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September 30, 2016

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British Columbia Securities Commission
The Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan

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Re: Canadian Securities Administrators consultation paper 33-404 proposals to enhance the obligations of advisers, dealers and representatives toward their clients.

Thank you for the opportunity to share our input on the above-referenced proposals; for extending the comment deadline; and for your candour in revealing the differing views among CSA members.

For background, HighView Financial Group is the brand under which we operate our business. HighView Asset Management Ltd. ("HighView") is registered in Ontario, Alberta, British Columbia and Saskatchewan in the category of Portfolio Manager. HighView design portfolios for affluent families and institutions; embracing our status as a fiduciary and operating with diligent processes, transparency and robust – and clear – reporting.

General Comments – Best Interest Standard

Canadians investors' busy schedules make it very challenging to invest the time to build a robust base of investment knowledge – even for those with some interest. As a result, most look to providers of financial advice for guidance on a host of financial issues – many of which are investment-related. That combined with the CSA's finding that most investors already think that their financial advisors are held to a best interest standard argues strongly in favour of formalizing this standard of care. There are practical limitations to this initiative; which are evident in the divide on this issue among CSA members.

In theory, I support the idea that those offering money management and/or financial advisory services to the public should be legally required to put clients' interests ahead of their own. In theory, this is aligned with existing perceptions of virtually all clients and most 'advisors' that the proposals would impact.

However, the proposal to overlay a Best Interest standard of care on the existing industry structure is problematic when viewed in the context of the intended outcomes. As proposed, those selling proprietary products won't be able to fulfill this standard. Nor will this address the growing contingent of advisors that fall out of the CSA's jurisdiction.

Advocis reports that the number of insurance-only licensed advisors grew from 19,460 in 2008 to 24,070 in 2011 – by far the fastest growing segment tracked by Advocis[1]. In a follow-up report, Advocis reported that insurance-based advisors grew 12% between 2010 and 2013 while the numbers of non-insurance licensed advisors fell slightly during the same period. These statistics support my suggestion in my March 17, 2015 article in the Globe and Mail[2] that some advisors are moving to the insurance platform to avoid CSA regulatory changes.

For this reason, the Ontario Ministry of Finance's Expert Committee to Consider Financial Advisory and Financial Planning Policy Alternatives has proposed a statutory best interest duty on virtually all providers of financial advice in Ontario. In my view, that is a more effective approach since all providers of financial advice – i.e. licensed for securities; licensed for insurance; and unlicensed – will owe the same standard of care to their respective clients.

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[1] See http://www.advocis.ca/pdf/Financial-Advice-Industry-Economic-Profile.pdf

[2] See http://www.theglobeandmail.com/globe-investor/funds-and-etfs/some-advisers-behaving-badly-with-crm2-on-the-horizon/article23511604/

Otherwise, the majority of Canadian investors will continue to be subject to the same two-tiered system that exists today. High net worth investors can access firms like HighView that are legal fiduciaries. The rest get advice from a combination of securities-registered, insurance-registered and unregistered financial advisors – none of which are held to a best interest standard. While the proposals will cover all CSA and SRO registrants, it seems reasonable to assume that the growth of insurance-only and unlicensed contingents will continue to grow.

Applying a Best Interest standard will be an improvement but it may not be a significant one due to factors outside of the CSA's control and jurisdiction.

Policy Measures & Questions

Conflicts of Interest – General

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

    - This is common sense – and is the kind of disclosure I would like to receive if I was a client.

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?*

    - Yes because it simply requires a client-mindset – i.e. "what would I expect and deserve if I was the client".

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

    - Not that I can see. And if it does that has to come secondary to being transparent with clients – particularly where interests may be in direct conflict.

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?

- Clear and meaningful disclosure – accompanied by a brief verbal explanation has worked very well in my experience.

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?

- All products sold by a dealer should be treated equally for the purposes of dealing with and disclosing conflicts of interest.

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?*

- Tax is typically the weak spot for most advisors but I would expect the vast majority to have enough knowledge to become informed on a client's basic tax situation. That said, clients who are business owners and who have multiple entities (e.g., corporation, trust, etc.) likely would require an advisor to coordinate with her client's tax professional(s) to be more fully informed.

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?*

- No. Most firms design KYC and other data gathering forms based on their typical client needs, circumstances and planning process.

- I would suggest, however, that while some client information should be reviewed and updated annually; not all information requires annual update. For example:
    - Clients for whom retirement information is collected should be updated annually if they are approaching retirement. But if they're much further away from planned retirement, annual update of this information is not very meaningful.
    - Similarly, based on our experience investment risk profile changes are immaterial from year to year. For many years I took clients through a full discovery process at every update. This included the full risk profiling process without letting clients see their answers from the previous year. In every case, the changes were minimal and immaterial. So I'd suggest risk profiling does not need to be updated unless there has been a material change in circumstances.

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

- This is not necessary if the firm has good supervisory processes. But maybe a good idea when thinking of the broader universe of MFDA, IIROC and EMD representatives.

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?

- To the extent that investing has income tax implications – and it usually does – any sale of investment product or provider of investment advice should be aware of at least basic tax implications. So yes, the KYC process should include the collection/awareness of basic tax information – with an emphasis on 'basic' since it's not realistic to expect extensive tax guidance/advice from all dealing and advising representatives.

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

- See reply to #5.

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?

- In pure transactional situations (e.g., client-directed trades) or where the circumstances are very simple (e.g., a student with very limited funds) it is overkill to require a lengthy and detailed discovery and data collection process. The minimum for securities law and FINTRAC-related profiling should suffice in such instances.

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?*

- This is a reasonable approach. It is not reasonable, however, for a representative to be knowledgeable about every product offered by the firm – especially for dealers.

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 explain.*

    - I can foresee this being problematic depending on the CSA's notion on the final couple of points. An extensive product search does not require regular subsequent comparisons between the chosen product and the broader universe of similar products. Since there are real costs to switching products (for the firm and the client), the initial search outcome should stand unless there have been significant product developments (e.g. TSX-traded ETFs have gone from 81 in March 2009 to north of 400 today) or if there is a material deterioration of the existing product. The costs of switching need to be compared to the associated benefits.

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

    - With respect to initial product selection – yes. But with respect to the CSA's proposed "optimization" please refer my reply to #8 above.

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

    - An initial product selection process that adheres to the standards set out in the CSA's targeted reform; and supplemented by a robust oversight process will achieve this outcome.

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

- All dealers (other than bank-owned firms) will be challenged from a resource perspective. There was a time when in-house research on products was more common but these resources have been cut over the past fifteen years. Despite a growing universe of increasingly complex products, dealers have significantly reduced the product research staff for economic purposes.

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?

- That's the easiest and most efficient response. Fewer products offered = less time/resources required for due diligence and product research.

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

- Sure it could for the reasons outlined in #12 above.

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

- In an ideal world yes. But then they wouldn't be purely proprietary firms. And if the wish was to remain a proprietary firm there is no way that any product search could be unbiased. It's one or the other.

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?

   - There are subtleties today that may not fit well into this framework. One institution's mutual fund lineup can technically claim to have mostly third-party sub-advisers running all of their mutual funds. One sub-adviser runs a large proportion of its mutual fund AUM. But the sponsoring institution sold its money management arm to the sub-adviser, the equity of which the sponsor owns approximately 22%.
   - So the sub-adviser may technically be considered third party because the sponsor no longer has a true in-house (or majority/wholly owned) money management subsidiary. But the sub-adviser in this case can't be considered as independent as an unrelated sub-adviser.

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?

   - For exempt products definitely. For prospectus mutual funds, stocks, bonds and the like, it doesn't make sense.
   - For a firm like ours, it makes sense to have a formal 'shelf' or approved product list and that's all we use regardless of the client-facing individual representative. But for a dealer with hundreds of reps they will by definition have a broad product shelf. They can't possibly do a review of every product. In this case, the onus may fall more to the dealing representative to make sure they fully understand the product sold to the client regardless of the dealer firm's opinion of the product.

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.

- The guidance provided seems sufficient. This doesn't mean that we have to consider every product available to us but that we have to conduct a fair and unbiased investigative process.

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

- Maybe labels like "in-house" are simpler terms than "proprietary" for the investing public to interpret.

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.

- With the exception of the proposed "optimization" process it's reasonable for Portfolio Manager firms.
- But dealers have a business model where they sponsor/employ dozens or hundreds of individual representatives. This business model necessitates a very broad product shelf. There are not sufficient resources for dealers to conduct this type of investigation or due diligence on every single products offered – let alone do regular oversight and monitoring.
- Exempt products should be subject to stricter search and oversight requirements.

Suitability

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

- Yes.

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?

- I'm concerned about the seemingly hyper-focus on "is this buy suitable" because it seems too transaction-oriented. I don't think that's the intent but it's how it reads. It may not be feasible or reasonable to explicitly do a suitability check with every transaction (or a decision not to transact).
- Take, for example, a scenario where time has been spent profiling the client, designing a strategy, selecting products and making sure that a portfolio is suitable. If the client wants to add a lump sum to this portfolio six months later, it is overkill to have to do a separate suitability check to a set of purchases of the identical existing portfolio.
- Similarly if a strategy has been laid out and transactions have been foreseen – e.g. rebalancing within stated parameters/triggers – and rebalancing is implemented we don't need to stop and do a suitability check because it's already been agreed that the strategy and the rebalancing are suitable.
- A decision to hold a security should not always trigger a distinct suitability assessment since it may be the client's wish to continue holding a security. If the 'hold' recommendation is made by the representative then the advice should include a suitability assessment.

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

- No.

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

    - Yes, see #17 above.

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?

    - See #21 below.

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?

    - Giving clients a copy of a KYC form is one thing. But I disagree with providing clients with a copy of broader suitability analysis. Suitability assessments may contain sensitive information. For example, it's reasonable to assess a client based – in part – on their past investment experiences and behaviours. Including things along the lines of, "*John contacted me during bull markets wanting to dump bonds and buy more stocks…and during bear markets wanting to do the opposite*".
    - If I'm keeping a record of conversations that include this information (among other things) and the client sees these 'internal' notes that were originally written for private use that's the firm's property. And lifting the veil on this risks offending clients because they may not see themselves that way and may not be as objective about their past behaviour after many years have passed.

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?

- This is likely something captured in meeting notes and a suitability assessment is likely embedded in these notes. Beyond that, having to justify not buying a product can be a function of:
  - Unfavourable product assessment (i.e. unsuitable for anyone);
  - Unsuitable for the client; or
  - Both.

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?

- The basic context of suitability as proposed is sound and similar to what we do.

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

- Yes because it reads more transactional-driven and I can't believe the CSA would evolve the regulatory regime more toward transaction triggers and outside of the total portfolio context.

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?

- Yes because anything too frequent is not meaningful unless there has been a meaningful and material change in circumstances.

Relationship Disclosure

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

- Yes and no. In theory clients should be aware of product limitations. Then again, for most people investment funds & GICs probably do the trick so what is a limitation in a general context may be fully suitable in any given situation.
- The other tricky part here is that the CSA might argue that there are cheaper products that could help clients better achieve their goals. But this may not hold in a compensation-neutral scenario. Would a product with fees of 2% (that includes advisor compensation with proper disclosure) be better or worse than a product with a 1% embedded fee where the advisor adds 1% (or more) as a separate fee in a fee-based account?

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

- Yes because if I was a client of a firm selling only proprietary products this is the kind of transparency and candour I would want.

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

- No – see #23 above.

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

- Depends on the definition of "product list". Some PM firms only offer in-house security selection via separate accounts an in-house pools. In one sense they are selecting from all stocks around the world; but in another sense it's their own money management expertise that they're offering – not that of others via external products.

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

- I don't think so. It's pretty easy to make it understandable for clients.

Proficiency

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

- To the extent that these proficiency requirements are not currently covered by the CSC and IFIC, these industry-licensing courses can be enhanced to include missing components.
- My recent attendance at the OSC's roundtable discussion on risk profiling resulted in a near-consensus that proficiency standards for advisors (particularly dealing representatives) need to be raised. No specifics were discussed.

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

    - Not unless it can be demonstrated that the proposals are significantly different than the status quo. For example, when IIROC proposed a financial planning regulation it would have required IIROC staff and compliance staff at member firms to be very informed on financial planning, various technical components (i.e. tax, financial projections, etc.) and in how to write a proper financial plan. I don't see the same kind of differences here so can't see CCO/UDP being required to obtain additional proficiency or credentials.

Titles

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

    - It shouldn't raise any major challenges – though it will put a kink in marketing efforts.

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?

    - I don't like these titles at all but I like the idea of regulating titles. Business cards with EVP, SVP, and the like that are given out based on sales production levels need to go. So to do titles from weekend or one-day courses leading to a designation/title/certification.
    - But whatever the CSA is considering needs to be integrated with the Ontario Ministry of Finance's initiative to regulate financial planning and financial advisory – which reaches beyond securities registrants and all registrants to include unregistered providers of financial advice. No sense having two parallel efforts doing different things.

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

- Yes but again this may be fully covered by the broad Ontario initiative. I like the approach that the now-defunct Multilateral Instrument 33-107 took with respect to approved titles tied to credentials and qualifications.

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?

- Yes because there are too many one-day or weekend courses leading to a 'designation' without the oversight, CE, etc. that is typical of more professional designations like CFP, RFP, CFA, etc.

Roles of UDP and CCO

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

- No comment

Statutory Fiduciary Duty when Client Grants Discretionary Authority

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

- In theory I have no problem with this. And HighView has long embraced this idea. This raises two points of confusion for me.
  - First, my read of the proposals has not distinguished between the proposed "Best Interest" standard and a Fiduciary standard. It would help if the CSA could clearly distinguish between the two so that it's clear what it being proposed.
  - Second, it has been my impression that the existing law already considers discretionary portfolio managers to be in a fiduciary relationship with its clients.

I welcome the opportunity to further discuss this issue and my specific comments with the CSA.

Sincerely,

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