Eric Adelson
Senior Vice President and Head of Legal
T: 416.228.3670
F: 416.590.1621
Email: eric.adelson@invesco.com

Invesco
5140 Yonge Street, Suite 800
Toronto, Ontario M2N 6X7
Telephone: 416.590.9855 or 1.800.874.6275
Facsimile: 416.590.9868 or 1.800.631.7008
www.invesco.ca

September 30, 2016

VIA E-MAIL

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

Attention:
Josée Turcotte, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
comments@osc.gov.on.ca

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
consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: Canadian Securities Administrators Consultation Paper 33-404: *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients* (the "Consultation Proposal")

We are writing in respect of the request for comments dated April 28, 2016 regarding the Consultation Proposal. We appreciate the opportunity to comment on these important matters.

Invesco Canada Ltd. is a wholly-owned subsidiary of Invesco, Ltd. Invesco is a leading independent global investment management company, dedicated to helping people worldwide build their financial security. As of August 31, 2016, Invesco and its operating subsidiaries had assets under management of approximately US$821 billion. Invesco operates in 20 countries in North America, Europe and Asia.

Invesco Canada is registered as an Investment Fund Manager, an Adviser and a Dealer in Ontario and certain other provinces. Our investment products are primarily bought by and sold to retail investors and institutional investors. As such, we take a great interest in regulatory discussions that impact those investors.

Introduction

As a general proposition, Invesco Canada supports regulatory reform affecting the wealth management industry. We believe that a strong regulatory and legal regime is not only desirable, but vital, for the proper functioning of the wealth management industry. This is an industry characterized by asymmetries in information, knowledge and bargaining power and where those issues are not satisfactorily addressed by existing law and regulation, we support efforts to address those gaps. However, we believe that regulatory reforms must be carried out in a measured fashion where the specific problem is identified and the proposed solution is tailored to address that problem. We do not typically support regulatory reform where there has been no need identified. In our opinion, the proposals contained in the Consultation Paper, on balance, go beyond what is necessary to address the problems identified. To the extent that the proposals do address specific deficiencies in the regulation of wealth management, we support the current effort and will highlight in this letter those elements of the reform proposals with which we agree.

We have organized our response in the following manner:

1. Regulatory reforms are typically initiated to address specific problems or concerns. In the first section, we seek to determine what those problems or concerns are.

2. While comment letters are typically critical of regulatory reform proposals, and this letter is no exception, there are also many positive elements to the proposals contained in the Consultation Paper and, in the second section, we seek to highlight those elements which are positive.

3. In the third section, we set out a series of general concerns with the Consultation Paper itself and the proposals contained therein generally.

4. In the fourth section, we set out our concerns with certain specific proposals contained in the Consultation Paper.

5. In the fifth section, we summarize our prescriptions and provide an alternative framework.

We have provided answers to the 68 consultation questions posed by the CSA in an appendix to this letter.

What Is the Problem That We Are Trying To Address?

There has been much discussion over the years about the need for regulatory reform in our industry. It appears that this discussion has been spurred by abuses by specific registrants and by international developments. To the extent that regulatory initiatives in this country are based on the experiences of other countries, it is important to not lose sight of the fact that there are significant differences in the securities regulatory structures and securities markets in those other countries. These differences require us (collectively) to understand what gave rise to the need for reform in those countries and whether those same considerations apply in Canada. It is important to recognize, however, that Canada has often taken a different approach to regulation (not just in securities law) than other countries have and this different approach has served us well.

To the extent that regulatory initiatives in this country have been spurred by abuse by registrants, it is important to examine the incidence and the nature of those abuses. This is not an easy task as enforcement reporting tends to be scattered in Canada, with the Canadian Securities Administrators (the “CSA”), the provincial securities commissions and the self-regulatory organizations (the “SROs”) each publishing their own reports but without any comprehensive report that combines the information. Regardless, we have made an attempt to combine this information by culling the reports of the CSA and the SROs, as detailed in our comment letter to the Ontario Securities Commission (“OSC”) on its Statement of Priorities for the fiscal year ending March 31, 2017. To summarize from that letter, there are 123,883 individual registrants in Canada, not all of whom are client-facing but a substantial number of which are (we would guess in the range of at least 120,000). IIROC received 1,341 complaints in 2015, referring only 98 cases to the CSA for further consideration. This suggests that many complaints are of questionable validity or are of not such a degree of seriousness as to warrant CSA involvement. The MFDA had 444 complaints, referring approximately 50 cases to the CSA. Together, that is less than 2,000 cases of which approximately 150 cases were referred to the CSA. While those statistics are not perfect, in a universe of 123,885 individual registrants they suggest that the system works pretty well and that the problems faced in the retail wealth management industry are at normal (or below) levels. The complaint numbers themselves suggest an incidence rate of 1.6% (or 98.4% of situations do not give rise to any issues). Alternatively, if one considers that 10 million Canadian households participate in retail wealth management, under 2,000 complaints suggests an even lower incidence rate of 0.02%. This data is simply not indicative of a need to revamp the entire system at the present time. Rather, these numbers suggest that limited, specific reforms are appropriate.

Underlying the foregoing argument is our belief that there are, effectively, two ways to approach regulatory reform in a mature industry. Regulators can re-think the entire regulatory system and, with the benefit of experience that was lacking when the system was created, create an entirely new regulatory system. This has the potential to cause significant disruption to individuals and businesses that participate in the regulated industry and could lead to a range of unanticipated consequences as it is not always possible to field test every idea or to fully understand the ripple effects that a proposal might have. This type of wholesale reform, therefore, should be a rare occurrence. Alternatively, regulators can take a more surgical approach and initiate reforms only where there are problems that have been clearly identified and diagnosed and the reform solution is tailored to specifically address those problems. In our opinion, the CSA has not made a case for wholesale reform; rather and, in many ways, the Targeted Reforms contained in the Consultation Paper appear to be an attempt to mix both approaches.

Notwithstanding the foregoing comments, in Part 4 of the Consultation Paper the CSA does try to identify the problem by identifying areas where a registrant has an obligation but no explicit requirements in legislation or regulation and considers that a gap. We are critical of this approach because a perceived regulatory gap is not necessarily indicative of a problem that requires resolution. While such gaps may not have been intended, the consequences of those gaps might be acceptable. Reform critics often talk of “unintended consequences” of regulatory reform but it is important to recognize this works both ways and sometimes consequences, though unintended, yield either neutral or positive results. Therefore, we ask that in responding to the comments on the Consultation Paper, the CSA address the question of why each gap identified in Part 4 of the Consultation Paper needs to be addressed with a regulatory solution.

Instead of answering the threshold question of why reform is necessary, the CSA sets out in Part 5 of the Consultation Paper the key investor protection concerns in the registrant-client relationship. This is helpful as an overall rationale for securities regulation generally; however, we do not believe that these concerns – which are addressed by current regulation in many cases – collectively justify the expansive nature of the current consultation. We are not convinced that, and we urge the CSA to justify, two of the concerns listed actually fall within the jurisdiction and expertise of securities regulators. We will address those two concerns first.

The CSA is concerned that “clients are not getting the value or returns they could reasonably expect from investing”. Whether or not this is something that securities regulation should address is not clear and depends on whether and why clients have this belief. The CSA has not presented evidence that clients believe they are not getting the value or returns they could reasonably expect. In contrast, many industry surveys are conducted annually on this topic and they typically find that client expectations are, on balance, being met.[1] Absent evidence to the contrary, the CSA statement cannot stand on its own.

Assuming, however, that clients share the concern of the CSA, it is important to understand why clients might feel that way. Where a client is not getting the value or returns he or she could reasonably expect because a registrant has misled him or her and set unreasonable expectations, a regulatory issue arises. However, existing regulation addresses that as the registrant in that case cannot be said to be dealing “fairly, honestly and in good

[1] “2016 Canadian Investors’ Perceptions of Mutual Funds and the Mutual Fund ndustry”, Pollara Research on behalf of IFIC.Reference survey results, I think from IFIC but check.

faith" with the client. If CSA and SRO enforcement staff are not pursuing such cases, then the discussion should be about lack of enforcement and not promulgation of additional regulation. If cases are not being brought because the standards set by courts and tribunals are such that cases cannot generally be made, then there is a valid basis upon which to enact reforms. There is insufficient information to determine what the cause is in this instance and urge the CSA to seek out that information prior to proposing reforms in this area.

A regulatory issue may also arise if there simply do not exist any registrants who could meet a client's reasonable expectations. We do not believe that to be the case. If there are some registrants meeting these expectations, wholesale reform is not necessary and it is inarguable that some registrants are meeting these expectations. So if there are clients who feel their expectations are not being met, one should ask why are those clients not seeking advice from a registrant who will meet their reasonable expectations? This appears to us to be an issue of lack of information about registrants to help potential clients select a representative appropriate for them. It is surprising that a website or an app has not been developed to help clients in this regard and a tailored, measured regulatory response could be of assistance. An example of such a response would be for regulators to publish or require publication of more detailed information about the performance of registrants on a specific basis. Alternatively, regulators can use their bully pulpit to prod private enterprise to provide this information. We note that the *Investment Executive* publishes an annual report card for dealers. If client expectations are not being met, presumably there would be commercial interest in a report card for representatives as well. That none has been developed privately suggests that the overall reasonable expectations concern stated by the CSA is not valid. (An example of how this might work is the annual reports on Ontario schools published by both the Fraser Institute and People for Education.)

The CSA is concerned that "clients are not getting outcomes that the regulatory system is designed to give them." We were surprised to read this as we do not believe that the securities regulatory system is designed to provide any particular outcome. It is designed to ensure that participants in capital markets activities are treated fairly (i.e. investor protection) and that capital is allocated efficiently. While we appreciate that securities regulators have a certain level of expertise, achieving a particular outcome as the CSA implies is a policy decision that is properly within the purview of elected officials. We do not see the nexus between the stated purpose of the *Securities Act* (Ontario) and similar statutes in other provinces and territories and the regulatory public interest jurisdiction (which still must be informed by the purpose of the statute) and the need to engineer particular outcomes.

Invesco Canada agrees with some of the concerns stated by the CSA with respect to the registrant-client relationship. Specifically, we agree with the CSA that under current regulation, there is an "expectation gap" where clients believe the registrant is acting in the client's best interest even when there is no legal obligation to do so, conflict of interest rules are less effective than intended, and information asymmetry is a persistent feature of the client-registrant relationship. We also agree that to the extent the current regulatory system does not adequately address these concerns it is open to securities regulators to act.

An "expectation gap" exists because clients are often of the view that the registrant from whom they seek advice is obligated to act in the best interest of the client. Obviously, not all registrants currently have such an obligation although many who do not would argue that they act as if they do. We agree that this gap is troublesome and the client expectation is reasonable given the complexity of investing and the information asymmetry which exists. In addressing this concern, however, it is important to also recognize that many client-registrant relationships are subject to a common law or statutory fiduciary duty, which includes the requirement to act in the client's best interests. Therefore, the expectations gap is limited to certain sectors of wealth management.

Where the existence of a fiduciary duty in Canadian securities regulation is unclear is in any relationship where the registrant does not have the discretion to make investment decisions for the client. The registrant in those relationships is under a duty to act "fairly, honestly and in good faith" which courts have generally interpreted to mean that the registrant is obligated to ensure that an investment recommendation is merely suitable for a client, although courts have recognized that there is a spectrum based on the specifics of the relationship such that some of these relationships are subject to a fiduciary duty. In our opinion, the most effective reform in this area would be to create a black and white distinction in the regulations between discretionary and non-discretionary relationships and apply a best interest standard in the latter case. If the CSA adopts a best interest standard, it is important for the CSA to state clearly what it intends with the standard as otherwise it becomes subject to judicial interpretation. Arguably, the current "fairly, honestly and in good faith" standard has been interpreted judicially in a manner different from that which was intended. Therefore, a CSA statement of intent relating to a best interest standard will be vital to the success of such an initiative.

We agree with the CSA that current conflict of interest requirements are less effective than intended and agree with the proposed formulation that "firms and representatives must respond to each identified material conflict of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm and/or representative". While this formulation of the approach is helpful, we do not believe that it goes far enough.

In the Companion Policy to NI 31-103, the CSA approves of three methods for dealing with conflicts of interest: avoidance, control and disclosure. Historically, disclosure has been the primary means for dealing with conflicts of interest in Canadian securities law. However, the CSA recognizes the limits of this approach in Part 3 of the Consultation Paper: "Finally, conflict disclosure, by itself, is generally an ineffective conflict mitigation strategy and may have counter-intuitive results, such as increasing reliance on conflicted advice, which results in sub-optimal outcomes for investors." Parsing through this statement with some of the proposals intended to address conflicts of interest, we take "generally" to mean that in some cases disclosure is sufficient. We would argue that in institutional (i.e. non-retail) client relationships, disclosure is an effective tool as institutional investors have the knowledge, sophistication and motivation to read and understand the disclosure and to ask relevant questions to improve their understanding of the conflict and make an informed decision as to whether to accept the conflict. For retail investors, conflict disclosure has become somewhat of a blunt instrument for registrants to act in conflict regardless of the understanding of the client. Therefore, to the extent that the Consultation Paper proposes further disclosure solutions to conflict of interest questions, we must disagree and ask the CSA to further explain the rationale for the approach, especially in light of the quotation above from Part 3 of the Consultation Paper.

If the foregoing argument is accepted, then the only responses to conflicts that should be considered are avoidance and control. We tend to like the control solution because it is familiar to us. We manage mutual funds that are subject to NI 81-107 and, as such, have had to deal with these issues in the fund context for the past 9 years. When we address a conflict of interest with a control solution, we draft policies and procedures to enable us to control the conflict and these policies and procedures get reviewed by the fund's independent review committee ("IRC"). Subsequently, the IRC reviews the effectiveness of the policy and procedures annually and revisions are made thereto based on those findings. To facilitate this review (and to comply with the IRC's conditions for approval), we also provide the IRC with a report (annually or more frequently) relating to our reliance on the policy and procedure in managing the conflict. We believe this works and is effective because of the presence of independent oversight and, therefore, we find it surprising that the CSA would bring forward a proposal to address conflicts without adding an element of independent oversight. In our opinion, therefore, it would be appropriate to include an IRC requirement for all registrants in managing their conflicts of interest, especially where the conflict is addressed by a "control" solution.

The final approach to conflicts of interest, avoidance, is of course the most controversial. While there are some conflicts for which this approach is appropriate, we understand the reluctance of regulators to force this approach by prohibiting impugned practices where a registrant fails to adopt "avoidance" as the response to the conflict. However, regulators must accept that some conflicts cannot be sufficiently mitigated by control or disclosure and registrants themselves are loathe to avoid any practice that is legally permitted. Therefore, regulators must find the gumption to prohibit those activities the conflicts associated with which cannot realistically be mitigated. To the extent that CSA members do not have the authority to prohibit particular activities, those CSA members should refer the matter to their legislative partners. We do not see that as a meaningful bar to reform.

The final concern expressed by the CSA that we will address is that of information asymmetry. Information asymmetry has historically been addressed by disclosure obligations. However, the CSA has concluded – justifiably in many cases – that investors do not read the disclosure provided to them. We believe this happens for two reasons. First, much disclosure is simply not written in a way that people can understand. Second, investors are suffering from information overload with the result that more meaningful disclosure gets obscured by less meaningful yet still important disclosure. Given the foregoing, we do not draw a real distinction between the ineffectiveness of disclosure as a conflict mitigation tool and the information asymmetry that exists in the wealth management sector. As such, a possible solution may well be for the CSA to focus on the quality rather than the quantity of disclosure obligations, tighten the requirements so that boilerplate disclosures are not provided, and opine on the merits of that which is disclosed. While we understand the reluctance of regulators to opine on the merits of an offering of securities, we note that the CSA has – in the context of the Targeted Reforms - set out specific steps that a dealer and its representatives must follow in providing advice to clients, which is an analogous situation.

It is worth noting that the CSA attempted to address the lack of investor engagement on disclosure in the specific case of the mutual fund simplified prospectus, which was already subject to a “plain language” requirement, by adding the Fund Facts Document and replacing the simplified prospectus delivery obligation with a similar obligation for Fund Facts Documents. This approach has been effective in simplifying decision making relating to an investment and providing a guide for an interested client to ask appropriate questions of their dealing representative when making investment decisions.[2] The ultimate resolution of information asymmetry will have to be a greater willingness on the part of regulators to propose prohibitions on conduct or, alternatively, to more emphatically enforce the obligations that exist today.

As a final note in this section, we wish to re-emphasize a point we have made previously in other fora and that is that many of the perceived problems are addressed by existing rules. These rules have been ineffective due to our perception of either a lack of or selective enforcement. For example, industry participants are well aware that many registrants do not comply with certain parts of NI 81-105. This is acknowledged in the conflicts of interest discussion of the Consultation Paper in the section “Sales Practices.” The OSC alone has conducted at least 3 sweeps of mutual fund managers’ sales practices and has found deficiencies at each manager in almost every sweep, yet there were no enforcement actions as a result of those sweeps or otherwise. Dealers have similar obligations under NI 81-105 yet, as far as we are aware, IIROC has not enforced NI 81-105. All of this leaves us questioning the utility of further reforms. We believe effective enforcement of existing rules would encourage a more productive dialogue with industry participants on any future proposed reforms.

Positive Elements of the Proposal

We would like to begin our response to the Proposal by highlighting areas we believe are most effective.

The Targeted Reforms are appropriate and likely to be effective in the context of true financial planning relationships and, in that context, we largely agree with the comments of the Canadian Institute of Financial Planners (“CIFPs”). We note that while CIFPs is largely correct in that financial planners provide for their clients many of the services that would be required by the Targeted Reforms and an overarching best interests standard is likely all that is needed, there is nothing that requires financial planners to provide those services. Therefore, in that context the Targeted Reforms would be appropriate.

[2] This does beg the question as to why a simplified prospectus and annual information form must be prepared annually for a mutual fund when the CSA acknowledges that no one other than CSA Staff read them.

We also agree with the proposition that the KYC process should be enhanced with the aim of ensuring that the result of that process is that the representative has a thorough understanding of the client, although that should be circumscribed by what the client wants to share with the representative (which would then affect the appropriate standards to be applied) and the nature of the relationship that the client desires.

We agree that proficiency for representatives should be enhanced and the points enumerated in the Consultation Paper are appropriate. Depending on the extent to which the CSA chooses to implement the Targeted Reforms, we suspect that market forces will address the proficiency issue since there will be representatives who will not be able to meet the enhanced standards without additional education. This does not negate the need for regulatory intervention in setting appropriate proficiency standards as it is important that all registrants meet mandatory minimum requirements in order for the public to have confidence in registrants generally. Additionally, only the regulators can force a continuing education requirement, which we believe is appropriate for all individual registrants.

We agree that titles of client-facing representatives must be regulated. The OSC's mystery shopper exercise did an excellent job of highlighting how confusing and problematic the current state of affairs has become with at least 48 different titles in use. The CSA should set out appropriate titles and ensure through vigorous enforcement that (a) only those qualified under securities regulation are permitted to use the prescribed titles and (b) a representative must use the prescribed title that fits with the service the representative offers to clients. For example, we believe one such title should be "Financial Planner" and that a financial planner would be obligated to meet all KYC, KYP and suitability requirements contained in the Targeted Reforms, without exception. The key point is that regulation must define what services are provided by each title. Important to this effort, however, is that the CSA must undertake a public relations campaign to educate the public as to what each title specifically means and does not mean. Assuming a representative can use the title "securities advisor" or "financial planner", title regulation will have no impact if the public does not understand what services would be received and what standards applied with each title.

We also agree that designations should be regulated. While representatives should have the freedom to choose what designations are important to them and what education related to those designations has value, the CSA must maintain the ability to determine what designations can and cannot be used by representatives. Furthermore, the CSA should ensure there is substance to a designation and, therefore, a system of "approved" or "recognized" designations would be helpful. As an example, we see many representatives call themselves "seniors specialist" although it is not clear if a representative has to do anything to use that label.

Subject to our reservations with the broad-based nature of the proposals relating to KYC, KYP and suitability, which we will discuss below, we also agree with the proposals relating to the roles of the UDP and the CCO. The concept of UDP is an important control to ensure that registered firms create a culture of complying with regulation, but it is presently not well understood. The proposed enhancements would be of assistance in clarifying this concept.

We also agree with the proposal to create a statutory fiduciary duty when the client grants discretionary authority. In our opinion, a common law fiduciary duty already exists with respect to discretionary authority in every province except Quebec (which does not use the common law). A statutory fiduciary duty would clarify the application of the duty and signal the importance of such a duty from a public policy perspective.

We agree with the exceptions from the Targeted Reforms for institutional clients and order-execution only services, although we do not believe the exceptions go far enough. We will discuss this issue further below.

Lastly, we generally agree with the position of Ontario and New Brunswick that a regulatory best interest standard would be appropriate. We agree that this would assist tribunals and courts in interpreting securities regulation where there are specific gaps and would help tribunals and courts address ambiguities. We do not necessarily agree with all of the reasons Ontario and New Brunswick have set forth in support of a regulatory best interest standard. Providing a governing principle and setting an appropriate tone from the top, however, are sufficiently strong reasons to adopt a regulatory best interest standard. To the extent the regulatory best interest standard would have meaning beyond these reasons, it would be important for the CSA (or provinces that adopt this on their own) to set out clearly in the form of guidance what this standard would mean in different types of registrant-client relationships.

General Concerns with the Consultation Paper and Proposals

In our opinion, the Consultation Paper misrepresents the findings of the Cumming Report. The CSA asserts that "the paper found that conflicts of interest, specifically sales commissions and trailing commissions paid by fund companies…dealer affiliation and the use of deferred sales charge arrangements **materially affect** representative/dealer behaviour to the detriment of investor outcomes and market efficiency" (emphasis added). Perhaps the version of the Cumming Report read by the CSA is different than the version posted on their websites but the version we read had no such conclusion. The Cumming Paper was a correlation study. It is extremely important to not confuse correlation with causation, especially when using a study such as this to formulate public policy. Prof. Cumming's research project was not remotely designed to assess causality and two items could be correlated based on coincidence alone. We make this point because the words "materially affect" imply causation and, in our opinion, much of the current consultation on registrant conduct, as well as the parallel consultation on mutual fund compensation, are based, or at least encouraged, by the findings of the Cumming Report. The misinterpretation of those findings appears to be partly responsible for some of the concerns with the Consultation Paper that we address in this letter.

The Consultation Paper also states that "the self-regulatory and industry organization investor complaint experience shows there is consistent and ongoing non-compliance with many of the current key regulatory requirements, with the unsuitability of investment recommendations being the primary basis for complaints to OBSI…." Earlier in this letter, we presented complaint data from the CSA and the SROs. While the words "consistent and ongoing" might be accurate in the sense that every year there are complaints and they generally fall within the same categories of conduct, those words imply a level of pervasiveness that is simply unsupported by the data. Furthermore, "consistent" implies activity at similar levels over time yet IIROC's enforcement report shows a steady decline in cases over the past 5 years. It is not clear to us what the benefit is of overstating the problem. Canadians look to their regulators for guidance and if an accurate, rather than overly dismal, picture of the wealth management industry were conveyed to investors, we believe that would solve many of the perception issues noted in the Consultation Paper.

One of our primary concerns with the Consultation Paper is that, in our view, while valid in some cases the scope and application of the Targeted Reforms are overbroad and, hence, unnecessarily disruptive to existing models. The proposals in the Consultation Paper are overbroad in 3 respects:

1. The distinction between advising and dealing has been eliminated.

2. With the exception of order-execution only, the distinct service models within the dealing category have been eliminated.

3. Institutional clients are largely treated the same as individual retail clients despite the lack of evidence of deficiencies in registrant conduct toward institutional clients and the rules applicable to institutional clients are different depending on whether they ultimately invest in an investment pool or a managed account.

It appears to us that the Consultation Paper treats any client-facing registrant as a full-blown financial planner ("Financial Planner"). Insofar as one wishes to be a Financial Planner, the Targeted Reforms present an effective and comprehensive code of conduct upon which it would be reasonable to evaluate one's work. However, not all clients want a prescribed level of service. We would like to see the CSA adopt reforms that allows registrants the flexibility to provide a level of service desired by their clients. Without this flexibility, registrants face the threat of non-compliance with regulation.

<u>Elimination of Distinction Between Advising and Dealing</u>

Under NI 31-103, firms can register under one of two adviser categories and one of five dealer categories. Individuals can register in one of five categories (dealing representative, advising representative, associate advising representative, ultimate designated person, and chief compliance officer) but, for practical purposes, a client-facing individual can register as an advising representative or a dealing representative. A plain reading of the Consultation Paper suggests that there is really no distinction in the conduct that is expected and the services that should be provided between advising representatives and dealing representatives (or advisers and dealers) even though they provide substantially different services. As a threshold issue, if it was a good idea to draw distinctions for registration categories – and we believe that not only was that a good idea but an essential one for the proper functioning of capital markets - it is not clear why the rules that apply to their client interactions should be the same.

In this regard, we refer the CSA to the comments of the Portfolio Managers Association of Canada ("PMAC") and their explanation of why the Targeted Reforms ought to be inapplicable to portfolio managers. We fully endorse the arguments of PMAC in this regard. We note that portfolio managers do not offer financial planning and financial advice; they only offer access to investment expertise. In our opinion, clients seek out portfolio managers to take advantage of their investing expertise and seek more general financial advice elsewhere. This distinction is important in the context of considering the applicability of the Targeted Reforms to advisers.

We assert the foregoing with one caveat. There has been a blurring of these distinctions in the market to a certain degree, as some dealing representatives (and some dealers) have sought advising registration in order to fully manage client portfolios. This aspect of client portfolio management is different from what a portfolio manager is traditionally thought to have done in that these representatives are really asset allocators and allocate client assets to managed products. These types of advising representatives must be distinguished from the more traditional type and, in that regard, the simplest and most efficient approach would be to re-characterize the firms and individuals as "discretionary dealers" and "discretionary dealing representatives". This would work in the context of the present consultation because discretionary dealing representatives do offer financial planning – in fact, that is their expertise – and therefore should be subject to the same standards as Financial Planners. More traditional advising representatives are investment experts, not financial planning experts, and ought to have a category of their own. Note that some advising representatives do use managed products in client portfolios, although this typically constitutes a small portion of client portfolios. Re-doing registration categories in this manner would also have the added benefit of reserving the title "portfolio manager" for advising representatives, thus eliminating confusion caused by that title as dealing representatives have gained discretionary authority.

<u>Elimination of Distinct Service Models Among Dealers</u>

Throughout the Consultation Paper, the CSA implicitly expresses the view that: (1) all dealings with retail clients are the same, regardless of the distribution channel selected and regardless of the specific needs of the client; and (2) clients who do not wish to be Do-It-Yourself investors should only have the option of a full financial planning relationship. The views that have been expressed by the CSA are confusing to us but we can draw no other conclusions from the Consultation Paper.

All retail clients are not the same and this is implicit in the need for KYC, KYP and suitability obligations. Dealers and their representatives may want to provide investment or financial advice, but without decision making authority. Effectively, they seek to be consultants more so than advisors. There is nothing wrong with this and it is a valid and proper service. Not all clients want financial planning. For numerous reasons, they may feel that it is unnecessary and they should not be forced into such a relationship. However, they should also not be denied the ability to consult with a professional for advice in areas with which they are not familiar. In other words, the concept of financial advice for regulatory purposes cannot be an all or nothing proposition. If you accept that premise, then it is clear that the range of KYC, KYP and suitability Targeted Reforms cannot apply to all dealing relationships. Absent this distinction, the Targeted Reforms make it clear that the client's only alternative is to engage an execution-only dealer and not receive any advice.

We do not believe a binary decision – either full financial planning or no advice – is a desirable outcome. Retail investors should be free to choose the relationships they want to have and the role of the regulators is to ensure clarity of choice. Effective securities regulation would ensure that a client seeking a full financial planning relationship understands what that entails and obtains it, and a client seeking a mere consultant relationship understands what that entails (and does not entail). The CSA has not left open this latter possibility and that is a significant oversight in our view. Based on our discussion with the Chair of the OSC, we do not believe that was the intent of the Targeted Reforms but it is difficult to come to a different conclusion when, immediately after the table of Targeted Reforms, the only relationships carved out are execution-only and institutional.

Application to Institutional Clients

NI 31-103 created a category called "permitted clients". A comparison of that definition with the definition of "accredited investor" reveals that permitted clients are a subset of accredited investors with the primary difference between the net worth of non-individual accredited investors. The practical impact of the "permitted client" definition is to exclude such investors from know your client and suitability obligations to the extent such clients purchase an investment fund through an investment fund manager. It is not clear why these exceptions apply when the permitted client invests in investment funds but not in managed accounts as, in our view, there is little practical difference between the two. We note that such clients are owed a fiduciary duty in respect of a managed account and, as such, the Targeted Reforms are not necessary in that instance. We urge the CSA to consider the disparate treatment between investment funds and managed accounts for these clients.

While we appreciate that there may be regulatory concerns with respect to individual permitted clients since the fact that one is wealthy is not necessarily a good proxy for investment sophistication, the other differences between the definitions do not make much sense on their face. As such, we recommend that the definition of "institutional client" be replaced with "a non-individual permitted client" or the definition be dropped altogether and references to "institutional client" be replaced with "non-individual permitted client."

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One final note of general concern is warranted. The Targeted Reforms are very prescriptive. Overly prescriptive regulation carries with it a legitimacy risk for regulators. We believe regulators are well placed to establish principles of conduct and to determine acceptable and unacceptable conduct. However, regulators are not well placed to determine how acceptable conduct should be carried out and this raises legitimacy questions in the eyes of the regulated. We have seen no evidence in the history of Canadian securities regulation that securities regulators possess the expertise to delineate all the steps that a Financial Planner (or other representative) must follow to serve a client. Yet that is exactly what the Targeted Reforms do.

Concerns with Specific Proposals

In this section, we have chosen to highlight several specific proposals contained in the Consultation Paper to discuss our concerns more thoroughly. In this section we address our concerns with the proposals relating to proprietary products, conflicts of interest, application of the Targeted Reforms to advisers and their representatives, and sales incentives.

Proprietary Products

The conflict regarding the distribution of proprietary products is, in our view, the biggest conflict issue that exists in retail wealth management. It threatens the existence of independent investment management firms such as ours and it results in limited and possibly deceptive choices for Canadians. One of the findings of the Cumming Report was "fund flows from affiliated dealers of the investment fund manager show little to no sensitivity to past performance, and this lack of sensitivity is also associated with reduced future outperformance before fees." This is an important finding which has largely been overshadowed in both the trade and general media by the findings regarding trailing commissions. We are disturbed by this as the Cumming Report shows that the negative alpha effect of affiliated products is actually worse than the similar effect of trailing commissions – that is, investors in affiliated products do worse than investors in trailer commission-paying products - yet the CSA is on the precipice of a consultation on how to ban trailing commissions and is not even considering a ban on proprietary products. Rather, the findings of the report would suggest that the CSA's proposed prescription for proprietary products would actually result in the worst possible outcome.

The Consultation Paper makes an important point on disclosure and conflicts: "Finally, conflict disclosure, by itself, is generally an ineffective conflict mitigation strategy and may have counter-intuitive results, such as increasing reliance on conflicted advice, which results in sub-optimal outcomes for investors." This is not merely a statement of opinion from the CSA but is based on several academic behavioral studies. These studies show that in an agency relationship, when the agent discloses the conflict, the agent is more likely to act in conflict to the client. While there are few certainties in behavioral economics, we do believe this finding is as close as is possible to certainty in this field.

To summarize the two previous paragraphs, the CSA's commissioned research has found that affiliated products are worse for investors than trailing commissions and the CSA has acknowledged that disclosure is an ineffective conflict mitigation strategy. The natural and obvious conclusion that flows from the foregoing is that a disclosure solution to affiliated product distribution conflicts will be ineffective. As such, our expectation is that the Consultation Paper would address this in a meaningful way.

In our opinion, the CSA is neglecting this important issue by proposing a disclosure obligation that we believe will be ineffective. The Consultation Paper proposes that firms that distribute proprietary products advise clients, in the relationship disclosure document, that they offer either a proprietary product list or a mixed/non-proprietary product list. Aside from the fact that the relationship disclosure document has not met regulatory expectations (it is generally too long, these documents often do not meet plain language requirements, and they have become a repository of required disclosures), the potential for manipulation is high.

Dealers, especially large dealers, generally view it as a business necessity to represent to clients that they offer a range of investment products, not just those managed by an affiliate (or themselves). Under the disclosure proposal, a dealer could easily offer 1 non-proprietary product, claim that otherwise their proprietary list meets all possible client needs, and then claim to be a mixed/non-proprietary dealer. The latter, of course, is commonly referred to as "open architecture" and, in our opinion, firms should be required to characterize themselves as open architecture or proprietary only. Firms that choose to characterize themselves as open architecture should be required to include investment products managed by unrelated parties on their product list (or, as is more commonly known, the product shelf) in every investment category in which a proprietary product is offered and in a number sufficient for a reasonable person to conclude there is a real choice. In our opinion, the latter requirement would be met by offering at least 10 competitive unaffiliated products per fund category. It would also be important to include standards that would be applicable to these products. Our concern is that a dealer will simply include unattractive non-proprietary funds on the product shelf so that proprietary fund sales are unaffected. In this regard, we believe the guidance provided for firm-level Know Your Product obligations is deficient. The selection of specific products is the last part of the process proposed by the CSA. While we agree that a firm should consider performance versus a benchmark, we believe that is too limiting a set of considerations since past performance is not necessarily indicative of future performance. We recommend, therefore, an approach similar to that taken by consultants to defined contribution and group plans. While each consultant firm differs in approach and all include past performance within their analysis, these consultants typically engage in a more in-depth analysis of the portfolio management team, process and philosophy to arrive at an opinion as to future performance. Important factors in this analysis are the composition of the investment team and how they work together, the clarity of the investment philosophy, the merits of the philosophy and its impact on generating investment ideas, the approach to portfolio construction and the ability of the firm to implement these decisions, stability of the team, and the strengths and weaknesses of the investment approach (including risk factors). Net of fee returns are also considered as are fees and expenses generally (although not to the degree implied in the CSA proposals). Dealers should be required to put in place policies and procedures around this practice and the CSA and SROs should audit both the policies and procedures themselves and the implementation of those policies and procedures shortly after any reforms become effective. CSA members will have to strictly enforce these requirements and engage in a public relations effort so that the public understands the difference between a dealer that offers only proprietary funds and one that is open architecture.

In addition to the foregoing, we urge the CSA to consider other alternatives:

1. *Ban the distribution of proprietary products.* In this scenario, a firm would either be in the manufacturing space or in the dealing space but not both. Cross-ownership of such firms would be eliminated which is the norm in the vast majority of markets around the world. In this model, payments from a manufacturer to a dealer other than specifically authorized payments such as co-op payments would also be eliminated. Such a structure removes any incentive whatsoever for the dealer to prefer the product of one manufacturer over that of another other than on the merits.

2. *Prohibit indirect compensation or incentives that are designed to increase the sale of affiliated products*. For example, incentive plans that allocate equity, incremental cash bonuses, or other special incentives (like exotic trips) to representatives that disproportionately invest their clients in proprietary products would not be allowed. Rather, incentive plans would treat all representatives the same way whether they sell affiliated products or not.

Conflicts of Interest

As stated above, we agree with the proposed formulation that conflicts of interest should be resolved in a manner that prioritizes the interests of the client ahead of the interests of the firm and/or representative. However, this discussion highlights a serious flaw with the present consultation. Conflicts arise because human nature often dictates that we act in our own self-interest. For a representative, this could mean maximizing one's earnings. If the earnings incentive is removed, often the conflict disappears. As such, a discussion of conflicts of interest cannot reasonably be separated from a discussion of compensation and incentives, yet the Consultation Paper does just that. This separation ensures that the present consultation will not yield an optimal solution to the problem of conflicts of interest and we urge the CSA to bring issues of compensation and incentives into the present consultation.

Application to Advisers and Advising Representatives

The Targeted Reforms appear to us to be overbroad in their impact on advisers and advising representatives, as discussed above and we will not re-hash those concerns. In this section, our concern is primarily with the blurring of the adviser category and the meaning of certain parts of the Consultation Paper. Previously, we discussed the fact that some advising representatives are really discretionary dealing representatives in that they primarily engage in asset allocation for their clients using managed products to represent the asset classes. We distinguished those advising representatives from the true portfolio managers. Our concern is the application of the Targeted Reforms, especially the KYP and suitability proposals, to these portfolio managers. The uncertainty arises from the use of the word "investment product". In our opinion, an investment product is a product managed by an individual or firm for the benefit of another and that contains many investments. In contrast, an investment is a non-managed security, such as a stock or a bond. If the distinction between investment product and investment as we have stated herein is valid and within the contemplation of the Targeted Reforms, i.e. the proposals only relate to investment products, then we have no concern. However, to the extent that the CSA believes investments and investment products are one and the same, we have serious reservations from the perspective of an adviser. (This concern does not generally apply to dealers.)

Securities laws adequately address conflicts of interest as it relates to investments and, in our view, no further reform is needed. KYP obligations, such as creating a product list, would be problematic if investments were investment products as that would require an adviser to create a list of potential investments and impose a knowledge obligation on advising representatives of the firm with respect to those investments. That is not possible in a universe of thousands of investments. Portfolio managers typically apply screens to the universe of securities eligible for investment by their product and then engage in deeper analysis of the issuers that have passed the screen. To require anything different would turn portfolio management on its head and represent a significant departure from historical and international standards. We are unaware of any reason why that would be appropriate.

This issue is complicated by the discretionary dealing representative remaining in the advising representative registration category. We acknowledge that there are discretionary dealing representatives who make investments for their clients (as opposed to allocating assets to investment products). Dealing representatives with discretionary client authority who invest solely or substantially in managed products should be registered in a new category called "discretionary dealing representatives" and the Targeted Reforms should generally apply to those registrants. However, dealing representatives with discretionary client authority who generally do not invest in managed products should be registered as advising representatives (under current categorization). An additional discretionary category for dealing representatives may also be appropriate given that these representatives are a hybrid of dealing and advising representatives. The latter is more attractive, in our opinion, as these representatives should be subject to suitability obligations when investing on behalf of clients. One may conclude that such is not necessary if these individuals are subject to a fiduciary duty and we would accept that position as well.

<u>Sales Incentives and Practices</u>

The Consultation Paper specifically states that compensation arrangements are outside its scope. As we have stated earlier in this letter, this is a mistake that the CSA should rectify because conflicts of interest are typically motivated by compensation and remuneration considerations. It is not clear how conflicts of interest can be addressed meaningfully when compensation and remuneration considerations are not addressed.

Equally distressing, the Consultation Paper states that the CSA is "aware that there are sales practices and compensation arrangements that registrants engage in that are outside the scope of those specifically addressed in NI 81-105 that may give rise to the same types of conflicts of interest and could impact a registrant's ability to comply with their obligations to their clients." We are disturbed by this because, two paragraphs later the Consultation Paper defines what it means by sales practices and it is abundantly clear that, insofar as mutual funds are concerned, sales practices is a "closed system". In other words, if a practice is not permitted by NI 81-105, it is prohibited. Therefore, if the CSA is aware of practices that are not specifically permitted by NI 81-105, where is the enforcement? Make no mistake; we welcome enforcement in this area and we are mystified as to how, 18 years following the introduction of NI 81-105, there have been no enforcement cases. The result of that abdication of regulatory responsibility is that an increasing number of firms take a "detection risk" approach to compliance questions relating to sales practices and some firms do not consider non-compliance to be a risk.

We would like to see a comprehensive effort to address this issue and strict enforcement of NI 81-105. If the only way a representative can get remunerated is by a payment from a client or an embedded commission fully disclosed to the client under CRM2, most of the questionable sales practices will disappear as almost every one of them is tied into remuneration. The CSA should consult on non-remunerative sales practices to determine an appropriate solution. By non-remunerative, we mean threats to individual sponsorship by their firm based on sales metrics, threats to the viability of a representative's business by their firm generally, and other practices.

NI 81-105 currently permits non-cash business promotion activities, such as inviting a dealing representative out for dinner. These activities should not be prohibited or circumscribed further than they are at present because there is no evidence that this leads to undue influence and it is not part of a representative's remuneration.

We have come across many conflicting sales practices over the years but we have recently come across one that is non-remunerative and for which we have been unable to formulate a suggestion, other than that the practice should be prohibited through the regulatory public interest jurisdiction. In that case, a dealer affiliated with a fund manager has a process for generating fund facts documents in the point of sale context that is simpler for proprietary funds than third party funds; all it takes is one click (approx. 5 seconds) to complete the process for proprietary funds whereas it takes 5 minutes and multiple clicks to complete the process for third party funds. Representatives of that dealer have told us that this just makes it easier for them to sell proprietary funds so they have been moving their practice in that direction. This is simply wrong, contrary to the spirit of securities regulation yet perfectly legal under current legislation and regulation. This must be addressed.

Alternatives to Accomplish the Regulatory Goals

Throughout the foregoing sections, where we have criticized the Consultation Paper or the Targeted Reforms, we have sought to offer alternatives. In this section, we propose an alternative framework and summarize our earlier suggestions.

The foundation of our alternative approach is that where a common law or statutory fiduciary duty exists today, the Targeted Reforms should not apply as they are not necessary. We suspect that the provinces that object to a best interest standard have agreed to the Targeted Reforms on the basis that the former is a general statement whereas the latter is the specifics that flow from that general statement. That is, the Targeted Reforms are a way for those provinces to achieve a best interest standard without compromising on some of the legitimate concerns that they have raised with a best interest standard. In our view, if there is a best interest or fiduciary standard, the Targeted Reforms are not necessary, although we have no objection to Staff expressing their views on the regulatory obligations of a registrant. Therefore, where there is a fiduciary standard at common law, we propose that be enacted by statute as well to provide a clear signal to all of the nature of that particular client-registrant relationship. In our opinion, the registration categories of adviser, advising representative and associate advising representative would not be subject to the obligations set out in the Consultation Paper. We note that there is no history of complaints or abuse within these categories.

The registration categories of dealers and advisers should remain distinct. We would subdivide the dealing representative category and include the following as individual registration categories for individual dealing representatives and these titles would be required to be included on business cards:

- Discretionary Dealing Representative: where the representative engages in financial planning for the client and provides discretionary investment management, i.e. the representative invests in stocks and bonds on behalf of the client (note that if financial planning is not included, the individual would have to register as an advising representative);

- Discretionary Financial Planner: where the representative engages in financial planning for the client and provides discretionary asset allocation to the client using investment fund products;

- Financial Planner: where the representative engages in financial planning for the client and make investment recommendations to the client as part of that process;

- Investment Consultant: where the representative does not engage in financial planning for the client, although the representative is permitted to provide some financial planning advice, but the client primarily consults with the representative for investment ideas; and

- Sales Representative: where the representative sells proprietary mutual funds.[3]

In the first two categories, a full fiduciary duty would apply and, therefore, the enhancements included in the Targeted Reforms are not necessary. However, those enhancements seem to us to be consistent with what those categories of representatives do and, therefore, it should not be objectionable to apply the Targeted Reforms. Financial Planners should be subject to a best interest standard and the Targeted Reforms whereas Investment Consultants should be subject to limited KYC obligations and a best interest standard. To ensure that the category of Investment Consultant is not abused, these individuals would be required to enter into a contract with the client and the contract would set out specifically what services will be provided and will not be provided (based on services that a Financial Planner would provide). Sales Representatives would continue to be subject to a suitability standard.

The registration categories for advisers should not be changed, although we recommend changing “advising representative” to “portfolio manager”, which is a better understood term. We would not be averse to allowing such individuals to use the title “portfolio manager” or “investment counsellor” in dealing with the public, although we believe “investment counsellor” should be limited to dealings with individuals (including their holding companies or family trusts). As previously stated, we endorse the views of PMAC in this regard and recommend that the Targeted Reforms not apply to this category. In addition, as these categories are already subject to a fiduciary duty, a best interest standard should not be added.

Below is a summary of the recommendations and suggestions that we have made in this letter:

- The CSA/SROs should publish information about the performance of individual dealing and advising representatives to assist the public in evaluating the performance of their representative or take measures to persuade private enterprise to provide this service.

- A best interest standard should apply generally to non-discretionary client-registrant relationships in order to eliminate the expectation gap, although the CSA will have to specifically define what this means in each relationship.

- All registrants should be required to create an independent review committee to oversee their management of conflicts of interest, especially where the conflict is managed by a “control” approach. (An independent review committee is not necessary where the registrant seeks to avoid the conflicting activity.)

- CSA members must demonstrate a greater willingness to prohibit conduct that cannot be objectively justified rather than leaving it to registrants. The

[3] This proposal would require that firms that are not truly open architecture either become so in accordance with our recommendations elsewhere in this letter or cease representing themselves as such.

reality is, registrants rarely choose the path of avoidance in the face of conflicts.

- CSA members should enhance enforcement of sales practices and sales incentives, in the context of a best interest approach.

- To the extent titles become regulated, the CSA must embark on a public relations campaign to educate Canadians as to the meaning of each title and the services expected with each title.

- A dealing representative category must be created for dealing representatives that do not provide financial planning and the Targeted Reforms should be muted for that category. It would be mandatory for dealing representatives in this category – which we have called Investment Consultant, above – to enter into a contract with the client clearly setting out the services that the representative will provide and specifically stating which services will not be provided, based on the range of services that would be provided by a Financial Planner.

- Dealers should be required to identify themselves as providing open architecture or proprietary products only. There should be no other alternatives. Open architecture firms should be required to offer at least 10 non-proprietary products in each fund category in which they offer proprietary products, subject to quality standards consistent with the KYP-Firm proposal.

- The CSA or their legislative partners should consider an outright ban on the distribution of affiliated investment products.

- Prohibit indirect compensation or incentives that are designed to increase the sale of affiliated products. Incentive plans that allocate equity, incremental cash bonuses, or other special incentives (like exotic trips) to representative agents that disproportionately invest their clients in proprietary products would not be allowed. Rather, incentive plans would treat all representatives the same way whether the sell affiliated products or not.

- The present consultation should be expanded to include all forms of compensation and remuneration. We acknowledge that the CSA will be consulting on banning embedded compensation but, in our view, that still excludes many forms of compensation and remuneration that lead to questionable behaviour.

Thank you for providing us with the opportunity to comment on this important initiative. We would be pleased to discuss our comments further should you so desire.

Yours very truly,

Invesco Canada Ltd.

Eric Adelson
Senior Vice President and Head of Legal – Canada

APPENDIX

Responses to Questions Posed in the Consultation Paper

CONFLICTS OF INTEREST

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

   Effective securities regulation must incorporate a blend of principles and prescriptive rules. The general approach, which we take to mean that registrants must respond to material conflicts of interest in a manner that prioritizes the interests of the client ahead of the interests of the firm and/or representative is absolutely the correct approach. In our opinion, it is fairly clear.

2. **Is the requirement to respond to conflicts "in a manner that prioritizes the interest of the client ahead of the interests of the firm and/or representative" clear enough to provide a meaningful code of conduct? If not, how could the requirement be clarified?**

   We believe that the principled statement is sufficient. Whether or not the client's interest is prioritized is more a question of fact than of judgment and, therefore, compliance with this principle is verifiable. Further elaboration of this concept may be appropriate in the Companion Policy. We would appreciate it if the CSA would state in the Companion Policy that where a proposed action by the registrant is not contrary to the best interests of the client, i.e. if it is neutral, then it would meet the standard. This is often how NI 81-107 has been applied during its decade of existence and we see no reason to not apply a similar standard to conflicts of interest generally.

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

   From a conflict perspective, we do not believe this would present any particular challenges, although we defer to the comments of restricted registrants in that regard.

KNOW YOUR CLIENT

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

   We do not believe that all registrants have the proficiency to understand their client's basic tax position, although we would expect this to be rare, given that one of the ways in which a registrant adds value is by ensuring the client is invested in the right type of account from a tax perspective.

   Requiring collection of this information will raise issues for clients, not all of whom wish to share this very personal information and will not understand why it is important for the services sought. Please refer to our proposal regarding the categories of registration. We do not believe clients of advisers would want to provide this information, nor do we think it is necessary.

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

   A prescribed form would simplify compliance with these obligations, although registrants should have the ability, based on their category of registration and the services they offer to the client, to refrain from completing certain sections of the form.

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

   We do not believe this countersignature should be mandatory although we would view a supervisor's signing of the form to be a good practice. In our view, the registrant's compliance department should be reviewing the form and we believe compliance review is a better control than supervisory review since the supervisor may have the same business incentives as the representative and it is these incentives which often lead to questionable practices.

KNOW YOUR PRODUCT - REPRESENTATIVE

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

   The general approach is appropriate; however, elements of it present an impossible standard. First, the proposed requirement for a representative to "understand and consider the impact on the performance of the product of all fees, costs and charges connected to the product, the client's account and the product and account investment strategy" is a standard almost impossible to meet. A simple requirement to consider fees and expenses would be sufficient. Second, for larger firms with extensive product lists, it is not reasonable to expect a representative to consider each of these items for each product offered for each investment decision made by a client. We suspect that is not the intention of this proposal and, if so, the CSA should clarify what it means. We did not find the guidance on this point to be particularly helpful.

KNOW YOUR PRODUCT - FIRM

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

   We do not agree with the intended outcome as it leaves open the ability for a dealer to manipulate the requirement and offer a very limited set of alternatives to proprietary products. Please refer to our discussion of this topic on pages 15-17 of this letter.

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

   The manner prescribed to select products could be improved as we have set forth on page 15 of this letter; however, as discussed therein we do not believe that the outcome will be as the CSA intends. In many cases, we would expect the outcome to be the opposite of that which is intended.

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

Please refer to our discussion on pages 15 and 16 of this letter.

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

These requirements will raise immense challenges for any firm that distributes third-party funds because it imposes onerous KYP requirements that are not present today. Firms will decide to reduce the number of companies with whom they deal in order to simplify their ability to meet these requirements. We would expect some firms that currently offer third-party funds to cease to do so in order to simplify their operations.

12. Will this requirement cause any unintended consequences? For example, could this requirement result in firms offering fewer products? Could it result in firms offering more products?

This requirement will cause the unintended consequence enumerated in the question and also result in more firms adopting a purely proprietary model. In our opinion, these are negative outcomes based on the findings of the Cumming Report that we have highlighted in this letter. While anything is theoretically possible, it is extremely unlikely that any firm will offer more products as a result of this requirement. We have discussed this matter with many dealer firms and all of them have indicated that this requirement will lead to a reduction in the number of fund companies with whom they deal. On average, we have been advised that dealers will offer the products of only 3 to 6 fund companies as a result of this requirement.

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

These requirements create a clear incentive for firms to stop offering non-proprietary products as doing so will result in considerable cost savings by eliminating the need for significant resources to be allocated to the product shelf process.

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

We have always believed in choice for investors and we believe in choice for entrepreneurs as well. Firms should be free to decide whether or not they wish to offer proprietary or non-proprietary products or both. However, they should be subject to the standards that we have discussed on pages 15 and 16 of this letter in doing so.

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

While the categorization is useful, the nomenclature suggested by the CSA will render it ineffective. If I ask my mother whether she thinks there are issues with proprietary products, she will look at me as if I am talking in a foreign language. The average retail investor simply does not understand the terminology. If you told the investor that the firm only offers products that it manages and does not offer products offered by other managers – and then lists a few of the better known managers to give context to the statement in the desperate hope that the client will understand – that might be more effective.

As discussed on page 15 of this letter, we believe the distinctions should be between “proprietary” and “open architecture”, but any classification system will not be helpful to retail investors unless the CSA engages in a public relations exercise to ensure investors understand the distinction.

SUITABILITY

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

This is the most difficult question posed by the CSA in this consultation and is probably the most controversial concept being discussed as it goes to the heart of two questions (1) what is the purpose of securities regulation and (2) what is the purpose of a dealing representative. There are certainly models where it would be appropriate for an advisor to consider other basic financial strategies. Drawing on the distinctions we drew on page 19 of this letter, we do not believe that dealing representatives in the category of “Investment Consultant” should have this obligation. Those with the designation “Financial Planner” should. The question is much murkier with the other two categories we have suggested because the client is really looking for someone with investment expertise, which suggests that they want their money invested, even if that might not be the best use of their money.

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

This is an impossible standard to meet and should be removed entirely. With the passage of time, it will become impossible for an arbiter to determine if that standard was met at the time of investment and, inevitably, the actual investment result will be the determining factor. We do not believe this is salvageable.

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

We believe that there have been enough SRO decisions that provide guidance on suitability such that specific requirements are not necessary.

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

The challenge is in the impracticality. It is clear from other elements of securities law that the decision to hold a security is an ongoing one so, in essence, there is a continuous instruction to hold the security. This is not what we believe the intent of this proposal is and we believe that the intent is to capture explicit, not implicit, instructions. Should the CSA proceed with this proposal, we recommend that this be made clear by using the term "explicit instruction". It is necessary to consider when an instruction to hold might be given in order to properly answer this question. A dealing representative may call a client with a recommendation to sell a particular security. If the client opts not to take the advice, is that an instruction to hold? If so, the dealing representative would have had to make a suitability assessment in the context of the advice being given, i.e. the advice to sell one security and purchase another. A dealing representative may conduct a portfolio review with the client and, in doing so, recommend maintaining various portfolio positions. If the recommendation is accepted, is that an instruction to hold? In doing a proper portfolio review, a suitability assessment would necessarily be performed by the dealing representative. We struggle to find a situation where an instruction to hold, beyond the foregoing, is given and where applicable rules relating to suitability would not apply. That is, anytime a dealing representative makes a recommendation or accepts an instruction, it is our understanding that a suitability assessment is required. Where this is not tied to a particular transaction, it is a challenge to understand what is required. As such, we believe the inclusion of "hold" is unnecessary and confusing. A client simply does not call a dealing representative to instruct them to hold. The hold instruction necessarily flows from a recommendation from the dealing representative. Given the "every 12 months" requirement to review suitability, we do not believe that a specific assessment for a hold instruction adds value, yet it incurs a cost (time, inconvenience) which is unnecessary and, therefore, we believe that the CSA should not proceed with this proposal.

20. Will the requirement to perform a suitability analysis at least once every 12 months raise challenges for specific registrant categories or business models? For example, a client may only have a transactional relationship with a firm. In such cases, what would be a reasonable approach to determining whether a firm should perform ongoing suitability assessments?

We note that in posing this question, this is the first time in the Consultation Paper that the CSA explicitly acknowledges that business models that do not involve full financial planning are acceptable. We strongly urge the CSA to make this clear in any rule proposals.

Referring to our proposed registration categories on page 19 of this letter, the requirement to perform a suitability analysis every 12 months is appropriate for all categories other than Investment Consultant. We would anticipate a range of services being provided by Investment Consultants, based on mutual agreements with the client, and an annual suitability review will be appropriate in most of those relationships.

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

We disagree that the client should receive a copy of the representative's analysis. The client must be given the target rate of return and a summary of investment needs and objectives and, of course, the representative should discuss how that target was determined, but it is not clear what the merits of providing the analysis are. It has become popular among industry commenters, especially Neil Gross, the Executive Director of FAIR, to compare financial advice with medical advice. While we strongly disagree with the merits of that analogy, we note that a doctor often provides advice to a patient without providing a patient with a written report explaining how they arrived at that advice. It is not clear why dealing representatives should be held to a higher standard than doctors.

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

The suitability review set forth in the Target Reforms appears to be extremely detailed and onerous as any recommendation or instruction relating to a single security would trigger a suitability review of the entire portfolio. It is difficult to imagine the circumstances where one transaction has an effect over an entire portfolio such that a full suitability review is warranted as things do not change that frequently. The third trigger, which includes 5 different events that lead to a suitability review appear to capture the types of events that would warrant a suitability review and that should suffice, even in the absence of a full blown review on each recommendation or instruction. As such, we recommend that the first two bullet points be revised so that such events do not trigger a suitability review of the entire portfolio. Our concern is twofold. First, it would appear that this proposal would have representatives spending an undue amount of time performing suitability reviews for little apparent benefit. This could lead to representatives taking on fewer clients. We anticipate that the impact of the Targeted Reforms would be a reduction in the number of representatives generally and we are concerned that the impact, in that regard, would be too great. Second, larger dealers will presumably find a way to automate this function and we are not convinced that such would lead to better outcomes for clients as there is little evidence of that. It would also eliminate the human element from these reviews thus reducing the value of the KYC-representative proposals contained in the Targeted Reforms.

RELATIONSHIP DISCLOSURE

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

When the Relationship Disclosure Document ("RDD") was first proposed in the NI 31-103 proposal, we were supportive of that because it made sense to provide a short document, easy to read, in plain language, to the client that describes the relationship with the dealer and the representative and their respective obligations. However, the RDD has become something quite different. RDDs have evolved into a drop bucket for all disclosures that are connected in any way to the dealer-client relationship. Unfortunately, that has created a document that spans 12-40 pages, depending on the dealer. The CSA is aware that retail investors do not read documents of that length – otherwise why would we have replaced a simplified prospectus with a 2 page fund facts document – yet disclosure requirements are regularly added. This makes little sense and we caution against adding further requirements to this document.

The information listed for a restricted dealer's relationship is the right type of information that should be communicated to a client and that a client needs to understand prior to engaging with a restricted dealer. We believe a 1-2 page plain language document would accomplish this and have a better chance of being absorbed by the client. Furthermore, the CSA should consider dividing the RDD into a series of 1-2 page documents, each with a discrete topic. While it amounts to the same reading by a client, we believe people absorb information better in these shorter spurts, the length of the current RDD and other long documents being an intimidating factor to those who are not highly literate in financial matters.

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

As discussed earlier in this letter, we believe the proposed disclosure requirement will be completely useless and ineffective. We do not believe this to be a viable response to the greatest conflict in retail wealth management. We have proposed alternatives elsewhere in this letter. The CSA should ask themselves how an informed investor should have confidence in the regulatory framework, faced with demonstrable proof as to the magnitude of this conflict and clear evidence that disclosure is an ineffective strategy to address conflict, when the proposal is a disclosure solution with no structural solutions at all. It seems to us that Canadian banks and insurance companies are the only beneficiaries and this does little to improve investor confidence in capital markets.

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

We do not know what "workable" means in this context. If the CSA proposes something, l registrants find a way to make it work regardless of their views on the merits of the proposal.

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

It is not clear what additional disclosure would apply in these cases. The disclosure proposed under this aspect of the Targeted Reforms seems intended to convey to clients what their restricted dealer cannot offer that an investment dealer can. Therefore, additional disclosure is not necessary for investment dealers, who have the widest latitude to offer products under securities regulation. Consistent with our views expressed earlier in this letter, we do not believe there is any benefit for clients of portfolio managers to receive additional disclosure.

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

There are a finite number of relationship models that are acceptable to the CSA. The only way a requirement like this can truly be effective is if the CSA writes the document for each form of language, using plain language experts, and prescribes the form based on the type of relationship. Guidance in and of itself will be abused.

PROFICIENCY

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

The proficiency requirements must be adjusted to ensure that anyone who satisfies only the minimum requirements will be able to fulfill their duties prescribed by securities legislation. We note that the proposals referred to as Targeted Reforms place significant enhanced burdens on dealing representatives. It is not clear to us that the learning required to pass the prescribed exams provides the full range of that knowledge at a level that meets regulatory expectations. However, that is the exercise that must be undertaken by or on behalf of the CSA in order to properly answer this question.

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

No. It is not clear what the utility of such would be. The responsibilities for CCOs and UDPs are quite clear. It is not realistic to assume that either will have the proficiency of a dealing representative and it is not clear to us how that would enable them to be more effective in their roles.

TITLES

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

In light of the 48 titles found in the OSC Mystery Shopping exercise, stricter regulation would raise some challenges. We do not view that, however, as a reasonable basis to not strictly regulate titles, given the possible benefits of clarity and transparency for clients.

31. Do you prefer any of the proposed alternatives or do you have another suggestion, other than the status quo, to address the concern with client confusion around representatives' roles and responsibilities?

Please refer to our discussion on page 19 of this letter, wherein we propose a set of titles for dealing representatives, and on page 20 of this letter where we discuss titles for advising representatives.

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

A dually licensed representative could easily fit within the categories we have proposed on page 19 of this letter.

DESIGNATIONS

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

The main issues with designations are the potential to mislead the public and for use of designations to become a competitive issue among dealing representatives. This could lead to a proliferation of designations not understood by the public. We note that there are several designations for financial planners, yet the public is not able to distinguish among them. This is an unacceptable situation. In our opinion, any designation must be approved by the CSA and the firm should have policies and procedures governing the use of the designation. For example, the CSA would have to specifically authorize the use of the CFA designation, but the firm would decide who can display that designation and under what circumstances.

ROLE OF UDP AND CCO

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

While helpful, we believe that the proposed clarifying reforms are consistent with typical UDP and CCO practices. As noted in our letter, we believe that these clarifications will help to reinforce the importance of the UDP setting a tone from the top that is consistent with a compliant organization. We do not see a similar benefit with the CCO clarifications, but we do not see any harm in that proposal either.

STATUTORY FIDUCIARY DUTY WHEN CLIENT GRANTS DISCRETIONARY AUTHORITY

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

While we cannot comment on Quebec, the remaining provinces and territories listed next to this question all operate under the common law and, therefore, a fiduciary duty exists when the client grants discretionary authority. While not necessary, as discussed on page 10 of this letter, we believe there would be benefits to codifying this duty.

PART 8 – PROPOSED FRAMEWORK FOR A REGULATORY BEST INTEREST STANDARD

36. Please indicate whether a regulatory best interest standard would be required or beneficial, over and above the proposed targeted reforms, to address the identified regulatory concerns.

Please refer to our discussion on page 10 of this letter. In summary, we believe that a best interest standard would be helpful as an interpretive guide.

37. Please indicate whether you agree or disagree with any of the points raised in support of, or against, the introduction of a regulatory best interest standard and explain why.

Points in Support of Best Interest Standard

- Governing principal: as noted above, we agree with this rationale.

- Closes the expectations gap: We are neutral on this as a rationale. Given that an expectations gap exists, the solution is to either modify expectations of clients or increase the standard. In and of itself, therefore, closing the gap is a weak rationale for reform.
- More objective, client-centered standard of care: The criticism with the current suitability standard is that it is overly objective given the broad range of advice that falls within suitability and that often misses important factors that are particular to the client. A best interest standard is not, in our view, particularly objective.
- A principle-based approach allows greater flexibility for registrants: We agree with this rationale. A guiding principle is always helpful in the face of uncertainty. It is clear that the CSA expects registrants to act in a manner and at a level that goes beyond the prescriptions of securities laws and this type of guiding principle is helpful in that regard.
- Investors responsible for investing to fund their retirement: Please see our discussion on page 5 of this letter relating to the concern that clients are not getting the outcome that the securities regulatory system is designed to give them, as that raises the same issues as this rationale.
- Mitigates client-registrant information gap and validates clients' significant trust in registrants. A standard of care cannot realistically solve a plethora of problems, especially given the general lack of private enforcement in this area. That said, in the face of information asymmetry, one solution is to place a higher standard of care on the party that has greater access to information. Therefore, we believe that a best interest standard could effectively mitigate the information asymmetry inherent in registrant-client relationships.
- Immediate impact. We are confused by this as a rationale as we do not believe this would have an immediate impact as the standard would require judicial interpretation to be truly effective.
- Assists in professionalization of advisers, dealers and representatives. In our opinion, this is a weak attempt at professionalization. If that is the goal, then we recommend that legislation be enacted or regulation promulgated that professionalizes advisers, dealers and representatives directly. There are many examples of this in Canadian legislation.
- Aligns with conduct expectations of key international and domestic standard setters. We do not view this as a reason for action as discussed on page 3 of this letter. It seems to us that this is analogous to the typical exchange between a parent and child:

  Parent: "Why did you do X?"

  Kid: "Because Jimmy did"

  Parent: "And if Jimmy jumped off a bridge, would you?"

  The proper answer is "no". We suspect that there was a desire to get to 10 reasons so this reason was added. Unfortunately, it weakens some of the strong reasons for a best interest standard as it makes proponents look weak. We would have preferred to see Ontario and New Brunswick focus on the three good reasons we have highlighted as those, in our view, present a good reason to proceed.
- Fosters confidence and trust in capital markets and strengthens investor protection. We disagree with this statement. There is no evidence to support the notion that these reforms

will lead those who do not invest in securities to invest. We challenge Ontario and New Brunswick to provide some basis for this viewpoint. The reality is that if the Targeted Reforms are adopted, it would be extremely difficult for dealing representatives to maintain the same number of clients as they do today so, absent more dealing representatives, there will be a drop in supply of financial advice. This will also lead some dealing representatives to exit the industry since they will likely make less money if they have fewer clients. Furthermore, as the advice industry professionalizes (which will happen eventually regardless of regulatory action), one would expect more dealing representatives to leave the industry on the basis of proficiency. Professionalism leads to proficiency standards typically above the standards in place prior to professionalism. We would expect the same outcome here, especially considering that proficiency is on the list of reforms contained in the Consultation Paper. If the supply of advice declines, what exactly is it that the CSA believes will send new investors to the market and prod current investors to increase their investments?

Points Raised As Concerns With Best Interest Standard

- Exacerbates expectation gaps due to different business models. We disagree. If all clients believe that registrants are required to act in their best interests and they are not, and the regulators believe that registrants should be acting in their clients' best interests, then it is not clear to us how implementing a best interest standard exacerbates the expectations gap. We agree that it would be more effective with other measures that are inherently conflictual but which would be permitted under the Targeted Reforms, but we believe any expectations gap is easily managed.

- Creates legal uncertainty. While it is possible that a best interest standard will create legal uncertainty, we disagree with this being a reason not to proceed as any reform effort inherently creates legal uncertainty until it is judicially interpreted.

- Effectiveness of CRM2 and POS should be measured before a RBIS is considered. We agree that existing reforms should be given more time before their effectiveness can be determined and additional reforms proposed. However, we do not believe that imposing a best interest standard would negate any impacts of CRM2 and POS.

- Other jurisdictions that have introduced RBIS have done so in conjunction with reform of compensation models. As discussed in various parts of this letter, we understand and endorse this concern. Ultimately, we do not believe that a best interest standard, divorced from issues of compensation, will be effective.

- RBIS may impact interpretation of existing fiduciary standards for certain registrants. We disagree with this point. There is no reason to believe that courts would alter their interpretation of fiduciary standards as a result of a statutory requirement. Canadian courts have not historically thrown out the common law once a common law principle has been legislatively enacted. It is not clear to what this concern truly relates and we ask the provinces that have stated this as an objection to a best interest standard to fully explain their concern. Based on what we have read in the Consultation Paper, we simply see no basis at all for this concern.

38. Please indicate whether there are any other key arguments in support of, or against, the introduction of a regulatory best interest standard that have not been identified above.

The two sets of jurisdictions have, in our opinion, created a rather comprehensive list of argument in support of and against a best interest standard.

PART 9 – IMPACT ON INVESTORS, REGISTRANTS AND CAPITAL MARKETS

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

At this stage, the proposed targeted reforms remain rather undeveloped and, as such, it is difficult to put a price tag on compliance. In addition, different registration categories will have different costs. We will address those categories in which we are registered:

Investment Fund Manager: Direct compliance costs are presumably nil as the only aspect of the targeted reforms that directly implicate investment fund managers are the proposals relating to the roles of the UDP and CCO, which come with no cost. We are concerned with the compliance costs for a dealer, given our dependence on them to distribute our products but we leave it to dealers to comment on that.

Adviser: As a portfolio manager, we deal exclusively with pooled investments, although we are working on various separately managed account initiatives. As written, we expect the compliance costs to be significant since advisers simply do not work in the way envisioned by the Targeted Reforms. If investments are distinguished from investment products, compliance costs for us as a portfolio manager would be fairly low. Otherwise, we would probably need to increase the size of each investment team and that would entail an annual cost in the millions of dollars. If our comments on advisers are accepted, then costs would be nil.

Exempt Market Dealer: We are an exempt market dealer for purposes of our institutional business. In that context, we do not deal with individuals and our clients, typically, are permitted clients. Notwithstanding the carve-outs for suitability and KYC, as these only apply to investments in investment funds, we would expect a significant increase in costs as we would need additional personnel and systems. As such, we estimate that cost to be at least $500,000 initially and slightly less on an annual basis.

Mutual fund dealer: We are registered as a mutual fund dealer under a restricted license, the restriction being that we can only deal with clients who are present or former employees of Invesco Canada and we can act as a dealer for our funds' own fund-of-fund trades, for seed capital investments, and any acts in furtherance of a trade (such as marketing and promotions). A cost burden would arise for our mutual fund dealer in how they deal with our employee/clients. We would have to increase the personnel of that department to address the increased compliance requirements and we would have likely have to invest in additional information systems. We would estimate costs in this regard to be at least $500,000 initially and annually.

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

Securities regulation should not be an outcomes-based endeavor in the sense that regulators should not craft regulation in order to achieve specific outcomes for investors. It is clear that the purposes of the Securities Act have nothing to do with outcomes. Therefore, we think this question is inappropriate and somewhat deceptive as a response to the direct question could be construed as an endorsement of an expansion of the purpose of securities regulation beyond what is provided in the governing statute of every CSA member. We have no wish to support that.

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

(i) proposed targeted reforms?

The current compliance system of most registrants is based on current regulatory requirements. The targeted reforms are significantly more onerous, therefore, implementation is a serious challenge. When new reforms are implemented, existing personnel of a registrant must be pulled off other projects resulting in a temporary decline in customer service. The first challenge will be in determining what gaps in your compliance and operational systems the Targeted Reforms will create and then determining how to close those gaps. This will take much analysis and require registrants to engage outside consultants, which comes at a significant cost. Overall, the Targeted Reforms will require enhancements to compliance systems and oversight, thus requiring investments in technology and an expansion of compliance department headcount. This also comes with significant cost. Given the KYP – Firm proposals, firms will need to re-think how they go about approving products for the product shelf. This, too, will require thought and investment. The challenge raised by the foregoing is that some registrants, especially dealers, are already facing financial challenges and the implementation of the Targeted Reforms will further drain resources, which may lead to reduced service.

With every challenge comes an opportunity. Given the breadth of the KYP-Firm proposals, however, it is not at all clear what opportunities will arise for independent investment management firms. In theory, if our funds perform well, we should have a plethora of opportunity but considering that most dealers distribute proprietary product and, as discussed elsewhere in this letter the likely impact of the Targeted Reforms is to favour further distribution of such product at the expense of the third party product, there may well be no opportunities for independent firms.

(ii) a regulatory best interest standard?

The challenges for a regulatory best interest standard ought to be similar as those for Targeted Reforms since they seem to go hand in hand. If both sets of reforms are adopted, we do not expect there to be incremental concerns with the best interest standard. If only the latter is adopted, we would expect that, for the most part, registrants would look to the Targeted Reforms as an expression by the CSA of its expectations regarding behavior under a best interest standard.

That said, a best interest standard, in theory, provides an opportunity for independent firms to have their products offered on a level playing field.

42. How might the proposals impact existing business models? If significant impact is predicted, will other (new or pre-existing) business models gain more prominence?

For independent dealers, we would expect that the impact of the proposals will be to reduce the range of clients with whom they deal. We would not expect clients with under $100,000 invested through the dealer to be profitable for the dealer, with the cut-off level of assets likely being higher. As a result, those dealers will likely cut staff. Those who remain will struggle given the limited number of High Net Worth Canadians and the increasing number of firms chasing that business. It is not inconceivable that, over time, an equilibrium develops and clients realize that independent dealers may provide the least biased advice and then these businesses could grow. However, history suggests that such an evolution is slow and survival will be a challenge during that period.

The bank-owned integrated dealers will continue to grow and to thrive. The banks are big and strong enough that they can go through the exercise of building a third party shelf, which is an important value proposition for their IIROC member dealer firms. Small accounts will continue to be diverted to the bank branches which will end the illusion of open architecture offering proprietary product only and some accounts will choose to switch to the bank-owned robo platforms, which we would expect to proliferate, at least in the short term.

Other integrated dealers will face more difficulties and the choice of open architecture versus proprietary only will be more difficult. In our view, they face a more uncertain future, although we would expect similar client segmentation to that expressed above for the bank-owned firms. The problem these dealers will face is the lower end of the market will simply not exist for them. Whether that cut off is $100,000 in investable assets or $250,000 remains to be seen.

Clearly, the CSA expects robo platforms to proliferate and absorb those parts of the wealth management market that will be abandoned by more traditional dealers. Whether or not this turns out well for Canadians remains to be seen. We note that the single business expense for a robo platform is the costs incurred to attract clients. If one thinks about that conceptually, it is not hard to imagine an explosion of conflicts as robo platforms will need to grow at extremely high rates to survive or to be viable to be bought by competitors. It is not hard to imagine that clients will be shifted among robo platforms as some sort of economic equilibrium takes place within the robo market. While the end result might be acceptable, the journey there will be very disruptive for clients.

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

We believe the proposals go plenty far in enhancing the obligations of dealers, advisers and their representatives toward their clients.

CONFLICTS OF INTEREST (GUIDANCE)

44. Is it appropriate that disclosure by firms be the primary tool to respond to a conflict of interest between such firms and their institutional clients?

Disclosure is appropriate as the primary tool to respond to conflicts between the firm and institutional clients. Unlike typical retail clients, institutional clients not only read everything they can get their hands on, but they also understand it. We also know from our experience in dealing with institutional clients that if they do not understand something (a) they avoid it, to the detriment of the registered firm who wishes to deal with them or (b) they ask and keep asking until they receive a satisfactory response. We do not believe the studies that show conflicted individuals acting in an emboldened manner following disclosure apply to institutional clients, most of whom monitor the registered firm's activities closely. As such, disclosure is appropriate in the circumstances.

45. Are there other specific situations that should be identified where disclosure could be used as the primary tool by firms in responding to certain conflicts of interests?

We are aware of no other situations where disclosure is the appropriate response to a conflict of interest, especially when the conflict of interest is with an individual retail investor.

CONFLICTS OF INTEREST (GUIDANCE – INSTITUTIONAL)

46. Is this definition of "institutional client" appropriate for its proposed use in the Companion Policy? For example: (i) where financial thresholds are referenced, is $100 million an appropriate threshold?; (ii) is the differential treatment of institutional clients articulated in the Companion Policy appropriate?; and (iii) does the introduction of the "institutional client" concept, and associated differential treatment, create excessive complexity in the application and enforcement of the conflicts provisions under securities legislation? If not, please explain and, if applicable, provide alternative formulations.

Please see our response on page 13 of this letter. We are perplexed as to why the CSA believes this definition is required or necessary and are disappointed that no explanation has been provided.

Subquestion (i): This question asks whether $100 million is an appropriate threshold yet the Consultation Paper does not seek to justify this number at all. Why did the CSA choose $100 million over $5 million, $10 million, $25 million? It is up to the CSA to justify its decision and then commenters to offer their views. We have responded in this way as we simply do not understand why any definition, beyond "non-individual permitted client" is necessary, nor do we understand why these provisions would only apply to investments in investment funds and not any other investment made by these clients. As we've stated, the choice of investment vehicle (collective investment or separate account) is the last step in the process and, therefore, waivers of requirements based on the investment type are not helpful. We do not understand the CSA's position on this point and urge them to engage institutional investors directly.

Subquestion (ii): The proposed Companion Policy merely states that there will be differential treatment without explaining why. As such, it is difficult to respond to this question. We suspect that the question is really whether the institutional carve-out is appropriate and while we agree that a carve-out is appropriate, that which is proposed is far too limiting for the reasons provided on page 13 of this letter.

Subquestion (iii): The addition of a third definition certainly creates excessive complexity for no apparent good reason. We have discussed this on page 13 of this letter. Firms set up for an institutional business will have challenges that do not exist today if they are forced to treat some institutional clients in one fashion and others in a different fashion, based on asset size. Effectively, firms will have to take on additional obligations or segregate the two lines of business in a way that has not been previously contemplated. While we do not reject change, we seek justifiable change and it does not appear that the CSA has made any attempt to justify this proposed change. We believe we have provided justification to revise the current rules so that the carve-out applies to not only investment funds, but all investments by institutional clients.

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

Replacing “institutional client” with or defining it as “permitted clients who are not individuals” would be infinitely better than the institutional client definition as proposed.

CONFLICTS OF INTEREST (GUIDANCE – SALES PRACTICES)

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

We are not entirely certain as to what “specific examples” the question refers since the section “Sales Practices” does not list any examples. It is our understanding that the OSC, at least, is well aware of many questionable practices in this space.

We have seen many sales practices that are questionable. While most have a financial element to them and, therefore, are clearly contrary to NI 81-105 (which, unfortunately, only applies to mutual funds and not all activities carried out by dealers and representatives), we recently came across one that was non-financial for the representative. The dealer implemented of Point of Sale Reforms with system solutions that make it cumbersome to comply with the requirements when the representative sells third party funds (i.e. multiple steps required) but make it simple to sell proprietary funds (i.e. one click and you are done); representatives of such dealers have advised Invesco that notwithstanding better performance on our products and better risk metrics, they will move their business to the proprietary product due to simplicity.

There are many sales practices of a direct or indirect financial nature that exist and that, in our view, are contrary to the spirit, if not the letter, of NI 81-105. It is our understanding that CSA staff are aware of these practices.

49. Are specific prohibitions and limitations on sales practices, such as those found in NI 81-105, appropriate for products outside of the mutual fund context? Is guidance in this area sufficient?

It has never been clear to us why sales practices regulation was limited to mutual funds only in the first place. As the CSA is well aware, when a rule is implemented that contains restrictions, intelligent people will find ways to continue their practices within the confines of the rule and often end up succeeding despite the best efforts of regulators. If mutual fund sales practices are made more restrictive, then the dealer simply moves to a separately managed account where there are no restrictions whatsoever and the client is led to believe this is an independent product. We strongly believe that these rules are important to protect retail investors, not just retail mutual fund investors and, accordingly, NI 81-105 or an equivalent instrument must be created for the entire retail sector and absolutely must be enforced aggressively. Unfortunately, there is no evidence that suggests that the SROs are enforcing NI 81-105. As such, we are left to conclude that continued delegation of this responsibility to the SROs will be ineffective.

50. Are limitations on the use of sales practices more relevant to the distribution of certain types of products, such as pooled investment vehicles, or should they be considered more generally for all types of products?

For purposes of this response, we assume by "pooled investment vehicle" the CSA intends to cover any pooled investment, whether in the form of a mutual fund, pooled fund, ETF, limited partnership, etc. As we've noted elsewhere, often choice of investment vehicle comes at the end of the process between a representative and a client, especially an institutional client. Therefore, it remains unclear how limited sales practices regulation to a product makes any sense at all. It ignores a vast swatch of the retail wealth management industry. We note that it is the same individual who sells a mutual fund and a separately managed account at a dealer, or a linked note or other managed investment. Therefore, it follows the regulation of sales practices has to apply to the relationship and not the product. By applying it to the product, the CSA has invited creative people to devise new product types that would be uncovered by regulation covering a specific product type and the creative people are currently winning this battle.

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

If the CSA is serious about the regulation of conflicts of interest then it has to eradicate any and all incentives for a representative to sell any particular product. The way to do that is rather simple. The only compensation that a representative is entitled to is that paid by the client, whether directly or indirectly in the form of embedded compensation fully disclosed to the client. (Note our earlier comment that the client and representative should agree to an overall fee but once that fee is agreed, whether it is paid by the client directly or through embedded commissions fully disclosed is or ought to be irrelevant.) Incentives designed to increase sales of any particular product, such as proprietary products over third party products, should be banned.

52. What type of disclosure should be required for sales practices involving the distribution of securities that are not those of a publicly offered mutual fund, which are already subject to specific disclosure requirements?

Publicly offered securities are distributed by way of a prospectus that contains full, true and plain disclosure. We assume that is what the CSA is referring to in this question. We are not clear as to what the disclosure document has to do with sales practices and we do not believe that sales practices disclosure for mutual funds is at all effective. Sales practices disclosure is contained in the simplified prospectus of the fund but not in the Fund Facts Document. We note this point since the CSA has determined that no one reads a simplified prospectus of a mutual fund and, therefore, replaced delivery of that document with delivery of a Fund Facts Document. As such, while publicly offered mutual funds are subject to specific disclosure documents, to think that those benefit investors is misguided at best, delusional at worst. As the CSA has noted in the Consultation Paper and as we have quoted earlier in this letter, disclosure is simply an ineffective mitigation strategy for conflicts of interest.

53. Should further guidance be provided regarding specific sales practices and how they should be evaluated in light of a registrant's general duties to his/her/its clients? If so, please provide detailed examples.

We believe that the totality of our responses to the preceding 5 questions and our discussion on pages 17 and 18 of this letter fully responds to this question.

KNOW YOUR CLIENT (GUIDANCE)

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

The extent to which tax information is necessary is, in our opinion, slightly overblown. At lower asset levels, most clients do not engage in sophisticated tax planning and tax strategies are pretty basic, such that tax information is rarely necessary. At higher asset levels, clients generally employ tax professionals to assist with tax planning and do not use dealer representatives of this purpose. Between those two, however, there is the ability for a representative to add value to the client with tax planning. In those situations, some basic information should be provided. Making this a mandatory requirement, however, is inappropriate given the broad range of clients who do not require this service or who do not use this service.

We note that tax information is highly personal and confidential and individuals are reluctant to share this information unless absolutely necessary. With the cyber-threats ever present in our society and the infiltration of information systems and pilfering of personal information, a requirement to provide this type of information must be carefully considered and, in this instance, on balance a mandatory requirement is inappropriate.

55. To what extent should a representative be allowed to open a new client account or move forward with a securities transaction if he or she is missing some or all of the client's KYC information? Should there be certain minimum elements of the KYC information that must be provided by the client without which a representative cannot open an account or process a securities transaction?

We do not believe there should be issues with simply opening an account although proceeding with a transaction is obviously directly tied into collection of appropriate KYC. The minimum information required should vary based on the nature of the relationship.

The information necessary is directly related to the type of relationship the registrant has with the client. For a financial planning relationship, much of the information proposed appears to be necessary or desirable and it would be extremely important for a representative to understand the investment needs and objectives, financial circumstances and risk profile of the client. As one moves down the spectrum away from this type of relationship, less information is required; the items noted above are still necessary but less depth of information ought to be required.

In our opinion, a client should be permitted to waive this requirement. Dealers should be required to have policies and procedures to ensure that this waiver is not abused. For example, if a client waives these requirements more than once, the compliance officer or ombudsman of the dealer should reach out to the client to ensure there has been no undue influence regarding the waiver.

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

We believe additional guidance is necessary, although we are not in a position to provide details. We refer the CSA to work done by organizations such as PlanPlus and Finmetrica in this regard.

57. Are there circumstances where it may be appropriate for a representative to collect less detailed KYC information? If so, should there be additional guidance about whether more or less detailed KYC information may need to be collected, depending on the context?

We believe that the situations that would be responsive to this question are the same as those detailed in the response to Question 55.

KNOW YOUR PRODUCT (GUIDANCE – FIRM)

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

A list is really just the sum total of the work of the product review process and, therefore, focusing on the existence of a list *per se* is misdirected. The real issue is the process by which products are reviewed. If the two concepts – a product review procedure and a shelf/list – are mutually exclusive, then the focus should clearly be on the procedure given the rapid pace of change at the product level in this industry.

59. Would additional guidance with respect to conducting a "fair and unbiased market investigation" be helpful or appreciated? If so, please provide any substantive suggestions you have in this regard.

"Fair and unbiased market investigation" is a new term in Canadian securities legislation. Therefore, it is reasonable to assume that firms will interpret that in their own interest. This could lead to wildly divergent results and, therefore, we believe additional guidance is necessary.

It is not difficult to imagine how firms that claim to be open architecture while offering proprietary products will manipulate this requirement and turn it into a sham by finding a complicit independent party to approve their investigation. Without minimum standards, requirements based on loosely worded and vague language are ineffective.

While we are not overly confident that there is a way to ensure that a requirement for a fair and unbiased investigation can be free of manipulation, we would gain some comfort if the regulatory standard was based on the parameters that we set forth on page 15 of this letter or on research and findings of independent third parties not involved in the distribution of investment products, such as Globefund, Morningstar, Fundata, etc. and rely on ratings from those firms. We would be amenable to such provided the CSA undertakes to regulate the provision of this service or, at minimum, monitor the activities of the rating firms very closely for the first several years of the reform. The concerns would be back-door deals with dealers or fund managers or the rating provider itself creating a situation for it to enter the fund business in some capacity. We point to Morningstar as the perfect example of this: a firm that built its reputation on its independent and rigorous standards; over time it began attacking active fund management very indirectly; then it introduced its own line of indices and licensed them to First Asset for use in ETFs. (In contrast, we believe that S&P has engaged in similar activities but those were begun well after they entered the index business.)

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

The purpose of the label is to alert an investor as to the type of firm with which they are dealing. Our expectation is that few, if any, retail investors would know what these labels even mean. Given the propensity of the CSA to engage in market research relating to regulatory initiatives (which we welcome and encourage), we think this would be an appropriate topic on which to do so. A telephone survey can be easily arranged in a cost-effective manner. Such survey would be helpful to test any labels. We encourage a survey rather than a focus group as we find that CSA focus groups tend to be too small to have strong statistical significance and, in our view, regulatory mistakes have been the result on occasion. To the extent that any related terminology is understood by the general public, we prefer "open architecture" be used in place of "mixed/non-proprietary product list" and we refer the reader to our discussion on page 15 of this letter.

61. Is the expectation that firms complete a market investigation, product comparison or product list optimization in a manner that is "most likely to meet the investment needs and objectives of its clients based on its client profiles" reasonable? If not, please explain your concern.

This is not a reasonable request as it is impossible to know *a priori* what single products are most likely to meet anyone's needs. This is a portfolio business, not an individual investment business, for the most part. Any single product may or may not be appropriate for a portfolio; it depends on the other components. In our opinion, inserting a "most likely" standard into a process that is no more than educated guesswork is inappropriate because it will be impossible to meet. We would appreciate if the CSA provided some insight as to how it would enforce this requirement, assuming that it would enforce this requirement. If the CSA did seek to enforce this requirement, our concern would be that the proposed standard is too vague to be unenforceable. If the provision will not be enforced or will not withstand judicial challenge, it should not be included in any rule amendments.

SUITABILITY (GUIDANCE)

62. What, if any, unintended consequences could result from setting an expectation in the context of the suitability obligation that registrants must identify products both that are suitable and that are the most likely to achieve the investment needs and objectives of the client? If unintended consequences exist, do the benefits of this proposal outweigh such consequences?

We have no problem with the expectation that registrants will identify suitable products. However, we cannot comprehend how a registrant is supposed to identify the product most likely to achieve the investment needs and objectives of the client. The problem is likely in the use of the word "most". Using CIFSC Fund Classification categories, the U.S. equity category contains 1,105 funds. The word "most" conveys the meaning that there is only 1 answer. It is not clear to us how a registrant is supposed to select from 1,105 funds of which 276 are top quartile performers (based on the definition of "quartile") which fund is most likely to achieve any type of result, let alone one as uncertain and ambiguous as the "investment needs and objectives" of the client. Dropping the word "most" would likely go a long way to resolving this issue.

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

Further guidance would be helpful. This is a requirement with which many have struggled because every second of every day that a position is held in a client portfolio is an "ongoing decision to hold a position" and we cannot imagine that the CSA expects there to be a continuous process for suitability. If that is the CSA intention, then it would be helpful for the CSA to articulate how they expect one to accomplish that. The fact that the proposed guidance refers to an order from a client to hold a security is quite disturbing as no such concept exists in retail wealth management, as we have discussed elsewhere in this letter.

64. Should we provide further guidance on the frequency of the suitability analysis in connection with those registrant business models that may be based on one-time transactions? For example, when should a person or entity in such a relationship no longer be a client of the registrant for purposes of this ongoing obligation to conduct suitability reviews of the client's account?

Suitability reviews should be based on the nature of the dealer-client relationship. For execution-only relationships, there should be no ongoing suitability obligation relating to any particular position. Beyond that, it is not possible to have a black and white rule. For business models that are based on one-time transactions, i.e. where the client is not receiving advice, we do not believe a suitability review is necessary.

REGULATORY BEST INTEREST STANDARD (GUIDANCE)

65. Should the Standard of Care apply to unregistered firms (e.g., international advisers and international dealers) that are not required to be registered by reason of a statutory or discretionary exemption from registration, unless the Standard of Care is expressly waived by the regulator?

An international dealer may only avail itself of a registration exemption if the international dealer is trading as principal or agent for (a) the issuer of the securities, (b) a permitted client, or (c) a person or company that is not a resident of Canada.

Where the international dealer acts for the issuer, by definition the issuer cannot be a Canadian issuer. Such clients do not require the protection contemplated by a best interest standard. Where the international dealer acts for a permitted client, in most cases these protections are not required. Permitted clients are such based on who they are or financial tests, the latter being a proxy for whether the client can look out for its best interests on its own. While we do not believe that non-individual permitted clients require this protection, we believe it would be appropriate for it to apply to individual permitted clients as they do not necessarily possess the knowledge or sophistication to self-police. In our opinion, Canadian securities laws should not be concerned with clients who are non-residents of Canada. Therefore, the Standard of Care should not apply to international dealers unless they are dealing with individual permitted clients resident in Canada.

Overall, given the limited nature of the permitted activities in Canada for an international dealer, and the lack of any allegations of historical wrongdoing, there is no clear benefit to subjecting international dealers to this standard. In contrast, international dealers may perceive the imposition of the standard as an additional burden outside the norm and decide to simply stop dealing with Canada, as we have recently seen in the market for foreign-issued bonds of Canadian issuers.

The international adviser exemption is even more circumscribed. International advisers may only deal with permitted clients. As we noted above, such clients do not require the protection of a best interest standard.

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

The Standard of Care is not inconsistent with any current element of securities legislation, other than as discussed in the Consultation Paper or this letter (i.e. offering proprietary products and the compensation issues related thereto). However, we do not see an inconsistency that would cause confusion for a registrant. We note that, unlike similar provisions, the proposed Standard of Care omits the word "fairly". The CSA should reconsider that omission.

67. Do you agree that the Standard of Care should not apply to the underwriting activity and corporate finance advisory services described above? If not, please explain.

We are under the impression that a fiduciary duty applies to underwriting activity and corporate finance advisory services and, therefore, the Standard of Care need not apply. If we are wrong in that impression, then clearly the Standard of Care should apply as the issuer-client in those instances is inherently vulnerable to the firm doing the underwriting or providing the corporate finance advice.

68. Do you think this expectation is appropriate when the level of sophistication of the firm and its clients is similar, such as when firms deal with institutional clients?

This question refers to Principal 4 in the best interest standard discussion in Appendix H of the Consultation Paper which states that registrants should interpret both the law and agreements in a manner favorable to the client when conflicting interpretations arise. As the level of sophistication of the clients of a firm increases, this is completely inappropriate. Institutional agreements are very heavily negotiated. To give one party such an interpretive weapon is simply unfair and addresses a problem that does not exist.