

Industry News

Letters to the Editor: BCSC stance on “best interests” not divisive

Provincial difference of opinion on a new standard for advisors does not presage a divided co-operative securities regulator

By Ian Russell | June 1, 2016

Re: [Position would be laughable, if not so sad](#), editorial, Investment Executive, June 2016

Your editorial alleges that the British Columbia Securities Commission (BCSC) is unwilling to consider the merits of an overarching client "best interest" standard on the grounds that it has decided not to solicit opinion on the "best interest" standard in the April, 2016 Canadian Securities Administrators (CSA) Consultation Paper. It also alleges that this difference of opinion presages the unenviable outcome of a fractional CSA or divided cooperative regulator. Both opinions are misguided.

First, the BCSC makes it clear in the latest CSA consultation paper that it will not solicit opinion on the "best interest" standard, not because it is uninterested in opinions and views on the merits of the standard, but because extensive opinion has already been canvassed, notably through the October 2012 CSA consultation paper 33-403: The Standard of Conduct for Advisors and Dealers: Exploring the Appropriateness of Introducing a Statutory Best Interest Duty When Advice is Provided to Retail Clients, and subsequent CSA stakeholder consultation sessions. Moreover, the BCSC refers to independent research carried out by the B.C. and Alberta Securities Commissions on the best interest standard.

The BCSC concluded that the proposed targeted reforms to the existing rules and regulations described in the latest CSA consultation paper "significantly strengthen the standard of conduct, lead to better investor outcomes and advance the best interests of investors." The BCSC has also concluded that to impose "a broad, sweeping and vague" best interest standard may be unworkable, and may create unwarranted expectations of the shared responsibility between clients and advisors for securities transactions and other services. Moreover, the regulators and courts would expend considerable effort and costs sorting out the meaning and implications of a "best interest" standard.

The differences of opinion between provincial securities commissions on the merits of a client "best interest" standard, or any other regulatory matter, do not portend a divided cooperative securities regulator. The cooperative regulator will have a unique and key advantage over the existing system. It will be led by an expert board of directors overseeing regulatory proposals that will seek and drive compromise on matters of regulatory principle, balancing investor protection concerns against efficient regulation and well-functioning markets.

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