

APPENDIX B – Part 1
(ONTARIO and equivalent provisions across CANADA)
EXISTING SECURITIES LEGISLATION AND SRO RULES FOR THE PROTECTION OF INVESTORS PURCHASING MUTUAL FUNDS

Current as at February 14, 2013

REGULATORY REQUIREMENTS	DESCRIPTION OF REGULATORY REQUIREMENT	SOURCE OF REGULATORY REQUIREMENT ⁽¹⁾
1. BEFORE THE CLIENT MEETS THE SALESPERSON AND OPENS AN ACCOUNT WITH THE DEALER		
Registration of the dealer as either a mutual fund dealer or an investment dealer	Before a firm and its salespersons can operate as a dealer and receive clients in Canada, the firm must be registered as a dealer (and its salespersons - as dealing representatives) with the securities commission in the province or territory where the investor resides. Registration can be as either a mutual fund dealer (in which event the dealer is permitted to sell only investments in mutual funds) or as an investment dealer (in which event the dealer generally can sell any type of investment including investments in mutual funds).	25(1) of OSA (with equivalent provisions in all other Canadian jurisdictions) 7.1(1) and 7.1(2) of NI 31-103
Membership of the dealer with a self-regulatory organization (SRO), either the Mutual Fund Dealers Association of Canada (MFDA) if a mutual fund dealer or the Investment Industry Regulatory Organization of Canada (IIROC) if an investment dealer	In addition to regulatory oversight by a securities commission, the dealer also must join an SRO. Each SRO provides a second layer of regulatory oversight of the dealer and its salespeople. *Note that in Québec, section 9.2 of NI 31-103 does not apply. The MFDA is not recognized by the Autorité des marchés financiers as SRO. The Autorité des marchés financiers is currently consulting the industry on a possible harmonization of the regulation applicable to mutual fund dealers. In the meantime, the Chambre de la sécurité financière is the authority responsible of the discipline and professional development of the representatives acting in the province of Québec. Consequently all references made to the MFDA's rules in this document does not currently apply to representatives and dealers based in Québec. We refer the reader to the table of the existing securities legislation specific to the province of Québec.	9.1 and 9.2 of NI 31-103
Minimum capital	Every dealer must maintain a required minimum amount of capital stipulated by its SRO to ensure that the dealer has sufficient financial resources to carry on its day-to-day business.	12.1 and 12.2 of NI 31-103 MFDA Rule 3.1 and 3.2 IIROC Rule 17
Insurance and bonding	Every dealer must maintain required minimum amount of insurance and bonding stipulated by its SRO. The insurance protects clients from a wide range of events, including negligence and fraud.	12.3 of NI 31-103 MFDA Rule 4 IIROC Rule 17 and 400

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Participation in an investor protection fund, either the MFDA Investor Protection Corporation if a mutual fund dealer, or the Canadian Investor Protection Fund (CIPF) if an investment dealer	Every dealer must participate in an investor protection fund which ensures that client assets are protected in the event that the dealer becomes bankrupt. For mutual fund dealers, the investor protection fund is the MFDA Investor Protection Corporation (" MFDA IPC "). For investment dealers, the investor protection fund is CIPF. Each dealer pays quarterly assessments to fund its investor protection fund.	Participation by MFDA dealers in MFDA IPC is mandatory for mutual fund dealers under the authority of the provincial approval orders. IIROC 41
Joint Regulatory Financial Questionnaire and Report (JRFQR)	Every dealer prepares a JRFQR annually and files it with its SRO to confirm compliance with the minimum capital, insurance and bonding requirements, and to confirm that written internal control policies and procedures are in place. The JRFQR is audited by an independent accounting firm.	MFDA Rule 3.5
Books and recordkeeping systems	Every dealer must have a system of books and records to properly record its business transactions and financial affairs.	11.5 of NI 31-103 MFDA Rule 5
Compliance systems and internal controls and procedures	<p>Every dealer must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the dealer and each person acting on its behalf (including its salespersons) complies with securities legislation. These compliance policies and procedures also must manage the risks associated with the dealer's business in accordance with prudent business practices.</p> <p>As part of such compliance policies and procedures, every dealer must establish and maintain internal controls and procedures that will allow it to service its customers adequately and to supervise the conduct of its business, including controls and procedures relating to capital adequacy, insurance, segregation of clients' securities, safeguarding of securities and cash, pricing of securities and derivatives risk management.</p>	<p>11.1 of NI 31-103</p> <p>MFDA Policy 4</p> <p>IIROC 17.2A and 2600</p>
Compliance manual	The dealer must have written policies and procedures for dealing with clients and ensuring compliance with applicable laws and regulations.	MFDA Rule 2.10 IIROC Rule 38.1A(i) and (ii)

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Conflict of interest disclosure	Dealers must take reasonable steps to identify existing and potential material conflicts of interest.	13.4 of NI 31-103 MFDA Rule 2.1.4 IIROC Rule 42
Directors	At least 40% of the directors of the dealer must have successfully completed the Partners', Directors' and Senior Officers course (the " PDO ") and also have at least five years financial services industry experience acceptable to IIROC. These requirements ensure that the directors have adequate knowledge and training to supervise the business of the dealer.	IIROC Rule 7.3 and 2900, Part I, section A.2
Executives	All officers of the dealer that are "executives" (as defined by IIROC) must have successfully completed the PDO and at least 60% of the "executive" officers must have at least five years financial services industry experience acceptable to IIROC. These requirements ensure that the officers have adequate knowledge and training to carry on the daily business of the dealer.	IIROC Rule 7.4 and 2900, Part I, section A.2
Chief Financial Officer	The dealer must subject to approval of IIROC, appoint one "executive" as a Chief Financial Officer (CFO) who has satisfied all requirements applicable to executives and also has successfully completed the Chief Financial Officer's Qualifying Examination. The CFO is responsible for monitoring adherence to the firm's policies and procedures as necessary to provide reasonable assurances that the firm complies with financial rules.	IIROC Rule 38.6 and 2900, Part I, section A.2A
Chief Compliance Officer	The dealer must have a Chief Compliance Officer (CCO) who has successfully completed applicable educational requirements. The CCO is responsible for the oversight and monitoring of the firm's compliance system and for developing and updating the firm's policies and procedures.	3.6 and 11.3 of NI 31-103 MFDA Rule 2.5.3 IIROC Rule 38.7 and 2900, Part I, section A.2B
Supervisory Personnel	Activities of salespersons are supervised by: (i) in the case of the MFDA registrants, a branch manager or supervisor who must have successfully completed one of the Branch Manager's Courses prescribed by the MFDA Rules; and (ii) in the case of the IIROC registrants, a supervisor who has satisfied additional proficiency requirements applicable to their area of supervision.	MFDA Rule 2.5.5 and MFDA Policy 2 IIROC Rule 2900, Part I, section A.1

<p>Salespersons and other dealing representatives:</p> <p><i>Proficiency</i></p>	<p>Each salesperson must satisfy specified proficiency requirements.</p> <p>A salesperson limited to selling mutual funds must have successfully completed either one of the following:</p> <ul style="list-style-type: none"> • the Canadian Securities Course Exam, • the Canadian Investment Funds Course Exam or • the Investment Funds in Canada Course Exam • (or in the case of an IIROC registrant, The Principles of Mutual Funds Investment Course) <p>A salesperson of an MFDA registrant is also required to complete a training program within 90 days of commencement of trading or dealing in securities and a concurrent six month supervision period.</p> <p>A salesperson of an IIROC registrant must have successfully completed all of the following:</p> <ul style="list-style-type: none"> • the Canadian Securities Course • Conduct and Practices Handbook Course • either a 90-day training program for a registered representative dealing with retail customers or a 30-day training program for an investment representative • if dealing with retail clients on matters beyond mutual funds, the Wealth Management Essentials Course within 30 months after person's approval as a registered representatives 	<p>3.5 of NI 31-103</p> <p>IIROC Rule 2900, Part I, section A.4</p> <p>MFDA Rule 1.2.1(a)</p> <p>IIROC Rule 2900, Part I, section A.3</p>
<p>Salespersons and other dealing representatives:</p> <p><i>Background checks</i></p>	<p>Each person seeking to become a salesperson must complete a Form 33-109F4 to facilitate a background check of the individual. The information gathered includes a history of the following matters:</p> <ul style="list-style-type: none"> • residential addresses • employment • regulatory sanctions • criminal sanctions • civil actions • financial disclosure • securities ownership. <p>Background checks, such as police, credit, employment, education and proficiency</p>	<p>2.2 NI 33-109</p>

	course completion records and records from other government or non-government regulatory authorities are performed by the relevant securities commission and the SRO to complete their review of the Form 33-109F4 and determine fitness for registration.	
Salespersons and other dealing representatives: <i>Dual Occupations</i>	A salesperson of a dealer may have an outside occupation which shall be disclosed to and approved by the relevant securities commission and the SRO. The dealer must review any outside business activity conducted by the salesperson and the dealer must have policies and procedures in place to deal with any potential conflicts of interest as a result of the business activities and ensure proper time and attention is dedicated by the salesperson to the dealer's clients.	MFDA Rule 1.2.1(c) IIROC Rule 18.14
Continuing education	Partners, directors, officers, employees and agents of an IIROC dealer are required to regularly complete continuing education courses based on their categories of approval throughout their careers.	IIROCO Rule 2900, Part III
2. WHEN THE CLIENT FIRST MEETS THE SALESPERSON AND OPENS AN ACCOUNT WITH THE DEALER		
New client policies of the dealer	<p>Every dealer and its salespeople must comply with policies and procedures established by the dealer in accordance with the requirements of the relevant securities commission and SRO for accepting new clients. Among other matters, a salesperson is required to:</p> <ul style="list-style-type: none"> • collect relevant documentation, including a new account application form, • obtain the essential facts relative to each client, including his/her current financial and personal circumstances and investment objectives • gather information required by other laws and regulations applicable to the dealer's business, including information required for compliance with the <i>Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations</i> any applicable personal information disclosure authorizations • document the process of identifying and verifying the identity of the new client 	MFDA Rule 2.2 MFDA Policy 2 IIROC Member Regulation Notice MR0498 (dated October 10, 2007)
Obtain client information (“ know-your-client ”, or “ KYC ”)	At all times, the client's salesperson must know the essential facts relevant to the client to identify the client and ensure that each investment is suitable for such client.	13.2 NI 31-103 MFDA Rule 2.2.1 IIROC Rule 1300

<p>Relationship disclosure</p>	<p>As part of accepting a new client, every dealer must deliver to the client all facts that the client might consider important to the relationship between the dealer and the client including the following:</p> <ul style="list-style-type: none"> • the nature and types of accounts available through the dealer • the types of investments available through the dealer • risks to be considered • risks of using borrowed money to make investments • conflicts of interest • costs to operate the account • costs to make, hold and sell investments • compensation to the dealer • ongoing reporting from the dealer to the client • availability of independent dispute resolution or mediation services at the firm's expense • a statement of an obligation to make a suitability assessment for the client prior to trade execution • information collected under the know-your-client requirements <p>An MFDA dealer is subject to similar relationship disclosure rules and is required to provide the client with the written disclosure of the following:</p> <ul style="list-style-type: none"> • the nature of the advisory relationship; • the products and services offered by the dealer; • client cash and cheques receipt and handling procedures; • the description of the dealer's obligation to make a suitability assessment for each order of the client; • definition of terms with respect to the know-your-client information and description how this information will be used in assessing investments; • content and frequency of account reporting • compensation that may be paid to the dealer <p>The IIROC rule for the establishing the minimum industry standards for relationship disclosure to retail clients will become effective on March 26, 2013 with respect to the new clients and on March 26, 2014 with respect to existing clients. The relationship disclosure will be required to be made in writing and contain all the required content listed in IIROC Rule 3500.5</p>	<p>14.2 of NI 31-103</p> <p>MFDA Rule 2.2.5</p> <p>IIROC Rule 3500</p>
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New account application form	<p>The salesperson is required to obtain from the client a completed new account application form which captures relevant information about the client including but not limited to:</p> <ul style="list-style-type: none"> • employment information • the type of account • investment objectives • investment time horizon • investment knowledge • tolerance for risk • information required by other applicable laws and regulations 	MFDA Rule 2.2.2 MFDA Policy 2
Disclosure of any referral arrangements	<p>A dealer may pay a fee to a third party who referred the client to the dealer only if the referral arrangement satisfies a number of conditions. One of these conditions is that the client must be provided with the following information in writing before the account is opened for the client:</p> <ul style="list-style-type: none"> • name of each party to the referral arrangement • purpose and material terms of the referral arrangement • any conflicts of interest arising from the referral arrangement • method of calculation and, if possible, the amount of the referral fee • the securities registrations of the parties to the referral arrangement and the scope of activities in the referral arrangement that are permitted by such registrations • a statement that all activity requiring registration resulting from the referral arrangement will be provided by the registrant receiving the referral • any other information that a reasonable client would consider important in evaluating the referral arrangement <p>In addition, an MFDA dealer may enter into the referral arrangements only if</p> <ul style="list-style-type: none"> • the referral arrangement is between two MFDA dealers or between an MFDA dealer and an entity licensed or registered in another category, a Canadian financial institution, insurance agent or broker or subject to such other regulatory system as may be prescribe by the MFDA • there is a written agreement in place for the referral arrangement • all fees and other compensation is recorded on the books and records of the dealer • written disclosure of referral arrangements has been made to clients prior 	<p>13.7-13.11 of NI 31-103</p> <p>MFDA Rule 2.4.2</p>

	to any transaction taking place, including, but not limited to, the disclosure of how the referral fee is calculated, the name of the party receiving the fee	
Prohibition on personal financial dealings with clients	<p>IIROC dealers and their representatives are prohibited from receiving any type of remuneration, gratuity, benefit or other consideration from their clients.</p> <p>IIROC also proposed an amendment to the existing rules to expressly prohibit personal financial dealings with the clients, including:</p> <ul style="list-style-type: none"> • receiving any direct or indirect benefit or consideration from clients, other than through the dealer • entering into any private settlements with clients • lending money to clients • borrowing money from clients • having control or authority over the financial affairs of clients <p>Under the MFDA Rules, financial dealings with a customer fall under the general conflict of interest section.</p>	<p>IIROC Rule 18.15</p> <p>Proposed amendment to IIROC Rule 18.14</p> <p>MFDA Rule 2.1.4</p>
3. WHEN THE CLIENT WANTS TO PURCHASE OR SELL AN INVESTMENT IN A MUTUAL FUND		
Restrictions on promoting a mutual fund through advertising	<p>All advertising to promote investing in a mutual fund (whether the advertisement is made by the mutual fund or the client's dealer) must comply with extensive rules in Section 15 of NI 81-102. These rules include a general prohibition against misleading sales communications and specific rules on the following matters (among others):</p> <ul style="list-style-type: none"> • citing the past performance of the mutual fund and its rating or ranking • comparing the mutual fund's performance to that of another investment or index • noting any recent material changes to the mutual fund that may have impacted its past performance • promoting the tax advantages of investing in a mutual fund <p>These rules are designed to ensure that advertising is fair and accurate.</p> <p>No MFDA dealer is permitted to issue, participate or knowingly allow its name to be</p>	<p>15 of NI 81-102 Part 13 of 81-102CP</p> <p>MFDA Rule 2.7.2</p>

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	used in any advertisement or sales communication which contains a (i) false or untrue statement or an omission of a material fact, (ii) an unjustified promise of specific results, (iii) uses unrepresentative statistics or fails to identify the material assumptions, (iv) contains any opinion or forecast of future events which are not clearly labelled as such, (v) fails to fairly present the potential risks to the client, (vi) is detrimental to the interests of the public, dealer or the MFDA or (vii) does not comply with any applicable legislation, policies or guidelines.	
Restrictions on client communications	<p>An MFDA dealer shall not issue any client communication that would</p> <ul style="list-style-type: none"> • be untrue or misleading • make unwarranted or exaggerated claims or conclusions or fail to identify material assumptions • be detrimental to the interests of the clients, the public, the dealer or the MFDA • contravene any applicable legislation, policies or guidelines • be inconsistent or confusing with any information provided by the dealer or its representative in any other information given to the client 	MFDA Rule 2.8
Prohibition against a mutual fund or its manager from paying compensation or benefits directly to salespeople	All forms of monetary and non-monetary compensation and benefits paid by or on behalf of a mutual fund or its manager must be paid to the salesperson's dealer rather than directly to the salesperson. This is designed to provide the dealer with greater control and oversight of the types of compensation and benefits received by its salespersons for selling mutual funds.	2.1 and 2.2 of NI 81-105

<p>Restrictions on forms of commission compensation</p>	<p>A mutual fund's manager may pay commissions to a dealer only if several conditions are satisfied, including that:</p> <ul style="list-style-type: none"> • the mutual fund's prospectus discloses the range of commissions that may be paid and how those commission are calculated • the rate of the commission does not increase based on the volume of sales made by the dealer or amount of assets of that dealer's clients invested in the mutual fund • the rate of commission does not increase for a particular time of year (such as RSP season) <p>These requirements and restrictions are intended to provide clients with disclosure of the compensation their dealer is receiving for selling the mutual fund, and to limit differences in the rates of commissions that otherwise could provide an incentive for a salesperson to recommend one mutual fund over another mutual fund.</p>	<p>3.1 of NI 81-105</p> <p>3.2 of NI 81-105</p>
<p>Internal dealer incentive restriction</p>	<p>A dealer cannot provide its salespeople with an incentive, such as a bonus payment or higher commission pay-out rate, to recommend one mutual fund over another mutual fund. This restriction encourages salespeople to recommend mutual funds to clients based on suitability rather than the compensation arrangement of their dealer. (There are a few exceptions to this rule based on particular business models.)</p>	<p>4.1 and 4.2 of NI 81-105</p>
<p>Prohibition against using portfolio transactions as dealer incentives</p>	<p>A manager is prohibited from using or influencing the trading activity in the mutual fund's investment portfolio as a means for rewarding salespeople for selling the mutual fund. This prohibition is achieved through various restrictions on how the manager allocates those trades to dealers for execution, and how the dealers process such trading activity. It prevents a salesperson for using a different relationship with the mutual fund as a means for increasing the salesperson's compensation.</p>	<p>6.1 and 6.2 of NI 81-105</p>
<p>Disclosure by the mutual fund and dealer of potential conflicts of interest from cross-ownership</p>	<p>If a salesperson recommends that a client invest in a mutual fund where either the manager has an ownership interest in the dealer, or the dealer or salesperson has an ownership interest in the manager, this must be disclosed to the client before the client decides to proceed with the purchase. The mutual fund makes this disclosure in its simplified prospectus. The dealer makes this disclosure in a document provided by the dealer to the client before the investment is made.</p>	<p>8.2 and 8.3 of NI 81-105</p> <p>13.6 of NI 31-103</p>

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Suitability review	<p>Before arranging for a client's investment to be made or sold, the salesperson must review with the client whether the transaction is suitable for the client. This is the key obligation on salespeople. It describes the fundamental nature of the service received by a client from his or her salesperson, namely a determination with a particular mutual fund is a suitable (or unsuitable) investment for that client.</p> <p>The salesperson of an MFDA dealer also has an obligation to update know-your-client information upon the occurrence of a material change in client information and at least annually request in writing that each client notify the dealer if there has been any material change. The date of such request and the date on which such client information is received and recorded must be retained.</p> <p>A representative of an IIROC dealer is required to update client information on the application where there is a material change of client information. An IIROC dealer is required to have procedures to verify material changes to client information independent of its representatives.</p>	<p>13.3 of NI 31-103 MFDA Rule 2.2.1 IIROC Rule 1300</p> <p>MFDA Rule 2.2.4</p> <p>IIROC Rule 2500, Part II, section A.5</p>
Disclosure of the use of borrowing for securities purchases	Before a client borrows money in order to make an investment, the salesperson must provide to the client a risk disclosure document containing the added risks associated with making an investment using borrowed money.	MFDA Rule 2.6
Restrictions on commission rebating	A dealer and its salespeople are prohibited from reimbursing a client for some or all of the client's redemption fees to assist the client with transferring from their current mutual fund to mutual fund managed by the dealer or one of its affiliates.	7.1 of NI 81-105
Prohibition against tied selling	Dealers are prohibited from imposing a requirement on a client to buy, sell or hold a security or use a product or service as a condition of buying, selling or holding a mutual fund investment. Restrictions also apply to the IFM.	7.4 of NI 81-105 11.8 of NI 31-103
Prohibition of financial assistance	A manager is prohibited from providing financial assistance to a dealer (such as through a loan or loan guarantee).	7.2 of NI 81-105
Prohibition against using charitable donations as incentives	A manager is prohibited from making a charitable donation if the tax credit associated with the donation would benefit a dealer or its salesperson.	7.3 of NI 81-105

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General anti-avoidance rule concerning dealer compensation and selling practices	A manager, dealer and salesperson cannot attempt to circumvent the sales practices restrictions described above through indirect means.	2.4 of the companion policy to NI 81-105
Simplified prospectus of the mutual fund	<p>For each investment by a client in a mutual fund, the client will receive the simplified prospectus of the mutual fund either before making the investment or within two business days of such investment (unless the client has already received the mutual fund's current simplified prospectus). The simplified prospectus provides extensive and detailed information concerning information that the investor may find helpful about the mutual fund. It is used as a tool by both the salesperson and the investor to ensure that the investor can understand all material aspects of their investment in the mutual fund, and the salesperson can confirm the suitability of the mutual fund for that investor. Information in the simplified prospectus includes the following:</p> <ul style="list-style-type: none"> • the investment objectives and strategies of the mutual fund • the risks associated with an investment in the mutual fund • a summary of the types of investors for whom the mutual fund may be suitable • the transaction costs associated with purchasing and selling an investment in the mutual fund • the ongoing annual costs associated with an investment in the mutual fund • the fees paid to the manager for managing the operations of the mutual fund • the commissions and other compensation paid to the dealer for selling the mutual fund 	71 (1) of OSA NI 81-101 and NI 81-101F1
Simplified prospectus disclosure of dealer compensation	A mutual fund's simplified prospectus must disclose to investors all types of compensation payable to dealers who sell the mutual fund and the sales practices of the manager for the distribution of securities of the mutual fund. This disclosure provides transparency concerning the relationship between the mutual fund and the dealers that offer the fund for sale.	8.1 of NI 81-105
Fund Facts document of the mutual fund	<p>Every mutual fund must prepare a fund facts document for each class or series of securities of the mutual fund. The fund facts document provides a summary of the information that investors consider most relevant to a decision whether to invest in the mutual fund including:</p> <ul style="list-style-type: none"> • the past performance of the mutual fund • the mutual fund's top 10 holdings • a risk assessment of the mutual fund • the costs associated with an investment in the mutual fund • the compensation paid to a dealer for selling the mutual fund 	NI 81-101 and NI 81-101F3

	<p>The fund facts documents are required to be posted on the manager's website as soon as practicable and no later than within 10 days of its filing with the securities commission.</p> <p>In the next implementation stage currently developed by the CSA, the fund facts documents will be required to be delivered to investors within two days of buying a mutual fund.</p>	
Trade confirmation	<p>Following the purchase or sale of an investment in a mutual fund, the dealer must promptly deliver to the client written confirmation of the details of the transaction. These details include:</p> <ul style="list-style-type: none"> • the name of the mutual fund and the class or series of the investment • the date of the transaction • the price per security and quantity and description of security 	14.12 of NI 31-103 MFDA Rule 5.4
4. WHILE THE CLIENT REMAINS INVESTED IN THE MUTUAL FUND		
Supervision of activity in retail client accounts	<p>Every dealer must have systems and written policies and procedures to supervise trading activity in retail accounts.</p> <p>Under the MFDA Rules, a two-tier structure is required to adequately supervise client account activity, with branch level supervision at the first tier and head office or regional area supervision at the second tier. The branch manager is required to review the previous day's trading for unsuitable trades and any other unusual trading activity, which review must include all initial trades, trades in exempt securities, leveraged trades/leverage recommendations for accounts, trades in accounts of registered salespersons' family members operating under a power of attorney, redemptions over \$10,000, trades over \$2,500 (in moderate-high or high risk investments), trades over \$5,000 (in moderate or medium risk investments) and trades over \$10,000 (in all other investments).</p> <p>The head office is required to review daily account activity which must include all redemptions over \$50,000, trades over \$5,000 in exempt securities, moderate-high or high risk investments or leveraged trades/recommendations for open accounts, trades over \$10,000 in moderate or medium risk mutual funds and trades over \$50,000 in all other investments.</p> <p>Under the IIROC Rules, a two-tiered supervisory review system that complies with</p>	<p>MFDA Rule 2.5 MFDA Policy 2</p> <p>IIROC Rule 2500,</p>

	<p>prescribed daily and monthly trade reviews is an acceptable structure, with supervisors conducting review at the first tier and the head office conducting review at the second tier. Daily and monthly trade reviews should be reasonably designed to detect the following activities at the first-tier review:</p> <ul style="list-style-type: none"> • unsuitable trading • undue concentration of securities in a single account or across accounts; • excessive trade activity • trading in restricted securities • conflict of interest between registered representatives and client trading activity • excessive trade transfers, trade cancellations etc. indicating possible unauthorized trading • inappropriate / high risk trading strategies • quality downgrading of client holdings • excessive / improper crosses of securities between clients • improper employee trading • front running • account number changes • late payment • outstanding margin calls • violation of any internal trading restrictions • undisclosed short sales • manipulative or deceptive trading • insider trading • The second-tier daily and/or monthly reviews, as applicable, include the review of trades meeting certain criteria, non-client trading, all client accounts not reviewed by the supervisor, trade cancellation and late payments. 	Parts III and IV
Requirement for ethics and integrity in business conduct	<p>Every MFDA dealer and its salespeople are required to:</p> <ul style="list-style-type: none"> • deal fairly, honestly and in good faith with clients • observe high standards of ethics and conduct in the transaction of their business • not engage in any business conduct or practice which is unbecoming or detrimental to the public interest 	MFDA Rule 2.1.1

	<ul style="list-style-type: none"> • be of such character and business reputation and have such experience and training as is consistent with the standards described above or as may be prescribed by the MFDA. <p>Comparable business conduct obligations (other than the standard described in the first bullet above) apply to an IIROC dealer and its salespeople.</p> <p>[These standards, though worded differently from a fiduciary duty, can be applied by regulators to provide the same degree of protection for investors.]</p>	IIROC Rule 29.1
Quarterly account statements	For each quarter that a client is invested in a mutual fund, the client will receive from his or her dealer an account statement that summarizes the activity in the client's account during such period.	14.14 of NI 31-103 MFDA Rule 5.3.1
Restrictions on forms of trailer fee compensation	<p>A mutual fund's manager may pay a trailing commission to a dealer but only if a number of conditions are satisfied, including:</p> <ul style="list-style-type: none"> • the payment obligation arises after the trade • the mutual fund's prospectus discloses the range of trailing commissions rates that may be paid and the method of their calculation • the method and time of calculation of the trailing commission and the time periods used for determining the amount are the same of all participating dealers • the rate of trailing commission does not increase based on the increases in the amount or value of securities sold, the amount or value of securities of the mutual fund or for a particular period of the year in which the trailing commission is paid <p>These requirements and restrictions are intended to provide clients with disclosure of the ongoing compensation their dealer is receiving while the client remains invested in the mutual fund, and to limit differences in trailer fee rates that otherwise could provide an incentive for a salesperson to recommend one mutual fund over another mutual fund.</p>	3.2 of NI 81-105
Restrictions on educational and marketing support	A mutual fund manager is permitted to provide financial assistance for a dealer's educational and marketing activities only if certain conditions are satisfied. These rules generally limited to eligible conferences, seminars and other marketing to those satisfying particular educational requirements concerning mutual fund investing.	5.1, 5.2, 5.3, 5.4 and 5.5 of NI 81-105

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	<p>The reasons for these restrictions are:</p> <ul style="list-style-type: none"> • to ensure that the manager's assistance ultimately benefits investors in mutual funds (rather than merely constituting promotion for the dealer) • to ensure that the amount of assistance provided is reasonable in the circumstances 	
Updating client information	<p>Every MFDA salesperson is required to update each client's KYC information upon occurrence of a material change in client information and at least annually, in writing, request each client to notify the MFDA dealer if there has been any material change in client information.</p> <p>A representative of an IIROC dealer is required to update client information on the application where there is a material change of client information. An IIROC dealer is required to have procedures to verify material changes to client information independent of its representatives.</p>	<p>MFDA Rule 2.2.4</p> <p>IIROC Rule 2500, Part II, section A.5</p>
Annual financial reporting of the dealer and fund manager	The dealer must prepare and file annual financial statements with the relevant securities commissions and SRO to confirm the continuing financial strength of the dealer and its ongoing compliance with various regulatory requirements. The annual financials should include calculations of excess working capital.	<p>12.10 and 12.12 of NI 31-103</p> <p>MFDA Rule 3.5</p>
Interim financial reporting of the dealer and fund manager	The dealer must prepare and file interim financial statements with the relevant securities commissions and SRO to confirm the continuing financial strength of the dealer and its ongoing compliance with various regulatory requirements. The interim financials should include calculations of excess working capital.	<p>12.11 and 12.12 of NI 31-103</p>
Standard of care of the manager of the mutual fund	The manager of the mutual fund must exercise the powers and discharge the duties of its position honestly, in good faith and in the best interests of the investment fund. The manager also must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.	116 of OSA
General duties of a registered dealer, advisor and their representatives	The registered dealer, advisor and their representatives must deal fairly, honestly and in good faith with their clients.	2.1 of OSC Rule 31-505

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Custody of the assets of the mutual fund	The assets of the mutual fund must be held by (i) a bank listed in Schedule I, II or III of the <i>Bank Act</i> (Canada), (ii) a trust company incorporated in or licensed or registered under the laws of Canada or foreign jurisdiction with shareholders' equity of not less than \$10 million or (iii) a company incorporated in Canada or foreign jurisdiction that is an affiliate of a bank and subject to certain conditions.	6 of NI 81-102
Annual financial statements of the mutual fund	Every mutual fund must prepare and file annual financial statements with the relevant securities commissions. These financial statements are audited by an independent accounting firm. The financial statements are mailed to the client unless the client opts out of receiving the financial statements. The financial statements also are publicly available, free of charge, on SEDAR.	2, 3 and 5 of NI 81-106
Annual management report of fund performance	Every mutual fund must prepare an annual management report of fund performance in which the mutual fund provides a commentary on its annual financial statement in order to assist clients with understanding the relevance of the information in those financial statements. The annual management report of fund performance is filed with the relevant securities commissions and mailed to the client unless the client opts out of receiving the report. The report also is publicly available, free of charge, on SEDAR.	4 of NI 81-106
Interim financial statements of the mutual fund	Every mutual fund must prepare and file interim financial statements with the relevant securities commissions. The interim financial statements are publicly available, free of charge, on SEDAR.	2,3 and 5 of NI 81-106
Interim management reports of fund performance	Every mutual fund must prepare an interim management report of fund performance in which the mutual fund provides a commentary on its interim financial statement in order to assist clients with understanding the relevance of the information in those financial statements. The interim management report of fund performance is filed with the relevant securities commissions and also is publicly available, free of charge, on SEDAR.	4 of NI 81-106
Quarterly portfolio disclosure of the mutual fund	The mutual fund prepares a summary of its investment portfolio for the first and third quarters of its financial year. These reports are posted on the mutual fund's website and enable the client to monitor their mutual fund.	6 of NI 81-106

Annual compliance report regarding the custody of the mutual fund's assets	Annually the custodian of the mutual fund's assets must a report confirming whether the custodian and sub-custodian agreements are in compliance with the applicable provisions of NI 81-102 and whether each sub-custodian satisfied the applicable custodianship requirements. A copy of this report is required to be delivered by or on behalf of the mutual fund to the securities commission within 30 days after the filing of the annual financial statements of the mutual fund.	6.7 of NI 81-102
Annual compliance report of the manager, principal distributor and dealer relating to the handling of client money	<p>Annually the mutual fund (or its principal distributor) and every dealer must prepare and file with the securities commissions a report confirming compliance with applicable requirements of NI 81-102, and an accompanying auditor's report, concerning the handling of client assets according to the requirements of NI 81-102.</p> <p>The requirement for the principal distributor and every dealer to deliver the above compliance reports does not apply to a member of IIROC and, except in Quebec, to a member of the MFDA.</p>	<p>12 of NI 81-102</p> <p>12(4) and 12(4.1) of NI 81-102</p>
5. IF THE CLIENT IS DISSATISFIED WITH HIS OR HER SALESPERSON OR DEALER		
Designated Complaints Officer	Dealers are required to designate a Complaints Officer with the requisite experience and authority to oversee the complaint handling process.	IIROC Rule 2500B, section 3
Prescribed complaint response timelines	<p>When a complaint is made by a client to an IIROC dealer, an acknowledgement letter must be sent to the client within five business days, and a substantive response letter is required be provided within ninety days.</p> <p>The client and IIROC must be advised if the client is not to receive a final response within the ninety (90) days time frame, including the reasons for the delay and the new estimated time of completion. The substantive response must be presented in a manner that is fair, clear and not misleading to the client and must include:</p> <ul style="list-style-type: none"> • a summary of the complaint • the results of the dealer's internal investigation into the complaint • the dealer's final decision on the complaint, including an explanation <p>In addition, the substantive response letter must describe for the client the options available to the client if the client is not satisfied with the dealer's response, including:</p> <ul style="list-style-type: none"> • arbitration • referral to the Ombudsman for Banking Services and Investments; • filing a regulatory complaint with IIROC or another regulatory authority to 	<p>13.15 of NI 31-103</p> <p>IIROC Rule 2500</p>

	<p>assess whether disciplinary action is warranted</p> <ul style="list-style-type: none"> • litigation (civil action) • other applicable options <p>When a complaint is made by a client to an MFDA dealer, an acknowledgement letter must be sent to the client within five business days, and a substantive response letter is required be provided within a reasonable time which must include:</p> <ul style="list-style-type: none"> • a summary of the complaint • the dealer's final decision on the complaint, including reasons for its decision • reminder that the client has the right to consider (i) making a complaint to the Ombudsman for Banking Services and Investments which will consider the complaint within 6 months of the substantive response letter; (ii) making a complaint to the MFDA, (iii) litigation/civil action and (iv) other applicable options. 	MFDA Policy 3
Dispute resolution service	<p>The dealer is required to ensure that independent dispute resolution or mediation services are made available, at the dealer's expense, to a client to resolve a complaint made by the client about any trading or advising activity of the dealer or its representatives.</p> <p>Each IIROC dealer is required to participate in or become a member of an arbitration programme or organization (which provides for mandatory arbitration) and ombudsperson service, each as approved by IIROC.</p>	<p>13.16 of NI 31-103;</p> <p>IIROC Rule 37</p>
Member Event Tracking System (MFDA)/ ComSet Reporting Requirement (IIROC)	<p>Representatives of an MFDA dealer are required to report a number of events to the dealer, including:</p> <ul style="list-style-type: none"> • a client complaint made in writing against the representative • a client complaint made in writing or otherwise against the representative personally or any other representative involving, among others, allegations of theft, fraud, misappropriation, breach of confidentiality and personal financial dealings with the client • circumstances when the representative believes that he/she contravened or is subject to proceedings alleging the contravention of the securities laws or any regulatory requirements • criminal offence charge or conviction • a civil proceeding where the representative is named as a defendant • bankruptcy • cancellation, suspension, termination or refusal of registration 	MFDA Policy 6

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	<ul style="list-style-type: none"> rendered or outstanding garnishments The MFDA dealer is required to report a number of events to the MFDA, including: all client complaints (other than service complaints) any contravention of law or regulatory requirement by the dealer or its representative, including theft, fraud, forgery, insider trading, breach of client confidentiality, private dealings with the client, etc. any legal action against or involving the dealer or any of its representative or cancellation, termination, suspension or refusal of registration bankruptcy of any of the representatives outstanding or rendered garnishments against the dealer or any of its representatives <p>The IIROC rules also require that the representatives of an IIROC dealer report any customer complaints or contravention of law or regulations to their dealer and the dealer has an obligation to report customer complaints (other than service complaints) and a number of other events to the IIROC.</p>	IIROC Rule 3100
Gatekeeper Reporting Requirement (UMIR)	These are market compliance rules that apply to IIROC dealers and their representatives.	UMIR Rule 10

(1) For brevity, this summary uses the following abbreviations:

81-102CP	Companion Policy to NI 81-102
IIROC Rule	Rules of the Investment Industry Regulatory Organization of Canada
MFDA Rule	Rules of the Mutual Fund Dealers Association of Canada
NI 31-103	National Instrument 31-103 <i>Registration Requirements and Exemptions</i> of the Canadian securities regulators
NI 31-109	National Instrument 31-109 <i>Registration Information</i> of the Canadian securities regulators
NI 81-101	National Instrument 81-101 <i>Mutual Fund Prospectus Disclosure</i> of the Canadian securities regulators
NI 81-102	National Instrument 81-102 <i>Mutual Funds</i> of the Canadian securities regulators
NI 81-105	National Instrument 81-105 <i>Mutual Fund Sales Practices</i> of the Canadian securities regulators
NI 81-106	National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> of the Canadian securities regulators
NI 81-107	National Instrument 81-107 <i>Independent Review Committee for Investment Funds</i> of the Canadian securities regulators
OSA	<i>Securities Act</i> (Ontario)
OSC Rule 31-505	OSC Rule 31-505 <i>Conditions of Registration</i> of the Ontario Securities Commission
UMIR Rule	Universal Market Integrity Rules of the Investment Industry Regulatory Organization of Canada

**APPENDIX B – Part 2
(QUEBEC)**

**EXISTING SECURITIES LEGISLATION FOR THE PROTECTION OF INVESTORS PURCHASING MUTUAL FUNDS
(Does not include regulation already applicable across Canada such as NI 31-103, NI 81-102, NI 81-105, etc.)**

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
Obligation to register	148. No person may act as a dealer, adviser or investment fund manager unless the person is registered as such.	<i>Securities Act</i> (Québec), R.S.Q., c. V-1.1 (“Securities Act”)
Obligation for the representative of a mutual fund dealer in Québec to contribute to the Fonds d’indemnisation des services financiers / Financial Services Compensation Fund	<p>Securities Act 148.1 The first paragraph of section 77 and the second paragraph of section 81 of the <i>Act respecting the distribution of financial products and services</i> (chapter D-9.2) apply, with the necessary modifications, to dealers registered as mutual fund dealers or scholarship plan dealers.</p> <p>ARDFPS - 77 The legal person that registers must, in addition to paying the fees required for registration, pay the contribution payable to the Fonds d’indemnisation des services financiers pursuant to section 278.</p> <p>ARDFPS - 81 [...] A firm must also pay the contribution payable to the Fonds d’indemnisation des services financiers pursuant to section 278.</p>	<p>Securities Act.</p> <p>Note that when the mutual fund sector was transferred from the <i>Act respecting the distribution of financial products and services</i> (Québec) (R.S.Q., c. D-9.2) (the “ARDFPS”) to the Securities Act on September 28, 2009 certain obligations contained in the ARDFPS were maintained including among others the Fonds d’indemnisation des services financiers and the Chambre de la sécurité financière’s entire mission with respect to mutual fund representatives.</p>
Authority of the Chambre de la sécurité financière over the discipline and professional development of the representatives of a mutual fund dealer in Québec	149.2 Titles V - <i>Chambre de la sécurité financière and chambre de l’assurance de dommages</i> to VI - <i>Discipline Committees</i> of the <i>Act respecting the distribution of financial products and services</i> (chapter D-9.2) apply to representatives of a mutual fund dealer and representatives of a scholarship plan dealer.	Securities Act. Introduced in the Securities Act in September 2009.
Obligations of the investment fund manager including the Obligation to act in the best interest of its clients	<p>159.2 An investment fund manager shall, in the exercise of its functions, comply with the obligations set out in its constituting document, its by-laws and the law, and act within the limits of the powers conferred on it.</p> <p>159.3 An investment fund manager shall, in the best interests of the fund and its beneficiaries or in the interest of the fulfillment of its purpose, exercise prudence, diligence and skill, and discharge its functions loyally, honestly and in good faith.</p>	Securities Act. Introduced in the Securities Act in September 2009.

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
Obligation of the dealers and advisors and their representatives to act in good faith	<p>160. All persons registered as dealers, advisers or representatives are required to deal fairly, honestly, loyally and in good faith with their clients.</p> <p>160.1 In their dealings with clients and in the execution of the mandates entrusted to them by their clients, all persons registered as dealers, advisers or representatives are required to act with all the care that may be expected of a knowledgeable professional acting in the same circumstances.</p>	Securities Act
Fonds d'indemnisation des services financiers / Financial Services Compensation Fund	<p>FINANCIAL SERVICES COMPENSATION FUND Establishment.</p> <p>258. A financial services compensation fund is hereby established under the name "Fonds d'indemnisation des services financiers". Purpose. The fund shall be assigned to the payment of indemnities payable to victims of fraud, fraudulent tactics or embezzlement for which a firm, an independent representative, an independent partnership or a mutual fund dealer or scholarship plan dealer registered in accordance with Title V of the Securities Act (chapter V-1.1) is responsible.</p> <p>277. The Authority is subrogated in all the rights of a victim it compensates, up to the amount of compensation paid. The amounts so recovered shall be paid into the fund.</p>	Sections 258 and 277 of the ARDFPS apply for the purpose of compensating a victim of fraud. fraudulent tactics or embezzlement .
Membership of the representatives of the mutual fund dealer with the Chambre de la sécurité financière	The Chambre de la sécurité financière is responsible of the discipline and compulsory development of mutual fund dealer's representatives.	The Chambre de la sécurité financière is the organization responsible of the discipline of representatives until the Autorité des Marchés Financiers adopts an official position on the harmonization of the mutual fund regulation.

Regulatory requirements	Description of regulatory requirement	Source of regulatory requirement and case law
Rules of ethics in the securities sector	<p>2. A representative shall show loyalty towards his client whose interests shall be of the utmost priority when he makes a trade on his behalf.</p> <p>3. A representative shall make a diligent and professional effort to get to know a client's financial and personal situation as well as his investment goals. The information he obtains from the client shall describe this situation as well as any developments with respect thereto.</p> <p>4. A representative's recommendations shall be based on an in-depth analysis of information obtained from the client and information concerning the trade.</p> <p>5. A representative shall caution a client who gives him an unsolicited order which does not appear to be in keeping with his situation.</p> <p>6. A client's capital shall remain his exclusive property and a representative shall only use it for trades authorized by the client.</p> <p>7. A representative shall take reasonable steps to ensure the accuracy and sufficiency of information given to a client concerning his investments. ...</p> <p>14. A representative's professional activities shall be conducted responsibly, with respect, integrity and skill.</p> <p>15. A representative shall maintain a high level of professional knowledge.</p> <p>16. A representative shall ensure that his conduct complies with the law and meets the requirements of the body governing the firm on behalf of which he is acting.</p>	<p>Sections 2 to 7 and 14 to 16 of the <i>Regulation respecting the rules of ethics in the securities sector</i> adopted pursuant to the ARDFPS. <i>(This Regulation is revoked, M.O. 2009-06, 2009 G.O. 2, 3686A. Sections 2 to 20, as they read on 27 September 2009, continue to apply to mutual fund dealer representatives and scholarship plan dealer representatives registered in accordance with Title V of the Securities Act, until rules equivalent to those prescribed in the sections mentioned above are determined in their respect in a regulation made under section 331.1 of that Act, the whole as per the terms of section 135 of an Act to amend the Securities Act and other legislative provisions, Q.S. 2009 chapter 29) These sections will therefore cease to apply with the entry into force of the regulation adopting a compatible MFDA regulation.</i></p> <p>Lelièvre c. Lefebvre , CD00-0950, September 2012,</p> <p>Thibault c. Beaudoin, CD00-0765, March 2011</p>

business rather than to acquire new required skills, retool his/her office to implement new practice requirements and assume the increased risk of liability that comes with the, as yet untested, rules. It is feared this reduction in the number of advisors will reduce the availability of advice to investors.

The FSC estimates that the regulatory component of the FoFA reforms alone will cost product manufacturers and advice providers over \$700 million.

As it is early days, more research and cost benefit analysis is required of the Australian reforms over the next few years to assess their true benefits.

EUROPE:

There are currently several different proposed Level 1 texts for the revised Markets in Financial Instruments Directive (“MiFID II”) and the new Markets in Financial Instruments Regulation being debated at the various legislative bodies. Among the most contentious provisions is the proposal to ban independent advisors and portfolio managers from receiving third party commissions which is contained in the European Parliament adopted text for MiFID II. The Economics and Monetary Affairs Committee, made up of members of the European Parliament voted to reject the ban altogether, instead focusing on enhanced disclosure obligations.

It is important to note a difference between the CSA best interest concept described in the Consultation Paper and the similar requirement in MiFID (which may be carried into MiFID II). The MiFID statutory requirement “to act honestly, fairly and professionally in accordance with the best interests of the client, when providing investment services or ancillary services to clients”, applies to the investment firm and not the individual advisors as is proposed in the CSA Paper.

Tripartite negotiations between the three legislative bodies – the European Commission, the European Parliament and the Council of the European Union are still to take place to agree on the final framework legislation. Officials of industry associations in Europe say it is difficult to estimate how the contentious issues will be resolved, but observe that there is very little support for the ban on commissions, and so it is not expected to be included in the final MiFID II requirements. The associations are of the view that the U.K. ban on all retail investment advisors accepting commission imposed by the FSA effective January 1, 2013 is likely to make the U.K. an outlier jurisdiction. This is seemingly causing concerns that an unlevel playing field has been created for U.K. advisors. The actual market impact of the U.K. reforms is just beginning to be analyzed and reported; this will be discussed in more detail in the United Kingdom section of this Appendix.

MiFID II is not expected to be finalized before the Fall of 2013. Thereafter the Level 2 implementation measures will have to be agreed, after which the requirements must be implemented by each Member State to be effective in that State. Each Member State has a fair degree of flexibility in how it implements the principles in the Directive, so it will be important to understand how the appropriate comparative jurisdictions actually implement the ultimate MiFID II requirements. Realistically this Member State implementation is not expected to take place before 2016.

UNITED KINGDOM:

Officials of the Investment Management Association (IMA) note that the Consultation Paper provides a reasonable summary of the Retail Distribution Reforms (RDR) being implemented in the U.K. However there are important market and regulatory structure differences between the U.K. and Canada that must be analysed and better understood in order to assess the appropriateness of an RDR-style reform for Canada. For example, the U.K. reforms were driven largely by a number of incidents of mis-selling of pension, mortgage and structured products; situations that have not been present in Canada.

It is fully expected that the U.K. decision to ban commissions in advance of the conclusion of the tripartite debates in Europe over MiFID II will likely result in the U.K. being a regulatory outlier to the rest of Europe. The impact of this difference, both short and long term, will need to be better understood.

As in Australia, the securities regulator in the U.K. is also the regulator for insurance and banking products. As stated earlier, this allows these regulators to readily monitor market activity and prevent regulatory arbitrage and product substitution; an ability the CSA regulators do not have due to their narrow regulatory jurisdiction.

Impact of U.K. Reforms

Although it is still early in the implementation of the RDR, information is beginning to emerge on the practical impact that these reforms are already having in the U.K. market – and some of that information is pointing to increased prices for advisory services.

A recent analysis of the pricing models that have been adopted by several large U.K. banks to provide advice under the RDR indicates not only that there will be a wide spectrum of possible models, many of which are complex, but the range of prices for similar levels of advice will vary significantly from one institution to another. Although it may now be easier for an investor to actually calculate their price, the average price appears to be significantly higher than it would have been under the previous regulatory regime. This will surely reduce the appetite for many investors to obtain advice, and thereby would signal a negative consequence of the reforms.

UNITED STATES:

Representatives of the Investment Company Institute have stated that the CSA Consultation Paper provides a fair summary of the fiduciary duty issue in the U.S. but it overstates what the regulators and Congress have done so far. The study that was completed pursuant to the Dodd-Frank Act was not an SEC document, but an SEC Staff recommendation upon which the Commission has not yet acted. Accordingly it does not represent “an example of a foreign regulator developing a qualified best interest standard applicable to advisors and dealers.” As noted in the Consultation Paper the debate in the U.S. is so contentious that SEC staff have moved from stating they were going to propose a rule, to stating that they would do something more akin to a concept release in which they would seek data on the economic impacts of a fiduciary duty, to now saying even that effort is bogged down. As such, the nature of the reforms, if any, is far from certain and cannot yet be considered to be a proposal.

More importantly, conceptually the U.S. fiduciary duty initiative is substantially different, and is designed to achieve a very different objective, than the proposal for Canada described in the CSA Consultation Paper. The differences must be clearly understood.

The U.S. initiative is very much an exercise in harmonization of the requirements that should apply to broker/dealers *when providing personalized investment advice to clients*, with those requirements that already apply to investment advisors *when providing such advice*.

Section 202(a)(11) of the Investment Advisors Act defines an “investment advisor” as any person or firm that satisfies all of these three criteria: (i) for compensation; (ii) is engaged in the business of; (iii) providing advice to others or issuing reports or analyses regarding securities. There has been much interpretive guidance issued and discussion about who fits, and what activity brings someone, into this definition, and it is clear that the precise definition of “investment advisor” and the activities performed by an investment advisor will be fundamental points that will first need to be agreed upon before the Dodd-Frank initiative can move forward.

It is widely agreed that broker/dealers should be able to continue to conduct transactions for clients on a commission basis, and there would be no fiduciary duty applied in that case. The proposal in concept would seek to apply a fiduciary duty to broker/dealers who provide “advice and recommendations” to a client who is seeking the broker/dealer’s guidance, who is “relying on” the broker/dealer’s guidance and who expected that advice “to be given in the client’s best interest”. The concept is that if broker/dealers are providing substantially the same services to a retail client as investment advisors (who are already subject to the fiduciary duty), they should be subject to the same duty, with the same limitations in the scope of that duty. However, absent an SEC proposal, it is not possible to properly assess the U.S. concept or its scope, and therefore its appropriateness as a model the CSA should consider.