

IFIC RESPONSE TO CSA CONSULTATION PAPER 33-404

The following is a summary of The Investment Funds Institute of Canada's submission to the Canadian Securities Administrators' ("CSA"), filed today, on Consultation Paper 33-404 – Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients.

EXECUTIVE SUMMARY

Our submission expresses the industry's long-standing support for placing the interests of the client ahead of the interests of the registrant where those interests conflict. This objective can best be met by enforcing current rules, and addressing any gaps in the regulatory framework. We support reforms that improve the investment process and caution against adopting measures that are unclear in their application and may misalign client adviser expectations.

We urge regulators to ensure that the regulatory framework continues to make investment opportunities available to all Canadians and that it does not jeopardize access to advice for small investors and the durable economic value it delivers. This means giving investors continued access to a wide range of financial products and services appropriate to their needs, at competitive prices. It also means not imposing targeted reforms that attempt to regulate investment outcomes – something the markets should do.

We have organized our comments into four parts:

1. ESSENTIAL FACTORS TO CONSIDER IN FRAMING THE PROPOSED REGULATORY REFORMS

We highlight several factors that should be considered in developing regulatory policy:

- The broad and lasting benefits of working with an adviser,
- The importance of measuring the impact of regulatory changes recently implemented and of taking into consideration the evolutionary market forces at play, and the evidence just emerging from international regulatory developments,
- Investor outcomes in jurisdictions that have introduced significant changes to the client-adviser relationship, as well as the reasoning of those who have considered, and then declined to adopt, those changes, and
- Market driven changes in products, prices and services that respond to some of the identified harms.

2. NEW REQUIREMENTS THAT SHOULD BE RE-CONSIDERED

- The requirement for firms to choose products which will "most likely meet the investment needs and objectives of its clients" will put the regulator in the position of deciding what investment products and services will meet the needs of individual clients. It seeks to regulate investment outcomes rather than processes – a role that regulators should not undertake.
- The KYC requirement to identify other financial strategies and asset allocation strategies will impose a "one size fits all" approach that may create the expectation that firms will provide financial planning services to all clients, regardless of their actual needs. We agree that enhancements can be made to KYC and suitability requirements, but maintain that clients are best served by KYC requirements that allow fit-for-purpose assessments and tiered services that meet their individual needs.
- The requirement that advisers must know every product their firm sells is impractical and likely unachievable, especially in mixed/non-proprietary firms with thousands of mutual funds and other products. Know Your Product, as discussed in NI 31-103 and 31-103 CP is less onerous

than the requirements and guidance of the SROs. We support strengthening the National Instrument to mirror the SRO rules.

- The requirement for an agreed-upon target rate of return for every size of investment and account will likely be misinterpreted by clients as a guaranteed rate of return. More helpful and relevant to clients is to reframe the guidance in the rule into an appropriate target savings rate or contribution rate needed to achieve the savings objectives of the client.
- The requirement for firms with mixed/non-proprietary products to perform an “unbiased” market investigation of all products and to sell only those “most likely” to achieve client objectives will be difficult to comply with. Without further clarity on how regulators will decide whether the investigation was unbiased or the product was in fact the “most likely” firms will reduce their product shelves to only those they believe the regulators would approve.

3. COMMENTS ON CREATING A REGULATORY BEST INTEREST STANDARD OF CARE

The regulatory standard of care governing the registrant-client relationship contained in the securities rules requires registrants to ‘act honestly, fairly and in good faith’. The CSA proposal (except for the BCSC) adds the words ‘and act in their clients’ best interest’. The Paper does not explain what these additional words mean.

Conflict between the interests of the client and the firm arise almost exclusively in the investment process. The SROs’ rules and CSA guidance already require the firm to put the interests of its clients ahead of the firm in the resolution of any conflict of interest.

The proposed best interest standard of conduct will create an unmanageable and perhaps unnecessary degree of regulatory, compliance and legal uncertainty. We share these concerns as expressed by the BCSC, and question further how the industry would supervise compliance with an aspirational overarching rule. What is prohibited under a best interest standard of care that was permitted under a duty to act honestly, fairly and in good faith?

4. COMMENTS ON KEY ASPECTS OF THE TARGETED REFORMS

We agree with many of the proposed targeted reforms of the Consultation Paper, for example:

- The MFDA and IIROC have rules which govern conflicts of interest. We recommend including them in NI 31-103.
- IIROC and MFDA registrants must comply with suitability rules designed to ensure that their recommendations, including recommendations not to sell or buy, will meet their client’s investment needs and objectives. We support the incorporation of similar standards in NI 31-103.
- We agree that the updating of KYC information could be enhanced through an annual invitation to the client to contact their dealer or adviser to determine whether an update is required or restricting accounts that have not been updated in a timely way.
- We support requiring firms to fully disclose to clients who they are and what they offer, and allowing clients to choose what products and services they want.
- We support enhanced proficiency standards and continuing education for registrants to ensure they have the appropriate education, experience and training to deal with clients.
- We support a limitation on the number of titles a firm and adviser can use, and agree that the CSA should include rules in NI 31-103 establishing a principles-based approach to regulate titles. Titles should be consistent across a registrant category and not be differentiated by product shelf.

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We look forward to continuing our participation in these consultations. Should you have any questions or wish to discuss our comments, please contact me directly by phone at 416-309-2300 or by email at pbourque@ific.ca.