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CANADIAN REGULATION OF INVESTMENT ADVISORS MEETS AND EXCEEDS GLOBAL MODELS

Toronto, ON – November 11, 2013 – A legal analysis of current and contemplated obligations of financial advisors to act in their clients' best interests has concluded that Canada's regulatory system is thorough, progressive and in many cases superior to those of the United States, the United Kingdom and Australia.

The 57-page report was prepared by Torys LLP, one of Canada's most respected business law firms, at the request of the Investment Funds Institute of Canada (IFIC) and the Investment Industry Association of Canada (IIAC) to address and clarify the following statements included in Canadian Securities Administrators Consultation Paper 33-403: *The Standard Of Conduct For Advisers And Dealers: Exploring The Appropriateness Of Introducing A Statutory Best Interest Duty When Advice Is Provided To Retail Clients:*

> "In this respect, the U.K. and E.U. already impose a qualified best interest standard on their advisors, Australia has passed legislation making such a standard mandatory by July 1, 2013, and in the U.S., staff of the U.S. Securities and Exchange Commission (SEC) has recommended such a uniform standard be introduced for broker-dealers and investment advisers although both a detailed SEC cost-benefit analysis and an SEC draft rule have yet to be completed."

"The terms 'fiduciary' and 'best interest' are over-used, casually and interchangeably, to describe a wide range of possible and unclear obligations," commented the paper's author, Torys Partner Laura Paglia. "When we looked at the content of the obligations of investment advisors in the U.S., the U.K. and Australia, we found that none of these jurisdictions have, or are considering, more onerous requirements than those already in place in Canada," Paglia added.

The U.S. Securities and Exchange Commission (SEC) has been exploring the possibility of a "uniform fiduciary standard" for several years; however, it has not yet made any recommendation. The Torys paper concludes that the U.S. is either debating or clarifying concepts that have been accepted and developed by Canada's legal and regulatory systems, noting:

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- The SEC Request for Information defines a fiduciary standard to simply include a duty of loyalty and care.
    - A duty of care is comprised of know your product and suitability obligations along with fair and reasonable compensation.
    - A duty of loyalty requires disclosure of the aspects of the retail client relationship and material conflicts of interests.
    - In addition to Canadian common law, IIROC and MFDA requirements in Canada incorporate and detail duties of loyalty and care.

The Torys paper found that the U.K. does not impose a statutory "best interest" duty on investment advisors, and, unlike Canada, there is little common law specific to investment advisors. "Their regulatory rules of conduct which require that financial advisors act 'honestly, fairly and professionally in accordance with the best interest of their client' are consistent with the crux or content of duties that apply to advisors in Canada through our existing regulatory system," Paglia said.

A recent (October 22, 2013) discussion paper published by the U.K. Law Commission focuses on pension schemes, but considers various market participants with some reference to investment advisors. The U.K. Consultation Paper formed the view that the law of fiduciaries should not be reformed by statute due to difficulties in defining fiduciary duties, which difficulties would multiply with statutory reform and result in new uncertainties and possible unintended consequences.

Various corporate collapses, along with a government mandated compulsory superannuation program caused Australia to introduce a statutory best interest standard in 2012. The statute did not provide clear guidance as to the meaning of best interest – a task that has fallen on the Australian Securities and Investment Commission (ASIC). The analysis by Torys reports that the subsequent guidance issued by ASIC is neither superior to, nor more onerous than those of Canada's SROs, and that the incoming government is expected to further narrow the scope of the statutory standard.

"Our conclusion, after reviewing the content and source of the obligations of investment advisors in each of the jurisdictions the CSA has elected to consider and benchmarking them against Canada, is that the applicable rules, guidances and notices of the IIROC and the MFDA fully inform investment advisors' professional standards in manners consistent with, if not superior to, approaches in these other jurisdictions," said Paglia. "In looking to other jurisdictions for best practices, it is vital that the CSA fully appreciate the underlying substance and context informing the concepts that are being considered and analyse these jurisdictions judiciously against Canada's regulatory system as a whole," Paglia added.

To review the analysis by Torys, click here.

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