

Submission to the Canadian Securities Administrators (CSA Consultation Paper 33-404)



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CARP is pleased to have the opportunity to provide input into the regulatory priority setting process which so greatly affects the quality of lives of seniors. CARP is a national non-profit, non-partisan association with 300,000 members across Canada, most of whom are retired, with above average education, income and net worth. Most are concerned about out-living their money in retirement and about their children and grandchildren, whom they see as not saving enough for retirement – like a lot of Canadians.

Financial well-being is integral to quality of life as we age, and the access to quality investment advice and services is important to all of us living out our life in dignity and comfort.

This submission paper addresses the proposed fiduciary standard detailed in CSA Consultation Paper 33-404, which states:

Existing securities legislation in British Columbia, Saskatchewan, Ontario, Quebec, Nova Scotia, Prince Edward Island, Nunavut, Yukon, and the Northwest Territories would be amended to introduce a statutory fiduciary duty for registrants when they manage the investment portfolio of a client through discretionary authority granted by the client.

In addition to this standard, CARP understands that all jurisdictions with the exception of the British Columbia Securities Commission is also consulting on the addition of a regulatory best interest standard to the current standard of care for registrants. As set out in Consultation Paper 33-404, this standard “would require that a registered dealer or registered advisor shall deal fairly, honestly and in good faith with his or her clients and act in his or her clients’ best interests.” The registrant’s conduct would be held to that of a prudent and unbiased firm or representative, acting reasonably.

CARP supports the immediate adoption of a best interest standard for registrants. The suitability standard is unacceptable. Financial advisors should be recommending the product that is “best suited” for an investor, not merely one of several suitable options that may result in a higher commission for the advisor. This is a conflict of interest, where the advisor places his or her own interests over that of the investor.

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The need for clear and explicit regulation protecting investors is highlighted by the following observation contained within Consultation Paper 33-404:

The self-regulatory and industry organization investor complaint experience shows there is consistent and ongoing non-compliance with many of the current key regulatory requirements, with the unsuitability of investment recommendations being the primary basis for complaints to OBSI for the past five years, case assessment files for IIROC for the past three years and allegations in MFDA enforcement cases for the past three years.

CARP members overwhelmingly indicate that they believe their investment advisor is already required to act in their best interest. If this is the belief among Canadians, but not the reality, there is a serious problem. This problem is perhaps best summarized by Ed Waitzer, former Chairman of the Ontario Securities Commission, when he repeated the following quote:

If the product sold is that of advice, then that advice should be in the best interest of the client. Anything else is fraud, because the seller is delivering a service different from what the consumer thinks he or she is buying.

CARP supports the definition of best interests currently adopted by the Financial Planning and Standards Council, which is:

1. A Financial Advisor shall always place the client's interests first.
2. A Financial Advisor shall always act with integrity.
3. A Financial Advisor shall be objective when providing advice and/or services to clients.
4. A Financial Advisor shall develop and maintain the abilities, skills and knowledge necessary to competently provide advice and/or services to clients.
5. A Financial Advisor shall be fair and open in all professional relationships.
6. A Financial Advisor shall maintain confidentiality of all client information.
7. A Financial Advisor shall act diligently when providing advice and/or services to clients.
8. A Financial Advisor shall act in a manner that reflects positively upon the profession.

In addition to these eight principles, CARP supports the imposition of a ninth principle identified by ADVOCIS:

9. A Financial Advisor shall act in accordance with the spirit and principles of the law.

CARP understands that some oppose the imposition of this long-overdue standard on the basis of existing mechanisms in place to protect investors. Some believe that a best interests standard would create legal uncertainty. The best interests standard has been implemented in Canada by

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self-regulatory organizations and has been working well for years. There is no “legal uncertainty”.

The problem with the current system is that it creates a false sense of certainty for investors who already believe registrants are acting in their best interests when it comes to advice bearing on their financial viability into the future.

While CARP does not agree that the best interests standard would create uncertainty, if uncertainty is to exist, registrants are better positioned to deal with that uncertainty than are the victims of poor investment advice.

Failing to adopt the best interests standard will lead to more complex regulation. Neither the CSA, nor provincial securities regulators will be able to regulate every interaction between registrants and their clients. An overarching standard to act in the best interests of the client would serve to provide an explicit framework for every interaction moving forward, protecting investors and limiting the need for excessive and precise regulation that attempts to address every facet of the investor-registrant relationship. Over regulation is not the answer.

There are different understandings of a best interest standard:

1. Registrants would be required to provide overall financial advice in the best interests of investors. This would involve consideration of investment products, insurance products, estate planning and tax implications.
2. Registrants would be required to provide advice and act in the best interests of the investor in relation to the class of products available.
3. Registrants would be required to provide advice and act in the best interests of the investor only in relation to the products offered by the registrant or the organization they are employed with.

CARP believes that the best interest standard should apply to the overall financial situation of the investor, however recognizes that there are situations where a limited number of products are offered by a registrant – banks, for example. In these situations, registrants should be held to the best interest of the investor in relation to the products offered, but there is a heightened need for transparency. These registrants should be required to explicitly inform investors in writing that they only offer a select line of

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products and there may be other products available that are better

suited to the investor. This information should be disclosed and acknowledged prior to any advice or dealings taking place.

When a financial advisor breaches the best interest standard, the firm should be held accountable for that breach, alongside the advisor. Current enforcement levels and fine collection rates for breaches are unacceptable. Without adequate enforcement, even the most protective rules are meaningless.

Designations and Titles

CARP believes there are far too many designations and titles being used in the industry. A recent poll of our 300,000 members across Canada demonstrates that our members are unable to distinguish between the myriad of titles and designations. This leads to a lack of transparency in the industry, and a level of trust uniformly placed in advisors that may not be warranted. To address this issue, CARP recommends the following:

1. **There needs to be a distinction between those who provide broad financial advice and those who only provide investment advice.** A financial advisor provides professional advice in relation to a client's overall financial situation, such as whether they should invest or instead focus on paying off a credit card, whereas an investment advisor focuses solely on how best to invest funds. It is important for clients to understand whether they are receiving complete financial advice or advice that is more limited in scope.
2. **Professional designations and related titles for both of these activities should be strictly controlled.** Doctors, lawyers, engineers and chartered public accountants are self-regulated professions which rigorously control qualification for designations and the use of titles by their members. The proliferation of designating bodies and the sheer variety of titles in use by financial and investment professionals and sales people is not serving Canadians well. Self-regulatory bodies should be given the power to expressly enforce rules around titles and designations by statute, and they should be required to do so.

Submission to the Canadian Securities Administrators (CSA Consultation Paper 33-404)



3. **Individuals working in the investment industry who are not designated by an approved regulatory body must have a title that clearly indicates they are a sales person.** For example, an individual might be a mutual fund sales person, an investment product sales person or a stock sales person. This does not preclude the individual from providing advice about a particular product – this is indeed what good sales people do – but it will clearly indicate to the client the nature of the relationship. Other titles such as Vice President, Seniors Advisor or Wealth Management Specialist are not appropriate and should be eliminated. CARP is particularly concerned about unwarranted titles signalling expertise to seniors, which may not be warranted.

4. **Where titles or designations are appropriate, they should be justified by comprehensive educational requirements to ensure they encompass the level of professionalism and knowledge that is communicated to the public through the title.**

Conclusion

Registrants need to be held accountable for their actions. The need is heightened with the rapid increase in the number of senior citizens. Failure to address identified problems will lead to a growing crisis in the near future. The status quo is simply unacceptable – the protection Canadian investors already believe they have needs to be explicitly provided. We urge you to address the failures in the existing system. Seniors and investors across Canada deserve better.

Thank you for the opportunity to share the concerns of many of our 300,000 across Canada.

Sincerely,

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Director fo Policy