

**Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients***

**Summary of Proposed Specific Changes:**

- **Conflicts of Interest**
  - Obligations apply to firms and their representatives (“reps”)
  - Respond to conflicts in a manner that prioritizes the interests of the client ahead of the interests of the firm and/or rep
  - Any disclosure given to a client about a conflict must be prominent, specific and clear
  - Firms and reps must have a reasonable basis for concluding that a client fully understands the implications and consequences of the conflict
  - Where interests of client cannot be prioritized, the conflict should be avoided (by ceasing to provide the service or ending the relationship)
  
- **Know Your Client (“KYC”)** *\*Forms basis for meeting the suitability obligations*
  - Firms and their reps. to ensure the KYC process results in a thorough understanding of each client
  - Gather more client-centered information
    - Re. investment needs and objectives – time horizon for investments, how liquid the investments need to be, investment preferences and constraints
    - Re. financial circumstances – amount and nature of all assets and debts, loan interest rates, net worth, income, employment status, spouse dependents status and needs
    - Re. risk profile – client’s investment knowledge, expertise and vulnerability, risk attitude, risk capacity and loss aversion
  - KYC forms signed by client, dated and copy delivered to client
  - Take reasonable steps to update KYC forms and information at least every 12 months and more frequently if a significant change affects the client or their portfolio
  
- **Know Your Product (“KYP”)** *\*Forms basis for meeting the suitability obligations*
  - Reps to have sufficient knowledge of a product (together with KYC information) to support a suitability analysis, including product features, product strategy, costs, and risks
  - Reps to understand and consider how a product recommendation compares to other products on the firm’s product list, understand the impact of fees and charges on the performance of that product, and understand and consider the impact on the client’s account and investment objectives
  - Firms to provide their reps with information and tools needed to comply with the reps’ KYP obligations
  - Firms to identify if they have solely a proprietary product list or a non-proprietary or mixed product list
  - Firms that have a non-proprietary or mixed product list required to do a market investigation of a reasonable universe of products that the firm is authorized to sell, and compare the products to the firm’s product list to ensure the firm has a

reasonable range of products that meet the needs and objectives of its clients (and make changes to the product list if necessary)

- Suitability
  - Suitability assessment required before a recommendation or accepting instructions to buy, sell, hold or exchange a security OR a decision to buy, sell, hold or exchange a security for a client's managed account – ALSO every 12 months and on certain events
  
  - Suitability assessment to include:
    - assessment of basic financial strategies, including non-securities strategies (basic financial suitability)
    - if securities strategy most appropriate, then rep to look at client's portfolio and formulate basic asset allocation strategy for client to achieve client's investment needs and objectives (investment strategy suitability)
    - ensure the purchase, sale, holding or exchange of the security is suitable for the client and most likely to achieve the client's investment objectives based on review of products on the firm's product list (product selection suitability)
  
- Relationship Disclosure
  - Nature of client-financial adviser relationship disclosed in prominent, clear and specific language that is easy to understand
    - If firm restricted in the products that it is licensed to offer (such as a mutual fund dealer only able to offer mutual funds), then firm is required to disclose to the client that it is only permitted to offer a limited selection of products and that when determining if the product is suitable for the client, the larger market of other products was not considered
  - Firm to disclose types of products on its product list
    - If firm only has proprietary products, firm must disclose that its recommendations are limited to proprietary products and that when determining if the product is suitable for the client, the larger market and other products were not considered
  
- Proficiency & Designations & Titles
  - Increase proficiency requirements for reps, including re. product costs, investment strategies, and knowledge elements required to comply with proposed changes
  - Require continuing education of reps
  - Specify what designations or credentials that a rep may use to indicate they have specialized knowledge or expertise as a result of education and/or experience
  - Specify what titles a rep is permitted to use when dealing with a client so that clients are not misled or confused by a rep's proficiency, qualifications, experience, or scope of products and services offered
  
- Clarify the roles of Ultimate Designated Person and Chief Compliance Officer
- Create a statutory fiduciary duty for registrants that have been granted discretionary trading authority by their client

**Proposed Best Interest Standard (“BIS”) (in addition to the above noted specific changes)**

- Create an over-arching standard of conduct that a firm and its reps. are required to deal fairly, honestly and in good faith with its clients and act in its clients’ best interests
- BIS is not intended to be a fiduciary duty (which has been developed through case law, applies to various disciplines and situations, lacks clarity in this context, and remedies potentially too harsh)
- BIS intended to be tailored to the client-registrant relationship and govern all aspects of the relationship, including the interpretation of the specific requirements where ambiguous or where there are new developments
- BIS not intended to prevent firms from charging clients, result in lowest product costs, prohibit firms from offering proprietary products, guarantee highest returns or lowest risk