WEBMASTER NOTE: This is the unedited transcript of the Investor Roundtable Re: CSA Consultation Paper 33-403 - Statutory Best Interest Duty for Advisors and Dealers on June 18, 2013 which we received directly from the transcriber. We are posting the transcript in this form to make it available as soon as possible.

CANADIAN SECURITIES ADMINISTRATORS

AUTORITÉS CANADIENNES EN VALEURS MOBILIÈRES

INVESTOR ROUNDTABLE RE:

CSA CONSULTATION PAPER 33-403 - STATUTORY BEST

INTEREST DUTY FOR ADVISORS AND DEALERS

DATE: Tuesday, June 18, 2013

HELD AT: Ontario Securities Commission

22nd Floor, 20 Queen Street West

Toronto, Ontario

BEFORE:

DEBBIE FOUBERT Director

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--- Upon commencing at 9:05 a.m.

INTRODUCTION AND OPENING REMARKS:

MS. FOUBERT: Okay. I think we'll get started. If everybody can grab their last coffee and muffin, and we can start then. I just wanted to thank everybody for attending. This is the first of three roundtables the CSA is hosting on the best interest consultation paper, so want to welcome everyone.

Just to take care of the business, the legal business, I will provide the disclaimer for all CSA individuals in the room, so that you know that the views expressed by the CSA staff during the roundtable are our own and do not necessarily represent the views of any commission that comprise the CSA.

Okay. So now that that is taken care of, so my name is Debbie Foubert. I'm the director of compliance and registrant regulation branch, which is also known as CRR, so if you hear that periodically, we fall back into acronyms every once in a while. But there are a lot of CSA members in the room as well, and so I just thought I'd do a quick introduction.

So Felicia Tedesco, Jeff Scanlon, and Alizeh Khorasanee are from the OSC. Lindy Bremner is joining us from the BC Securities Commission. Stéphane Langlois --

MR. LANGLOIS: Yeah.

MS. FOUBERT: And Isabelle Boivine is from the AMF. We also have our colleagues from the other jurisdictions on the phone. We have Bonnie Kuhn from the Alberta Securities Commission, Sonne Udemgba -- sorry -- from the -- from Saskatchewan, Chris Besko from the Manitoba Securities Commission, and Jason Alcorn from the New Brunswick Securities Commission.

We also have a number of people that are observers within the room from various organizations that are very interested in this initiative. So we have individuals from IIROC, the MFDA, OBSI, the Ontario Ministry of Finance, as well as some members of the press.

And then everyone sitting at the tables are representative of investor groups, investors themselves, so we're -- this roundtable is focused on the investor perspective. So thank you all for joining us.

Just a little bit of housekeeping. So the mics in front of you are muted unless you press the button, so the red light will go on. So please -- when you want to make a comment, please press the mic, and hopefully we can have one conversation going at once.

Also we are having a transcript done of the roundtable, just to make sure that we have everything accurately recorded, and then we will post that transcript on the OSC web site within a couple of days so everybody can go back and review.

So I just wanted to, you know, give a little background on -- to the paper. I'm sure everybody has read the CSA consultation paper, and that obviously this is a very complex area that requires careful consideration, and we want to have the right approach for Canada. So we want to ensure that our standards are appropriate for the Canadian investor and the Canadian capital markets.

And let me emphasize that no decisions have been made as to how we proceed at this point. This is a consultation, and so we value and appreciate all input that we're receiving on this.

I will give you a little bit of the agenda, then. First off, we'll provide a little bit of a background, and then we have grouped questions into four topic areas. So we'll be able to discuss the first topic, the first four topic areas, we'll have a break, and then we'll discuss the remaining four topic areas and then have time for conclusion.

So I think that that basically talks

about all of the housekeeping and the roadmap information. So I would like to turn it over to Jeff Scanlon, and he will be doing the rest of the presentation. Thank you.

BACKGROUND:

MR. SCANLON: Good morning, everyone. So as Deb mentioned, what I'd like to do is provide a bit of background to why we're here and where the paper came from.

So I think in some ways, a useful starting point is just to take a quick look at the regulatory structure for advisors and dealers in Canada. So the slide that you see in front of you sets out the different kinds of registration categories that firms can be registered in in Canada.

So in terms of advisors, there's one category of advisor registration, and that's portfolio manager. Portfolio managers can really advise on any kind of security, and they can have both sort of regular accounts or managed accounts.

And I know many of you know what a managed account is, but for those of you who don't, managed accounts are essentially accounts where, after having a discussion with your advisor and your advisor learns a little bit more about you and your investment

objectives and your risk tolerance, et cetera, they make investment decisions on your behalf, and you don't need to give consent for each of those decisions.

So that's a managed account, and they do both managed accounts and regular accounts, where you would sign off or give consent for each trade.

So in terms of dealers, there's actually four categories of dealers. There's investment dealers, so these are generally full-service dealers. They're regulated by IIROC. Then there's mutual fund dealers. Mutual fund dealers deal and trade in essentially mutual funds and labour-sponsored funds. They're -- the Mutual Fund Dealers Association of Canada has oversight over mutual fund dealers.

Then there's exempt market dealers. These are dealers who are focused on dealing with exempt products. So these are products that are usually sold to accredited investors or other -- sold under other exemptions like the $150,000 exemption, and they tend to be focused and not generally sort of retail products in the normal sense.

And then there's scholarship plan dealers that focus on specific savings products designed for people to help invest for their children's education.

Finally there's investment fund managers. I just wanted to put them out there. They are another category of registrant, although investment fund managers do not provide advice in respect of buying or selling securities. What they do and what they need to register with the securities regulators in Canada is to essentially run investment funds. And to the extent they do give advice, it's only because they're registered in one of the other categories I've talked about.

So I just wanted to give you a quick snapshot of those different kinds of firms in Canada. And one of the sort of takeaways I want to leave you with is that, you know, a lot of what we do is focused on proficiency, as securities regulators, and depending on what kind of advisor or dealer you are -- having a technical -- it couldn't be a really public roundtable without one of these moments.

So, you know, I'll just keep -- keep going here. So what I was getting at around proficiency is that we don't have a sort of one-size-fits-all solution for proficiency. Because of the specific approach to having these registration categories, we try to ensure that firms that have a specific focus have the proficiency necessary for that

kind of product that they deal in or that they advise on.

And you may find myself or other people as we go through this roundtable, that we use the term "advisor" kind of generically to mean both advisors and dealers. And part of the reason is because I think in the context of this roundtable and this project, the best interest standard that was discussed in the paper applies when advisors or dealers are providing advice.

So it's just -- it's a good shorthand when we're talking about both advisors and dealers when providing advice. So you may hear me talk about just advisors, but in fact, I mean both.

So that's just a bit of the background. So what is the current statutory standard of conduct today? So generally, advisors and dealers and the representatives have to deal fairly, honestly, and in good faith with their clients. So this is kind of an overarching, fundamental cornerstone element of our current securities regulatory structure.

When their clients are buying or selling securities or they're doing that on behalf of their clients, they have to ensure that they do what's called know-your-client diligence, which is ensuring that they know, you know, the investment objectives,

risk tolerance, other information about their client. They also need to do -- that's known as KYC.

They also need to do what's called "know your product" or KYP. And this is to the extent they're making recommendations or their client is buying a product, they need to know enough about that product to, you know, have a professional opinion about that. And then essentially, as most of you know, what happens is that they take the KYC and the KYP, and they try and ensure that there's an appropriate match for that product for the client. And that process, that match, is called suitability.

There's also rules around conflicts of interest, and these are generally principles-based. So what the securities rules essentially say is that you have to identify and respond to conflicts of interest if you're aware of them in the course of operating your business. And you can -- you can sort of manage them or respond to them in one of three ways. You can disclose them, control them, or avoid them, or any combination thereof.

And although securities rules do have some very specific prohibitions, for the most part, it's a principles-based approach, and it allows firms to have some -- quite a bit of flexibility to sort of

craft the response that they think is appropriate.

And then there's a variety of other, you know, principle- and rule-based regulatory requirements for advisors and dealers when they're dealing with their clients.

You know, we don't have time to get into all of them, but just some examples. I mean, if there's a referral arrangement in place, for instance, between the advisor and someone else to send the client to the advisor, there's a disclosure requirement, clients have a written agreement. There's also what's called relationship disclosure requirements, so there's an expectation that advisors and dealers provide sufficient information for the client to understand the nature of the relationship and how that relationship works.

So that's the current statutory standard of conduct in place, which leads me now to fiduciary duty. So what is fiduciary duty exactly? And so, you know, I hope you found the explanation in the paper helpful. Fundamentally, it's a duty to act in the client's best interest.

And you know, that always led to the question, well, what exactly does that mean, because that's not totally clear. So as the paper sort of

tries to explain, it -- there's some principles that courts generally identify to help explain what the content of that duty is.

So there's the principle that client interests must be paramount. So essentially, the client's interests come first. Conflict of interest must be avoided is another principle of the fiduciary duty. Clients are not to be exploited.

So this is -- the concept here is that it -- to the extent a fiduciary -- you know, under -- or realizes or becomes aware of an opportunity in the course of providing their service, generally they're not supposed to take advantage of that opportunity if they only found out about it through providing services to their client.

Clients are provided with full disclosure about the services and the advice that's given, and then finally, services are performed reasonably and prudently, which is a similar very kind of standard duty of care that's owed in a lot of relationships.

So it's worth mentioning this, that in most cases currently, there is no statutory fiduciary duty on advisors and dealers in Canada. There are some situations, narrow situations, in some of the provinces

in the context of managed accounts where there is a best interest -- statutory best interest duty, and Quebec civil law does have the duty of loyalty and duty of acting in the client's best interest in some circumstances. But in terms of a general overarching statutory requirement, that's not in place.

And then finally, I just want to briefly talk about -- and the paper mentions this -- when a fiduciary duty arises. And the courts have identified that financial advisor relationships are not relationships where fiduciary duty will always arise. It's always a factual analysis. Courts have to get into the weeds of that relationship.

And what they look for -- and I've just sort of highlighted the key elements up there -- is, you know, the vulnerability of the client, both coming into the relationship, but quite frankly, I think more importantly, once they're in the relationship, the vulnerability of the client; trust that the client reposes on the advisor; the reliance by the client on the advice; the discretion of the advisor over the client's interests.

And this is a key point, especially for financial advisors, and it's a key point, and this ties back to my comment about managed accounts. But managed

accounts, the very nature of them are that you're essentially handing over discretion to your advisor. So in that case, currently in Canada, courts will almost always find that there's a fiduciary duty at common law for advisors in the context of a managed account.

Fiduciary duty can arise outside of a managed account, but you have to look at the facts and see if there was that vulnerability and reliance, and, say, a slavish approval by clients of the advice that they get from their advisor.

And then finally, professional rules or codes of conduct also help inform whether or not courts will find that there's an expectation or reasonable expectation by clients and the advisor, frankly, that they're acting in the client's best interest.

So that's just a very quick snapshot of fiduciary duty, which brings me to the international reforms. So there's been some interesting developments internationally, and we canvassed them in the paper. And very quickly, in the U.S., SEC staff released a report where they recommend to their commission that the SEC introduce a statutory uniform fiduciary duty or best interest standard for financial advisors and broker-dealers in the U.S.

And that project hasn't really progressed that far. In March of this year, the Commission, their commission, released a request for data and other information to help them continue their analysis and to do some cost/benefit analysis in respect of their proposal, but there's been no draft rule making.

In the UK, there -- as part of a set of reforms called the retail distribution review, the UK reforms really focused on two things. And before I get there, they already had a qualified best interest standard. They've had it since 2007, but what they introduced was essentially a -- sort of more hopefully intuitive classification of advice into independent and restricted advice.

So that clients and investors would understand if they're getting, you know, advice that is sort of, you know, canvassing a reasonable array of products versus restricted advice, which might be narrower. And then more interestingly, they've banned commissions from third-party product producers, they call them, which is often sort of what we think of as fund companies. Any kind of compensation going from those companies to advisors, they've more or less banned that commission. So that's an interesting

development in the UK.

In Australia, they've come out with reforms that actually will take effect in only a few days, July 1st, 2013, where they've introduced both a statutory best interest standard when providing advice, and they've also introduced a ban on commissions quite similar to what the UK has done. So that's what's happening in Australia.

In the EU, it's early days still in the EU. They're working on what's called MIFID2, which is just really a set of reforms building on the original reforms back in 2007 when they came online. And they're looking at sort of a -- there's still a lot of flux in those reforms. It's hard to say exactly where they're going to land.

They likely will not be implemented before about 2015, but the EU Parliament is, I think, a bit of a Byzantine place sometimes. So I think there's a lot of negotiations going on.

The paper does sort of, you know, explore that they're going with kind of an independent versus restricted classification of advice. Not a -- maybe an outright ban on commissions, but maybe a scenario where if you want to hold yourself out as providing independent advice, then you can't accept

those kinds of commissions from other producers. So that's what's going on in the EU.

And I think the only other thing I want to mention about international reforms is that, you know, I think -- I think they were instructive and helpful to us as we considered some of these same issues, but I don't think this is a situation where, because we see what's going on there, we necessarily think, you know, that's necessarily the only solution for us.

I mean, I think what sort of was driving those reforms, there was a starting place in some of those jurisdictions. For instance, in Australia, what really sort of kick-started those reforms was a parliamentary committee report that delved into a couple of large-scale, very high-profile failures of investment companies. And so there were some scandals that led to these reforms.

So I guess my point is, you know, there was some different starting -- different starting places in terms of those reforms, and they were -- they've been very helpful as we consider some of these issues, but, you know, I think -- I think we just need to ensure that we are doing what's right for Canadian investors and Canada's capital markets. So those are

the international reforms.

Very briefly here, I know I'm running a bit overtime, and I'll just run through it. So the statutory best interest standard in the paper that we're -- that's described in the paper is really the standard that the advisor will have to act in the best interests of the client when providing advice.

We use this term retail client, and we use -- we tie it back to sort of a technical sort of term that's used in securities law, but one of the key elements of it is that it would apply to individuals who have $5-million or less in net financial assets. So it's a fairly high standard that would capture a lot of individuals.

But, you know, I think it's important also to stress what it wouldn't mean. You know, and I think the paper does this. It doesn't mean that there's necessarily one best investment, and I think that's an important -- that's an important point. It doesn't mean either that the advisor is a kind of guarantor for the returns.

I mean, you know, I think what we were envisioning as we described that standard is, you know, you take a look at the time that the advice was provided. And you can't sort of, you know, in

hindsight look back and say, well, you know, it turned out to not really perform that well, so it wasn't the best investment. You know, courts, even currently at common law, in the context of fiduciary duty, courts are very clear about that. I mean, this is not a situation where the fiduciaries are any kind of guarantor.

Nor will it also mean that investors are necessarily put into the cheapest product. I mean, the cheapest product might not actually be the best product. I mean, I think what a lot of investors are mainly interested in are, you know, the highest possible returns, risk-adjusted returns, over the time horizon that they have in mind. You know, as to the actual price of the product that will get them there, you know, it may not be the cheapest product. It might be, but it might not be.

And then what the paper doesn't mention or gets into is there's no -- as part of this project, any kind of contemplated change to dispute resolution mechanisms. So -- and we can talk about this, but to the extent that -- like having to, you know, go through the courts and, you know, engage in a lawsuit, you know, sort of a legal duty like this is not really saying anything about the dispute resolution

mechanisms.

So that's just a bit -- a quick snapshot of the duty that's prescribed in the paper.

And then very quickly, this is my last slide on the background. I just wanted to talk about, you know, what the CSA has been doing. We've been doing a lot of good work, I think, in the area of the advisor/client relationship. So we've got the Fund Facts reforms.

So these reforms essentially resulted in a document that's two pages -- up to two pages double-sided, that, as of -- I think it's June 2014 -- currently, fund companies have to post this document on their web site, and it's a summary of the mutual fund, each series of mutual fund, and describes -- gives a very kind of user-friendly, plain-language description of what's in the mutual fund, with the intention of investors being able to use it and look at it quickly and not getting bogged down in the details. And that is going to be a requirement to be delivered to investors within two days of any purchase, starting in June 2014.

IIROC and the MFDA have just passed a number of reforms called the client relationship management reforms, CRM reforms. And, you know, these

reforms, as I mention in the slide, I mean, there's a whole package of reforms. The ones that are most relevant for our purposes is that there have been enhancements to the suitability regime in those -- in those worlds, and as well to the conflicts of interest that have been enhanced and strengthened with those reforms.

And then finally, in terms of recent reforms that have passed is the reform called CRM II, the cost disclosure and performance reporting reform. So that's coming online imminently, in July 15th of this year. Now, there is a phase-in approach.

But the concept there is that the reforms are meant to give absolute transparency to customers and clients to understand, you know, what fees they're actually paying on their account and what are the returns on that account, so that, for instance, on an annual basis, they will see, you know, in dollar terms what fees they paid, as well in dollar terms, what is the return in the account, so that there can be, I think, a fulsome discussion with their advisor at least on an annual basis about how they're performing, and are they getting value for money.

And I think that will help some of the issues that come up in the advisor/client relationship.

Some of the other policy initiatives that the CSA is working on, the mutual fund fees paper that was published in December is looking at, you know, some of the issues with how mutual fund fees are structured in Canada, especially around embedded commissions like trailers, trailer commissions, trailer fees.

And there was actually a great roundtable on June 7th here in this room, and there was a great discussion, and the transcript is already available online, so I encourage you to take a look at that.

And then finally, in November of last year, the CSA published a proposal to securities laws to require advisor and dealer firms outside of Quebec to use OBSI as their dispute resolution provider when they have disputes with their clients.

So that's just a very quick snapshot of some of the other initiatives that we have worked on, continue to work on. I think provides some context for this discussion.

So I think that's enough of me talking. Before I start, does anyone have any questions or comments before we get into the more interactive portion of the session?

MS. FARRELL: So I just wanted to introduce myself to anybody who doesn't know me. I'm Eleanor Farrell, the director of the office of the investor here at the Ontario Securities Commission.

The office of the investor is a relatively new initiative here. It came out of the strategic review in 2011, and really was the recognition that there's an opportunity to improve investor protection by enhancing the OSC's understanding of investors' issues and concerns and better integrating those into our policy and operational activities.

The OSC is very committed to expanding outreach to investors, and the office of the investor leads the effort to identify investor issues and concerns and ensure that they're considered in our policy and educational activities.

We really believe that a better understanding of investors helps us to protect them better. This and other investor roundtables are being held so that we can talk to investors and hear their views and concerns. We recognize that it's a complex issue, and so we've prepared the backgrounder that you all received. We do want to hear your views and your thoughts.

This is part, as Jeff and Deb mentioned, of a broader outreach, and so hearing people's views about the relationship and ways that we can improve that is something that we're looking forward to. Thanks.

TOPIC: POTENTIAL BENEFITS:

MR. SCANLON: Any other questions or comments before I jump in?

Okay. So as Deb mentioned, we want to sort of throw out first four topics under the umbrella of the potential benefits of a statutory best interest standard. So I'm going to just quickly run through what those four topics are, and then we'll open the floor to comments and questions.

So the first topic is a solution to which problem? So as you know, we had a number of comment letters on this paper, and some of the comment letters said that there was really no evidence of actual harm to investors out of the current advisor/client relationship.

So what we want to hear from you are, you know, what are the main problems or concerns with the advisor/client relationship that you think a best interest standard will address. And you know, I think what we like is -- you know, we have a number of tools

in our regulatory toolbox, and I've talked about -- talked about them, you know, suitability and the fair dealing, the conflict rules, relationship disclosure, suitability, all those.

So, you know, we're trying to sort of figure out, you know, beyond that, how a best interest standard can address some of the problems that might exist, whether it's, you know, better investments or, you know, improvements around how conflicts are dealt with or how compensation is dealt with.

And then also, you know, if there's any concerns that you think are pressing in that relationship that a best interest standard might not address.

Topic 2, from suitable to best interest investments. So what we're trying to get at here is, you know, we see a potential benefit of a best interest standard is sort of increasing the standard from suitability to a best interest standard where clients get investments that are in their best interests rather than just suitable.

But there have been a number of commentators, and we asked some questions in the paper around, you know, how do you identify that? Like, what -- you know, what do you need to look at with the

client? What do you need to look at in respect of a product? Like, you know, we'd like your thoughts on, you know, how you go from suitable to best interest investments.

And also, as you think about that, you know, how do we -- how do we bring that together with our different registration categories that I went out at the start, so that we've got different registration categories that are focused on certain kinds of products like mutual fund dealers or exempt market products. So how would a best interest standard apply in those contexts, which are a little narrower.

Topic 3 is the impact of information/literacy imbalance. So in the course of our consultations, we've heard some comments that instead of being a potential benefit, some commentators said this is -- this could be a problem in the sense that, I mean, this imbalance is why clients and investors go see their advisors in the first place.

And to the extent that maybe they feel that their advisor is -- has to take more responsibility about the client's financial outcomes and future, that maybe there will be sort of a distancing or that the advisor -- the client will somehow be less engaged with their account, with their

advisor, and maybe that's not such a good thing. And we'd like to hear your thoughts about that.

And then finally, the legal certainty of the relationship. And again, this is another potential benefit that we listed in the paper, but some commentators have come back and said, well, you know, this could be a situation where there's enough uncertainty about really what it means in practice. And when you try and operationalize it, it might actually lead to a lot more uncertainty in practice, and it could take years, you know, of having to go through the courts to sort of try and figure out what it means.

So those are just some of the topics that have come up in the context of the potential benefits. So having canvassed them, I think at this point, we'd like to hear your thoughts on these topics and any of the other thoughts you have around potential benefits.

MS. ENG: First instance, I don't have the technology down. My name is Susan Eng. I'm vice-president for advocacy at CARP, Canadian Association of Retired Persons, but we don't use the name anymore, because we say so many of our members can't afford to retire.

And it used to be a joke. Now it isn't, because from our perspective of older Canadians who have invested or who would like to invest for their retirement, this issue has become a very, very significant one. Whereas they used to be able to sustain, you know, the volatility of the market, they now find that especially after 2008, it's devastating. And they have found that in addition to the vagaries of the market, that their own advisors have not been the best help that they could be.

And so there have been all the horror stories that we've seen, and our job at CARP is to help to identify some of the structural changes that might take place. And so we're really very welcoming of the CSA's initiative here and of course the OSC's role in it, to focus in on protecting investors and trying to level the playing field in the event that things go wrong.

And that is not to say that by definition, advisors are disadvantaging their clients, but rather that when things go wrong, the path to redress is uneven.

And if we look at the net-net purpose of a best interest standard -- let's say we had one -- it is to allow a person who has lost, aggrieved, to

sue -- after the NSA thing, now we're really worried who's listening. I lost my train of thought. No.

The purpose of the best interest standard, of course, is that when things go wrong, a person who feels victimized or aggrieved can take the advisor to court. You know, ultimately, that's the point of all of this. And when they go to court now, they have to prove that the advisor owed the duty, which is -- requires all that it entails, the uncertainties, the expertise, the legal costs, at a time when they've just lost all their savings. So it puts a very uphill battle in front of them.

So the question is whether or not, if we give them one of those tools, that is a statutory best interest duty, that at least they get the first step covered. They still have to show consequences to get the redress.

While that is definitely something that they currently don't have anywhere in Canada, as you've noted, that needs at least to be one way to start evening the playing field, so that during the client/advisor relationship, the advisors especially know that there's a consequence at the other end. At the present time, there is no consequence.

So that's really the point and purpose

of all of this, and this is what our members, from our very layman's perspective, need to see happening in the infrastructure of the securities regulated system altogether.

So from our perspective, we see it as a critical need. There is no legal uncertainty that's created, other than the fact that the advice industry, which has had easy sailing up until now, will now have to consider the interests of clients. These are the kinds of issues that disturb any kind of advance in protecting investors.

The path to -- and we polled our members, and what they need to see happening is that when things go wrong, they don't assume that they can hang their hands by their side and say, 'I have no responsibility.' They expect some balance. But they do expect that there is some clear path to restitution.

And at the present time, except for very hefty and expensive lawsuit, there is none. Public agencies that are set up to help them do not have the mandate to get their money back. The OSC, for all of the work that you're doing to encourage, support, educate investors, doesn't actually have a path to restitution. So that's our focus and interest.

MS. BREMNER: Thank you. I guess I'd

ask if you could maybe drill down a little bit more on the clear path, because that's something I'd like to hear from you on, and I guess the question is I would think that if we started with a best interest standard, that the client would still be in a legal system, which we know is costly, and they would be then faced with not proving that they were owed the best interest standard, but that that standard had been breached.

And it's an ambiguous standard and would require evidence to be led that that standard had been breached in order for them to get the redress that they want. And I question whether that's a clearer path than the path that we have now, where you can say it was unsuitable or they didn't deal with you fairly.

MS. ENG: There is a path to -- sorry. There is a path to restitution. That's the lawsuit. The hurdles in the path, however, are cost and the lack of the best standard. I'm overexcited. So clearing away one of those hurdles is a net positive. Sorry. I think the coffee went down the wrong way.

So -- yeah, so that would help. But by no means do we suggest that that's the only thing that should happen. Indeed, if we have the model that was recommended along with the national securities regulator, that is the informed -- investor protection

and enforcement agency, which has the model of both championing the investor, providing education, expertise, mediation, and ultimately helping the investor take issue before a tribunal, that actually would be the better thing.

In the absence of that coming to any kind of reality, then we are left only with the lawsuit path, okay? So I would prefer to see much more -- a much earlier intervention in this relationship, rebalancing of the relationship very much earlier on.

So this discussion, I think, if it sparks that kind of conversation instead of the best interest, because it's a bit of a cudgel at the moment, which is great, and then if we change the dynamic up front, then I think that would be even better. Nobody actually wants to go to court.

MR. SCANLON: So that's helpful. Thank you, Susan. I mean, I remember reading the CARP comment letter clearly, and it was a good comment letter, and I think as you mentioned in your comments here, you had surveyed some of the membership. And one of the issues, for instance, that you had talked about -- and just when you were talking in your comments previously about advisors not being the best help, I sort of want to maybe flesh that out a little

bit with you.

Because I remember one of the comments in your comment letter was that, for instance, quite a large portion of your membership thought that they were sold unsuitable investments. And, I mean, I find that distressing, point number 1. Point number 2, though, is that, I mean, we do have a suitability rule. So to the extent that, you know, suitability is not being met, I mean, we have a suitability rule at present that we could -- presently that we could -- you know, there's some different ways of approaching this kind of issue.

But if it's an issue of compliance with the current rules, is a best interest -- a statutory best interest standard necessarily the right solution to that problem.

MS. ENG: The big problem with these internal rules is that there are no consequences. And remember it is still true that the advisor is the absolute professional.

And as you mentioned in your paper -- what did you call it, the asymmetry of knowledge or whatever, which is a wonderful term. Just means the advisor knows lots more than the individual does, and the individual is in no good position to judge the

suitability for him or herself until after things go wrong.

Now, I readily accept and our members accept that investors have some obligation. Some of them are greedy, and they made a mistake, and they insisted, and they overcame the advice of their advisors. Fine. You know, those things will come out, say, in court or in some kind of tribunal or mediation.

But when it comes right down to it, these are recent -- our members tend to be above-average income and education, and a lot of them do have investments, and a lot of them have pension funds, for that matter, but they do have a very down-to-earth understanding of the situation. They're not sort of calling victim all the time, right?

So they're the kind of people who say, yeah, you know, we have a role to play, but we know that in this imbalance, we were taken advantage of, and there was no recourse. So I think it's a recourse point. So does it matter to anybody right now that somebody missed their suitability requirement? I have no idea how to challenge that.

So I guess part of the best interest standard, at the other end, as a bit of a backstop, is to suggest that at least it gets tested in court. You

know, if that's where we're going. So that's why it's really important for us to look at that as -- in the absence of anything else, that we have that, but along the path, that might require a much clearer conversation about suitability and consequences earlier on in the stream for missing suitability.

MS. FOUBERT: So on the point of suitability, that there's no consequences, I don't know whether or not you're aware, but we did do -- the OSC did do one of the largest sweeps that we've conducted on suitability, and so we went in and monitored portfolio managers and EMDs, and we've recently published the findings from that report.

So there is -- I mean, there is consequences, but it's a point of going through the oversight reviews and testing the files of the clients in the actual registrants.

We are going to be releasing guidance on that as well, hopefully later on in the year, and to be able to give a full spectrum of suitability requirements from SROs into the provincial. So I mean, I take your point that, you know, there probably doesn't seem like there's a lot out there, but there is work going on regarding suitability.

MS. ENG: That would be very welcome,

because the more you arm individual investors with the vocabulary and the access points and what the nature of the consequence is, including deregulation -- you know, removing the membership, suspension, you know, yelling at them, you know, whatever it is is the consequence. You know, a lot of people -- many say, just give me my money back. I don't care what happens to industry. But a few others will say, okay, I've taken my lumps, but I don't want this to happen to anybody else. So you do have that dichotomy.

And if this introduces an earlier conversation where people can look after themselves, you know, realistically, then that would be a net positive.

MS. CRADDOCK: Just trying to see how to turn it on.

MS. FARRELL: At the bottom, there's a silver button.

MS. CRADDOCK: There you go. I'm Connie Craddock. I'm with the Investor Advisory Panel. Our view -- I'm not speaking for the panel, but I'm speaking for myself. But we did -- we did submit a comment letter, and I think our view is that the suitability regime is too weak a standard. It's way too low.

It's based on a transaction regime rather than a holistic advice regime, which is what consumers today need. We need a higher standard, one that isn't based on disclosure, which has been traditionally what regulators have relied on, but which increasingly regulators are acknowledging is inadequate in many ways. Disclosure may be fine for a sophisticated institutional investor from 20 years ago. The average client today really has great difficulty, as you know, and as Fund Facts demonstrates, in managing in a disclosure-based regime.

And I think one of the things that might be useful to discuss today is the advantages of the conflict regime in a best interest standard. Although we say here that conflicts can be and should be avoided in a suitability regime, they rarely are. It's principle-based, and I think that's one of the key advantages of the best interest standard, is that conflicts simply must be avoided.

And I think that's what should be required when you're dealing with a professional advisor.

MS. BREMNER: So -- sorry. Don't know if that's on or not. So when you say conflicts should be completely avoided, you know, one of the issues that

arises when you introduce that standard is that there's a lot of business models in this country that, you know, mutual fund dealers --

MS. CRADDOCK: That's right.

MS. BREMNER: -- that only sell one product, exempt market dealers that only sell a limited-scope product or possibly sell one issuer group's products --

MS. CRADDOCK: Right.

MS. BREMNER: -- the conflicted remuneration in --

MS. CRADDOCK: That's right.

MS. BREMNER: -- trailing commissions, embedded commissions. So I take it from that comment that you think all of that would need to change if we implemented a best interest standard.

MS. CRADDOCK: I think it's time for regulators to redress the balance. Your mandate is also not to preserve existing business models. Your mandate is investor protection, efficient and fair markets. And it's unfortunate that conflicted models have arisen over the years.

Our industry is doing very well. They're very innovative. They innovate very quickly when they've got new products. They can innovate when

they've got a new regulatory regime. But it's not your responsibility as regulator to maintain and support business models which are conflictual at their base.

MS. BREMNER: So would a more targeted approach, though, get to the heart of your concern? Because, you know, whether or not an embedded commission -- I mean, I would take the view that it wouldn't be permitted under --

MS. CRADDOCK: That's right.

MS. BREMNER: -- a best interest standard, but that would be open to interpretation, as we mentioned in the paper. There may be accommodations made for different business models, if we didn't go with the pure fiduciary duty, the common-law fiduciary duty.

So if we didn't do that, then would a more targeted response be what would be better, because it would be certain that we're going to -- not allow trailing commissions or embedded fees, and basically, you know, undo any kind of conflicted remuneration. Would that address it in a more targeted way?

MS. CRADDOCK: Might be easier for you, if that's what targeted means, but I don't think that's necessarily -- if you ask me personally what I think is the best thing to do, I think you should be getting rid

of those conflicts.

I think as well that you need to address titles. It's almost impossible today for people to know what they're dealing with. That would help a lot. I know one of the things that the FSA has said, that the consumer advisory panel there regrets that -- the recommendation that people who sell only one product, let's say mutual fund salespeople. They can't really give you best interest performance because they've got a limited shelf of products, right? They can only sell you mutual funds.

So perhaps if they were called mutual fund salespeople, had a different title, that would help clients have a better understanding. So if there was clarity of titles.

I mean, I think our view is that if you're going to do a best interest standard, which we very much hope that you will, that you need to do title reform so that titles more accurately represent an individual's proficiency and what they actually are -- what service they're able to give you. That needs to be done too.

And I know that was done in the UK, where they moved to restricted and independent advice. That would be helpful.

But as someone speaking from an investor perspective, I don't want to say, yes, I think you should take a targeted approach. I think you should be looking seriously at the conflicted models that have arisen over the years and look at investor protection.

MS. BREMNER: So just to confirm, even if we introduce the statutory best interest standard, we would still need to do targeted reforms, though, about titles and conflicted remuneration.

MS. CRADDOCK: I wouldn't call that targeted. I would just call that doing a --

MS. KNIGHT: Complete.

MS. CRADDOCK: -- a complete job. Okay? I don't -- I think -- and I think that's what regulators have done elsewhere too. In the UK, they looked at proficiency. I can't remember when a whole-scale proficiency review was undertaken in this country. I know that efforts are made each year, for example at IIROC, and working with the CSI, the courses are renewed and modified to reflect new products, new developments.

But when did we last in this country actually look at the proficiency requirements for advisors? I don't know. Is it decades ago? I mean,

I'm asking. I don't know. But I think --

MS. FOUBERT: Well, it was --

MS. CRADDOCK: -- undertook proficiency requirements reviews too.

MS. FOUBERT: So with the implementation of 31-103 in September of 2009, right, that's when -- they reviewed proficiency --

MS. CRADDOCK: Yes.

MS. FOUBERT: -- at that point. So, it's -- you know, we did do a review in 2009.

MS. CRADDOCK: But did you make any changes in the fundamental requirements? I don't remember that. I know you changed the titles so that they're, to be blunt, even less helpful to a client.

MS. FOUBERT: No. I mean, I think the proficiency regarding experience and things of that nature were looked at as well.

MS. CRADDOCK: And training, the educational requirement?

MS. BREMNER: Proficiency encompasses not just the educational --

MS. CRADDOCK: Yes.

MS. BREMNER: -- but it also encompasses time, experience requirements, depending on the level, right?

MS. CRADDOCK: Yes, of course.

MS. BREMNER: So obviously an advising rep for a portfolio manager, being the gold standard, has to have the most experience and the highest proficiencies, you know, CFA, for example. And then, you know, a mutual fund dealing rep, obviously a lower level of education and experience.

But I do believe -- and, you know, don't quote me on it. We'd have to check, but there was a full review in the implementation of -- reform.

MS. CRADDOCK: I guess my point simply is that I think realistically, and if you want to do this thoughtfully, if we are going to look at introducing a best interest standard, that would also involve title reform, so that we were more accurately and helpfully communicating what a particular registrant was able to provide to a client. And at the same time, taking a look at the proficiency requirements that are associated with each of those categories.

But I certainly think from an investor perspective, sure, I acknowledge that it would be disruptive to business models, but I don't think that's my job as -- from an investor perspective, to help make those compromises, and I certainly would encourage you

to put as your first priority putting in a system that is fair and really works in the best interests of the client. I think we really need that.

MR. SCANLON: Yes, Alison.

MS. KNIGHT: Thank you. My name is Alison Knight. I think I'm agreeing with Connie, but I want to build on a couple things.

I think one of the things -- when I look at the best interest standard, there are two bullets here that say conflict of interests are avoided, and clients are not exploited. To me that's the definition of protection. So if it's not that, you don't have investor protection. You have the investor in a game.

The reality is that despite a wonderful education system in this country, the average person who needs to put their money somewhere is not numerate. They're not educated. They're not financially literate. That is our reality.

In any other area of protection and consumer protection, you build your regulations and your protections based on the reality of who you're dealing with. You don't say, oh, well, maybe they'll figure out what questions to ask, and therefore, you know, we don't have to build in that level of

protection. Protection demands that you look at it from whom you're trying to protect.

This needs to be focused on the average investor, not the elite investor. The disclosure that we have is incomprehensible, in -- even the simplified disclosure. Sorry, but if you think that the average person can understand that, the average person can't even do comparative pricing when they shop for paper towels.

Seriously. You know the unit pricing in the stores? A lot of people don't even know how to use that. That is Canada. Those are the people that are trying to figure out where to put their $50 a month, $100 a month, that want to have dignity in their old age.

So I believe you've got to start with your definition of protection and what it means, and know that when you're -- a person is trying to figure out where to put their savings so that they can have dignity, so that their kids can go to college, whatever, that they can trust the person that's giving them advice, that they are protected from being exploited.

And when you look at the whole area of compensation and commissions, how could anybody

possibly think that you can manage a conflict of interest? You can't. That's why it's called a conflict. And consumers and investors deserve to be protected from incentive schemes that would otherwise buy us the frame of mind of the person that's trying to sell them something.

I think we need to go back to some fundamentals here in terms of what it all means to protect it, and look at not, oh, would it make it difficult to do this. Well, life isn't always easy. But look around at other standards and other areas of investor protection and what we as Canadians, in a Canadian society, think is proper protection when you buy a house, when you buy some cars, when you use electrical products, when you buy a funeral.

The person who's buying it isn't supposed to be the expert. The person that's making it and delivering it is supposed to make it safe. And I think we need to look at that and use the analogy from an investor protection perspective and really get real in what protection people need.

I find it very patronizing that somebody would say, oh, if we use a best interest standard, then people are going to slack off. That's not my experience of a typical Canadian. But if that

slacking off also represents the competency level of an investor on the spectrum, so be it. So be it. The average person is not looking to sue for redress. The average person is looking to have a peaceful, quiet life where they can earn a decent return on their investments.

I do believe that the redress system needs to be balanced. I think this needs to be a complete package. I think the odds are stacked against the typical investor in so many ways that we -- that this sort of approach to try and say, how do we balance things, how do we get back to protection, is really important.

Because I don't think, as the system's evolved, that we've actually looked at it from an investor protection perspective. I think we've looked at it from a competitive marketplace perspective, and so I'm hopeful that working together, we'll be able to get ourselves on the protection side of protection for investors.

MR. SCANLON: Alison, those are helpful comments. Just one question, and you sort of touched on it, about, you know, having a best interest standard, and is it appropriate based on, you know, who -- who the clients are and what sort of skill set

they have.

And one of the comments that we received quite a bit in some of the comment letters was, I mean -- and I'd like your thoughts on this, is that there is no one -- one average investor. I mean, there's a huge, wide variation or spectrum of investors.

And the comment is usually made in the context of what happens at common law today with fiduciary duty, where a court will look at some of those factors I talked about, and there is no presumption. The courts have essentially -- where the law has landed is that there isn't a presumption, that you have to take a really close look at some of those factors around the vulnerability of the client, the reliance that they place on the advice, et cetera.

So that is a comment we hear about that. And you sort of touched on that, saying, you know, this standard should apply to the average investor, not the elite investor. So can you just sort of maybe share your thoughts on that?

MS. KNIGHT: Sure. And maybe I'll use an example from the -- I was on the board of directors for -- of the Board of Funeral Services for Ontario for a number of years.

If you go into a funeral home because your spouse has just been killed in an accident, and you're traumatized, and you need to arrange a funeral, funeral directors are held to a standard of care, but they are taught, and it's also part of their professional standard, that when you're dealing with someone at need, who's bereaved, who's traumatized, who's in grief, you don't treat them as if they can cope like a normal person who's pre-planning their funeral for 40 years or whenever they might die in the future.

So that protection regime takes into account the fact that you will have people who come to you in different frames of mind, in different competencies. In the at-need situation, one's competencies are affected by the fact that one is traumatized, and so one's judgment may be influenced.

And so in the case of investors, yes, you do have a whole range of investors. You have people who are -- have very little financial experience and background, and quite frankly, those are more vulnerable.

If you -- if you are dealing with people in other areas which require a level of expertise, buying and selling real estate, and you're a

first-time homeowner, you better believe you get the extra package and the extra tutorial and all the extra stuff where you go to get your mortgage.

So in a lot of areas of our life, we've already looked at it from a protection -- a customer protection, customer service perspective and said not everyone's the same, and so the people that are delivering the service learn how to deliver the service appropriate to the competency level and the extent of the -- that someone could be exploited with lack of knowledge.

And so it will be very different, but it's different now in how we deliver health services. It's different in how we sell a lot of things in our society, where we know that people have different levels of competency, different expectations. And it's worked through. It doesn't necessarily mean that the fundamental concept of best interests change, but what best interests looks like in terms of who you deliver it is always in the specific context.

MS. BREMNER: But I think when you say not everybody's the same, so you're going to look at it in the context, that's the structure of the common law, because a judge is going to look and see if somebody's vulnerable or if, you know, somebody's been taken

advantage of or if they've given full discretion over the account to an advisor. They're going to look at those factors, and then if they find that there is a reason to impose the fiduciary duty, they impose the fiduciary duty. And in other contexts, they'll look at it and not impose it.

MS. KNIGHT: Well, let me just go back here. There's certain things -- and, you know, I don't look at things from a court of law. I think we should behave with one another so you don't end up in a court of law. I think the consumer, the investor, has the right to not be put in a situation where they could be exploited. I think that's a fundamental right.

And if exploitation and one's ability to exploit -- exploit somebody depends upon their level of education and their financial literacy, then understanding what that looks like in the context of a point-of-sale relationship means taking that into account. That's what I meant.

Okay. I believe that everyone should be protected from behind-the-scenes conflict of interests that incent people to sell certain products and not other products. I believe that's a fundamental part of investor protection. And it appalls me that it's not, quite frankly.

And so what that looks like needs to be held to the same standard regardless of where you are in the spectrum, but you should not be conflicted in terms of how you're giving -- you have to be able to put yourself in the client's shoes, the investor's shoes. And if you can't, you shouldn't be in the business.

MS. BREMNER: Thank you.

MS. PASSMORE: Can I just make a comment? I'd just like to add to the question you asked about if the common law will judge whether there is a best interest standard or fiduciary relationship after the -- I mean, that happens after the fact. The point is is that a best interest standard would require all dealers and advisors to provide advice in the best interests of the client from the outset, so everybody is subject to the same standard of care at the outset.

It's not something that gets judged after the fact, so that, you know, hopefully standards will improve, and people actually get advice rather than just getting sold products that are so-called suitable, but as it turns out, you know, in many instances, and if you look at IIROC's reports and the MFDA reports and OBSI statistics, they're not even being sold suitable products.

So that's one of the key benefits of having a best interest standard.

MS. FOUBERT: Sorry. The gentleman down the room.

MR. GELLER: Hi. My name is Harold Geller. My concern is that we've got two poles here. We've got some -- what I'll say is a misunderstanding of what's happening in the courts and best -- and what's happening in people's offices.

Jeff, I appreciated your summary and your introduction, but I'm in the trenches, and I represent primarily clients, consumers. I do, from time to time, represent advisors as well.

The consumers are routinely met with dealers, being from a position of power, doing things which in other areas would be considered completely unacceptable. Dealers routinely deny the most obvious things when they review complaints. The complaints office and the ombudsmen of the same dealer are connected. They share information; often they share titles.

There is the appearance of a second-level review, of an independent ombuds. That is a falsity, and it's something which the OSC has allowed to fester and mislead investors. And I say the OSC

because they haven't acted. I'm not -- this is just the evolution of regulatory systems, but they haven't acted. They haven't put their foot down.

In addition, if the OSC were to review the actual submissions -- sorry, the response letters at first, and then the submissions of dealers' and reps' lawyers to courts, to tribunals, they might be quite shocked at what is actually said, the denials of simple things. Let me give you a simple example.

In 2002, Re: Lamoureux, and then 2008, Re: Daubney, ended any issue about who is responsible for suitability. I routinely still see in submissions and in statement of defences denials that the advisor and the dealer are responsible for suitability and the attempt to put that responsibility onto clients.

How can that be? How can that not be offensive to the rules, the basic rules of conduct for dealers and for financial advisors? It's misleading, and it's permitted.

I think that the problem stems back to a simpler thing, which is financial advisors are an incredibly important part of our community, as are dealers that offer their services. These professionals, as they call themselves, are perhaps more important than most lawyers, other than, say,

family and criminal lawyers, who deal with basic, basic issues of rights. Most doctors, certainly accountants as well fall into that.

Financial advisors are taking care of people's futures. Most consumers, as per your studies of the Investor Education Fund and your own studies of this committee have gone out and put -- they realize they don't understand enough, so they can do one thing. They can go to a professional, a financial advisor.

Unfortunately, financial advisors are not truly professionals. They're not educated to a professional standard. Let me give you an example of that. In Grade 13, I was bored, so I did -- got into a -- scholarships into school, and I took the Ontario -- the Canadian Securities Course. At age 17, I was qualified to be a financial advisor. The standards are essentially the same today.

I can tell you I couldn't balance a chequebook. I had never done my own investment. I knew nothing, but I now had my license. That license can be obtained today for a fee and a few exams. It's a low level.

Now, let me give you another issue that goes directly to this. The regulatory arbitrage that's permitted undermines this whole system. We've talked

about it in passing. For example, the limited shelf of the mutual fund dealer, the captive dealer who can only sell their own products. I'm sorry. A professional's first duty is to say when they can't do something, when they're not the best person, when there are other things to consider. If there was an obligation to work in a PAN, a professional advisory network, then that would assist things.

Now, let's look at lawyers, for example. Lawyers have had to deal with these issues, and we've had a crummy history of dealing with these issues, but through some litigation, we've been forced to look at ourselves. And one of the things which we have, of course, is a best interest. Another thing is we have to advise very forthrightly about conflicts.

The conflict disclosure requirements are so much more rigorous than are being considered by the OSC at this point, and I'm sorry. That's -- that's just basically a professional level of disclosure that we're required to do. Why not for financial advisors?

The fee arbitrage, of course, is an issue which is different than the commission issue. I am offended by the fee arbitrage, where product sales are in part driven by offering better incentives. And the disclosure of incentives today are still legalese

and unmeaningful to most people, so I have a problem with that.

I happen to differ with some of the speakers in that commission is not necessarily a model that has to be thrown out, is my opinion. And I do that in part because if you have true professionals, they can deal with these issues. For example, in order to give access to justice, I'm authorized to take contingency retainers, and most consumers could not afford my fees to go fight the dealers. They couldn't do it without an equivalent to commission structure.

But I have a different training. I've been trained to recognize conflicts. I disclose when discussing about my retainer that I will be in a conflict with them if they choose contingency. That's one of the first discussions I have to have, and repeatedly.

So what I'm really saying is a professional standard is what's required. How do you get there? Well, fiduciary duty is too littered in the courts with bad history, including particularly with financial advisors, where we go from the buyer-beware model to the advisory model, and that has a checkered history, going back well before this century or last century, and that informs it.

A best interest standard will start a new consideration of what is required of these professionals, and it's a first step. It is not an end step. It's just something that gets us from the circumstances today, where a best interest standard or even really a duty to many consumers is denied by dealers in their litigation, through to where we should be, which is going to be a few years getting there. Thank you.

MR. SCANLON: Thanks very much, Harold. Oh. Sorry.

MS. SPEED: Lindsay Speed of FAIR Canada. I just wanted to follow on a point that Connie made there about business model protection and about the innovativeness of the industry, and I think it's important to remember that the industry is complicit in this expectation gap.

They hold themselves out as providing advice, and you see the commercials and the advertisements that we'll take care of you. We'll ensure your retirement is secure. Just place your money with us and trust us.

And you know, the implication is that advisors will act in the best interest, and they're complicit in this understanding of investors, which has

been demonstrated in a number of studies, that advisors trust and have this expectation of advisors. So, I mean, some of the members of industry, I think, have said that advisors do act in the best interest. So what is the real issue with raising the standard and requiring them to meet this expectation as they said?

MS. BREMNER: Well, I think in the paper, we outlined some concerns about introducing it as, you know, a standard that applies to all business models, because I think that certain business models won't be able to exist under that standard, so there's that issue.

And then I guess the other issue, although I don't give it much credence, is the argument that, you know, investors will then not take an active role in their futures and planning their investments because they'll just rely on the backup of the best interest standard. I don't myself support that notion, but certainly the introduction of a statutory fiduciary duty, you know, I think everybody around the table agrees is going to have to have a wholesale change to the business models that we have and the compensation structures that have developed. So we just need to be prepared for that.

Maybe one of the questions for this

group is do you think that we'll get to the point where the cost of providing professional services is going to become too high, or do you think they will adapt, and, you know, we'll just set a new way in which advisors become compensated?

MS. SPEED: It's our expectation that new models will develop and that the industry, in its ability to innovate, will be able to deliver services, basic services that people need, at a lower cost and therefore have better outcomes for investors.

MS. CRADDOCK: I was just going to comment on the innovation issue. I think the securities industry in Canada prides itself on its ability to innovate. They can get a new product out the door in no time.

It's a pity sometimes that more time wasn't taken to look at that product, thinking of asset-backed commercial paper, which was so perplexing to industry professionals; it's no wonder that advisors sometimes didn't know what they were selling, and clients didn't know what they were buying.

But I certainly think -- I don't see why regulators or policy makers would be asking themselves why they need to protect an industry. That's not their job. And our industry is perfectly

capable of innovating, of changing.

You see it now. BMO's already got a new advice mechanism that has been approved by the regulators. If you look in the UK, there are new models for advice coming out that are being delivered. There are generic centres where you can get advice.

And frankly, I say I'm already paying 1 percent when I buy a mutual fund for advice that doesn't seem to have any correlation at all to what I'm paying in terms of services, so I'm leaving 1 percent roughly on the table now. Maybe with that, I could buy some.

So I frankly think that the question of the industry being able to innovate and change is one that we can leave to the industry, and they'll respond successfully.

MS. DEWAR: My name is Letty Dewar. I have been active inside the industry for about 25 years. I'm now retired, and I'm talking to you as an investor, which I've been for the last 50 years, perhaps.

I want to start off by saying I support most of what is said, and I am for putting in the fiduciary duty standard because I think that largely, it's already expected by a lot of advisors, so the fact

that it's not there is a little bit deceiving.

It's also deceiving, I think, because it isn't the same for all the registrants. Portfolio managers are already under the standard, and they arguably deal with a constituency that's much more informed than the average investor that the advisor sits in front of.

And building on the comments previously made, I think advisor is a misnomer. If somebody is a mutual salesman -- mutual fund salesman, he should be called that. If he's a securities seller, he should be called that. To call somebody an advisor raises certain expectations in the person sitting across from them.

I have worked in that capacity. I have worked in compliance where I have to enforce the ability, and I know that when you sit in front of people, they trust you. They think you have this -- or they believe you have this body of knowledge and that you will deal in the best interest for them.

So as such, I'm all for it. I liked -- I looked at the UK proposals where they make a differentiation, because I do understand, having worked in the industry, that in some areas, it's complicated to enforce the standard. But in the UK, they have the

proposal that it is disclosed as independent advice, which to me should be comparable to legal advice, where you pay a fee, where you disclose your fee schedule, and then there is not independent advice, where somebody is constrained by the product list that they have available. As long as the investor knows this, I think it's acceptable.

So I believe that the fiduciary duty should be implemented for all registrants, not selectively. And I don't necessarily think that somebody who sits in front of a client should be less educated than somebody who's dealing in portfolio management. So there has to be a standard of proficiency as well.

There has to be proper disclosure, and I also believe that the client has certain responsibilities. We cannot eliminate that. The client has responsibilities for their wellbeing. So client education may be an area that you would also want to look at.

And the -- yeah, if there's a commission base, I also realize, having worked in the industry, that that may be difficult to eliminate right away. But there is always an inherent conflict when somebody's based on volume of sales. As long as the

client understands that, I think that can be dealt with over a transition period. That's kind of my input.

MR. SCANLON: I just had one question. When you were talking about the client responsibilities, which you were talking about the -- you know, clients would still have responsibilities.

In the context of a best interest standard, like what do you envision -- like what is -- what are those responsibilities? What are they, in your own mind? Like, is it just giving enough information to the advisor, or -- is that it, or is there something --

MS. DEWAR: There is -- number 1, I think the client should look for the proper advisor, so not just embark on one, just like you look for whatever, your best lawyer. There has to be a mutual trust. And yes, then there is appropriate information. And the client should try and get information about the vehicles that are recommended.

The client should ask, what is a hedge fund? How does it work? And they may deem that it's not suitable for them. May be suitable in terms of the amount of capital they have, but it's not suitable for who they are. So I think they should ask the questions. They cannot totally hide.

But I think in general, they should be able to take the position -- when I go to a doctor, I expect that doctor to have more knowledge than I do about my ailment, but it doesn't mean if the doctor gives me advice, that I think, gee, that's not really what I feel, or I don't think it works, that I don't communicate that to this professional.

So I rely on them having more experience than I do. They have more knowledge than I do, but it doesn't mean that I don't have to provide the proper information, proper feedback, try to adjust things that I feel are not correct. So it has to be a dual situation.

But I think by having the fiduciary duty standard, there is a certain expectation that this client can have in terms of what this professional is expected to do for me, because there is a standard. Doesn't mean, like it says in one of the proposals, that they can give perfect advice. They can't. They're human beings. Do they know the whole spectrum of investments available to the client? They don't.

But they have to deal in the best interests of the investor, and I think that's what's expected currently, and the fact that a mutual salesman calls themselves an advisor may be deceiving to some

clients.

MR. SCANLON: Think there was a -- yes, sir.

MR. GOLDHAR: Good morning. I'm Alan Goldhar. I'm also a member of the investment advisory panel of the OSC. Like Susan, my client base is seniors, so that's a specific sector that is a growing sector of the investment world.

And unfortunately, I see a lot of the horror stories too, where we see a lot of inconsistencies between how different firms manage the paperwork around the seniors. I've seen cases where the advisor completes the paperwork for the senior, just asks the senior to sign at the bottom.

And there's no way -- for all of the good work that Tom and his group have done on the education side, there's no way these seniors are ever going to understand the details or the complexities of the investments that they're told are in their best interest to purchase, no matter how much disclosure you give.

So the only solution seems to be that whatever they are told by their advisor -- and I'll use that term as opposed to the salesperson -- has to be in their best interest. They just don't know enough, and

they'll never know enough. They're seniors. They're barely making it through the day. This is just money that they have. They need to have it invested appropriately for them.

I've seen cases -- and hundreds of cases through the years I've seen where completely inappropriate investments, and the way the salesperson justifies it is by completing the paperwork, you know, the way it works for them, if at all. And even that is so inconsistent between the different firms that we'll deal with.

When I ask for specifics like their investment policy statement, I get a strange look. When I ask for have you ever done a financial plan for this client, I -- we have thousands of clients. I have yet ever to receive one complete, comprehensive financial plan from an advisor. I get all the paperwork, but none of that is put together to say, here's how we've put the whole story together.

I look at risk analysis for clients in their 80s and 90s. I say, how did you come up with that? And there 's a lot of resistance from the advisor. I think -- so what do we do?

I think there's been lots of great suggestions made. Certainly the distinction between

advisor and salesperson is where I would start, because there is this perception that anybody you go to to talk to about investments, and that could be the customer rep at -- client rep at the bank counter. Everybody's qualified to give me advice on investments, and that, of course, is not the case.

But my clientele, seniors, don't understand that. They think if you go to a bank, and you're directed to -- a person over on the side counter there is going to explain all the mutual funds to you, they think they know what they're doing and that they're going to advise them in the best way for the client. That, of course, is not the case.

So I think a lot of clarity around what's an advisor and what is their responsibility.

Clarity of titles in general needs to be worked on so that we're really clear on this. And as I mentioned, consistency in the paperwork, in the sort of documentation that has -- the consistency in the mandatory paperwork required would be another place to start.

But I think as Harold mentioned, this is just the beginning. If we go to the best interest standard, fiduciary standard, that's a start. There's a lot of work, obviously, from there to go. And I

think we have a lot of people within the industry and outside that would be interested in that, and, you know, would work together to push this forward once we have some base to work from, to start from.

MR. HAMZA: Hi. My name is Tom Hamza. I'm from the Investor Education Fund. One of the things, as an organization that focuses on investor education, that we often find is that we can be -- we're fairly close and fairly informed, like many regulators are, on the issues. And as a result, it can cause a distortion to some degree of the reality of the issue.

And I know last year, we conducted some research together, in partnership with the OSC, to really try to shed some light on the magnitude of some of the things that had been mentioned in -- by Alan and others. Certainly one of the real eye-openers for us, you know, the starting point of this was how infrequently people understand the conflict that exists with their advisors.

And answering the question of 'my advisor will recommend the best product for me, even if it means less money for them,' seven out of ten people -- that was 2,000 people that we interviewed -- believed that, in fact, that was the case.

What that means is it's not just seniors. It is people that are across the board at a sort of middle level of investments, all the way from beginners to sophisticated. That is a very significant majority.

Further to that, when it comes to the factual sort of closeness and reliance of investors on their advisors, we had really other interesting numbers. Two-thirds of investors have very little knowledge of the background of their advisor before they start, and it's an arranged marriage, so to speak, through a -- through the trust that they have in the institution, which is largely a marketing-based trust, I would add.

Within that, one out of ten of the people interviewed actively disagree with advisor advice, meaning that they are not consciously aware of enough of the issue to be able to challenge the information that is given to them, which is really interesting, because of all the people around this table, I suspect that we all at some point have challenged an advisor's advice.

But the bottom line is that on -- you know, people who aren't close to this industry don't think about it very much, just don't do that and aren't

aware of the conflicts that are inherent.

So given that, and given the fact that most people seem to believe that there is a fiduciary duty of some sort, we have to ask ourselves what's going to be more difficult, to take the seven out of ten people and educate them -- and in my deepest heart, I wish that was a simple thing to do. Or is it to accommodate the regulations to make them closer to the existing beliefs that have been created through the industry?

And I just thought that those numbers might be helpful insight into what we see every day on the street and what directs us in the information and education efforts that we have.

MR. SCANLON: Thanks very much.

MS. FOUBERT: So we'll have a question --

MR. SCANLON: Okay. I think we're -- why don't we take a couple more minutes and try and wrap up on this topic, and then we'll take a break, and if we need to, we can continue the conversation after the break. Sir.

MR. GAZZARD: My name is Bill Gazzard. I'd just like to build on what Tom said. I think -- I think that best interest should be a starting point for

regulators when they're looking at how to protect retail investors under securities regulation in the province. It is a cornerstone for us going forward.

Clearly the industry has changed over 20 years. There has never been more reliance on investment advisors and more of a professional relationship now than ever before, and it's going to get more complicated, not less. That relationship has changed just as a certainty, and the rules need to change to reflect that.

Best interest should be a defining principle, and to me, it's obvious why. The intermediaries should exist to serve the public. The public is not there to serve the intermediaries. The public is paying the bill. And currently, most of the investing public, as Tom mentioned, believes the deal that they have with the intermediaries, what they're paying for, is that the intermediary is acting in their best interest in terms of advice given to them.

And even those in the investing public that don't think that, the other three, I venture to think that's what they think they should be getting. So the deal that intermediaries should act in the best interests of the retail clients needs to be generally reflected in securities regulation.

And the best way for this basic, really basic, fundamental principle to be -- that we're going to be building on for years to come, to set that clear, is to put it in plain words. And the best way to do it in plain words is through a statute, and the -- I would the intermediaries and the investors need to know exactly what each is getting on something this important, and it can't be left to the vagaries and the imprecision and the slowness of common law to get there.

In my view, assuming the principle of best interest is accepted -- and I certainly believe that it should be -- the industry and its practices should revolve around it. And that is as a defining principle, best interest should be accorded the highest weight in designing a system of protection for the retail investor under securities regulation, and the principle should be pervasive in the system.

The principles need to drive the nature of the retail system, and not the nature of the current retail system driving the necessary principles to preserve it.

MR. SCANLON: Sorry. One more comment?

MS. ENG: I just want to make the point about who we're talking about, because I'm sensitive to

the idea that seniors equals incompetent. In fact, the people that we're talking about as our client base here are not the people who only have $50 a week to put away for their retirement. They are people with decent savings. They have a certain level of education, and otherwise they wouldn't be of any interest to advisors. They have some capital saved up.

The point that we make from our perspective is simply the tyranny of time. They don't have enough time to recover all that they need if they lose it all. So that's why it's important to our demographic.

That said, there's also a limit to what you can expect the average investor to learn. You know, with all the initiative programs, certainly there should be some commonality.

If you take the world of, you know, medicine, for example, you start to know that, you know, taking too many antibiotics is not good for you, which everybody knows. You know, one of those quotes. Everybody knows you shouldn't be doing this or that. You know, you should know about the kind of things to keep yourself generally healthy.

But even the most high-powered tax lawyer rolling into the operating room with his heart

surgeon is not going to say to the surgeon, by the way, what I saw on the Internet about this procedure, I think you should be doing -- I mean, that's just not going to happen, and it shouldn't happen, right?

So there is some dividing point between what the obligation of the average client, patient, should know to look after themselves, but at some point, you know, the obligation runs to the industry to guarantee certain standards of conduct.

MR. SCANLON: Very good. Thanks very much, Susan. Thanks, everyone. I think that was really helpful discussion. I think we've come to the end of the first part of today's roundtable, so let's take our break. Even though I think the agenda says we'll reconvene at 10:45, let's reconvene at 10:50.

So there's some coffee and refreshments and snacks, so please help yourself, and we'll see you in about 15 minutes.

--- Recess at 10:37 a.m.

--- On resuming at 10:55 a.m.

MR. SCANLON: Okay. Thanks, everyone. Sounded like a lot of you were having some good conversations at the break, which is great. I just wanted -- now at this point, we've canvassed those four topics on the potential benefits, and we had a great

discussion, obviously, before the break.

So at this point, Felicia's going to walk the group through the -- some of the potential competing considerations, and she'll speak to four other topics that I think we'd like to get your thoughts on at this stage in the roundtable.

TOPIC: POTENTIAL COMPETING CONSIDERATIONS:

MS. TEDESCO: Thanks, Jeff. We've had a really good first half, and I'm hoping that the second is as interactive.

The first part of our discussion focused on the obvious benefits that would happen if the best interest standard was imposed. However, we just want to focus the discussion a little bit on, you know, give some thought and discussion to possible competing considerations.

And so one of them would be potentially a negative impact on advisory services. So many commenters have pointed to the fact that while the imposition of a best interest standard might, you know, ultimately be a good thing, it may also result in potentially making advice more expensive, increasing costs, and limiting choice to clients, specifically or especially those smaller retail investors who arguably

would need advice more.

So, you know, the paper does point to two different studies that have been undertaken in the U.S., one in 2010 by Oliver Wyman. In fact, that study did conclude that there was a negative impact and that there was limited -- more limited choice, limited access, and ultimately limited -- some negative impact to retail investors.

Interestingly enough, another study by Michael Finke at Texas Tech more recently in 2012 came to a different conclusion, basically saying that if -- the industry as we know it would continue pretty much as it has, even with -- given that it's so highly regulated, in fact would not incur adverse consequences.

So one of the questions we would like to put out to you is what could happen in Canada, and in fact, would Canadians receive less advice? Would there be limited access? Would costs increase? So that's one of the themes.

Another theme tied to sort of the first theme is, as well, will there be a shift to alternatives? So for example, will clients shift to products that are not regulated by the regulatory regime, and ultimately would not be subject to the best

interest standard, the most notable one being insurance-type products, for example, seg. funds? And would that be something that clients should be doing, or investors?

As well, tied to the original -- the prior slide is would -- due to restricted access or increased cost, would people shift more to the discount broker model type, so therefore foregoing advice because it's now become too expensive? And again, the shift -- is that a good shift? So smaller retail investors are now foregoing advice and would arguably -- saving for retirement, they're likely the ones who need it more.

And Jeff has -- had touched on this in the first part of the discussion, and we've all touched on it in the discussion, is, you know, the CSA and the SROs, we have undergone and taken on many initiatives, and so, you know, many commenters have said, you know, wait. Allow the implementation of these reforms because they will enhance suitability.

The IIROC and SRO -- IIROC and the other SROs, the MFDA, have made enhancements in that regard. They have made some tightened conflict-of-interest rules. The CSA, for example, as Jeff had mentioned, under CDR 2, cost and disclosure

reporting, that will arm investors with really good information on an annual basis so that they are in a better position to question, inform.

As well, Fund Facts, it is a much, much better two-page document. It is plain language. Investors arguably don't read prospectuses. They're very long, they're cumbersome. Maybe there's higher -- I think it's much higher likelihood that investors will read Fund Facts.

So the combination of all of these things, if they're allowed to, you know, be implemented, potentially might get us a long way to dealing with some of the issues that we've all discussed in the first half.

And finally, and this was very much touched on in the first half, is the best interest standard, even if it is implemented in the statute, is going to be a principle-based requirement. So currently, we have a whole host of things that we could do that arguably, in isolation or in combination, could get us there.

We talked about proficiency before the break, you know, that proficiencies just aren't high enough, so, you know, maybe target that. As well, like suitability. Some of the discussion I heard on some of

the investor issues that many of you are dealing with is -- sounded to me like suitability wasn't being met. So should suitability just be tightened, enhanced?

You know, conflict of interest, maybe we have to make more strict conflict-of-interest rules. Continue on investor education, which, you know, as Tom says, probably never going to educate everybody, but in combination, will probably move the mark.

And even just increased enforcement by the different commissions. Would that, you know, in combination -- so would all of these or some of these initiatives deal with a lot of the problems that have been identified.

So having said that, we'd like to open the floor again to continue the conversation on these four different topic areas.

MR. PASCUTTO: If no one else is going to talk, I think I can jump in here.

I think there's a fundamental faulty assumption when you say, you know, is there going to be a negative impact on advisor services. And that is the assumption that people are actually receiving advice that's in their interest, and I don't think that that's the case. So, you know, how is there going to be a negative impact?

I mean, what happens -- what happens now, you know, if I -- if I have money to invest, and I am a relatively sophisticated investor, you know, I have $200,000, I -- I'll go to TD Waterhouse and open an account, and I can buy a reasonably diversified portfolio of stocks or ETFs for a couple hundred dollars, and that's my cost.

If I don't know what I'm doing, if I don't understand it, if I don't understand how to invest money, I will go to someone who holds himself out as a financial advisor. What will happen is I'll end up with a package of ten mutual funds. Saving 200,000, they'll split it among ten mutual funds, and they will charge me $2,000 a year in perpetuity.

Am I receiving advice, or am I just being sold a package of mutual funds? That's all that's really happening right now. You're not receiving advice. And that's what -- you know, go in to any, you know, kind of financial advisor, and that's what they're going to sell you. They're just going to sell you a package of mutual funds.

I think the assumption that you're getting advice -- and why would I go and pay an advisor $2,000 a year in perpetuity if they're not giving me advice in my best interest? I mean, no one -- you

know, who in their right mind is going to go and pay those kind of fees only to get something that is not in their interest? It just doesn't -- you know, it doesn't make any sense. The system doesn't work now. Doesn't make any sense.

What is going to happen? I think, you know, what's going to happen is that probably the financial institutions are going to figure out how to make the same amount of money, okay? They are going to eliminate -- we're -- in the cases where clients do not want to pay the high fees, they're going to eliminate the high cost, which is the expensive salespeople, and they're going to have -- they're going to automate the services, and they're going to have people on an hourly basis. So they're going to reduce their costs, and they're going to end up making the same amount of money.

I mean, providing financial advice to someone who has 50- or 100,000 or 200,000 dollars isn't brain surgery. I mean, the mutual fund salesmen who have taken a four- to six-week correspondence course in order to sell these things aren't giving you like brilliant investment advice. They're just giving you a prepackaged thing that the firm has set out for them to sell to you.

That can easily be automated. You don't need the sales -- you know, mutual fund salesmen to give you that. So the industry will innovate.

And you know, we're starting to see that when you see, you know, a BMO offering kind of online advice. So sort of like a morphing of kind of discount brokerage and full-service brokerage. They're going to solve the problem. People are going to get better advice. People are really going to get advice -- I mean, you know, the computerized models will probably give you far better advice in the best interests of the client than mutual fund salesmen will give you right now.

MR. SCANLON: Thanks for that. So I'd like your thoughts on a couple of things that came to mind as you were talking. So one is a number of studies have been done by industry advocacy groups about the value of advice. And so there's been some work done there by the industry to try and demonstrate the value of the advice.

So I'd like your thoughts on that because I'm getting the sense from you that, you know, there's not much value in the advice today for the average retail investor.

And then a second thought that came to

mind was some of the experience in the UK as they've -- as they've implemented their reforms, there's been a lot of talk and some concern expressed about the "advice gap." So this notion that because of the reforms, there could be sort of a -- there could be a certain cross-section of investors that have not really -- don't -- you know, maybe who had advice before, but with the reforms, there might be a lack of advice. And some commenters are worried about that possible advice gap.

So I'd like -- if you can comment on that, or anyone else as well.

MR. PASCUTTO: Okay. Since I talk far too much, can I ask my colleague, Marian, to respond to that?

MR. SCANLON: Of course.

MS. PASSMORE: Okay. On the value of advice, the industry claims that the value of advice is -- you know, that helps people become more retirement ready, and they don't even claim that they actually get better returns through going through the advisor, but the claims that they make are not supported by the actual study, and the author of the study has said that they need a better study in order to actually say what they're saying.

Because first of all, they don't take into account survivalship -- survivorship bias, and they also don't -- the Serrano(phonetic) study did not account for the different levels of savings that people have that were part of the study. So if you had a lot of wealth, you know, because advisors tend to seek out those with money, the study is skewed. So I think the claims are overstated.

What's clear is that if people actually paid separately for advice, they would actually, (A), know what they're paying, and (B), know -- then be able to assess whether they're getting value for that.

And on the issue of the advice gap, in the UK, there's two things happening at the same time. There's the increased proficiency. So a lot of advisors decided, well, I'm not going to be able to make that proficiency level, so I'm going to get out of the business. So you have people not continuing on because I'm not going to be able to meet that proficiency.

As well, you have certain firms who decided we can't make the -- whatever profit they wanted to make, so they decided to get out of the business. So you have a process of evolution happening there and change and transformation, which actually

presents opportunities for the marketplace to devise services that will actually meet consumers' needs.

So it's too early to say it's created a huge advice gap, and people are going to be left without advice. You know, you can't say that yet.

MS. TEDESCO: So -- but to that point, don't you run the risk that potentially where we may end up is two extreme ends of the continuum? So people who truly are getting advice and discretion and, you know, are paying their portfolio manager who arguably -- not arguably. Today has that duty to you, and then people on the very other end of the continuum, especially if people become more aware of what trailers they're paying and are opting to truly move to discount model, which would not be subject to best interest?

MS. PASSMORE: I think there's going to be clients out there who don't want to do it themselves. They want to be assisted in some way. And they want maybe that person there to help them, you know, with the discipline to actually put the money away.

And I think that the market will evolve to service those people. I don't think it's just going to be the ultra-wealthy who are going to have advisors, and everybody else is going to be left out on their

own. I think that the market will evolve and that the industry will figure out a way to have those -- have those people as clients and provide them with services that they're willing to -- you know, there will be -- (A), clients will determine, yes, I want to pay it, but that industry will figure out a way to give them, you know, what they're willing to pay.

MS. FOUBERT: So Alison had her hand up, and then Letty.

MS. KNIGHT: Yeah, I've got a couple comments on the different questions. I guess when I considered the -- would it mean that fees would go up, well, I'm an accountant by profession, so I look at the all-in, and I think that for the number of people whose savings and investment returns have underperformed their expectations or what they could have otherwise had, and/or amounts that were lost, if you add all that in, it's not just the fee. It's the -- what you get at the end of the day. You know, your net-net-net savings after all fees and losses and disasters from being in the wrong investment product.

So I don't think you can look at that question in isolation and just focus on the fees and get a reasonable and meaningful answer, and to do so is a red herring. It's an absolute red herring.

The question of shifting to alternatives is interesting. First of all, one of the consumer's rights and responsibilities -- one of the rights and responsibilities is the right for choice. So I absolutely believe that investors should have choice and that they should be able to invest in the sorts of things that they choose to invest in.

And so the fact that some would go to discount brokers or whatever, fine. They exist. There is a market for them. Fine. What you see is what you get. In that area, there's no -- nobody's pretending you're getting advice.

With respect to the insurance products and segregated funds, that would be a bit problematic, but I'm hoping that if we developed -- were to have a developed standard for best interest and fiduciary care and advisory services around mutual funds and securities, that maybe there would be a lot of people in the industry who would be putting pressure on the regulators of the insurance industry that they would have a common standard.

So the fact that we've got two broken standards doesn't mean that we shouldn't move forward and try and fix the one that we have some influence over.

The notion that we would allow full implementation of the current reforms, when I think of that, what I think of is let's suppose I've got this house that's been around for a while, and the foundation is not very solid. Might crumble. It might not serve my purpose. But meanwhile, I'll do some renovations. I'll fix the kitchen. I'll, you know, put on new siding. I'll put on an addition. Should I wait and see how I like my renovations before I fix the foundation? No.

The best interest standard is a fundamental piece of investor protection, and it needs to be there. And the other things that are going on are very helpful, but they don't speak to the core of what's been missing all along, which is the best interest standard, which is essential for investor protection.

Because these still are reflecting, I would say, some non-listening. The fact that, you know, most people are not financially literate, most people rely on their advisors, think that their advisor's doing -- you know, some of these things still are based on some underlying presumptions that is not our reality in the investor world in Canada, in Ontario.

And the question as to -- for other potential solutions, and I think it was should we -- targeted improvements to suitability and conflict rules. Again, no, I don't think that we take something that hasn't worked and see, well, can we try and just make it work harder or better or whatever, because I don't think it started off on the right basis, the suitability standard.

It's based on a flawed premise as to the nature of the relationship and the power in the relationship between the client and the advisor or whoever's selling them their investments, and I think that the suitability standard, because it was based on a flawed premise, could never be made to work as investors actually deserve in terms of consumer -- investor protection.

So those were my thoughts in terms of the competing considerations.

MS. PASSMORE: Also on the idea of regulatory arbitrage, if the industry thinks that it acts in the best interests of the client or it puts the client's interests first and professes that it wants to move to a professions model, then why would they then say, but if you impose a best interest standard, we're going to go sell a bunch of high-fee seg. funds so we

can make more money? It's very disingenuous.

MR. GELLER: Very good comments, and what I see routinely is a -- not just the fee arbitrage, but the -- a standard arbitrage on a routine basis, and it goes a number of different ways.

For example, I routinely hear arguments that notices and directions from the OSC, MFDA, and IIROC are not binding. They're just suggestive. They don't tell you anything about what should have occurred, okay? So these are arguments put to courts.

The OSC may not buy into them, but the OSC hasn't put their foot down, except for occasionally in rulings, and of course that's a process by -- we'll get rulings as we get rulings. If a best interest standard were to apply and there were to be further indications that notices and directions are indication of what the best interest standard is, and you incorporate that, that would be greatly helpful, not only to the plaintiff before a judge, but helpful to the financial advisor who's trying to figure out what the standard is.

Because often they'll turn to a compliance officer who's a newbie, has very little experience, and has very little direction they can give. The advisor is left hanging there. And hang --

what I'm really worried about is those advisors who care, which are the majority of them. I'm not worried about the rogues. I'm worried about the ones who are trying to become informed, didn't have a professional training, don't have real CE, continuing education. They have product sales CE. How are they supposed to figure it out? They need direction from you.

The other point which is on the arbitrage is that you may not have power over FSCO, but you do have power over joint licensed individuals. And joint -- if you create a standard which all advice given by that financial advisor must adhere to a standard, then that will have to leak across to the insurance as well.

Because anybody who's dual licensed will then be in a position where -- where informed public or people like me are going out there and saying, hey, if you deal with only an insurance agent, you may get a second standard. If you deal with somebody who's jointly licensed and must conform to best interest on leverage recommendations or insurance recommendations or planning or -- and we go on -- now you got two standards of care out there.

I'd be happier to see a good standard of care coming out of the OSC which then the -- FSCO

has to respond to than ignoring the issue and the fact that regulatory arbitrage right now is a very serious matter, undermining consumer confidence and certainly consumers' rights.

MS. TEDESCO: We've talked a lot about how you need the foundational starting point, you know, which everybody, I think, in this room would agree, but -- and we've talked a lot about suitability, but currently, there is a standard of dealing fairly, honestly, and in good faith with clients.

And in your experience, that in combination -- I mean, that isn't a statute. I mean, there's a standard. That's not sufficient or --

MR. GELLER: Absolutely not. Absolutely not. In fact, courts put almost no weight on it. Go look for a decision where that's been the turning point. Regulatory decisions routinely are saying that now. There's been a new shift in what we see in regulatory decisions. Good for those panels. But not before courts, and most certainly not submissions.

But I do see defence lawyers making submissions to this committee saying that that is the end-all and be-all. Those same lawyers I have seen say to a court or make submissions that were completely the

contrary.

Now, of course, lawyers are allowed to talk out of both sides of our mouth. We're paid to do so. But who are you going to believe? And the answer is what is -- go and look what they're saying about consumers' actual investments to decision-makers. What are they saying to the OBSI? What are they saying to courts? Then you get a much better idea of what the -- what the industry's position is in reality.

And in fact, if you did a review of the complaint -- complaint process from dealers and you looked at those files, never once in all of the litigation I have done, hundreds of files, has the dealer recognized any wrongdoing in their own investigation, but they've paid out time and time again. And of course you have a clause saying 'we're not admitting to anything,' but that's settlement process. That has nothing to do with the facts.

MR. SCANLON: So you made an interesting point about, you know, perhaps the CSA introducing a standard that would apply to all advice, not just advice about advising in securities. And you said that in the context of, you know, the CSA not being able to control FSCO, let's say, Ontario. But, I mean, don't we -- aren't we running up against a

jurisdictional issue here?

I mean, as much as we may want to or not want to regulate insurance products in FSCO, I mean, I think it's pretty clear we don't have the authority to do that. So how would you respond to that point?

MR. GELLER: It's a very difficult issue, and Susan Wolburgh Jenah ran up against this in her debate about titles and financial planning. And I don't know where that went. I sort of lost track of it. But --

MS. DUBLIN: That was me.

MR. GELLER: Okay. There you go. And I --

MS. DUBLIN: We know where it went.

MR. GELLER: Okay. There are more knowledgeable people at this table, clearly, and I'm pleased with that. But it's the same sort of issue, as I see it.

But the answer, to me, is simple. You may deal with jurisdictions or parts of jurisdictions which you can't change, except by example. So set the example as to the acceptable standard for those who you do regulate, and let other regulators worry about their own responsibilities to the consumer. Talk to her.

MS. ENG: I think in your questioning, you've not added all of the alternatives. You suggest that people who see that perhaps more advice that you have to pay for might drive them to going to lower costs or more dangerous investments. In fact, what they actually do is nothing.

One of the problems that we have right now and another part of our advocacy is to deal with the fact that people are not saving at all. And part of it -- and a strong part of it -- is that they are afraid to make any choice whatsoever. You know, they've heard all the bad news. They figure, you know, a pox on all their houses. There's no safe spot. Putting it in my bank account gets negative interest, so they do nothing at all. Spend it now and forget about it.

And so of course there's a savings crisis and a problem with retirement over the longer term. One of our advocacy positions is forget about the individual financial decision-making and put it all in a supplementary pension plan, a universal pension plan.

And that -- you know, if you're trying to -- as a population, trying to get people to save for their own retirement safely and adequately, that might

be the final solution.

So when you set up the alternatives to doing something here, one of them is that the entire grouping of people who do this sort of dilettante level of financial advice would simply lose that business altogether, right? And so that's where it's going in terms of the average investor who's looking at, well, should I pay more fees or not? No, that's not what they're thinking. They're thinking, you know what? There's no safe place. I'm out of here. Find me something else, and I'll sit on my hands until that happens. So that's not a good solution for the population, obviously.

And I think that all of the little rules that the industry proposes are each of them probably useful. Indeed, I understand that Abacus(phonetic) is on TV right now as we speak, talking about its proposals for a professional designation with consequences that have an impact on whether or not you get to keep working. Fine. These are good things.

But in a way, all of these measures are somewhat lipstick on the pig because unless you change the fundamental understanding and relationship, you really haven't changed the ultimate relationship of

whether or not the client can actually enforce his or her interests and her -- his or her rights. And that still remains, after all of these suggestions.

MR. SCANLON: So, I mean, in the sense of the issues that you've identified, I mean, if there are -- you know, to the extent there is a savings crisis, I mean, will a best interest standard, though -- is that a solution to that problem? And I guess where I'm going, I mean, if -- is part of why people aren't saving in securities is because of the lot of fluctuations that have happened since sort of 2007, or is it being driven by that and by some kind of lack of trust or confidence in the investment advice industry?

MS. ENG: Both equally. Obviously the fluctuations in the market, with nobody seemingly safe, has frightened a lot of average investors out of the place, and we've asked about this in our polling. But of course the lack of trust. You know, they just don't know where to go and get good advice.

You know, that's just the way it is. They -- that much they know. That much, you know, investor literacy exists. But there is a great -- you don't know where to go. You have to choose carefully. Don't know how to choose carefully. So that's where

the decision-making stops. You don't get the savings.

And that's something that we can deal with, because if you set up a system, even if you never get the perfect system, if you start the intervention earlier in the decision-making process, the education levels -- even if, for example, the -- you know, before it goes off the rails, that first piece of paper. You know, stop the advisors on giving them four pages of script that they have to sign at the end, because that was prepared by lawyers only to protect the advisor. It has no meaning for the investor.

So there's no point in talking to people about plain language if they don't understand the concept behind that language anyway. So the levelling of the playing field has to start with, as Alison says, a -- restructuring the system that was never constructed originally to protect investors.

MR. SCANLON: Connie.

MS. CRADDOCK: All of these are reasons why we shouldn't do something. And I heard them all at the mutual fund roundtable. I mean, the irony of saying we have to keep the current -- conflicted compensation system to protect the investors. It's breathtaking.

But I think we have an advantage. On

the negative impact issue, regulators in other jurisdictions similar to ours have already moved. By the time anything gets done in this country, we will have had the opportunity to see in those jurisdictions what has happened and to see how the industry has responded.

And I'd remind us all that the industry operating in the UK is also operating here in Canada. It's often the same companies. So we'll have the opportunity to look at impact studies and to see the actual results in the UK and in Australia of this move to introduction of a higher standard.

On the full implementation of current reforms, I've heard some of the industry advocacy groups say, let's wait. Let's study the implementation of CRM and see its impact. 13 years to get where we are today in CRM, with the industry claiming that -- I'm being a bit unfair here, but that the negative impacts of that on their business model will be devastating. They seem to be doing fine today.

We still have three more years before CRM II is fully implemented. By the time we get through that, and then we start to study the impact, we'll be through another generation of investors. So I think the argument to allow full implementation of

current reforms is not one that one should take seriously.

And I think additionally, I would echo Alison's point of view and Susan's, which is that it's a foundational issue. You can do renovations, but there's a basic principle here.

I found it interesting, Felicia, that you mentioned to deal fairly and honestly, because I've written that down too, and I've always wondered why that's still allowed for the conflicts that exist in the current system. I would say that the CRM changes are -- and they're good ones, but they're really just -- marginal isn't probably fair to say.

But suitability, now we have three triggers. Really. I mean, it's enhanced, but it really isn't going to fundamentally change the flawed nature of the suitability standard. And for conflicts, IIROC now requires them to consider the best interests when deciding on conflicts. Well, when they're doing that under a requirement to deal honestly and fairly, you would think you would get a better level of dealing with conflicts than you currently have.

So allowing full implementation of current reforms, I don't think so. I'm glad we've got some, because while we gradually discuss moving to a

best interest standard, at least investors will be benefitting from these current reforms.

Shifting to -- I think we really have to, and again I'm echoing other people's views here. It's too bad the governments in Canada have allowed regulation by product, but that's not my problem as an investor. I would ask you to fix the area that you regulate and to hope that other regulators in the country will follow suit.

I know that the regulators talk constantly back and forth, but nothing happens, and it's not your fault. So I think you just need to proceed and move ahead.

Investor education, let's continue to do it, but I think with all due respect, it's still marginal. It's not going to change the fundamental relationship.

Titles, absolutely. But that's not marginal. That's a key part of moving to a best interest standard, and proficiency. So I think all these are reasons why we shouldn't do anything. I think we have to do something, and I think we should take our cue from regulators in other jurisdictions who have already acted, after long consideration.

MR. PASCUTTO: You know, 20 years or so

ago, Canada was the cutting edge of securities regulation. We -- other countries used to look at what we were doing because we were at the forefront of securities regulation. I mean, I left Canada in 1998-9 to go to Hong Kong. Hong Kong was regarded as a Mickey Mouse market and really was a Mickey Mouse market at the time.

But you know, when Hong Kong tackled the Fund Facts issue, they decided to tackle it after 2008. It took them 18 months to implement a Fund Facts approach. They called it a key statement -- key facts statement. It took them 18 months to implement that for their version of mutual funds -- they call them unit trusts -- for closed-end funds, for ETFs, and for insurance-linked products. It took them 18 months to implement it.

In Canada, a decade has passed, and we have still not implemented fully the Fund Facts. I mean, isn't that extraordinary, that to require the industry to produce a two-page document and deliver it to people before they sell them the product, that it's taken over a decade, and we're still not there?

You've presented where the other regulatory authorities are, where the other jurisdictions are, where the UK is, where the U.S. is,

where Australia is, where the EU is. They're all ahead of us. You know, all those jurisdictions are ahead of us. So Canada used to be at the forefront, and now we've fallen behind.

Regulatory arbitrage, that is a real issue. You know, that's one of the few real issues that the industry has. But you know what? That is a failure of government and regulation. That's not a failure of consumers. That's a failure of government.

Securities regulators know that segregated funds are securities, okay? They know that they're securities. Securities regulators know that any kind of real estate products are securities, that orange groves are securities if they're structured as investments, that whisky -- you know, look into the history of securities. All these things are securities if they're structured as investments.

It's purely a political decision that exempts segregated funds from securities regulation. Fix the political decision. Any -- if you talk to any chairman of the OSC, you know, about -- you know, about how the system should be structured, they know that the segregated funds should be regulated with securities. You know, they're 95 percent securities and 5 percent insurance. Why on earth should they be regulated by

insurance regulators?

So, you know, let's not talk about a government failure -- and I think the OSC has wanted to regulate segregated funds, but the insurance lobby has been too strong, and so the OSC has not been able to regulate segregated funds.

Let's attack the real problem. Let's let securities regulation actually regulate securities products. If we fix that problem, we won't have the regulatory arbitrage problem. Let's get back to being leaders in securities regulation, as opposed to being a lagger in securities regulation.

MR. SCANLON: Yes.

MS. DUBLIN: I'd like to think that's true. I do generally agree with what everyone is saying in terms of the position of retail investors. But -- and my concern is that the lipstick on the pig is slapping a best interest test on the existing system, with -- and looking to the common law for a fiduciary duty with no clear standards as a panacea for all of the very specific ways in which retail investors are disadvantaged by the system.

And it's not just the industry. Government and regulators, I believe, are part of the problem. And the financial planning proficiency role,

which has been mentioned, is a good case in point, both about the position of the industry on matters and on how regulatory arbitrage happens among securities regulators.

That was an initiative, a fairly modest initiative. It was followed by the fair dealing model, a more ambitious initiative, both of which fell foul to regulatory arbitrage.

It was an initiative to impose a proficiency -- a financial planning proficiency test, which was sponsored by the regulators working with industry educators, on all of those who held themselves out as not just being financial planners, a very current business model in the insurance -- or business designation in the insurance and mutual fund sales sphere, but all of those with all titles such as financial consultant, wealth -- wealth expert. Whatever title registrants used that implied reliance on their expertise for their customers would be subject to a proficiency standard. Not a fiduciary. Wouldn't go that far. We just said you have to be what you say you are.

We had a group that consisted of not just all the security regulators through the CSA, but all the insurance regulators, both the insurance

bureaus or whatever they're called that are out west, the self-regulators, FSCO. Everybody was involved.

At the eleventh hour, with a rule drafted, one jurisdiction was lobbied by the IDA and backed out. The comment was then there isn't a national consensus, and the minister in Ontario, because of a lack of -- was because, of course, again, industry lobbying, lack of consensus. What's -- what's going on, you guys? We can't go ahead with this unless it's a national consensus. End of financial planning proficiency. Never saw it again. Did not show up in regulatory reform.

And yet that's a very fundamental, consumer-centered goal, to make sure that people that deal with ordinary consumers, offering them financial planning advice or advice of that nature, should at least have the proficiency necessary to do what they say they're doing. Couldn't even get there.

So if we think that by throwing a phrase into our regulations or rules, best interest standard, without attacking the underlying problems, the real foundation of the system, we'll achieve much of anything for investors, I think that -- I think that we're deluding ourselves, and I think that investors will not be well served because there will be yet

another level of false confidence invited.

MS. KNIGHT: When you were asking part of the thing around other solutions, and I think that it is a whole suite of things that need to fit together to make this work.

And one of my concerns is that we don't always think or speak enough about opportunities for appropriate redress. And when we're looking at the balance structure between -- or the power structure and the lack of balance between retail investors and how they can seek redress and get adequate redress, because it doesn't seem like it's working currently.

And even when there are cases where firms are found to have acted inappropriately, consumers never hear about it. You know, they -- we -- the typical consumer has no way to know, (A), you know, is this a firm that I should be dealing with? Is this an advisor that I can rely on? Or if there is a way, it's not generally understood how to.

And when they -- when it comes to a need for redress, the mechanisms that they have to go through are borderline on tortuous and take an extended period of time.

So for the best interest standard to work, it can't just sit out there by itself. It is

part of the foundation. It is a building block. But the -- the right to information, the right to be able to be heard in a situation where one's being -- feels they've been treated unfairly and then actually seek and get appropriate redress is very, very important.

And one of the things I think we need to be looking at in terms of best interest standards is what are other ways that can be looked at to improve opportunities for redress and vehicles for redress, mechanisms for redress, where investors have -- are failed in the best interest standard.

So I think that if you just -- I'm agreeing with Julia. It's not just -- though I believe it is a building block and it's foundational; it's very, very important; it's the topic we are here to discuss today, but it's not a standalone. It absolutely isn't a standalone.

The other thing I think that's important as we have these discussions is that we not just think about this in the context of the current market environment, which is tumultuous at best, and, you know, significantly low interest rates, if not negative interest rates. And for some of these things, it actually helps me to think back to, you know, the 1980s or the 1990s in terms of that investment --

because interest rates will return. Whether the markets ever stop being volatile, who knows. Probably not.

But currently, when we're looking at alternative choices, there aren't a lot around for reasonable risk-free rates of return, like real rates of return, with low risk. And I think some of the conversations -- some of the comments might be unduly influenced by our current market environment.

And I just think that as we look at these in standards, we need to think about what sort of -- what sort of structures do we need in place and what sort of systems do we need in place that would protect investors through a whole range of the investment cycle, the good times as well as the bad times. Because investors also need protection in the good times, as in advice as to when to sell and whatever and time frame and that sort of thing.

So that was just something that I think is really important, that this be done in a long-time -- long-term context, and that it be piece -- a piece of a full solution.

MS. BREMNER: Maybe I can drill down a little bit about effects to redress. So are you looking for regulators to become the venue for that

redress? Because that wasn't really part of what we proposed. It would still rest with the courts, which, as I've said before, leaves me a little uneasy that they would then spend ten years deciding what best interest standard was and how it applies.

MS. KNIGHT: Well, I haven't given a lot of thought to it, except to know that what we've got isn't working, and in a lot of other regulated areas, there is within the regulatory body itself mechanisms for taking care of consumers, for consumer -- addressing consumer complaints, having discipline hearings dealing with a whole gamut of things.

And it's only things that are disputed from that that then go to the courts, but -- so I think that the whole how it would get redressed does need to be dealt with, because I don't think that it's -- the right to redress is sufficiently provided for under the regulatory regime we have.

MR. GELLER: Sorry. I'd like to jump in on this, simply because it's an issue which I deal with daily and debate with other lawyers. Joel Wiesenfeld, who is arguably the retired dean of this area for litigation is somebody who, although defends only -- I highly respect his opinion on both sides.

Little biased, but almost -- almost fair. Very intelligent guy.

He's put forward a proposal, which has been circulated, and in fact, a number of us have adopted in our own practices if we can get a counterparty agreement. And that is a system which, from first contact of him to written decision is six months.

Now, for most regulatory -- negligence which has a regulatory element and has a compensation claim, it's not complicated. Okay? There are aspects that may be complicated and you need a forensic accountant for or something like that. You might have to have an expert on forgery to determine who signed the documents. But those are very, very limited subsets.

And the whole process itself right now is run by deny, delay, confuse, and on confusion, even if the statement is completely contradictory to all regulatory positions, you can still state it in law. How do we get past it? Perhaps an alternative dispute resolution system.

You might study what FSCO did for motor vehicle. That's a much longer-tailed system because of the nature of injuries taking time to develop, but on

the other hand, it's seen, I understand, by the personal injury group, more so by the plaintiffs than the defence, as a pretty good system.

MS. KNIGHT: Sorry. Because -- can I just -- one of the things that also was occurring to me is that we have the OBSI. They're there to protect consumers. It seems that their -- that their mandate isn't actually giving them the clout that they need in order to make some of those things work. So how we strengthen the role of an ombudsman I think is something that is part of the -- part of the solution that needs to be taken seriously.

MS. BREMNER: And I'm sure as you know, I mean, one of the proposals that we put forth last year was to basically have OBSI go into the portfolio manager, EMD dispute resolution, as the mandatory service provider, if they provide the services in that area that are in dispute and if it falls within the caps, because there are those caps.

MS. KNIGHT: Right.

MS. BREMNER: So, I mean, that is one step forward. Give us some credit.

MS. KNIGHT: No, and I think that's a key piece of it. I think absolutely, in this sort of situation, that a strong ombudsman that's got some

teeth is a --

MS. PASSMORE: But also doesn't have binding decision-making authority, so I just --

MS. KNIGHT: Yeah, that's what I mean by teeth.

MS. BREMNER: I think there's two -- there's two issues at play -- there's two issues at play with OBSI. I mean, there is the non-binding decision-making, so we would have to restructure how it is overseen --

MS. KNIGHT: Yeah.

MS. BREMNER: -- in order to get there. The other problem, I think, is that limitation periods have been lowered obviously in the courts for -- contract that would cover most of the litigation to two years from six, and I think that's pretty uniform across the country. Again, not something securities regulators did, but that is another barrier, you know, to the redress.

So those are all issues that we have to look at when we look at this too.

MS. KNIGHT: Right.

MR. GELLER: On the limitation point, it is what it is. Legislature spoke well or poorly. We're limited to that. I don't think that that should

be really part of the debate of whether OBSI or not, whether OBSI should have -- what they should do with that I have personal opinions on, but what we're talking about is dispute resolution.

And for OBSI to be of really any value, it's got to have teeth. It's got to be able to order or to provide detailed information on name and blame. And I'm sorry. Three decisions -- well, four total. I know I have many stuck cases. I know that a case, a series -- a massive series of complaints from one particular hub which were started being complained in 1998, that advisor's name still has not been published other than in litigation.

I mean, I'm sorry, but that's a problem that's before OBSI and that's as well before the MFDA. We got real problems on that part which we need to change. And how are we going to change it? Can do a lot of micro-changes, and I'm all in favour of allow for full implementation of current reforms. I'm not trying to change them. We're just trying to add consumer protection.

And best interest is a new statement. It's a statement which is clear, and I think that the -- the securities commission and the CSA, in issuing it, should make that clear, that this is a

fundamental principle. It means that the client's interest always must be put first, and the advisor must -- must show justification if they've shown something -- if they've recommended something which arguably is not in the best interest. They're going to have to justify it.

I think that should be the standard because they're the ones in the power position.

MR. SCANLON: Susan?

MS. ENG: I think that there's a model that already exists, and exists in thought anyway. The national securities regulator -- you're, I'm sure, aware of that -- had as an adjunct proposal something that we were very happy to see because it represented what we had sent in when they asked for our input. And that is the enforcement arm, which is precisely what is needed in this landscape.

We cannot ask an ombudsman to take on the position of champion of the investor, but that was what was recommended in the NSR recommendations, and that is this. It's allowing with what -- how human rights commissions work, which is a specialist body that has -- that takes in customer complaints and concerns, identifies for them what their rights are, helps them to mediate and work with the other party to

try to resolve the issue on a sort of quasi-mediated process. And when that fails, if that fails, that they also take that client's case to the tribunal for a remedy that includes restitution, rescission, and so on.

So that model is probably the only option that average investors actually have. To ask them to get themselves so well educated they can actually search these web sites, insist that they get this information, make a great judgment about their advisor, et cetera, et cetera, even after all that, they do need to have something -- this area of investor rights has become so complex that you really cannot ask the average investor, busily making the money that they need to invest, to actually acquire this expertise. It's just not fair. It's not reasonable to expect that to happen.

So in order to put the landscape into a much fairer, more safe environment for investments, you need a champion that has authority, expertise, resources, ultimately part of a structure that can bring the case to court with a champion, and at the other end, actual restitution.

MS. CRADDOCK: I think it's -- I don't think anybody would disagree that we need better

enforcement, and we need better compensation systems. But what I want -- what I think we really need to be focusing on is better rules. I'd like better enforcement and better compensation in a system with better rules. And I think that's the key place for us to start.

That may sound simplistic, but I'm not -- I'm not much encouraged to hear that we're going to put a lot more effort into enforcement of poor rules, which are really, really difficult to enforce now because they're so poorly written. I mean, the suitability standard is so hard to prove that something went wrong. You could drive a truck through it in some ways.

I'm being a bit unfair, but I really think what we need is better rules, higher standards, and at the same time, we're looking at enhanced compensation systems and effective enforcement. But I think that's where we have to keep our focus and not get distracted by trying to do everything at the same time. It's -- we need better rules and higher standards that protect investors.

MS. SPEED: I just wanted to add a quick point to your question about waiting and seeing and allowing full implementation of the current

reforms.

Firstly, I think it's quite a pretty standard form of argument from industry to try and delay any sort of change that doesn't work directly in their interests. I mean, I thought it was really interesting that IFIC made the comment at the mutual fund fees roundtable that we really need to get moving on point of sale, because they seemed to have put every effort they had into delaying and somehow watering down the Fund Facts requirement. I mean, we're still looking at implementation years and years away before point of sale. So I think that's a bit of a red herring.

But I also think that the current reforms do not go to the core issue of conflict of interest. And there's been a lot of research out of -- particularly out of the U.S., in the financial services realm and more broadly, that says that there are real perverse effects of disclosure of conflicts of interest.

For one thing, the advisors tend to take more license. Whoever is providing conflicted advice takes more license once they've disclosed the conflicts of interest because they think they're free of this obligation.

And it also seems to induce more trust in investors once the conflict has been disclosed because they think they're being given true advice, but it's been demonstrated that they're not able to actually factor in the influence of that advice on the recommendations that they're receiving. So I don't think that CRM II and I don't think that point of sale really go to that core issue of what we're talking about.

MR. GOLDHAR: Just the -- one risk that we have in discussing all the potential competing interests are that we take our eye off the ball. We start decorating the house with all sorts of furniture, et cetera, before, again, we've focused on fixing the foundation.

Starting to sound like that when I hear some of the exceptions that we need to consider, and what about this, what about that. It sounds like, again, we're discussing what colour couch we want in the house, as opposed to again getting down to the basics. Let's fix the fundamentals that are broken right now.

And this does give organizations like IFIC more to discuss, more to delay, more to argue over. And if you want to get this through quickly, or

as quick as this industry will allow, then let's stick to the fundamentals. Let's stick to the one issue that we think we'll build -- we can build on, and that is this best interest.

Anything away from -- it's great that we're talking about it, and it's important, because these questions will come up, and if it looks like we haven't even discussed it, well, then, we've really been blind as we've moved along. But let's stick to those fundamentals. I think it's really important, and I think we need to get it in as soon as possible.

MR. SCANLON: I think we have time maybe for one quick last comment before we conclude. Does anyone want the last --

MR. GAZZARD: I don't feel I'm worthy, but I do have a few -- just one last comment that will make me feel better when I leave anyway.

With respect to the number 5, negative impact on advisory services, remember that you're moving from a suitability standard to a best interest standard. We're not moving from ground zero in a buyer beware standard. I, for one, am not convinced that moving that last 20 or 25 yards in the field is going to incur the costs that some in the industry say would be the case.

Remember, of course, that something that came out in the materials was we're talking about the net negative impact, and I think that's critical too. I'm not convinced that there will be a negative impact, but insofar as there is, there sure is going to be a positive impact, in my view, from moving to a best interest standard.

And on the question of should we allow full implementation of the current reforms, I do have some advice to you, and my advice would be, be bold. If there's anything I think that you can be bold about, then surely it's telling investors that the industry must recommend securities for the clients that are in the clients' best interests rather than recommending securities which may or may not be in their best interests.

Doesn't it feel right, somehow or other? And there are a thousand reasons to put it off, and maybe just one really good one to move forward.

CONCLUSION AND CLOSING REMARKS:

MS. FOUBERT: Well, I think that that is a fitting conclusion to our discussion today. This has been a great debate, a lively debate. We've gotten some great information out of here. I know that we -- thank goodness we have a transcript, which will be put

up on the web site to be able to recap issues.

I mean, I've made notes. I know that, you know, titles, we need clarity as to titles. Proficiency, we need to look at the proficiency of the people that are interacting with the registrants. Conflict of interest, how do we avoid them. The redress mechanisms. Current suitability practices need further review. Investor education.

I mean, the list -- the list goes on, but I do think that there was one statement that was quite interesting that -- you know, I can't -- don't remember specifically who said it, but the intermediaries need to serve the public, not the public to serve the intermediaries. So I think that too is a fitting end to the conversation.

I do want you to know that if we did not get to your questions, that there will be opportunities to send e-mails to us. We do have the best interest consultation e-mail address that we monitor, so if you have other questions that you want to submit, please feel free to send that through.

Also, we will be sending out a survey to the session, to your e-mail addresses. It should be going almost immediately. So please go back, fill out the surveys, and provide us with your input, because

this, as I said, is the beginning.

This is our first of three, so I will highlight that the second roundtable -- so we'll give industry the same opportunity to come in and address these concerns on June 25th, and then the third roundtable, which will be a moderated panel. We'll have industry and investor perspectives. So I hope that everyone is able to attend that one as well, because it will be a very good debate between the issues.

So on that, I would again like to thank everybody for coming. This has been wonderful.

--- Whereupon proceedings adjourned at 11:59 a.m.

I HEREBY CERTIFY THE FOREGOING
to be a true and accurate
transcription of my shorthand notes
to the best of my skill and ability.

____

Hilary Allison
Computer-Aided Transcription