HIGHVIEW FINANCIAL GROUP™
Canada's Outsourced Chief Investment Officer™

February 22, 2013

John Stevenson, Secretary
Ontario Securities Commission
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Suite 1900, Box 55
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Anne-Marie Beaudoin, Secrétaire
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
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RE: Canadian Securities Administrators Consultation Paper 33-403: The Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients (the Consultation Paper)

Thank you for this opportunity to contribute to this important discussion. For context, I have been a licensed Portfolio Manager for the majority of my 18-year career. Accordingly, I have been considered by law to be in a fiduciary relationship with clients – still the case today for our firm and me individually.

Focus on outcomes

In theory, I wholeheartedly support the notion that individuals and firms dispensing financial advice in Canada should be required by law to provide advice and sell products such that clients' best interests are paramount. There are, however, practical challenges to implementing this idea. I believe that the challenges are such that I do not think that imposing a fiduciary standard of care is a practical solution.

My view on this is based on a focus on the probable outcomes. Specifically, under a fiduciary standard of care, I expect that:

- Canadians will still be exposed to a two-tiered system where non-fiduciaries will be numerous;
- costs will almost surely rise for advisory firms, which will most likely be passed along to end clients;
- the most dangerous 'advisors' will not be affected by this standard;
- investors with less than $300,000 are likely to be left without advice from a fiduciary; and
- it's unlikely that the reality that today's biggest client-abuse cases will diminish in materially since they result largely from a failure to meet today's lower standard.

Jurisdiction

The Canadian Securities Administrators effectively have jurisdiction over all IIROC, MDFA and other CSA registrants. One challenge is that many so-called financial advisors do not fall under the CSA's jurisdiction. Specifically, Canada's approximately 11,000 insurance-only advisors[1] would not be subject to this standard, if implemented.

This is a problem since, to end investors, insurance-only advisors look and sound like other financial advisors. And they use savings and investment vehicles that are very similar to those purchased from other advisors. Accordingly, Canadians would continue to be subject to a two-tiered system with respect to the standard of care owed to them.

Costs

I have lived through the full evolution of Canada's securities regulatory regime and spent many years contributing to firms' compliance regimes. The regulatory burden is significant, with similarly high costs of compliance. Imposing a higher standard of care is destined to result in higher costs of compliance and, in turn, higher costs to end investors.

Stealth Advisors

Some of the most serious financial damage done to individuals has been done by so-called 'stealth advisors' – i.e. people dispensing quasi-investment advice without any license. Since stealth advisors often don't sell securities per se they may not require (and usually don't obtain) a license. Examples of stealth advisors include those promoting:

- diamonds and other precious stones as investments;
- gold coins and other forms of bullion;
- buy-low-donate-high schemes (see this 2005 ad for one of a series of presentations which was summarized in this National Post article);
- aggressive tax planning (see this recent article[2] for an example); or
- investment education materials as a way to earn asset-based fees without requiring a licence.

Too many Canadians have fallen victim to stealth advisors and this abuse is likely to rise as the most vulnerable investors are ignored or can no longer afford the services of a fiduciary.

[1] Source: page 4 of http://www.advocis.ca/pdf/Financial-Advice-Industry-Economic-Profile.pdf
[2] http://www.windsorstar.com/David+Baines+securities+offender+Jeffrey+Eshun+causes+more+damage+Ontario/7973723/story.html

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Lack of Fiduciary Advice

Given the expected rise in compliance costs for firms, they are likely to require relatively high minimum fees per household. Accordingly, it's very possible that fiduciary advisory firms will not accept clients

with under $300,000 in total household assets. Many "advisors" and "brokers" that I know today conduct themselves like fiduciaries and the common minimum portfolio size is $500,000 and higher. With a higher cost structure, such minimums will rise.

I expect that many Canadians with substantial sums of money – probably the majority by sheer numbers – will be left to seek advice from non-fiduciaries. And those with larger investment portfolios will naturally seek out licensed Portfolio Managers who are already legal fiduciaries. I struggle to see how imposing a uniform standard will significantly change this current dynamic.

Non-Compliance of Current Standards

Observationally, some of the most serious client abuses – i.e. excessive leverage, churning, unsuitable investments – result from a failure to comply with the existing standard of care owed to clients. While it will raise the litigation risk to the industry, I am doubtful that a fiduciary standard will correct the conduct of firms and brokers/advisors not following the current rules.

Competitive Market Forces

An increasing number of IIROC-licensed brokers are transitioning from a sales license to a Portfolio Manager license. Many are doing this for business reasons. But in doing so, such brokers are putting themselves in a fiduciary relationship with their clients. Competitive market forces are already working to push, albeit slowly, the advisory industry toward a fiduciary model within the existing regulatory framework.

I support the CSA's continued efforts to determine more effective ways of protecting Canadian investors. Given my professional choices, I clearly support being held to a fiduciary standard when providing investment and portfolio management advice. Yet I expect a uniform fiduciary standard to on balance have a negative impact on the majority of Canadian investors who need and want advice.

Sincerely,

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