
	We believe that a legal "best interest" standard should <u>not</u> be implemented. Clients are already well protected through a robust and evolving standard of conduct. The Paper provides no evidence of a regulatory gap that would warrant moving to a standard that a) lacks clarity in application; b) would subject providers to additional risk of lawsuit over unwarranted claims; c) would raise the cost of advice to investors; and d) would reduce investor access to advice. Impact to Client: If a legal "best interest" standard is implemented, it could lead to bad investment decisions and have uncertain implications for the availability of advice. We are not aware of any evidence which would suggest that a "best interest" standard would lead to a better outcome for the investor.
6	**If such a duty is imposed, are the terms of the best interest duty described above appropriate (for example, should there also be an on-going obligation regarding the suitability of advice previously given or investments held by a client)? What changes, if any, would you suggest to the terms of the best interest duty described above?**
	It is difficult to understand how the ongoing obligation regarding the suitability of advice previously given would occur in practice. Clear guidance from the CSA would be needed on this point as to when and how it would apply. What would be in a client's "best interest" is more easily evaluated in retrospect, and an ongoing standard could lead to excessive litigated claims. If no clear guidance is provided as to what would constitute "acting in the client's best interest on an ongoing basis" there would be limited defences available to dealers and advisors on litigated claims, warranted or not. We note that the issue of ongoing suitability review on the occurrence of a triggering event has already been addressed by the SROs.
7	**Are there other general issues related to imposing the best interest standard described above that should be addressed?**
	See questions 8 and 23.

#	Question
	Consultation Question on Potential Benefits and Competing Considerations Generally
8	**Do you agree, or disagree, with each of the potential benefits and competing considerations of the statutory best interest standard described above? Please explain and, if you disagree, please provide reasons for your position. Are there any other key potential benefits or competing considerations that have not been identified?**

	Below are some other key competing considerations that should be considered:
	
	• Potential for Dramatic Changes in Process Requirements and Increased Costs to Clients:
	    ○ KYC Information*:* Dealers are currently required to collect know-your-client information from a client, which would include a client's investment objectives, time horizon, and risk tolerance. It is unclear what additional information would need to be collected to assist a dealer or advisor to determine what would be in the best interests of a client.
	    ○ Supervision*:* It could be difficult to supervise trades to ensure they are in the best interests of a client. Extensive guidance would be required as to how dealer compliance processes and tools would likely need to be modified.
	    ○ Training*: A*dvisors are currently trained to ensure trades placed on behalf of a client are suitable for a client's KYC information. A "best interests" standard would require different training techniques to educate advisors on the best interests standard and what they must do to comply with it.
	    ○ Impact to Client*:* All changes to process requirements would require significant changes to back office procedures, compliance controls, IT systems, resourcing requirements, and training for staff and advisors. Dealers would likely have to invest significant resources into these changes and these additional costs would have to be absorbed by dealers and/or passed on to clients.
	
	• Potential for Confusion for Clients:
	    ○ The insurance industry standard currently encompasses the following principles-based non-legislated three standards for dealing with conflicts of interests which is applied in a more general way to compensation practices of advisors:
	        A. Priority of the client's interest;
	        B. Disclosure of conflict or potential conflict of interest; and
	        C. Product Suitability
	    ○ It is difficult to understand how a legislated "best interests" standard would come into effect where a dual-licensed advisor recommends a non-securities product and a client then claims that the advisor should have recommended a mutual fund product instead of the insurance product. Would the advisor have breached the legislated standard for recommending an insurance product not governed by the securities regulators?
	
	    ○ Impact to Client: The dual standards could cause confusion for and be misleading to clients.
	
	• Potential for Limited Access to Advice for Clients
	    ○ A statutory best interest standard may impact the premiums due for Errors & Omissions insurance. The uncertainty of legal decisions testing the interpretation of the statutory best interest standard will also increase costs for advisors
	    ○ Due to increased costs it may become non-economic for advisors to offer services to clients at current asset thresholds.

#	Question
	○ Impact to Client: With fewer advisors, investors may have limited access to obtain advice on financial products. As noted by the CSA, there is poor financial literacy among the Canadian public. With fewer advisors, fewer Canadians will be in a position to invest their money in an informed way.
	Consultation Questions on the Potential Benefits of a Statutory Best Interest Standard
9	**What are the criteria that should be used to identify an investment that is in a client's best interest?**
	We are of the view that the existing regulatory framework including the suitability requirement provides a high level of investor protection. There are clear rules and guidance on the suitability requirement, case law supporting its application and new conflict of interest and disclosure obligations presently being implemented. A proposed best interest duty would create uncertainty and the potential for an inordinate amount of liability for dealers and advisors with limited defences available given that a "best interest" duty is more easily evaluated in retrospect. The operational application of the best interest standard in trade supervision and complaint handling would be problematic. It would likely be impossible to develop practical guidelines to aid in determining which investment, out of a range of suitable investments, is "best".
10	**Should breaches of a best interest standard give rise to civil liability at common law?**
	The issue of civil liability and the application of the standard to a civil case should be left to the courts to determine. As investors currently have access to the courts, they should continue to have that option if a best interest standard after careful study is imposed.
11	**If so, is it necessary to state expressly that a best interest duty will give rise to civil liability on the part of the adviser or dealer or is it sufficient if that standard is a statutory duty?**
	This should be left to the courts. If the purpose of the best interest duty is to be principles based, there should not be express rules in legislation outlining when investors should access the courts.

APPENDIX A
CSA CONSULTATION PAPER 33-403: ***STATUTORY BEST INTEREST DUTY – 52 Questions***

#	Question
	Consultation Questions on Functional Equivalency
12	**Does the duty of an adviser or dealer to act fairly, honestly and in good faith when dealing with clients, coupled with the existing rules related to suitability and conflicts of interest, already impose a standard of conduct that is functionally equivalent to a fiduciary duty?**
	We believe that the current standard coincides with the principles of a fiduciary duty and that it, in effect, obligates dealers and advisors to act in the best interests of a client and place the client's interests first and foremost.
13	**If so, should it be made clear that investors can enforce that duty as a private law matter?**
	Investors can already sue for breach of contract or negligence. The court can determine the relevance and application of a regulatory "duty" to a specific matter. The current standard of care is already clearly set out in legislation and claimants already have the ability to bring these statutory provisions to the court's attention during the course of a legislated action. A legislated fiduciary duty imposes heavy remedies as indicated in question 8 and it is unclear why it is necessary to subject dealers and advisors to such heavy remedies when no evidence has been provided to suggest that client interests are not being protected by the current framework.
14	**If you believe that the existing standard of conduct for advisers and dealers already imposes a standard of conduct that is functionally equivalent to a fiduciary duty, what impact (if any) would the introduction of a statutory best interest standard have? For example, would it be desirable for investors to have the benefit of a statutory best interest standard that has long been recognized and interpreted under fiduciary duty common law principles?**
	A legislated "best interest" standard without clear parameters, which is equated to a fiduciary standard, would likely cause unintended consequences for dealers, advisors, clients, and the industry as indicated in questions 5, 8, and 23.
15	**Do you think the investor protection concerns raised in this Consultation Paper could be addressed by issuing guidance about current business conduct requirements, including the duty to deal fairly, honestly and in good faith with clients? Please provide specifics about the type of enhanced guidance that would be most effective.**
	Guidance to investors, advisors, and dealers would be helpful. Clearer guidance on conflicts of interest and know your product and the general standard of care may make any existing obligations on product selection and conflicts of interest relating to commissions clearer to

#	Question
	all parties and make the application in practice of current rules more effective. It may also be useful to more clearly identify inappropriate forms of conduct which relate to the investor protection concerns. Examples of inappropriate conduct might be: using coercion or undue influence to secure business, making false or misleading statements, delivering incomplete information, holding out in a way that is misleading, using commissions as the sole method of determining the investment strategy for a client, knowingly prejudicing the interests of a client for personal gain, taking advantage of a client's inexperience, ill-health or lack of sophistication. Guidance from self-regulatory organizations could potentially be used to address any investor protection concerns by identifying certain forms of conduct which the CSA considers inappropriate. As we believe that the current self-regulatory organization regime already addresses many of these activities, it is suggested that a full analysis of the existing rules and guidance in place be conducted before issuing additional guidance.
16	**Do you think that the concerns raised in this paper could be addressed by increased enforcement of current business conduct rules, including fair dealing, suitability and conflict of interest requirements?**
	Rather than increased enforcement, we would suggest that more effective enforcement focusing on egregious activities (i.e. fraud and theft) or consistent inappropriate activities (i.e. misrepresentations and churning books) of dealers and advisors may best address investor protection concerns.
	Consultation Questions on Potential Increased Costs
17	**Would the statutory best interest standard described above increase ongoing costs for advisers and dealers in Canada? If so, please identify the areas in which you believe there would be increased costs for advisers and dealers and provide any relevant qualitative arguments or quantitative data.** **In responding, please consider potential costs in the following areas:** **(i) regulatory assessment (client information required to meet standard)** **(ii) compliance/IT systems** **(iii) supervision** **(iv) ensuring representative proficiency** **(v) client documentation/disclosures** **(vi) insurance** **(vii) litigation/complaint handling** **(viii) other (please identify)**
	See question 8.

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#	Question
18	**If yes, given that a fiduciary duty is already owed to a client in certain circumstances, why do you think that clarifying the circumstances in which such a duty is owed will affect ongoing costs of advisers and dealers in Canada?**
	The application of the fiduciary duty in the courts is uncertain and the findings based on the facts of the case. Applying the fiduciary duty to every transaction and relationship will raise the risks of litigation to industry members and create uncertainty as to proper application of current standards.
19	**Are the computer systems advisers and dealers use today to support their compliance mandate able to support a statutory best interest standard? If no, what types of investment do advisers and dealers anticipate needing to make to improve their IT systems in order to ensure compliance with a best interest standard?**
	It would likely be impossible to develop a trade supervision system that could determine whether the investor has purchased the “best” product. This is because many factors (such as, fees, pricing, performance, manager, investment strategy, track record, history, reputation and stability of fund manager) can determine the investment recommendation, and many can legitimately debate which factors to apply and which are more important. The review of trades against such a standard would not be practical. It would depend on the extent of supervision expected by regulators in relation to the best interest standard and the criteria surrounding such a standard. Currently our supervision programs are set up to deal with suitability issues only.
20	**We note that cost-benefit and/or market impact analysis has been conducted to varying extents on the proposed reforms in each of the U.S., U.K., Australia and E.U. Do you believe that this international analysis is relevant to the possible introduction of a statutory best interest standard for advisers and dealers in Canada? If so, please explain.**
	Rules that have been applied in foreign jurisdictions are uniquely related to the specific regulatory, institutional, social policy and financial frameworks that exist in those jurisdictions. Unless it can be shown that the context, framework and prevalence of market failure that exists there also exists in Canada it cannot be inferred that the same regulatory initiatives have any relevance to Canada. Moreover, some of these countries are in the very early stages of implementation of these initiatives. Not enough is known to conclude on their success, failure or the extent of unintended consequences that might flow from them. Given that costs incurred to promote any changes required by the introduction of a “best interest” standard would be absorbed by dealers, advisors, and investors, a full and complete cost-benefit analysis for Canada is essential before moving ahead.

#	Question
	Consultation Question on Investor Choice, Access and Affordability
21	**Do you believe that the statutory best interest duty described above would have a negative, positive or neutral impact on retail clients across each of the following dimensions: choice, product access, and affordability of advisery services?**
	The statutory best interest standard described above would have negative impacts on clients. As noted above, such a standard would raise costs of providing advice, which would ultimately be borne by investors through higher prices or more restricted access to advice. With fewer advisors, and the remaining advisors forced to restrict their client base to stay in business, fewer Canadians will be in a position to invest their money in an informed way, or at all.
	Consultation Questions on Impact on Certain Business Models
22	**How should a statutory best interest standard apply to mutual fund dealers, exempt market dealers and scholarship plan dealers?**
	While we do not believe that a statutory best interest standard is necessary, if a statutory duty is put into place there should be clarification that mutual fund dealers, exempt market dealers and scholarship plan dealers should be allowed to continue in the marketplace. There are clear public policy arguments supporting product differentiation and investor choice. The statutory best interest duty has the potential to be interpreted as requiring the dealer to offer every product which would eliminate mutual fund dealers, exempt market dealers and scholarship plan dealers.
23	**Are there any adviser or dealer business models that could not continue if the best interest standard described above was adopted?**
	• The “best interest” standard, as described in Question 17, could call into question the existence of an exclusive sales force model. Many exclusive sales forces restrict themselves to offering only proprietary products, or giving prominence to proprietary products. Could a recommendation from a limited set of product choices be reliably demonstrated after the fact to have been made in a client’s best interest? • In respect of the sale of mutual funds, not all mutual funds are on the product shelf of each mutual fund dealer. If a “best interest” standard is imposed, it would be difficult for advisors and the dealer to always offer the best fund for the client if such a product is not offered by the dealer. The dealer may be indirectly forced to offer all mutual funds. • Certain dealers may also restrict new advisors to only offer conventional or proprietary products until those advisors have gained more experience. If a “best interest” standard is introduced, this practice may not be able to continue and new advisors may be expected to know everything about every mutual fund in the market. • Impact to Client: It would be difficult for advisors to know everything about each mutual fund and it would be difficult for dealers to be

#	Question
	able to control and train advisors in this regard. Clients may consequently experience poor service from advisors and the dealer. Choices presented to clients may also be limited given that products selection may decrease or advisors may only feel comfortable offering the "best" fund as rated by a private sector fund ratings provider, which itself may be a poor indicator of future outcomes.
24	**Do you agree with the approach reflected in the Australian Reforms or U.K. Reforms to accommodate restricted advice and scaled advice, respectively?**
	We are of the view that an extreme interpretation of a best interest standard is not appropriate and may eliminate access to advice for retail investors. There is important research required on how broadly the duty should apply, and who it should apply to. Alternatively, research may show that the existing model can address outstanding concerns with additional guidance and education.
25	**What specific qualifications to the best interest standard described in this Consultation Paper are required (please provide proposed statutory language where possible)?**
	While we do not believe that a statutory best interest standard is necessary. If one were introduced various qualifications would be required, including the following: • It would have to be clearly expressed that conflicts of interests must not always be avoided – i.e. it must be accepted that inherent conflicts can exist and can be managed through disclosure and the application of conflict rules; • It must be clearly stated that the dealer and advisor are not "guarantors" to a client for the amount of a client's investment; • It must be clearly stated that dealers can continue to focus on business models which enable the sale of proprietary funds; • It must be clearly stated that a "best interest" does not necessarily mean the product with the best price or earning in a year; • It must be clearly stated that a dealer can continue to determine what funds will be offered by that dealer and that a dealer will not be held liable for failing to have a certain fund on its product shelf; • It should be clearly stated that the standard does not apply to products or advice not regulated by securities laws and that advisors and dealers will not be subject to a "best interest" standard if advice is given or not given in relation to these products, and not implemented at all unless or until these latter products are subject to the same standard.
26	**Will the qualifications required to make a best interest standard work in Canada result in retail clients receiving only advice on a narrow range of investment products?**
	See response to question 23.

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#	Question
	Consultation Question on Impact on Capital Raising
27	**Would imposing a statutory best interest standard as described above affect capital raising?**
	The best interest standard may impact capital raising if it is interpreted that companies cannot do public offerings and provide advice to retail investors in the same organization. The increased standards may cause capital raising functions to move outside the securities industry into pension funds or crowd-sourcing type services which do not have the same history of transparency and investor protection.
	Consultation Questions on Effect on Compensation Practices
28	**Do you believe that the statutory best interest duty described above would affect the current compensation practices of advisers and dealers? If so, in what way?**
	Commissions paid by fund companies or other product suppliers to dealers and advisors may be seen to create conflicts of interest. The disclosure and management of these conflicts is the subject of an extensive array of rules and regulations set by securities regulators and SROs (see Appendix B). A fiduciary obligation which goes beyond these rules and regulations by requiring advisors and dealers to *avoid* conflicts could result in the elimination of commissions paid by product suppliers to dealers and advisors. The embedded fee compensation model has virtually disappeared from the United States mutual fund market and has been replaced primarily by a fee-for-service model. It has been demonstrated in research produced by Strategic Insight in November 2012 that investors as a result now face higher costs and less transparency in the marketplace. Regulators are advised to study this research and conduct similar analyses for Canada before proceeding with a standard that could be detrimental to existing compensation models.
29	**Should a best interest duty expressly address adviser and dealer compensation practices? If so, in what way?**
	As a goal of the best interest duty is to be principle based, specific practices and compensation models should not be banned in the rules.
30	**Could volume based payments or embedded commissions continue if the statutory best interest standard described in this paper is introduced? If so, should such compensation structures be specifically prohibited?**

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#	Question
	See question 28 and 29. The benefits of embedded compensation structures, such as the alignment of interests between the advisor and the client, the efficiency of billing and the availability of advice for all segments of the investing public, have not been considered and have not been adequately discussed in the Consultation Paper.
31	**What compensation structures that exist today among advisers and dealers do you think would be prohibited by the statutory best interest standard articulated in this Consultation Paper? Please consider compensation received by advisers and dealers both from clients and from product manufacturers. For each structure you mention, please provide your reasons.**
	See question 28.
32	**Should any statutory best interest standard be modified in any way to preserve various compensation structures?**
	Guidance may be required to describe what practices will change and what practices will be modified.
	Consultation Questions on Required Guidance
33	**If the statutory best interest duty described above is introduced, what areas of guidance would be most useful to advisers and dealers?**
	While we do not believe that a statutory best interest duty is necessary, if such a standard were introduced, it would be beneficial to have examples of conduct that would be considered to be “acting in the best interests of a client” and examples of conduct that would be considered to be “not acting in the best interests of a client.”
34	**Are there specific circumstances or activities, such as principal trading, that should be addressed?**
	It appears that principal trading is an activity that is subject to the best interest standard. However there is potential for conflicts of interest with principal trading, and we would be interested in how the CSA proposes to address areas with potential conflicts when it is beyond the scope of the best interest duty.

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#	Question
35	**Are there any categories of registrants today whose minimum proficiency requirements would need to change in order to comply with the statutory best interest standard described in this Consultation Paper?**
	Depending on the interpretation of the best interest standard, there is a potential for a change in minimum proficiency requirements. If advisors would need to educate themselves on the wide array of product offerings available in order to comply with the best interest standard, they may need to augment existing proficiencies. Dealer compliance personnel may need to enhance their training and their oversight processes to be able to conduct their functions in accordance with the new standard.
	Consultation Questions on Interaction with Existing Regulatory Regime
36	**Are there any advisery relationships between an adviser or dealer and a retail client where a fiduciary duty would not be appropriate?**
	The duty is not required in relationships with institutional or sophisticated clients. Beyond that, the real issue is whether the standard is required at all. The common law fiduciary standard will remain to protect investors and the current business conduct standards protect all investors.
37	**Would the introduction of a best interest duty as described above require the introduction of any new rules?**
	The best interest duty as described in Question 17 above lacks sufficient clarity to determine what, if any, new rules would be required.
38	**Would the introduction of a best interest duty as described above require any existing rules be revised or repealed?**
	Rules relating to know-your-client, know-your-product, suitability, supervision, and the standard of conduct would likely have to be revisited to determine how they would interact with the new standard. Specifically: • KYC Information*:* Dealers are currently required to collect know-your-client information from a client which would include a client's investment objectives, time horizon, and risk tolerance. It is unclear what additional information would need to be collected to assist a dealer or advisor determine what would be in the best interests of a client. • Know-Your-Product: It is unclear as to how the Know-your-Product rules would co-exist with a "best interests" standard. If dealers will, as a result of a best interest standard, be required to offer all mutual funds, it is unclear as to how our due diligence obligations on mutual fund selection will balance with such a standard.

#	Question
	• Supervision*:* It could be difficult for compliance to supervise trades to ensure the trade is in the best interests of a client if such supervision is required. Compliance processes and tools would likely need to be modified and guidance would be needed on how regulators would expect dealers to supervise trades to ensure they are in the best interests of the client.
39	**Are any existing regulatory rules inconsistent with the best interest standard described above?**
	Depending on the interpretation of the "best interest" standard there is the potential for conflict with existing rules. Any limitations on the relationship between client and advisor/dealer may be in conflict with the potential new duty. Limited shelf companies may be in violation of the "best interest" standard. Certain registration categories may be contrary to the standard depending on interpretation. The Know Your Product requirement may also be meaningless as there is the potential interpretation that all products must be known; but it is practically impossible to do due diligence on every product. The best interest standard applied on an ongoing basis may cause investments to be made with a short-term focus, contrary to the suitability requirements and potentially subjecting investors to additional trading fees and charges which may be inconsistent with their best interests. And the potential for regulatory arbitrage and product substitution may result in investors selecting those products that are the easiest to buy, not necessarily those that are in their best interest.
	Consultation Questions on Implications for Rules on Conflict of Interest
40	**Would the statutory best interest duty described above require revisions to the rules that govern how firms address conflicts of interest with their clients?**
	The concept of informed consent appears to be a new discussion item. We would be interested in further research on how informed consent should be applied to the conflict of interest regime. Consent issues have limited application of electronic delivery of documents and we are concerned that proposing other regulatory changes before current changes are studied call into question the legitimacy of the regulatory process.
41	**If changes are required to the rules on conflicts of interest, what changes do you recommend?**
	The best option to deal with the conflicts of interest regime is to allow existing rules that have recently gone in effect to be studied and assessed for effectiveness. The conflicts of interest changes in NI 31-103, and at the MFDA and IIROC are in place and the application and effectiveness of the rules should be analyzed.

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#	Question
	Consultation Questions on Targeted Best Interest Standard
42	**Should the CSA consider only imposing a best interest standard in respect of certain requirements, such as conflicts of interest or suitability requirements?**
	This approach may not be helpful in that it will make existing requirements more complex and difficult to interpret and apply in day to day transactions. A targeted best interest standard is an option for regulators to consider. A targeted approach would be less disruptive to current business models but also creates differences in the market so investors will not receive a consistent customer experience.
43	**If so, how would more targeted best interest standards address the key investor protection concerns raised in this paper? Please provide specifics.**
	The CSA could study areas requiring additional investor protection and consider whether existing rules should be strengthened or additional guidance be developed. If the existing rules are inadequate then other options such as a targeted duty could be considered.
	Consultation Questions on Application of Duty on Retail Clients
44	**Should a best interest standard apply only to advisers and dealers when dealing with “retail clients”?**
	We do not believe that a statutory best interest duty is necessary. The application should be studied together with the SROs to determine if there is a need for the application of the standard.
45	**If so, is the definition of a “retail client” appropriate? Should any such duty apply to other clients in addition to retail clients?**
	We do not believe that a statutory best interest duty is necessary for retail clients, and clearly there is no need to have the standard apply to institutional or sophisticated investors. We are interested in the CSA’s continued policy debate on retail clients and whether accredited investors will be included or excluded. There may also be issues around permitted clients which would require further study.
46	**Should certain kinds of permitted clients (e.g., municipalities) have the benefit of a statutory best interest standard?**

#	Question
	The CSA should examine the advantages and disadvantages of including certain permitted clients in the context of any new standard, and whether or not allowing exceptions would make the rules problematic for compliance and monitoring.
47	**Are there certain kinds of retail clients that do not require the benefit of a statutory best interest standard?**
	Professionals in the industry meeting certain qualifications, although not meeting a permitted client or accredited investor threshold, may not require the benefit of additional protections. We look forward to the CSA's further review of the accredited investor study.
48	**If the best interest standard described above was introduced, should advisers and dealers be permitted to modify or negate the standard by contract with their clients? If so, what limitations (if any) should be placed on that ability?**
	The ability to modify the standard owed to clients could create different standards for different investors. However there may also be legitimate reasons for clients to want different standards.
49	**If a best interest standard is introduced, should the existing duty on advisers and dealers to deal with their clients fairly, honestly and in good faith continue to apply whenever the best interest standard does not?**
	We are concerned that adding additional layers of regulation may make it more difficult for registrants to comply with the rules. There should be rationalization of regulatory requirements if further work is done on introducing new standards. The duty to act fairly, honestly and in good faith is in many ways functionally equivalent to a best interest duty. It could be argued that spending so much time on compliance and developing procedures is not acting in the best interests of clients as client contact could be minimized or segmented.
	Consultation Questions on Duty Applying to Advice
50	**Should the best interest duty described above apply when any advice is provided to a retail client or only when personalized advice is provided to a retail client?**
	It is important to determine what constitutes personalized advice. This may be one way of limiting applicability of the standard, although not necessarily according to the preferred limitations described in Answers 36 and 47.

#	Question
51	**If a best interest duty should apply only when personalized advice is provided to a retail client, what should "personalized advice" mean in this context?**
	See answer 50.
52	**Should it be triggered in the same circumstances in which the suitability requirement arises? Does this include advice to *hold* securities (as opposed to buying or selling securities)?**
	We are of the view that the existing regulatory framework including the suitability requirement provides a high level of investor protection. There are clear rules and guidance on the suitability requirement. There is case law supporting its application. A proposed best interest duty would create uncertainty and increased potential potential for liability. The triggering of a suitability review for a hold recommendation is not a current requirement. Our view is that general rules such as KYP and KYC can potentially address general advice issues.

APPENDIX B – Part 1
(ONTARIO and equivalent provisions across CANADA)
EXISTING SECURITIES LEGISLATION AND SRO RULES FOR THE PROTECTION OF INVESTORS PURCHASING MUTUAL FUNDS

Current as at February 14, 2013

REGULATORY REQUIREMENTS	DESCRIPTION OF REGULATORY REQUIREMENT	SOURCE OF REGULATORY REQUIREMENT(1)
1. BEFORE THE CLIENT MEETS THE SALESPERSON AND OPENS AN ACCOUNT WITH THE DEALER		
Registration of the dealer as either a mutual fund dealer or an investment dealer	Before a firm and its salespersons can operate as a dealer and receive clients in Canada, the firm must be registered as a dealer (and its salespersons - as dealing representatives) with the securities commission in the province or territory where the investor resides. Registration can be as either a mutual fund dealer (in which event the dealer is permitted to sell only investments in mutual funds) or as an investment dealer (in which event the dealer generally can sell any type of investment including investments in mutual funds).	25(1) of OSA (with equivalent provisions in all other Canadian jurisdictions) 7.1(1) and 7.1(2) of NI 31-103
Membership of the dealer with a self-regulatory organization (**SRO**), either the Mutual Fund Dealers Association of Canada (**MFDA**) if a mutual fund dealer or the Investment Industry Regulatory Organization of Canada (**IIROC**) if an investment dealer	In addition to regulatory oversight by a securities commission, the dealer also must join an SRO. Each SRO provides a second layer of regulatory oversight of the dealer and its salespeople. *Note that in Québec, section 9.2of NI 31-103 does not apply. The MFDA is not recognized by the Autorité des marchés financiers as SRO. The Autorité des marchés financiers is currently consulting the industry on a possible harmonization of the regulation applicable to mutual fund dealers. In the meantime, the Chambre de la sécurité financière is the authority responsible of the discipline and professional development of the representatives acting in the province of Québec. Consequently all references made to the MFDA's rules in this document does not currently apply to representatives and dealers based in Québec. We refer the reader to the table of the existing securities legislation specific to the province of Québec.	9.1 and 9.2 of NI 31-103
Minimum capital	Every dealer must maintain a required minimum amount of capital stipulated by its SRO to ensure that the dealer has sufficient financial resources to carry on its day-to-day business.	12.1 and 12.2 of NI 31-103 MFDA Rule 3.1 and 3.2 IIROC Rule 17
Insurance and bonding	Every dealer must maintain required minimum amount of insurance and bonding stipulated by its SRO. The insurance protects clients from a wide range of events, including negligence and fraud.	12.3 of NI 31-103 MFDA Rule 4 IIROC Rule 17 and 400

Participation in an investor protection fund, either the MFDA Investor Protection Corporation if a mutual fund dealer, or the Canadian Investor Protection Fund (**CIPF**) if an investment dealer	Every dealer must participate in an investor protection fund which ensures that client assets are protected in the event that the dealer becomes bankrupt. For mutual fund dealers, the investor protection fund is the MFDA Investor Protection Corporation ("**MFDA IPC**"). For investment dealers, the investor protection fund is CIPF. Each dealer pays quarterly assessments to fund its investor protection fund.	Participation by MFDA dealers in MFDA IPC is mandatory for mutual fund dealers under the authority of the provincial approval orders. IIROC 41
Joint Regulatory Financial Questionnaire and Report (**JRFQR**)	Every dealer prepares a JRFQR annually and files it with its SRO to confirm compliance with the minimum capital, insurance and bonding requirements, and to confirm that written internal control policies and procedures are in place. The JRFQR is audited by an independent accounting firm.	MFDA Rule 3.5
Books and recordkeeping systems	Every dealer must have a system of books and records to properly record its business transactions and financial affairs.	11.5 of NI 31-103 MFDA Rule 5
Compliance systems and internal controls and procedures	Every dealer must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the dealer and each person acting on its behalf (including its salespersons) complies with securities legislation. These compliance policies and procedures also must manage the risks associated with the dealer's business in accordance with prudent business practices. As part of such compliance policies and procedures, every dealer must establish and maintain internal controls and procedures that will allow it to service its customers adequately and to supervise the conduct of its business, including controls and procedures relating to capital adequacy, insurance, segregation of clients' securities, safeguarding of securities and cash, pricing of securities and derivatives risk management.	11.1 of NI 31-103 MFDA Policy 4 IIROC 17.2A and 2600
Compliance manual	The dealer must have written policies and procedures for dealing with clients and ensuring compliance with applicable laws and regulations.	MFDA Rule 2.10 IIROC Rule 38.1A(i) and (ii)

Conflict of interest disclosure	Dealers must take reasonable steps to identify existing and potential material conflicts of interest.	13.4 of NI 31-103 MFDA Rule 2.1.4 IIROC Rule 42
Directors	At least 40% of the directors of the dealer must have successfully completed the Partners', Directors' and Senior Officers course (the "**PDO**") and also have at least five years financial services industry experience acceptable to IIROC. These requirements ensure that the directors have adequate knowledge and training to supervise the business of the dealer.	IIROC Rule 7.3 and 2900, Part I, section A.2
Executives	All officers of the dealer that are "executives" (as defined by IIROC) must have successfully completed the PDO and at least 60% of the "executive" officers must have at least five years financial services industry experience acceptable to IIROC. These requirements ensure that the officers have adequate knowledge and training to carry on the daily business of the dealer.	IIROC Rule 7.4 and 2900, Part I, section A.2
Chief Financial Officer	The dealer must subject to approval of IIROC, appoint one "executive" as a Chief Financial Officer (**CFO**) who has satisfied all requirements applicable to executives and also has successfully completed the Chief Financial Officer's Qualifying Examination. The CFO is responsible for monitoring adherence to the firm's policies and procedures as necessary to provide reasonable assurances that the firm complies with financial rules.	IIROC Rule 38.6 and 2900, Part I, section A.2A
Chief Compliance Officer	The dealer must have a Chief Compliance Officer (**CCO**) who has successfully completed applicable educational requirements. The CCO is responsible for the oversight and monitoring of the firm's compliance system and for developing and updating the firm's policies and procedures.	3.6 and 11.3 of NI 31-103 MFDA Rule 2.5.3 IIROC Rule 38.7 and 2900, Part I, section A.2B
Supervisory Personnel	Activities of salespersons are supervised by: (i) in the case of the MFDA registrants, a branch manager or supervisor who must have successfully completed one of the Branch Manager's Courses prescribed by the MFDA Rules; and (ii) in the case of the IIROC registrants, a supervisor who has satisfied additional proficiency requirements applicable to their area of supervision.	MFDA Rule 2.5.5 and MFDA Policy 2 IIROC Rule 2900, Part I, section A.1

Salespersons and other dealing representatives: *Proficiency*	Each salesperson must satisfy specified proficiency requirements. A salesperson limited to selling mutual funds must have successfully completed either one of the following: • the Canadian Securities Course Exam, • the Canadian Investment Funds Course Exam or • the Investment Funds in Canada Course Exam • (or in the case of an IIROC registrant, The Principles of Mutual Funds Investment Course) A salesperson of an MFDA registrant is also required to complete a training program within 90 days of commencement of trading or dealing in securities and a concurrent six month supervision period. A salesperson of an IIROC registrant must have successfully completed all of the following: • the Canadian Securities Course • Conduct and Practices Handbook Course • either a 90-day training program for a registered representative dealing with retail customers or a 30-day training program for an investment representative • if dealing with retail clients on matters beyond mutual funds, the Wealth Management Essentials Course within 30 months after person's approval as a registered representatives	3.5 of NI 31-103 IIROC Rule 2900, Part I, section A.4 MFDA Rule 1.2.1(a) IIROC Rule 2900, Part I, section A.3
Salespersons and other dealing representatives: *Background checks*	Each person seeking to become a salesperson must complete a Form 33-109F4 to facilitate a background check of the individual. The information gathered includes a history of the following matters: • residential addresses • employment • regulatory sanctions • criminal sanctions • civil actions • financial disclosure • securities ownership. Background checks, such as police, credit, employment, education and proficiency	2.2 NI 33-109

	course completion records and records from other government or non-government regulatory authorities are performed by the relevant securities commission and the SRO to complete their review of the Form 33-109F4 and determine fitness for registration.	
Salespersons and other dealing representatives: *Dual Occupations*	A salesperson of a dealer may have an outside occupation which shall be disclosed to and approved by the relevant securities commission and the SRO. The dealer must review any outside business activity conducted by the salesperson and the dealer must have policies and procedures in place to deal with any potential conflicts of interest as a result of the business activities and ensure proper time and attention is dedicated by the salesperson to the dealer's clients.	MFDA Rule 1.2.1(c) IIROC Rule 18.14
Continuing education	Partners, directors, officers, employees and agents of an IIROC dealer are required to regularly complete continuing education courses based on their categories of approval throughout their careers.	IIRCO Rule 2900, Part III
2. WHEN THE CLIENT FIRST MEETS THE SALESPERSON AND OPENS AN ACCOUNT WITH THE DEALER		
New client policies of the dealer	Every dealer and its salespeople must comply with policies and procedures established by the dealer in accordance with the requirements of the relevant securities commission and SRO for accepting new clients. Among other matters, a salesperson is required to: • collect relevant documentation, including a new account application form, • obtain the essential facts relative to each client, including his/her current financial and personal circumstances and investment objectives • gather information required by other laws and regulations applicable to the dealer's business, including information required for compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations* any applicable personal information disclosure authorizations • document the process of identifying and verifying the identity of the new client	MFDA Rule 2.2 MFDA Policy 2 IIROC Member Regulation Notice MR0498 (dated October 10, 2007)
Obtain client information ("**know-your-client**", or "**KYC**")	At all times, the client's salesperson must know the essential facts relevant to the client to identify the client and ensure that each investment is suitable for such client.	13.2 NI 31-103 MFDA Rule 2.2.1 IIROC Rule 1300

Relationship disclosure	As part of accepting a new client, every dealer must deliver to the client all facts that the client might consider important to the relationship between the dealer and the client including the following: • the nature and types of accounts available through the dealer • the types of investments available through the dealer • risks to be considered • risks of using borrowed money to make investments • conflicts of interest • costs to operate the account • costs to make, hold and sell investments • compensation to the dealer • ongoing reporting from the dealer to the client • availability of independent dispute resolution or mediation services at the firm's expense • a statement of an obligation to make a suitability assessment for the client prior to trade execution • information collected under the know-your-client requirements	14.2 of NI 31-103
	An MFDA dealer is subject to similar relationship disclosure rules and is required to provide the client with the written disclosure of the following: • the nature of the advisory relationship; • the products and services offered by the dealer; • client cash and cheques receipt and handling procedures; • the description of the dealer's obligation to make a suitability assessment for each order of the client; • definition of terms with respect to the know-your-client information and description how this information will be used in assessing investments; • content and frequency of account reporting • compensation that may be paid to the dealer	MFDA Rule 2.2.5
	The IIROC rule for the establishing the minimum industry standards for relationship disclosure to retail clients will become effective on March 26, 2013 with respect to the new clients and on March 26, 2014 with respect to existing clients. The relationship disclosure will be required to be made in writing and contain all the required content listed in IIROC Rule 3500.5	IIROC Rule 3500

New account application form	The salesperson is required to obtain from the client a completed new account application form which captures relevant information about the client including but not limited to: • employment information • the type of account • investment objectives • investment time horizon • investment knowledge • tolerance for risk • information required by other applicable laws and regulations	MFDA Rule 2.2.2 MFDA Policy 2
Disclosure of any referral arrangements	A dealer may pay a fee to a third party who referred the client to the dealer only if the referral arrangement satisfies a number of conditions. One of these conditions is that the client must be provided with the following information in writing before the account is opened for the client: • name of each party to the referral arrangement • purpose and material terms of the referral arrangement • any conflicts of interest arising from the referral arrangement • method of calculation and, if possible, the amount of the referral fee • the securities registrations of the parties to the referral arrangement and the scope of activities in the referral arrangement that are permitted by such registrations • a statement that all activity requiring registration resulting from the referral arrangement will be provided by the registrant receiving the referral • any other information that a reasonable client would consider important in evaluating the referral arrangement In addition, an MFDA dealer may enter into the referral arrangements only if • the referral arrangement is between two MFDA dealers or between an MFDA dealer and an entity licensed or registered in another category, a Canadian financial institution, insurance agent or broker or subject to such other regulatory system as may be prescribe by the MFDA • there is a written agreement in place for the referral arrangement • all fees and other compensation is recorded on the books and records of the dealer • written disclosure of referral arrangements has been made to clients prior	13.7-13.11 of NI 31-103 MFDA Rule 2.4.2

	to any transaction taking place, including, but not limited to, the disclosure of how the referral fee is calculated, the name of the party receiving the fee	
Prohibition on personal financial dealings with clients	IIROC dealers and their representatives are prohibited from receiving any type of remuneration, gratuity, benefit or other consideration from their clients. IIROC also proposed an amendment to the existing rules to expressly prohibit personal financial dealings with the clients, including: • receiving any direct or indirect benefit or consideration from clients, other than through the dealer • entering into any private settlements with clients • lending money to clients • borrowing money from clients • having control or authority over the financial affairs of clients Under the MFDA Rules, financial dealings with a customer fall under the general conflict of interest section.	IIROC Rule 18.15 Proposed amendment to IIROC Rule 18.14 MFDA Rule 2.1.4
3. WHEN THE CLIENT WANTS TO PURCHASE OR SELL AN INVESTMENT IN A MUTUAL FUND		
Restrictions on promoting a mutual fund through advertising	All advertising to promote investing in a mutual fund (whether the advertisement is made by the mutual fund or the client's dealer) must comply with extensive rules in Section 15 of NI 81-102. These rules include a general prohibition against misleading sales communications and specific rules on the following matters (among others): • citing the past performance of the mutual fund and its rating or ranking • comparing the mutual fund's performance to that of another investment or index • noting any recent material changes to the mutual fund that may have impacted its past performance • promoting the tax advantages of investing in a mutual fund These rules are designed to ensure that advertising is fair and accurate. No MFDA dealer is permitted to issue, participate or knowingly allow its name to be	15 of NI 81-102 Part 13 of 81-102CP MFDA Rule 2.7.2

	used in any advertisement or sales communication which contains a (i) false or untrue statement or an omission of a material fact, (ii) an unjustified promise of specific results, (iii) uses unrepresentative statistics or fails to identify the material assumptions, (iv) contains any opinion or forecast of future events which are not clearly labelled as such, (v) fails to fairly present the potential risks to the client, (vi) is detrimental to the interests of the public, dealer or the MFDA or (vii) does not comply with any applicable legislation, policies or guidelines.	
Restrictions on client communications	An MFDA dealer shall not issue any client communication that would • be untrue or misleading • make unwarranted or exaggerated claims or conclusions or fail to identify material assumptions • be detrimental to the interests of the clients, the public, the dealer or the MFDA • contravene any applicable legislation, policies or guidelines • be inconsistent or confusing with any information provided by the dealer or its representative in any other information given to the client	MFDA Rule 2.8
Prohibition against a mutual fund or its manager from paying compensation or benefits directly to salespeople	All forms of monetary and non-monetary compensation and benefits paid by or on behalf of a mutual fund or its manager must be paid to the salesperson's dealer rather than directly to the salesperson. This is designed to provide the dealer with greater control and oversight of the types of compensation and benefits received by its salespersons for selling mutual funds.	2.1 and 2.2 of NI 81-105

Restrictions on forms of commission compensation	A mutual fund's manager may pay commissions to a dealer only if several conditions are satisfied, including that: • the mutual fund's prospectus discloses the range of commissions that may be paid and how those commission are calculated • the rate of the commission does not increase based on the volume of sales made by the dealer or amount of assets of that dealer's clients invested in the mutual fund • the rate of commission does not increase for a particular time of year (such as RSP season) These requirements and restrictions are intended to provide clients with disclosure of the compensation their dealer is receiving for selling the mutual fund, and to limit differences in the rates of commissions that otherwise could provide an incentive for a salesperson to recommend one mutual fund over another mutual fund.	3.1 of NI 81-105 3.2 of NI 81-105
Internal dealer incentive restriction	A dealer cannot provide its salespeople with an incentive, such as a bonus payment or higher commission pay-out rate, to recommend one mutual fund over another mutual fund. This restriction encourages salespeople to recommend mutual funds to clients based on suitability rather than the compensation arrangement of their dealer. (There are a few exceptions to this rule based on particular business models.)	4.1 and 4.2 of NI 81-105
Prohibition against using portfolio transactions as dealer incentives	A manager is prohibited from using or influencing the trading activity in the mutual fund's investment portfolio as a means for rewarding salespeople for selling the mutual fund. This prohibition is achieved through various restrictions on how the manager allocates those trades to dealers for execution, and how the dealers process such trading activity. It prevents a salesperson for using a different relationship with the mutual fund as a means for increasing the salesperson's compensation.	6.1 and 6.2 of NI 81-105
Disclosure by the mutual fund and dealer of potential conflicts of interest from cross-ownership	If a salesperson recommends that a client invest in a mutual fund where either the manager has an ownership interest in the dealer, or the dealer or salesperson has an ownership interest in the manager, this must be disclosed to the client before the client decides to proceed with the purchase. The mutual fund makes this disclosure in its simplified prospectus. The dealer makes this disclosure in a document provided by the dealer to the client before the investment is made.	8.2 and 8.3 of NI 81-105 13.6 of NI 31-103

Suitability review	Before arranging for a client's investment to be made or sold, the salesperson must review with the client whether the transaction is suitable for the client. This is the key obligation on salespeople. It describes the fundamental nature of the service received by a client from his or her salesperson, namely a determination with a particular mutual fund is a suitable (or unsuitable) investment for that client. The salesperson of an MFDA dealer also has an obligation to update know-your-client information upon the occurrence of a material change in client information and at least annually request in writing that each client notify the dealer if there has been any material change. The date of such request and the date on which such client information is received and recorded must be retained. A representative of an IIROC dealer is required to update client information on the application where there is a material change of client information. An IIROC dealer is required to have procedures to verify material changes to client information independent of its representatives.	13.3 of NI 31-103 MFDA Rule 2.2.1 IIROC Rule 1300 MFDA Rule 2.2.4 IIROC Rule 2500, Part II, section A.5
Disclosure of the use of borrowing for securities purchases	Before a client borrows money in order to make an investment, the salesperson must provide to the client a risk disclosure document containing the added risks associated with making an investment using borrowed money.	MFDA Rule 2.6
Restrictions on commission rebating	A dealer and its salespeople are prohibited from reimbursing a client for some or all of the client's redemption fees to assist the client with transferring from their current mutual fund to mutual fund managed by the dealer or one of its affiliates.	7.1 of NI 81-105
Prohibition against tied selling	Dealers are prohibited from imposing a requirement on a client to buy, sell or hold a security or use a product or service as a condition of buying, selling or holding a mutual fund investment. Restrictions also apply to the IFM.	7.4 of NI 81-105 11.8 of NI 31-103
Prohibition of financial assistance	A manager is prohibited from providing financial assistance to a dealer (such as through a loan or loan guarantee).	7.2 of NI 81-105
Prohibition against using charitable donations as incentives	A manager is prohibited from making a charitable donation if the tax credit associated with the donation would benefit a dealer or its salesperson.	7.3 of NI 81-105

General anti-avoidance rule concerning dealer compensation and selling practices	A manager, dealer and salesperson cannot attempt to circumvent the sales practices restrictions described above through indirect means.	2.4 of the companion policy to NI 81-105
Simplified prospectus of the mutual fund	For each investment by a client in a mutual fund, the client will receive the simplified prospectus of the mutual fund either before making the investment or within two business days of such investment (unless the client has already received the mutual fund's current simplified prospectus). The simplified prospectus provides extensive and detailed information concerning information that the investor may find helpful about the mutual fund. It is used as a tool by both the salesperson and the investor to ensure that the investor can understand all material aspects of their investment in the mutual fund, and the salesperson can confirm the suitability of the mutual fund for that investor. Information in the simplified prospectus includes the following: • the investment objectives and strategies of the mutual fund • the risks associated with an investment in the mutual fund • a summary of the types of investors for whom the mutual fund may be suitable • the transaction costs associated with purchasing and selling an investment in the mutual fund • the ongoing annual costs associated with an investment in the mutual fund • the fees paid to the manager for managing the operations of the mutual fund • the commissions and other compensation paid to the dealer for selling the mutual fund	71 (1) of OSA NI 81-101 and NI 81-101F1
Simplified prospectus disclosure of dealer compensation	A mutual fund's simplified prospectus must disclose to investors all types of compensation payable to dealers who sell the mutual fund and the sales practices of the manager for the distribution of securities of the mutual fund. This disclosure provides transparency concerning the relationship between the mutual fund and the dealers that offer the fund for sale.	8.1 of NI 81-105
Fund Facts document of the mutual fund	Every mutual fund must prepare a fund facts document for each class or series of securities of the mutual fund. The fund facts document provides a summary of the information that investors consider most relevant to a decision whether to invest in the mutual fund including: • the past performance of the mutual fund • the mutual fund's top 10 holdings • a risk assessment of the mutual fund • the costs associated with an investment in the mutual fund • the compensation paid to a dealer for selling the mutual fund	NI 81-101 and NI 81-101F3

	The fund facts documents are required to be posted on the manager's website as soon as practicable and no later than within 10 days of its filing with the securities commission. In the next implementation stage currently developed by the CSA, the fund facts documents will be required to be delivered to investors within two days of buying a mutual fund.	
Trade confirmation	Following the purchase or sale of an investment in a mutual fund, the dealer must promptly deliver to the client written confirmation of the details of the transaction. These details include: • the name of the mutual fund and the class or series of the investment • the date of the transaction • the price per security and quantity and description of security	14.12 of NI 31-103 MFDA Rule 5.4
4. WHILE THE CLIENT REMAINS INVESTED IN THE MUTUAL FUND		
Supervision of activity in retail client accounts	Every dealer must have systems and written policies and procedures to supervise trading activity in retail accounts. Under the MFDA Rules, a two-tier structure is required to adequately supervise client account activity, with branch level supervision at the first tier and head office or regional area supervision at the second tier. The branch manager is required to review the previous day's trading for unsuitable trades and any other unusual trading activity, which review must include all initial trades, trades in exempt securities, leveraged trades/leverage recommendations for accounts, trades in accounts of registered salespersons' family members operating under a power of attorney, redemptions over $10,000, trades over $2,500 (in moderate-high or high risk investments), trades over $5,000 (in moderate or medium risk investments) and trades over $10,000 (in all other investments). The head office is required to review daily account activity which must include all redemptions over $50,000, trades over $5,000 in exempt securities, moderate-high or high risk investments or leveraged trades/recommendations for open accounts, trades over $10,000 in moderate or medium risk mutual funds and trades over $50,000 in all other investments. Under the IIROC Rules, a two-tiered supervisory review system that complies with	 MFDA Rule 2.5 MFDA Policy 2 IIROC Rule 2500,

	prescribed daily and monthly trade reviews is an acceptable structure, with supervisors conducting review at the first tier and the head office conducting review at the second tier. Daily and monthly trade reviews should be reasonably designed to detect the following activities at the first-tier review: • unsuitable trading • undue concentration of securities in a single account or across accounts; • excessive trade activity • trading in restricted securities • conflict of interest between registered representatives and client trading activity • excessive trade transfers, trade cancellations etc. indicating possible unauthorized trading • inappropriate / high risk trading strategies • quality downgrading of client holdings • excessive / improper crosses of securities between clients • improper employee trading • front running • account number changes • late payment • outstanding margin calls • violation of any internal trading restrictions • undisclosed short sales • manipulative or deceptive trading • insider trading • The second-tier daily and/or monthly reviews, as applicable, include the review of trades meeting certain criteria, non-client trading, all client accounts not reviewed by the supervisor, trade cancellation and late payments.	Parts III and IV
Requirement for ethics and integrity in business conduct	Every MFDA dealer and its salespeople are required to: • deal fairly, honestly and in good faith with clients • observe high standards of ethics and conduct in the transaction of their business • not engage in any business conduct or practice which is unbecoming or detrimental to the public interest	MFDA Rule 2.1.1

	• be of such character and business reputation and have such experience and training as is consistent with the standards described above or as may be prescribed by the MFDA. Comparable business conduct obligations (other than the standard described in the first bullet above) apply to an IIROC dealer and its salespeople. [These standards, though worded differently from a fiduciary duty, can be applied by regulators to provide the same degree of protection for investors.]	IIROC Rule 29.1
Quarterly account statements	For each quarter that a client is invested in a mutual fund, the client will receive from his or her dealer an account statement that summarizes the activity in the client's account during such period.	14.14 of NI 31-103 MFDA Rule 5.3.1
Restrictions on forms of trailer fee compensation	A mutual fund's manager may pay a trailing commission to a dealer but only if a number of conditions are satisfied, including: • the payment obligation arises after the trade • the mutual fund's prospectus discloses the range of trailing commissions rates that may be paid and the method of their calculation • the method and time of calculation of the trailing commission and the time periods used for determining the amount are the same of all participating dealers • the rate of trailing commission does not increase based on the increases in the amount or value of securities sold, the amount or value of securities of the mutual fund or for a particular period of the year in which the trailing commission is paid These requirements and restrictions are intended to provide clients with disclosure of the ongoing compensation their dealer is receiving while the client remains invested in the mutual fund, and to limit differences in trailer fee rates that otherwise could provide an incentive for a salesperson to recommend one mutual fund over another mutual fund.	3.2 of NI 81-105
Restrictions on educational and marketing support	A mutual fund manager is permitted to provide financial assistance for a dealer's educational and marketing activities only if certain conditions are satisfied. These rules generally limited to eligible conferences, seminars and other marketing to those satisfying particular educational requirements concerning mutual fund investing.	5.1, 5.2, 5.3, 5.4 and 5.5 of NI 81-105

	The reasons for these restrictions are: • to ensure that the manager's assistance ultimately benefits investors in mutual funds (rather than merely constituting promotion for the dealer) • to ensure that the amount of assistance provided is reasonable in the circumstances	
Updating client information	Every MFDA salesperson is required to update each client's KYC information upon occurrence of a material change in client information and at least annually, in writing, request each client to notify the MFDA dealer if there has been any material change in client information. A representative of an IIROC dealer is required to update client information on the application where there is a material change of client information. An IIROC dealer is required to have procedures to verify material changes to client information independent of its representatives.	MFDA Rule 2.2.4 IIROC Rule 2500, Part II, section A.5
Annual financial reporting of the dealer and fund manager	The dealer must prepare and file annual financial statements with the relevant securities commissions and SRO to confirm the continuing financial strength of the dealer and its ongoing compliance with various regulatory requirements. The annual financials should include calculations of excess working capital.	12.10 and 12.12 of NI 31-103 MFDA Rule 3.5
Interim financial reporting of the dealer and fund manager	The dealer must prepare and file interim financial statements with the relevant securities commissions and SRO to confirm the continuing financial strength of the dealer and its ongoing compliance with various regulatory requirements. The interim financials should include calculations of excess working capital.	12.11 and 12.12 of NI 31-103
Standard of care of the manager of the mutual fund	The manager of the mutual fund must exercise the powers and discharge the duties of its position honestly, in good faith and in the best interests of the investment fund. The manager also must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.	116 of OSA
General duties of a registered dealer, advisor and their representatives	The registered dealer, advisor and their representatives must deal fairly, honestly and in good faith with their clients.	2.1 of OSC Rule 31-505

Custody of the assets of the mutual fund	The assets of the mutual fund must be held by (i) a bank listed in Schedule I, II or III of the *Bank Act* (Canada), (ii) a trust company incorporated in or licensed or registered under the laws of Canada or foreign jurisdiction with shareholders' equity of not less than $10 million or (iii) a company incorporated in Canada or foreign jurisdiction that is an affiliate of a bank and subject to certain conditions.	6 of NI 81-102
Annual financial statements of the mutual fund	Every mutual fund must prepare and file annual financial statements with the relevant securities commissions. These financial statements are audited by an independent accounting firm. The financial statements are mailed to the client unless the client opts out of receiving the financial statements. The financial statements also are publicly available, free of charge, on SEDAR.	2, 3 and 5 of NI 81-106
Annual management report of fund performance	Every mutual fund must prepare an annual management report of fund performance in which the mutual fund provides a commentary on its annual financial statement in order to assist clients with understanding the relevance of the information in those financial statements. The annual management report of fund performance is filed with the relevant securities commissions and mailed to the client unless the client opts out of receiving the report. The report also is publicly available, free of charge, on SEDAR.	4 of NI 81-106
Interim financial statements of the mutual fund	Every mutual fund must prepare and file interim financial statements with the relevant securities commissions. The interim financial statements are publicly available, free of charge, on SEDAR.	2,3 and 5 of NI 81-106
Interim management reports of fund performance	Every mutual fund must prepare an interim management report of fund performance in which the mutual fund provides a commentary on its interim financial statement in order to assist clients with understanding the relevance of the information in those financial statements. The interim management report of fund performance is filed with the relevant securities commissions and also is publicly available, free of charge, on SEDAR.	4 of NI 81-106
Quarterly portfolio disclosure of the mutual fund	The mutual fund prepares a summary of its investment portfolio for the first and third quarters of its financial year. These reports are posted on the mutual fund's website and enable the client to monitor their mutual fund.	6 of NI 81-106

Annual compliance report regarding the custody of the mutual fund's assets	Annually the custodian of the mutual fund's assets must a report confirming whether the custodian and sub-custodian agreements are in compliance with the applicable provisions of NI 81-102 and whether each sub-custodian satisfied the applicable custodianship requirements. A copy of this report is required to be delivered by or on behalf of the mutual fund to the securities commission within 30 days after the filing of the annual financial statements of the mutual fund.	6.7 of NI 81-102
Annual compliance report of the manager, principal distributor and dealer relating to the handling of client money	Annually the mutual fund (or its principal distributor) and every dealer must prepare and file with the securities commissions a report confirming compliance with applicable requirements of NI 81-102, and an accompanying auditor's report, concerning the handling of client assets according to the requirements of NI 81-102. The requirement for the principal distributor and every dealer to deliver the above compliance reports does not apply to a member of IIROC and, except in Quebec, to a member of the MFDA.	12 of NI 81-102 12(4) and 12(4.1) of NI 81-102
5. IF THE CLIENT IS DISSATISFIED WITH HIS OR HER SALESPERSON OR DEALER		
Designated Complaints Officer	Dealers are required to designate a Complaints Officer with the requisite experience and authority to oversee the complaint handling process.	IIROC Rule 2500B, section 3
Prescribed complaint response timelines	When a complaint is made by a client to an IIROC dealer, an acknowledgement letter must be sent to the client within five business days, and a substantive response letter is required be provided within ninety days. The client and IIROC must be advised if the client is not to receive a final response within the ninety (90) days time frame, including the reasons for the delay and the new estimated time of completion. The substantive response must be presented in a manner that is fair, clear and not misleading to the client and must include: • a summary of the complaint • the results of the dealer's internal investigation into the complaint • the dealer's final decision on the complaint, including an explanation In addition, the substantive response letter must describe for the client the options available to the client if the client is not satisfied with the dealer's response, including: • arbitration • referral to the Ombudsman for Banking Services and Investments; • filing a regulatory complaint with IIROC or another regulatory authority to	13.15 of NI 31-103 IIROC Rule 2500

	assess whether disciplinary action is warranted • litigation (civil action) • other applicable options When a complaint is made by a client to an MFDA dealer, n acknowledgement letter must be sent to the client within five business days, and a substantive response letter is required be provided within a reasonable time which must include: • a summary of the complaint • the dealer's final decision on the complaint, including reasons for its decision • reminder that the client has the right to consider (i) making a complaint to the Ombudsman for Banking Services and Investments which will consider the complaint within 6 months of the substantive response letter; (ii) making a complaint to the MFDA, (iii) litigation/civil action and (iv) other applicable options.	MFDA Policy 3
Dispute resolution service	The dealer is required to ensure that independent dispute resolution or mediation services are made available, at the dealer's expense, to a client to resolve a complaint made by the client about any trading or advising activity of the dealer or its representatives. Each IIROC dealer is required to participate in or become a member of an arbitration programme or organization (which provides for mandatory arbitration) and ombudsperson service, each as approved by IIROC.	13.16 of NI 31-103; IIROC Rule 37
Member Event Tracking System (MFDA)/ ComSet Reporting Requirement (IIROC)	Representatives of an MFDA dealer are required to report a number of events to the dealer, including: • a client complaint made in writing against the representative • a client complaint made in writing or otherwise against the representative personally or any other representative involving, among others, allegations of theft, fraud, misappropriation, breach of confidentiality and personal financial dealings with the client • circumstances when the representative believes that he/she contravened or is subject to proceedings alleging the contravention of the securities laws or any regulatory requirements • criminal offence charge or conviction • a civil proceeding where the representative is named as a defendant • bankruptcy • cancellation, suspension, termination or refusal of registration	MFDA Policy 6

	• rendered or outstanding garnishments • The MFDA dealer is required to report a number of events to the MFDA, including: • all client complaints (other than service complaints) • any contravention of law or regulatory requirement by the dealer or its representative, including theft, fraud, forgery, insider trading, breach of client confidentiality, private dealings with the client, etc. • any legal action against or involving the dealer or any of its representative or cancellation, termination, suspension or refusal of registration • bankruptcy of any of the representatives • outstanding or rendered garnishments against the dealer or any of its representatives The IIROC rules also require that the representatives of an IIROC dealer report any customer complaints or contravention of law or regulations to their dealer and the dealer has an obligation to report customer complaints (other than service complaints) and a number of other events to the IIROC.	IIROC Rule 3100
Gatekeeper Reporting Requirement (UMIR)	These are market compliance rules that apply to IIROC dealers and their representatives.	UMIR Rule 10

(1) For brevity, this summary uses the following abbreviations:

81-102CP	Companion Policy to NI 81-102
IIROC Rule	Rules of the Investment Industry Regulatory Organization of Canada
MFDA Rule	Rules of the Mutual Fund Dealers Association of Canada
NI 31-103	National Instrument 31-103 *Registration Requirements and Exemptions* of the Canadian securities regulators
NI 31-109	National Instrument 31-109 *Registration Information* of the Canadian securities regulators
NI 81-101	National Instrument 81-101 *Mutual Fund Prospectus Disclosure* of the Canadian securities regulators
NI 81-102	National Instrument 81-102 *Mutual Funds* of the Canadian securities regulators
NI 81-105	National Instrument 81-105 *Mutual Fund Sales Practices* of the Canadian securities regulators
NI 81-106	National Instrument 81-106 *Investment Fund Continuous Disclosure* of the Canadian securities regulators
NI 81-107	National Instrument 81-107 *Independent Review Committee for Investment Funds* of the Canadian securities regulators
OSA	*Securities Act* (Ontario)
OSC Rule 31-505	OSC Rule 31-505 *Conditions of Registration* of the Ontario Securities Commission
UMIR Rule	Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada

APPENDIX B – Part 2
(QUEBEC)
EXISTING SECURITIES LEGISLATION FOR THE PROTECTION OF INVESTORS PURCHASING MUTUAL FUNDS
(Does not include regulation already applicable across Canada such as NI 31-103, NI 81-102, NI 81-105, etc.)

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
Obligation to register	**148.** No person may act as a dealer, adviser or investment fund manager unless the person is registered as such.	*Securities Act* (Québec), R.S.Q., c. V-1.1 ("Securities Act")
Obligation for the representative of a mutual fund dealer in Québec to contribute to the Fonds d'indemnisation des services financiers / Financial Services Compensation Fund	**Securities Act 148.1** The first paragraph of section 77 and the second paragraph of section 81 of the *Act respecting the distribution of financial products and services* (chapter D-9.2) apply, with the necessary modifications, to dealers registered as mutual fund dealers or scholarship plan dealers. **ARDFPS - 77** The legal person that registers must, in addition to paying the fees required for registration, pay the contribution payable to the Fonds d'indemnisation des services financiers pursuant to section 278. **ARDFPS - 81** […] A firm must also pay the contribution payable to the Fonds d'indemnisation des services financiers pursuant to section 278.	Securities Act. Note that when the mutual fund sector was transferred from the *Act respecting the distribution of financial products and services* (Québec) (R.S.Q., c. D-9.2) (the "ARDFPS") to the Securities Act on September 28, 2009 certain obligations contained in the ARDFPS were maintained including among others the Fonds d'indemnisation des services financiers and the Chambre de la sécurité financière's entire mission with respect to mutual fund representatives.
Authority of the Chambre de la sécurité financière over the discipline and professional development of the representatives of a mutual fund dealer in Québec	**149.2** Titles V -*Chambre de la sécurité financière and chambre de l'assurance de dommages* to VI - *Discipline Committee*s of the *Act respecting the distribution of financial products and services* (chapter D-9.2) apply to representatives of a mutual fund dealer and representatives of a scholarship plan dealer.	Securities Act. Introduced in the Securities Act in September 2009.
Obligations of the investment fund manager including the Obligation to act in the best interest of its clients	**159.2** An investment fund manager shall, in the exercise of its functions, comply with the obligations set out in its constituting document, its by-laws and the law, and act within the limits of the powers conferred on it. **159.3** An investment fund manager shall, in the best interests of the fund and its beneficiaries or in the interest of the fulfillment of its purpose, exercise prudence, diligence and skill, and discharge its functions loyally, honestly and in good faith.	Securities Act. Introduced in the Securities Act in September 2009.

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
Obligation of the dealers and advisors and their representatives to act in good faith	**160.** All persons registered as dealers, advisers or representatives are required to deal fairly, honestly, loyally and in good faith with their clients. **160.1** In their dealings with clients and in the execution of the mandates entrusted to them by their clients, all persons registered as dealers, advisers or representatives are required to act with all the care that may be expected of a knowledgeable professional acting in the same circumstances.	Securities Act
Fonds d'indemnisation des services financiers / Financial Services Compensation Fund	FINANCIAL SERVICES COMPENSATION FUND Establishment. **258**. A financial services compensation fund is hereby established under the name "Fonds d'indemnisation des services financiers". Purpose. The fund shall be assigned to the payment of indemnities payable to victims of fraud, fraudulent tactics or embezzlement for which a firm, an independent representative, an independent partnership or a mutual fund dealer or scholarship plan dealer registered in accordance with Title V of the Securities Act (chapter V-1.1) is responsible. **277.** The Authority is subrogated in all the rights of a victim it compensates, up to the amount of compensation paid. The amounts so recovered shall be paid into the fund**.**	Sections 258 and 277 of the ARDFPS apply for the purpose of compensating a victim of fraud. fraudulent tactics or embezzlement .
Membership of the representatives of the mutual fund dealer with the Chambre de la sécurité financière	The Chambre de la sécurité financière is responsible of the discipline and compulsory development of mutual fund dealer's representatives.	The Chambre de la sécurité financière is the organization responsible of the discipline of representatives until the Autorité des Marchés Financiers adopts an official position on the harmonization of the mutual fund regulation.

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
Rules of ethics in the securities sector	**2.** A representative shall show loyalty towards his client whose interests shall be of the utmost priority when he makes a trade on his behalf. **3.** A representative shall make a diligent and professional effort to get to know a client's financial and personal situation as well as his investment goals. The information he obtains from the client shall describe this situation as well as any developments with respect thereto. **4.** A representative's recommendations shall be based on an in-depth analysis of information obtained from the client and information concerning the trade. **5.** A representative shall caution a client who gives him an unsolicited order which does not appear to be in keeping with his situation. **6.** A client's capital shall remain his exclusive property and a representative shall only use it for trades authorized by the client. **7.** A representative shall take reasonable steps to ensure the accuracy and sufficiency of information given to a client concerning his investments. … **14.** A representative's professional activities shall be conducted responsibly, with respect, integrity and skill. **15.** A representative shall maintain a high level of professional knowledge. **16.** A representative shall ensure that his conduct complies with the law and meets the requirements of the body governing the firm on behalf of which he is acting.	Sections 2 to 7 and 14 to 16 of the *Regulation respecting the rules of ethics in the securities sector* adopted pursuant to the ARDFPS. *(This Regulation is revoked, M.O. 2009-06, 2009 G.O. 2, 3686A. Sections 2 to 20, as they read on 27 September 2009, continue to apply to mutual fund dealer representatives and scholarship plan dealer representatives registered in accordance with Title V of the Securities Act, until rules equivalent to those prescribed in the sections mentioned above are determined in their respect in a regulation made under section 331.1 of that Act, the whole as per the terms of section 135 of an Act to amend the Securities Act and other legislative provisions, Q.S. 2009 chapter 29) These sections will therefore cease to apply with the entry into force of the regulation adopting a compatible MFDA regulation.* Lelièvre c. Lefebvre , CD00-0950, September 2012, Thibault c. Beaudoin, CD00-0765, March 2011

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
Rules of ethics that may apply to mutual fund representative when dually licensed in insurance or financial planning	DUTIES AND OBLIGATIONS TOWARDS CLIENTS **9.** In the practice of his profession, a representative must take into account the limits of his knowledge and the means available to him. He must not undertake or continue a mandate for which he is not sufficiently prepared without obtaining the necessary assistance. **10.** A representative must not make any false representations as to his level of competence or the quality of his services, or those of his firm or his independent partnership. **11.** A representative must practice with integrity. **12.** A representative must act towards his client or any potential client with integrity and as a conscientious adviser, giving him all the information that may be necessary or useful. He must take reasonable steps so as to advise his client properly. **13.** A representative must fully and objectively explain to his client or any potential client the type, advantages and disadvantages of the product or service that he is proposing to him and must refrain from giving information that may be inaccurate or incomplete. **14.** A representative must provide his client or any potential client with the explanations the client needs to understand and evaluate the product or services that he is proposing or that he provides to the client. **15.** Before providing information or making a recommendation to his client or to any potential client, a representative must seek to have a complete understanding of the facts. **16.** No representative may, by whatever means, make statements that are incomplete, false, deceptive or liable to mislead. **17.** A representative may not appropriate, for personal purposes, sums of money entrusted to him or securities belonging to his clients or to any other individual and of which he has custody.	**Code of ethics of the Chambre de la sécurité financière**

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
	18. A representative must, in the practice of his profession, always remain independent and avoid any conflict of interest. **19.** A representative must subordinate his personal interests to those of his client or any potential client. Without limiting the generality of the foregoing, the representative: (1) may not advise a client to invest in a legal person, partnership or property in which he has, directly or indirectly, a significant interest; (2) may not conduct any transaction or enter into any agreement or contract whatsoever with a client who, manifestly, is unable to manage his affairs, unless the decisions to conduct these transactions or enter into these agreements or contracts are made by persons who may legally decide in lieu of this client; (3) may not conduct any transaction or enter into any agreement or contract whatsoever in the capacity of representative with respect to a client for whom he acts as dative tutor, curator or adviser within the meaning of the Civil Code. **20.** A representative must be objective when his client or any potential client asks him for information. He must express opinions and make recommendations objectively and impartially, without considering his personal interest. **21.** A representative must ignore any intervention by a third party that could influence the way in which he performs the duties related to his practice to the detriment of his client or any potential client. **22.** A representative must not pay or undertake to pay to a person who is not a representative any compensation, any remuneration or any other advantage, except where permitted by the Act respecting the distribution of financial products and services (R.S.Q., c. D-9.2). **23.** A representative must demonstrate availability and diligence with respect to his client or any potential client. **24.** A representative must report to his client on any mandate given to him and must carry out the mandate diligently.	

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
	25. In the practice of his profession, a representative must not, through dishonesty, fraud, trickery or other deceitful means, avoid or attempt to avoid his professional civil liability or that of the firm or independent partnership in which he practices. **26.** A representative must respect the secrecy of any personal information that he obtains about a client and only use that information for the purposes for which it was obtained, unless he is relieved of that obligation by a provision of a law or by order of a competent court. **27.** A representative must not disclose personal or confidential information that he obtained, except in accordance with the provisions of the Act, and must not use that information to the detriment of his client or to obtain an advantage for himself or for another person. **28.** A representative must not dissuade his client or any potential client from consulting another representative or another person of his choosing. **29.** A representative must promptly give to his client, or to any person his client designates, the books and documents belonging to the client, even though the latter owes him sums of money.	
Rules of administration that apply to the representative	**1308.** The administrator of the property of others shall, in carrying out his duties, comply with the obligations imposed on him by law or by the constituting act. He shall act within the powers conferred on him. He is not liable for loss of the property resulting from a superior force or from its age, its perishable nature or its normal and authorized use. **1309.** An administrator shall act with prudence and diligence. <u>He shall also act honestly and faithfully in the best interest of the beneficiary or of the object pursued.</u> **1310.** <u>No administrator may exercise his powers in his own interest or that of a third person or place himself in a position where his personal interest is in conflict with his obligations as administrator.</u> If the administrator himself is a beneficiary, he shall exercise his powers in the common interest, giving the same consideration to his own interest as	***Civil Code of Québec*, S.Q. 1991, c. 64 ("C.C.Q.")**

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
	to that of the other beneficiaries	
Rules of contract that apply to representative	**2098.** A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay. **2099.** The contractor or the provider of services is free to choose the means of performing the contract and no relationship of subordination exists between the contractor or the provider of services and the client in respect of such performance. **2100.** <u>The contractor and the provider of services are bound to act in the best interests of their client, with prudence and diligence.</u> Depending on the nature of the work to be carried out or the service to be provided, they are also bound to act in accordance with usual practice and the rules of art, and, where applicable, to ensure that the work done or service provided is in conformity with the contract. Where they are bound to produce results, they may not be relieved from liability except by proving superior force.	**C.C.Q.**
Rules of mandate that apply to representative	**2138.** A mandatary is bound to fulfill the mandate he has accepted, and he shall act with prudence and diligence in performing it. <u>He shall also act honestly and faithfully in the best interests of the mandator, and avoid placing himself in a position that puts his own interest in conflict with that of his mandator.</u> **2139.** During the mandate, the mandatary is bound to inform the mandator, at his request or where circumstances warrant it, of the stage reached in the performance of the mandate. The mandatary shall inform the mandator without delay that he has fulfilled his mandate. **2140.** The mandatary is bound to fulfill the mandate in person unless he is authorized by the mandator to appoint another person to perform all or part of it in his place.	**C.C.Q.**

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
	If the interests of the mandator so require, however, the mandatary shall appoint a third person to replace him where unforeseen circumstances prevent him from fulfilling the mandate and he is unable to inform the mandator thereof in due time.	

APPENDIX C
REGULATORY CHANGES IN AUSTRALIA, EUROPE, U.K. AND U.S.

This information was provided to IFIC by officials in the fund industry associations from Australia, U.K., U.S. and the European Union, who were given the opportunity to review the sections in the CSA papers that speak to activities in those respective regions.

AUSTRALIA:

Officials of the Financial Services Council (FSC) note that the CSA Consultation Paper provides a reasonable summary of the Future of Financial Advice (FoFA) reforms being implemented in Australia. However it is equally important to be aware of the significant market differences between Australia and Canada that require more study before Australia's regulatory model can be considered an appropriate model for consideration in Canada. For example there were several high-profile advisory firm failures that prompted the Australian government to rapidly move forward with these reforms. No similar experience has taken place in Canada to suggest an equally strong regulatory response is warranted.

In Australia it is compulsory for all employees to participate in the superannuation scheme, which currently mandates contribution by the employer of 9% of employees' eligible earnings into a fund. Once contributed, funds cannot generally be accessed by the employee until retirement or disability. The compulsory nature of this scheme ensures a continuous inflow of investment contributions without requiring advisors to develop a savings culture in their clients. The mandatory nature of the scheme also results in reduced interest or ability of many employees to make "discretionary" investments in addition to their superannuation contributions in retail products of their choosing.

This contrasts with the competitive market environment in Canada where clients must first accept the importance of saving for retirement and other purposes, and then they must choose from a wide array of products that may be suitable for their objectives, time horizon and risk tolerance. The products that compete for investors' dollars are extremely substitutable and there is greater potential to select the product that comes with the least number of regulatory requirements (and therefore seems "safer" to an investor).

In addition, there is a significant difference in the regulatory regime in each country. The securities regulator in Australia is also the regulator for insurance and banking products. This allows this regulator to monitor market activity and prevent regulatory arbitrage, which could lead to product substitution. Since most of the CSA regulators have a narrow regulatory jurisdiction, they will not be in a position to either monitor for or act to deal with any regulatory arbitrage that may result.

Impact of Australian Reforms

Although the reforms are still in their early stage, with voluntary application since July 1, 2012 and a formal commencement on July 1, 2013, some information on market changes taking place is beginning to emerge. There has already been a reduction in the number of independent financial advisors, with many of the larger providers of independent .financial advice having sold their businesses to bank- or insurance-owned financial institutions, thus narrowing the range of providers. Further reductions are expected as the average Australian advisor is a male over the age of 50 who may prefer to exit the business rather than to acquire new required skills, retool his/her office to implement new practice requirements and assume the increased risk of liability that comes with the, as yet untested, rules. It is feared this reduction in the number of advisors will reduce the availability of advice to investors.

The FSC estimates that the regulatory component of the FoFA reforms alone will cost product manufacturers and advice providers over $700 million.

As it is early days, more research and cost benefit analysis is required of the Australian reforms over the next few years to assess their true benefits.

EUROPE:

There are currently several different proposed Level 1 texts for the revised Markets in Financial Instruments Directive (“MiFID II”) and the new Markets in Financial Instruments Regulation being debated at the various legislative bodies. Among the most contentious provisions is the proposal to ban independent advisors and portfolio managers from receiving third party commissions which is contained in the European Parliament adopted text for MiFID II. The Economics and Monetary Affairs Committee, made up of members of the European Parliament voted to reject the ban altogether, instead focusing on enhanced disclosure obligations.

It is important to note a difference between the CSA best interest concept described in the Consultation Paper and the similar requirement in MiFID (which may be carried into MiFID II). The MiFID statutory requirement “to act honestly, fairly and professionally in accordance with the best interests of the client, when providing investment services or ancillary services to clients”, applies to the investment firm and not the individual advisors as is proposed in the CSA Paper.

Tripartite negotiations between the three legislative bodies – the European Commission, the European Parliament and the Council of the European Union are still to take place to agree on the final framework legislation. Officials of industry associations in Europe say it is difficult to estimate how the contentious issues will be resolved, but observe that there is very little support for the ban on commissions, and so it is not expected to be included in the final MIFID II requirements. The associations are of the view that the U.K. ban on all retail investment advisors accepting commission imposed by the FSA effective January 1, 2013 is likely to make the U.K. an outlier jurisdiction. This is seemingly causing concerns that an unlevel playing field has been created for U.K. advisors. The actual market impact of the U.K. reforms is just beginning to be analyzed and reported; this will be discussed in more detail in the United Kingdom section of this Appendix.

MiFID II is not expected to be finalized before the Fall of 2013. Thereafter the Level 2 implementation measures will have to be agreed, after which the requirements must be implemented by each Member State to be effective in that State. Each Member State has a fair degree of flexibility in how it implements the principles in the Directive, so it will be important to understand how the appropriate comparative jurisdictions actually implement the ultimate MiFID II requirements. Realistically this Member State implementation is not expected to take place before 2016.

UNITED KINGDOM:

Officials of the Investment Management Association (IMA) note that the Consultation Paper provides a reasonable summary of the Retail Distribution Reforms (RDR) being implemented in the U.K. However there are important market and regulatory structure differences between the U.K. and Canada that must be analysed and better understood in order to assess the appropriateness of an RDR-style reform for Canada. For example, the U.K. reforms were driven largely by a number of incidents of mis-selling of pension, mortgage and structured products; situations that have not been present in Canada.

It is fully expected that the U.K. decision to ban commissions in advance of the conclusion of the tripartite debates in Europe over MiFID II will likely result in the U.K. being a regulatory outlier to the rest of Europe. The impact of this difference, both short and long term, will need to be better understood.

As in Australia, the securities regulator in the U.K. is also the regulator for insurance and banking products. As stated earlier, this allows these regulators to readily monitor market activity and prevent regulatory arbitrage and product substitution; an ability the CSA regulators do not have due to their narrow regulatory jurisdiction.

Impact of U.K. Reforms

Although it is still early in the implementation of the RDR, information is beginning to emerge on the practical impact that these reforms are already having in the U.K. market – and some of that information is pointing to increased prices for advisory services.

A recent analysis of the pricing models that have been adopted by several large U.K. banks to provide advice under the RDR indicates not only that there will be a wide spectrum of possible models, many of which are complex, but the range of prices for similar levels of advice will vary significantly from one institution to another. Although it may now be easier for an investor to actually calculate their price, the average price appears to be significantly higher than it would have been under the previous regulatory regime. This will surely reduce the appetite for many investors to obtain advice, and thereby would signal a negative consequence of the reforms.

UNITED STATES:

Representatives of the Investment Company Institute have stated that the CSA Consultation Paper provides a fair summary of the fiduciary duty issue in the U.S. but it overstates what the regulators and Congress have done so far. The study that was completed pursuant to the Dodd-Frank Act was not an SEC document, but an SEC Staff recommendation upon which the Commission has not yet acted. Accordingly it does not represent "an example of a foreign regulator developing a qualified best interest standard applicable to advisors and dealers." As noted in the Consultation Paper the debate in the U.S. is so contentious that SEC staff have moved from stating they were going to propose a rule, to stating that they would do something more akin to a concept release in which they would seek data on the economic impacts of a fiduciary duty, to now saying even that effort is bogged down. As such, the nature of the reforms, if any, is far from certain and cannot yet be considered to be a proposal.

More importantly, conceptually the U.S. fiduciary duty initiative is substantially different, and is designed to achieve a very different objective, than the proposal for Canada described in the CSA Consultation Paper. The differences must be clearly understood.

The U.S. initiative is very much an exercise in harmonization of the requirements that should apply to broker/dealers *when providing personalized investment advice to clients*, with those requirements that already apply to investment advisors *when providing such advice*.

Section 202(a)(11) of the Investment Advisors Act defines an "investment advisor" as any person or firm that satisfies all of these three criteria: (i) for compensation; (ii) is engaged in the business of; (iii) providing advice to others or issuing reports or analyses regarding securities. There has been much interpretive guidance issued and discussion about who fits, and what activity brings someone, into this definition, and it is clear that the precise definition of "investment advisor" and the activities performed by an investment advisor will be fundamental points that will first need to be agreed upon before the Dodd-Frank initiative can move forward.

It is widely agreed that broker/dealers should be able to continue to conduct transactions for clients on a commission basis, and there would be no fiduciary duty applied in that case. The proposal in concept would seek to apply a fiduciary duty to broker/dealers who provide "advice and recommendations" to a client who is seeking the broker/dealer's guidance, who is "relying on" the broker/dealer's guidance and who expected that advice "to be given in the client's best interest". The concept is that if broker/dealers are providing substantially the same services to a retail client as investment advisors (who are already subject to the fiduciary duty), they should be subject to the same duty, with the same limitations in the scope of that duty. However, absent an SEC proposal, it is not possible to properly assess the U.S. concept or its scope, and therefore its appropriateness as a model the CSA should consider.