



September 30, 2016

Josée Turcotte, Secretary  
Ontario Securities Commission  
20 Queen Street West, 22<sup>nd</sup> floor  
Toronto, ON M5H 3S8

Dear Ms. Turcotte:

**Re: CSA Consultation Paper 33-404 (the “Consultation Paper”)**

I am writing on behalf of ACPM (Association of Canadian Pension Management). ACPM is a national, non-profit organization acting as the informed voice of plan sponsors, administrators and their service providers in advocating for improvement to the Canadian retirement income system. Our membership represents over 400 companies and retirement income plans that cover more than 3 million plan members.

ACPM has a broad membership consisting of experts that are drawn from different industry segments and all regions of Canada. Our members have a strong interest in retirement income policy.

We applaud the Canadian Securities Administrators (CSA) for seeking to enhance the obligations of financial services advisers, dealers and representatives toward their clients through the regulatory actions proposed in the Consultation Paper. We are of the view that the proposals in the Consultation Paper collectively will better align the interests of the registrants with the interests of their clients, resulting in better outcomes for clients, many of whom will include ACPM members and/or their plan members.

Our interest in responding to this consultation lies mainly with our concern over avoiding possible inequity between the best interest standards applying to interactions between registrants and institutional investors such as pension plans, and those standards applying to the firms and individuals (advisors/investment managers) advising clients in the retail sector when making decisions related to individual retirement savings. We believe that there should be a level playing field. In addition to the issues regarding consumer confusion over business titles and a lack of transparency in relation to fees, we strongly agree with the proposal to create a best interest standard applicable to all registered dealers and all registered advisers.

There are a number of questions in the Consultation Paper related to the impact of the proposed regulatory reforms on registrants. Given our mandate, we have not attempted to respond to each separate question in the Consultation Paper. Rather, ACPM's comments will be limited to a few specified topics identified below:

### **Transparency**

It is our experience that Canadians are frequently confused by the multitude of business titles and designations used in the financial services industry, whether by financial planners, advisers, dealers or representatives. Adding to the confusion is that many financial services representatives (and financial services organizations) wear multiple hats and can have responsibilities that cover various aspects of financial services.

This creates customer confusion concerning the competencies and responsibilities of those within the organization. As a result, business titles need to be simplified, streamlined and designed to be as understandable as possible. ACPM supports a requirement that all client-facing business titles for registrants be prescribed.

ACPM supports the theme of transparency for product fees, registrants' compensation and clients' investment performance. Clients should be provided an explanation as to who is paying the registrant's fees (whether individual or institutional) and the costs of the products and associated fees and so we applaud the efforts of the CSA made through CRM2. There should also be transparency with respect to third party referral fees. No individual or firm that provides financial product sales and advice should be permitted to pay a referral fee to a third party for the referral of a customer unless (i) the fee is fully disclosed (transparent) to the client, and (ii) the individual or firm receiving the referral fee is also regulated as a provider of financial product sales and advice or financial planning.

ACPM has identified that there is a lack of financial literacy in Canada. Consequently, we are concerned about the disclosure of information to individuals who may not have the education or training to fully understand its implications. We advocate for the provision of very clear, concise, plain language disclosure for all products being considered, the fees associated with them and any potential conflict of interest.

The foregoing principles of transparency should, in our view, apply equally to individual clients investing through a retail environment as well as individual clients who are members of a pension plan (in particular, defined contribution pension plans where members direct the investment of their accounts and have the option of making use of an advisor or not). It is not appropriate to assume that the interposing of a pension plan administrator or employer between the individual member and the registrant will produce the same protections or outcomes for the individual in all cases. Therefore, we strongly encourage the CSA to ensure that advisor registrants apply the rules applicable to their retail relationships to their plan member relationships when those plan members can control whether and how to make use of an advice service.

## **Best Interest Standard**

Pension plan administrators in Canada are subject to statutory duties of care that require the administrator to exercise the care, diligence and skill of a person of ordinary prudence, and to use all relevant skill and knowledge that the administrator possesses or ought to possess.<sup>1</sup> While this language differs slightly across various jurisdictions, the duty is similar. It has also been recognized that the statutory standard of care gives rise to a fiduciary duty for plan administrators to act in the best interests of the plan members (i.e., a statutory best interest duty).


We understand that certain registrants (investment fund managers) already have a statutory duty to act in the best interests of their clients. But similar requirements do not exist for other categories of registrants such as advisors, dealers and representatives.

Part 7 of the Consultation Paper indicates that registrants dealing with institutional clients are not required to be held to the same standards as when dealing with individual clients (e.g. conflicts of interest). We submit that all individuals and firms advising Canadians' on their retirement savings (whether individually in the retail sector or through a pension plan that is an institutional investor) should be held to a similar standard regardless of the type of client involved, in particular when it comes to addressing conflicts of interest and the duty to act in the client's best interests.

We note that, in many cases, larger institutional investors are able to negotiate with registrants for a contractual fiduciary duty/best interests duty to be included in the investment management agreement (or other similar document) under which the registrant is appointed. The result is inequities between pension plans which are unable to successfully negotiate such contractual protections (typically smaller pension plans) and those larger pension plans which are able to obtain such protections. We suggest that the CSA adopt one Best Interest Standard duty which would apply to registrants regardless of the type of client involved or the amount of assets being invested.

We appreciate the opportunity to review the CSA Proposals and consider their impact from the viewpoint of retirement savings industry. We would be pleased to answer any questions you may have regarding our response.

Yours very truly



Bryan Hocking  
Chief Executive Officer, ACPM

cc: Mme Anne-Marie Beaudoin, Corporate Secretary, Autorité des marchés financiers

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<sup>1</sup> Ontario Pension Benefits Act (R.S.O. 1990, Chapter P.8), s22(1)(2); Supplemental Pension Plans Act (Quebec), s.151.