SUMMARY TRANSCRIPT

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---PROCEEDINGS COMMENCED

MS. LEONG: Let me begin by welcoming you all to our sixth Capital Ideas conference.

I was thinking last night, I was counting on my fingers how many of these events we've actually hosted and I think we are up to six.

Capital Ideas provides, what we believe, at the Securities Commission, to be a very important forum for bringing together international and Canadian experts, together with capital markets professionals and business leaders in the community.

Over the years, we have hosted an open dialogue on things like challenges facing 21st century investors, factors affecting the success of the public and private markets in Western Canada, the desirability, fairness and enforceability of principles-based regulation and improving regulatory and criminal enforcement in Canada, to name a few.

We've endeavoured to highlight, for industry, discussions emerging around important capital markets policy issues, either being considered internationally or that may have a particular significance to the Canadian capital markets.

Today is no exception. We are pleased to present two panels this morning, both, in our view, timely and relevant.

The first panel will discuss the potential impacts of a best-interest standard, or what is being referred to as a fiduciary standard, on Canadian investment dealers and investors.

In this panel discussion, you will hear about why and how it is being introduced in the United States, the UK and Australia. Panelists will also discuss a recent consultation paper just released by the Canadian Securities Administrators.

On my far left, Paul Bourque is the Executive Director of the British Columbia Securities Commission and Paul will be moderating the first panel.

Many of you here may know Paul. He has an extensive background in securities regulation, having held senior positions with the Investment Industry Regulatory Organization of Canada and the Ontario Securities Commission.

Susan Eng is Vice-President of CARP, the Canadian Association for Retired Persons, and as Susan said to me this morning, also known as "the bottom feeders". Under Susan's leadership, CARP has helped shape the policy discussion on such important issues as pension reform, investor protection and mandatory retirement.

Next to Susan is Sharon Morrisroe, Senior Vice-President, General Counsel and Corporate Secretary for Raymond James. Sharon has participated on various industry committees such as IIROC's Pacific District Council, the Commission's Legal Advisory Committee and the Portfolio Management Association.

And Jeff is Legal Counsel, Compliance and Registrant Regulation Branch of the Ontario Securities Commission. Prior to joining the OSC, Jeff was in-house Counsel and Corporate Compliance Officer at a leading Canadian company, where he was responsible for operational and regulatory issues.

MR. BOURQUE: Well, I'm delighted to be here this morning with three very knowledgeable people on a topic that has gained some significant interest and currency over the past 12 to 24 months.

As a bit of a background, of course, this issue is not new and it's been somewhat controversial for a long time. Some of you may recall that when the OSC issued its fair-dealing model proposal about 12 years ago, the fiduciary standard was part of that proposal.

And we are really talking about that relationship between a retail client and their advisor. That's the focus of our discussion and the focus of the relationship that we'll be talking about this morning.

So I'd like to begin the discussion with a description of what the fiduciary standard or best-interest standard is today, under current statutory or common law requirements.

So my first question is for Jeff. And Jeff, as project lead for the recent CSA Consultation Paper, which is out for public comment now -- and we certainly invite your comment and hope you do provide us with comments, but as the lead for that project, on the best-interest standard, can you explain, for the audience, what the key components of a fiduciary standard are, under the common law?

MR. SCANLON: So at common law, fiduciary duty -- if you owe someone at fiduciary duty, that's really just a fancy way, frankly, of saying that you have to act in that person's best interest.

But you might be sitting there, "Well Jeff, what does that mean? That's not that helpful."

So thankfully the courts in Canada have fleshed out what it means to act in your client's best interest.

And I just want to point out that this is the court speaking in general about fiduciary duties; not necessarily in respect of advisor relationships, but in general.

There's really five key elements. The first element is that client interests are paramount. So essentially, the fiduciary has to act in a way that keeps the priority on the client's interests, regardless of the impact on the interests of the fiduciary providing the service.

This is sometimes called the "duty of loyalty", and this is really the foundational duty of the fiduciary duty from which a lot of the other elements flow.

The second element is that conflicts of interests are to be avoided. So this is quite a strong prohibition against conflicts at all, and certainly, if there are conflicts in a general fiduciary relationship, just plain disclosure isn't enough. At the very least, you need informed consent and sometimes you need informed consent with a third party providing advice about the nature of the conflict involved.

The third element is that clients must not be exploited. This is often called the "no profit rule." And what the courts are saying here is, essentially, again, your focus must be on your client at all times. They don't want to have fiduciaries thinking about ways of profiting from their client. Whether or not the clients can profit from it, regardless, the courts want that emphasis to be on looking after your client's best interest.

The fourth one is that you need to provide clients with full disclosure. So to the extent there's material information about the service you're providing and the product you're recommending. You need to provide full material information to your client about that product.

And the last one is just really the duty of care, which is that services are performed reasonably prudently. And this is very common to anyone who knows about the normal duty of care in Canadian common law.

So that's a quick snapshot of what a fiduciary duty is, and just the last thing I want to mention is what a fiduciary duty isn't.

So the courts have also been really clear that a fiduciary duty is not a guarantee. The courts do not expect that if you're a fiduciary, let's say in an advisory relationship, for example, just because you're a fiduciary doesn't mean you need to give perfect advice. The courts are mindful of the fact that honest, good advice can be wrong sometimes. And so the courts are very clear on that point.

MR. BOURQUE: Thanks, Jeff.

Sharon, taking the description we've just heard from Jeff, and a very comprehensive sort of a sketching of the landscape, you, as someone who has to manage a lot of these issues in a national retail brokerage firm. Full service dealers have proprietary trading, retail brokerage, institutional, conflicts are everywhere. How do you assess what the courts have done, with respect to interpreting what a fiduciary standard is, in the way that you try to operate and give advice to your retail brokers?

MS. MORRISROE: I think the first thing that has to be looked at is this best-interest duty in common law applies when a fiduciary relationship exists.

So in non-discretionary accounts, the essence of that relationship between the client and the advisor is that the client must approve all trades. So the client has the final say. The relationship isn't, *per se*, fiduciary but it can be, depending upon the facts.

The Supreme Court of Canada in the *Lac Minerals and International Corona* case, Mr. Justice La Forest said:

> A fiduciary relationship arises as a matter of fact out of the specific circumstances of the relationship.

So the courts look at the nature of the relationship and they undertake a factual analysis. Factors are things such as vulnerability of the client, dependency on the broker, trust and reliance by the client and the exercise of power by the advisor.

So for example, where there is a discretionary-managed account and the advisor is making all of the investment decisions, the relationship is fiduciary.

You'll note that all discretionary managed accounts in the industry are fee-based, not commission based.

Another example is if a client is particularly vulnerable, uneducated, inexperienced, perhaps older, maybe has insufficient language ability to be able to understand the nature of investments and the risks associated with them, it is likely that that relationship will be regarded as a fiduciary one. Essentially, when the client approving a trade has no or little understanding about what they're approving, that will be regarded as a fiduciary relationship.

So for example, if there is an older client who's a widow, who's husband has always made the investments and dealt with financial matters, she has little financial literacy or experience and little higher education, the courts are likely to find that to be a fiduciary relationship, given that woman's vulnerability, lack of sophistication and experience, and given the trust, reliance and confidence that she places in the investment advisor.

So if that advisor/client relationship is a fiduciary one, the fiduciary advisor has the highest duties in law, similar to a trustee of a trust, acting for beneficiaries.

The corollary is that a fiduciary relationship will not be found to exist in circumstances where an investor is well educated, sophisticated, with extensive investment experience, who is in good position to understand and assess the product and disclosure.

In that 1992 Ontario case of *Varcoe and Sterling*, the court said:

> Primarily a broker's relationship with a client is that of agent and principal. The agent takes instructions from the principal and carries them out with care, skill and diligence. Failure to do so, may give rise to an action in breach of contract or in negligence.

So in that *Varcoe* case, Varcoe, essentially, had developed into a professional commodities futures trader and was very sophisticated and experienced and the court did find that it was not a fiduciary relationship. However, damages were found in negligence and he was awarded damages because the advisor had failed to meet his duties of care and failed to abide by the firm's trading limits in those situations.

So essentially, in some of these common law cases, even where a fiduciary relationship isn't found, there's other remedies awarded in negligence and breach of contract.

MR. BOURQUE: So we've now talked a little bit about the common law standard for a fiduciary relationship, heard a bit about how it works on the ground in a brokerage firm, the relationship between the broker and their clients, some of the legal issues that have to be monitored.

From your perspective, as Vice-President of Advocacy for CARP, a non-profit organization representing seniors, what are the issues currently of most concern to your members in their relationship, as they plan for retirement, for educating their children, what are their highest concerns, in terms of their relationship with their financial advisor?

MS. ENG: I guess I represent the perspective on the panel of, "What does this all mean to me?"

As you mentioned, we are a non-profit member-oriented organization with 300,000 members across the country, some 10,000 here in B.C., 55 chapters, where our members collect to concern themselves with issues like this.

And the focus for them, of course, is investor protection.

They worry about whether or not they're going to outlive their money.

By and large, our members are retired. They are above-average education, above-average income. They're already relatively comfortable or adequately provided for in retirement, but they're worried. They're worried about their future medical events. They're worried about their children and grandchildren, who they see, like many Canadians, not saving enough for their own retirement.

In that context, of course, many of them had their savings devastated in the '08/'09 crash and so they are going to start focussing very much on what is their relationship with the financial advisors.

And their concern has been, "How do we get our money back? When things go wrong, how do we get our money back?"

So if you look at that as the context -- by the way, we don't think of ourselves as bottom feeders but we worry about the bottom feeders in the industry, right? Because that's where we run into trouble.

And so when we look at the landscape on their behalf, as an advocacy firm, we look at what are the regulations in place?

We supported the idea of a national securities regulator, but the part of it that had the enforcement arm. It promised the idea that there would be a specialist champion for investors, a one-stop shop for investors to go to, if they had complaints and worries. There would be the agency that had a responsibility to help them through any legal process and ultimately a tribunal that would decide on their situation, and at the end of it, offer them some restitution.

And the recent case that you saw in the newspapers of OBSI, identifying a firm, Octagon, that refused to pay back the investor, gives you a really clear picture of the landscape that we're in today, which is that despite going through the regulatory process of IIROC -- and the firm was fined a substantial amount of money, and then going, on a review basis, to OBSI, the ombudsman, and getting a declaration in their favour and a persuasion, in effect an effort to persuade the firm to pay the restitution, again, they refused. And the investor is sitting there thinking, "Well, you've got all these wonderful regulatory -- self-regulatory frameworks, but how does that help me because I still don't have my money back?"

And it is true that it is possible for each investor who feels harmed to go to court and declare his or her case and fight it out, but remember who we're talking about. We're talking about the person who just lost all of his assets. So they're in no position to pursue this in court.

Therefore, the opportunity for a legislated best-interests standard actually only helps you one step in the legal process. It allows you to go to court in the first instance, to say, "Well, he owed me a fiduciary duty," which is something that litigators had to prove in court before this, through the common law.

The other thing is also true and that is that through the industry increasing its standards, by and large there are very small situations where a large, reputable firm sees that in one single case that there was improper exercise of the advisor's standards and that they abused the client in some way. The firms often just pay out because they do an internal check on that case.

But that isn't what the law, and that's not what we, as advocates, are focusing on. We're focusing on the framework that has a standard for everybody, including those firms that are not responsible, which is where the problem actually lies.

And so the best-interest standard, in a legislative framework, does have that potential for helping the average retail investors. There are wrinkles, of course, but as a larger principle, it's an important addition to investor protection from our perspective.

MR. BOURQUE: I wonder if I could just go off script a bit and just ask Sharon a question about remedies that are available to clients of investment dealers. And you mentioned OBSI, Susan, which is an independent ombudsman that can make recommendations, essentially.

There are other avenues. One of them is the arbitration program that IIROC has established. Is that an option that, Sharon, you see the firms using very often or do you see that as a useful method of investor redress when there is a dispute between a client and a broker?

MS. MORRISROE: I wouldn't say that the mandated arbitration process, is used very frequently.

I think if we back up, there are some very prescriptive complaint handling procedures through IIROC. And a client complaint starts with the firm and every complaint is investigated by the firm thoroughly. And if there are situations that are meritorious, the dispute is resolved at the firm level.

If the complainant is dissatisfied with the result, with respect to the firm's position, they then have a myriad of opportunities in terms of where to pursue a remedy.

One place that is at no cost is going to the ombudsperson, the OBSI, and an investigation takes place, a thorough investigation. It isn't a court but they have the power to make recommendations.

And the Octagon publication that was last week, I think, is only the second one where the recommendations of the OBSI have not been followed. So they have the power to make recommendations and then to name and shame, if the firm doesn't follow it.

So you're quite right. The client has an opportunity to mandate arbitration or to pursue the remedies through the civil courts.

MR. BOURQUE: So that's kind of the landscape in Canada with respect to common law standards of fiduciary responsibilities.

I'd like to turn our gaze sort of outward a bit and talk a little bit about what the situation is in other jurisdictions, in other countries.

So my question for you, Jeff, in October, Mary Schapiro, who's the head of the SEC in the US, indicated that she hoped that there would be a uniform statutory fiduciary standard for advisors and broker/dealers, both, in place in 2013. Can you tell us how the issue has developed in the US and what the status of the issue is there?

MR. SCANLON: It's really interesting to see how the issue has unfolded in the States. As always, there's a bit more drama, I find, south of the border.

So I think really the issue arose out of the financial crisis, like a lot of these issues. I think it became clear that intermediaries in a lot of instances maybe did not owe a duty to act in their client's best interests. It came to a head. One instance comes to mind, during some Senate hearings where there was an interchange between a Senator and a financial institution where that question was posed very clearly to that executive and that executive could not confirm that they acted in their client's best interest.

So that takes us to July of 2010. President Obama passes Dodd-Frank. Section 913 of Dodd-Frank does really a couple of things. It essentially requests or dictates to the SEC to conduct a study of what is the current standard of conduct that applies to investment advisors and broker/dealers in the US and to look at whether or not there are any gaps or overlaps, in terms of how that standard of conduct applies to those registrants in the US.

So SEC staff dutifully did the study. They presented it to Congress in January 2011. It's quite a detailed study. It's over 100 pages long. At the end of it, the take away is that they recommend that the SEC introduce a statutory uniform best-interest standard and they articulate a standard in that study.

Now, what's interesting is that on the same day the SEC staff published that study, two of the five SEC commissioners actually issued their own letter, their own statement, pretty harshly criticizing that study by SEC staff. And you don't see that every day. So that raised a few eyebrows.

And really they had a couple of complaints. These commissioners essentially were saying, "You haven't really identified what the harm is to investors and you haven't done a reasonable cost/benefit analysis."

So it's on that latter point that I think the SEC has been bogged down a bit. They're trying to do a robust cost/benefit analysis but it's taking them some time. And doing a CBA is a bit more complicated in the US that it is here. So that's one of the reasons.

It should also be interesting, there have been some rumours that Chairman Schapiro might be stepping down. It would be interesting to see what happens with that.

And really, my last observation was in terms of not just the fiduciary duty or best interest project in the

US, but really all of Dodd-Frank, there was really some uncertainty there, leading up to the US election. Candidate Romney was suggesting that he might pull some or all of it back. But now that President Obama is re-elected, it looks like the focus will be on continuing with Dodd-Frank, so we'll see where that lands.

MR. BOURQUE: Always interesting, the developments in the United States and always seemingly controversial.

But other jurisdictions, as well, have tackled this issue. They've looked at it from a variety of perspectives, from the perspective of fees, conflicts of interest. Particularly, I know the UK and Australia have been initiating reforms in this area.

Can you bring us up to date on what's been going on in those two jurisdictions?

MR. SCANLON: I'll sort of dive into it and not too deeply.

So let's start with Australia. So Australia, in April of 2010, launched its Future of Financial Advice Reforms.

So what happened in Australia, there were two high-profile collapses of securities firms. And so a joint parliamentary committee did quite an exhaustive report and made a number of recommendations, one of which was to introduce a statutory fiduciary duty.

So that's what the government did in April of 2010.

That's how it's progressed.

So two bills have been passed by the Australian parliament that essentially do two things that I want to bring to your attention.

One is that there's a best-interest standard where advisors who provide advice on investing in securities to retail clients, must act in the client's best interest. That's number one.

Number two, they've also gone ahead and banned commissions from issuers. Australia had, in some ways, a similar model to what we have in Canada today, to the extent that any advisors who were receiving commissions from issuers of securities, like funds. Australia is banning those commissions. And what they want is to create a compensation structure where the client is the one that pays their advisor. No one else.

So that's what's going on in Australia. Those reforms are scheduled to come into force July 1st, 2013.

Now, the UK already has a qualified best-interest standard. It was part of the Method Reforms in 2007.

What's interesting about the UK, is despite having the best-interest standard, they did some reforms called the Retail Distribution Review, and those started in 2006 and they, too, include a ban on embedded commissions. So that again, the issuers of funds or what have you, who had previously paid compensation or commissions to advisors, those commissions are being banned.

So again, there's this focus on ensuring that clients are the ones that are compensating their advisors.

And as part of the reforms in the UK, there's also an emphasis on making sure that clients understand that their advice is either independent or restricted. And advisors need to explain is it truly independent, there are no restrictions, or that they do offer restricted advice and they have to explain very clearly what that narrowing or restriction is.

The UK reforms are scheduled to come into force January 1st, 2013.

MR. BOURQUE: Okay, Jeff. Thanks.

Susan, so there's a lot going on in Canada, in the United States and around the world. Regulators are looking at embedded commissions, trailer fees, conflicts of interest, keeping the relationship transparent and keeping the relationship directly between the customer and the advisor. We're talking about a fiduciary standard in Canada.

Do you think that the reforms that are under review, either in Canada or the United States or other parts of the world, would help your members in their relationships and dealings with their financial advisors?

MS. ENG: Absolutely.

And it's interesting. The CSA paper uses this cute term. It's "financial literacy asymmetry." Which is, the advisor knows a lot about what's going on; the client doesn't. That's the reason why they're paying for an advisor.

And it's that gap that we're trying to accommodate. On one hand to raise the financial literacy of the general public and the investing public, and the other is to fill in that gap 'cause you're not going to ask advisors to be less knowledgeable. What you're trying to do is level that playing field, to have a champion that helps them fill that gap when things go wrong.

And that is part of the essential tussle that's going on right now. So it's very important for us to see a regularizing of the process.

We poll our members in an email that we send to 90,000 email addresses. And in that polling, we ask them questions. Our latest poll asked them about their investing style. And they've told us more than 5o% of them see themselves as very conservative. So if any of them had advisors who have them at medium or high risk, that would be, by definition, wrong for them.

And yet they don't know what they don't know. They've also indicated that they think that they themselves are fairly well suited for their investments but they know that others that they know about have run into problems. So it's never themselves. They aren't really sure about what they, themselves, know.

The third thing is that they say that they know exactly how much they pay in fees to their advisors. Not necessarily so.

And so that's why the trend in UK and in Australia, to forbid embedded fees, such as in mutual funds, where you don't know exactly what's being paid to the advisor and what's being paid to actually move your investment forward.

That is something that would interest our members. They don't even know that that is a problem, first of all. And I guess the argument goes that if they knew how much they were paying in fees, they might balk, resist. There'd be some competition. And some advisors would actually exit the industry. And that's what's happened in some of these jurisdictions where they put in those kinds of regulations.

So from the perspective of the consumer, the investor, who looks at the circumstances, say, "Do I have all the facts? Do I even have the capacity to understand all the facts that are given to me? Is there a way that policy, public policy, government and self-regulation, can improve the landscape so that at least I know where I am, what I'm doing, what's happening to me, how much am I paying? Do I have an informed choice?"

And so anything that improves that landscape for the average investor is something that we would be pushing for.

We see the best-interest standard as one of those tools. There probably needs to be some improvement as to how it's articulated.

But you can see why, when you talk about Congress and the shenanigans there, it's not a pure discussion. It is lobbying. One group is against another. And so you have the strong lobby group in the financial industry on one hand and on the other side you have who?

We do have a counterpart, although a hundred times bigger than we are, AARP in the United States, which forms a bulwark against some of the more pernicious changes that have taken place. And they take a position, in a public forum, to try to push back against undue lobbying on behalf of the industry.

We, in our small way, try to do the same thing here. And in that respect, our members, once they are charged up about what they might be able to do about the current status quo, might actually take action themselves at the ballot box.

MR. BOURQUE: So Sharon, you've heard from Susan, some of the issues that her members are facing with respect to their dealings with their financial advisors. We've heard what the situation is in Canada, what are some of the reforms taking place in the UK and Australia and the US.

How is the situation in Canada different or better or worse from the situation in the US, the UK or Australia?

MS. MORRISROE: Well, I think it's different and I think Canada has been a leader on these issues.

As early as January 2004, the Ontario Securities Commission put out their Fair Dealing Model. The CSA took a look at that and reframed that and brought out the Client Relationship Model in the fall of 2004.

Since that time, there's been considerable consultation, revision and education about these issues.

Securities regulators in Canada now are implementing a new regime - the CRM regime. So let's just look at that.

The CRM developments include things such as plain language requirements. Client-facing documents are now going to need to be written in plain language to make them more understandable.

The relationship disclosure requirements, so the nature of the relationship between the advisor and the client need to be set out in writing, so that the client's expectations can be both managed and met.

Third, conflicts of interest disclosure, broker/dealers are now required to outline, in writing to the clients, and to discuss with them circumstances where actual, inherent or potential conflicts of interest may exist.

For example, inherent in the investment dealer business model of a commission-based account, is that an advisor earns a commission when there is a trade. Any non-transparent commissions, such as the trailer fees that we were talking about, would be disclosed to the client.

There are also enhanced suitability requirements. So the advisor who, in the current environment today, needs to look at the suitability of the investment at the time of the trade, will now be required -- the enhanced requirements will require the advisor to be looking not only at that, but also the suitability of the investment portfolio. And there's prescribed circumstances where there are certain triggers where suitability obligations will be additionally required, such as when assets are deposited or transferred in, when there's a change in the client's KYC or financial circumstances and when there's a change of advisor.

Next, with respect to reporting to clients, in addition to the current requirements to provide trade confirmations and monthly or quarterly client statements, the broker is going to be required, at the time of the account opening, to disclose the charges and costs associated with the account. And annually, there is going to be a requirement for a report on the charges and other compensation that have applied with respect to that account, including compensation from third parties.

And finally, and probably the very biggest piece -- and I should add that this comes at tremendous compliance costs to the firms -- I think we're pretty much in the 11th hour to implementation of investment performance reporting. It will have a phased-in implementation, so you'll probably see it on a two or three-year horizon -- the client's statements will include book cost of each security. The statements will show the changes in the market value over a 12-month period and the investment performance reporting will require the calculation of a %age return, using a dollar-weighted performance calculation method, which is going to require some considerable changes to some of the industry practices today.

So these new proposals, generally, are mandating a lot of conversation with the client, explaining in writing and verbally, either by telephone or in-face meetings, explaining the information that they're being given and documents that they're being delivered. Firms will be expected to promote client participation to help the clients understand the relationship, to encourage them to actively participate in the relationship and to provide clients with clear, relevant and timely information and communication.

What will be expected of clients is for them to inform the advisor when they have any changes to their personal or financial circumstances, and they'll be encouraged and expected to be informed, to read the documentation, to ask questions, to request more information, to stay on top of their investments and to review this disclosure and these reports that are being provided to them, and to contact the firm immediately if they're dissatisfied with the handling of their account.

So really, there should be a two-way street.

So in summary, Paul, I see no need for Canada to be portrayed as a follower, as we've, in fact, been leaders in this space.

I think our Canadian regulators and the SROs, such as IIROC, have, in my view, better understood the products and services and the business model under which non-discretionary investment advice is provided in Canada. I think they've chosen from the regulatory tool kit to enhance investor protection with better and fuller disclosure, communication and education, rather than legislative change.

MR. BOURQUE: Okay. Thank you.

We're now going to give you an opportunity to ask any questions that may have come up in the course of the discussion and direct them, if you will, to any one of the panelists.

MR. THOMAS: Yes. Thank you. My name is Richard Thomas. I'm with PI Financial, another broker/dealer.

I've got a quick question about the client relationship model. And one of the other components of it, as I understand it, is that it has a best-interest standard. What would a fiduciary standard add to the existing best-interest standard in CRM currently?

MR. SCANLON: So the latest CRM proposal, -- and Sharon did an excellent job, summarizing what they are: cost reporting and performance reporting. So currently, clients don't always get, in dollar terms, really clear visibility of what it actually costs them, in dollar terms, to have an account with their advisor, and also what they actually earn on their account in dollar terms.

So that is in a sense, a quick summary of that initiative.

Now, that's a disclosure issue. That has got nothing to do with what the duty is owed to the client and suitability. I think looking at suitability is probably a good spot to focus your attention.

And Sharon's absolutely right. The SROs have done a good job, in the last year or two, at rolling out reforms to improve suitability, shore up weak areas of suitability.

But fundamentally, suitability is identifying, arguably, one product among many that might be suitable. It's not the most suitable product.

So to the extent that a best-interest standard changes suitability and ramps it up, so that an advisor has to select one or more products that are the best for the client, that could be one way there could be a difference.

MS. ENG: Paul, I took this from your paper, Jeff -- that the way they describe the added value of the best-interest standard is that you might find two investments that are suitable, but one gives you a much heavier commission than the other. And it would not be in the best interests of your client to take the second one because the amount of commission comes right out of their total earnings. And so in that situation, you would be obliged to either make it perfectly clear what the net impact of those two choices would be and advise him or her to choose against the higher commission option, so as to maximize their best interests.

And I think that's where, the tires hit the pavement. That's where you have to make a decision.

That's the difference, I think, of an imposition of a best-interest standard.

MR. BOURQUE: Okay. Any other questions?

AMARA HAQQANI: I'm actually from the Australian financial services industry and have been working here for a number of years.

I'm interested, particularly, to get your views further on the banning of commissions.

I'm just providing a little bit of background as to what happened before the Future of Financial Advice. A couple of years prior to that, there was the introduction of dollar disclosure. And that basically meant that there was a very clear disclosure of for every hundred dollars you invest, this is the dollar amount that you are paying in fees.

And what happened as a result of that very transparent disclosure was there were a number of providers left the industry, and also as a result of that, the industry, itself, started to move to a fee-for-service model.

And the competition that arose out of that, led to the regulators enforcing the banning of commissions.

So I have read that the CSA is not interested, at this point, in banning commissions, and I was just wondering what you thought of that.

MR. BOURQUE: So a fee-for-service versus commission-based accounts and what the view of the regulators might be, with respect to fee-for-service accounts?

MR. SCANLON: I guess I'm on the hot seat for that.

The consultation paper doesn't spend a lot of time talking about compensation structures and whether or not the banning of commissions is required.

Part of that is I think we agree with law makers in some of the other jurisdictions that a fiduciary duty or best-interest standard, in and of itself, does not necessarily ban any kind of compensation structure.

Having said that, some jurisdictions, like Australia, have gone further and have banned certain kinds of compensation structures.

So it's something that we know it's in the mix. It's something we're considering, but frankly, we're focussing more on the standard of conduct between the advisor and the client. And that's where we want to certainly start with the focus, but there are questions in the paper around compensation structures and we're hoping that our stakeholders will comment on that.

MS. MORRISROE: I would add that if you look at a strict fiduciary duty to act in the best interest of the client, when you're in a fiduciary relationship of common law, as Jeff said earlier, you need to be avoiding conflicts of interest. And so you'll see, when you've got discretionary-managed accounts, they're all fee-based accounts. They're not commission-based accounts, so as to avoid conflicts when you earn commissions on trades.

At one point, I looked at an elderly woman's account. She'd been in a cash commission-based account and the commissions that she paid on a portfolio of about $250,000, had been $800 for the previous year. Her account had transferred into a fee-based account, which we actually reversed, because the fees that she would have been charged on that account were over $3,000. So if you look just at a dollars-and-cents point of view and you say, "Well, what is the best interest of that client?”. The question is what happens if the commissions that had been paid in that account had been

$3,000 or $2,000?

The difficulty with introducing a phrase in a statute, "best interest" is that it's going to have to be defined.

We've got parameters in the common law and it would remain to be seen how that would be interpreted and what situations would be regarded as being in a person's best interests or not.

MS. ENG: I think from the perspective of the industry itself, we could do a better job or you could do a better job of actually telling people that, when we talk about banning commissions, we're not talking about banning livelihood. I mean everybody who's doing this work, advising and providing advice to their clients and helping them through their financial morass, is entitled to a living, right? It's just the manner in which you are paid that becomes an issue.

And the industry has started to sell itself as providing advice for free, right? "I don't get commission on this, if you buy this unit." And so over time, the industry has buried all of the compensation arrangements so that the average client, walking into this or that advice firm will say, "Well, that firm wants to charge me 2%. This firm is going to do it for free." Which one are they going to pick?

And so the effort to try to ban embedded commissions is an effort to put it all out there in the open, so that people can make an informed choice as to how much they're prepared to pay somebody to help them through their financial planning.

So maybe the industry needs to stop hiding from the fact that they need to make a living, needs to put in standards about how you're going to charge people for your advice and take it from there.

Right now, I think you've put yourself back on your heels rather than worried about whether or not there should be laws coming in.

MR. BOURQUE: Okay. We have a question over here?

MR. NOVIN: Yes. My name is Farid Novin and I'm working at the Bank of Canada.

Susan mentioned that most of her members think that they are conservative investors and my question relates to that question of best interests of financial fiduciaries with respect to identifying risk and uncertainty. How frequently they have to re-evaluate the risk and inform? Because risk is a sort of dynamic changes through time and how -- who is going to sort of evaluate if an investor says that "I'm conservative," the evaluation of, at this juncture, he's really or she is really conservative investors and this investment is suitable for him or her?

MS. ENG: That's a critical question and it's something that we tried to tease out in our polling. Most people don't know what the term means. What they really mean is, "I don't want to lose any of my money," and that's normal. But how you translate that into your advice, in terms of in this low interest rate environment -- it used to be a lot of our members retired when interest rates were 20%. They didn't have to think. They were making money.

Now at 2%, you're barely keeping up with inflation and now they're being asked to take on more risk than they're used to. So are they still conservative or are they medium risk? They have no idea.

That's why I like the principled approach to the CSA's paper which is, let's set out a standard of what we're trying to do as professionals. When we say "best interests" we mean that every advisor is going to be obligated to put the client's interest first, against his or her own.

And so the average client doesn't really want to hear about all these rules and regulations and what the forms mean or what the boxes mean. They just want to know that when things go wrong, their advisor is going to keep them out of trouble and look after their own best interests first.

And so as the profession professionalizes, the elements of accountability have to be much more evident.

So yes, standards. Maybe legislated standards.

But more important, at the other end, is consequences. One of the consequences is if the firm has to pay out. The other consequence is you'd lose your right to practice, which is what happens to a lawyer and you go offside.

MR. BOURQUE: Now I'm just going to come back to part of the question in our next session, because it does lead into the next question, but we have one more question from the floor and then we'll get back with the panelists.

MR. MURPHY: My name is Floyd Murphy. I've been a financial planner, dealing with probably mostly retirees for 42 years and I've seen a lot of things happen in that 42 years.

But one thing I will comment to you that every 10 years, you have a 30 to 50% drop in the stock markets, at some point. So if you think you're going to have an advisor that can get you through with never having that happen, it isn't going to take place.

The first part of my question is directed to Jeff dealing with the fiduciary responsibility. It's a very subjective issue, dealing with a particular client.

And the best way to demonstrate that is to take the articles that appear in think papers like the *Financial Post* or the *Globe and Mail*, where they take client facts and they give it to three separate advisors.

These three separate advisors, first of all, are usually highly qualified, come from pretty significant backgrounds. They are going to be analysed by all their clients who read the article. They're going to be analysed by their peers and they're going to be analysed maybe by a million readers. So you're going to pretty careful what you write in that article.

And guess what? There are three quite distinctive recommendations in most of those reports.

So how do you then decide, were two of them somehow misleading their clients? It was an interpretation thing.

And I don't think you'll ever be able to define that at the retail level. In fact, frankly, one of the things that concerns me -- and I should have mentioned earlier, I'm also a past chairman of Advocis and I've served in every role in that firm over the last 40 years.

The issue becomes that there are a small number of bad apples. And there are some customers that I've dealt with I refused to take on as clients, because there are bad clients, too.

So the first part of it is, I don't think you can define it. It's too subjective. Every advisor will have a slightly different role.

The second part of this would go to Sharon, regarding the fee disclosure.

There's a great new thing to decide what the advisor, what I get paid for my work, but there should be full disclosure of every fee that's there. How much goes to the management company? Why does Templeton get paid 1.5 on a retail account and charges 0.65 for an institutional account? Put it all out there. How much does your dealership receive? Tell the clients that.

I know I can explain what my 0.75 or whatever it is, I get. They see my services. I think they would have a heck of a hard time at the moment, identifying what a dealer does for them. They don't see the dealer.

And if they look in the paper and say, "I can go and get this service at 0.75 from Templeton, why am I having to pay, 1.65 for the same product?

So I'll leave that with you.

And in the case of the final point for Sharon, it deals with education. My experience is that in virtually every occupation, whether it be my sister who became an electrician or family members who have become doctors, almost every occupation has a very extensive training period, a mentoring period and then you have the credentials to work with the public with full credibility.

The biggest issue in this industry is the very low standards it takes to get into the industry to be an advisor. Raise those standards so that I have three years of education, two years of mentoring before I can go out and talk to the public.

I operate a property casualty insurance agency with 75 staff. They have various levels of licence. Most of the people that work for me cannot go outside the office to talk to a customer until they are at least two to three years in the business.

But in the area that I work in, I pass a simple exam and I am flung out into the public. You can't possibly supervise somebody like that around a kitchen table, across the size of this city.

So there's an education standard I think should be raised, full disclosure should be everybody and I don't think the fiduciary is going to work.

MR. BOURQUE: Okay. So I think there are some questions in there but what I'd like to do is take some of those comments and just segue into our next section and of course, start with Sharon on this one. And just sort of taking off from the question that was asked and, I think put in a very interesting way about the three different professional views you may get about what's a suitable investment or what may be a suitable investment strategy. And thinking about the situation as it exists today in Canada, how firms have to manage their retail brokerage sales force and we have a standard today of suitability. So given the example of, three different and appropriate either investment recommendations or investment strategies, in the world of suitability, how do you handle that?

And then in the world of a fiduciary standard, how would you handle it?

MS. MORRISROE: Okay. Well, let's start talking about what is suitability?

That obligation is one of a registrant. It's a regulatory obligation. In the IIROC world, it's under Rule 1300.1, and essentially, the registrant has to determine whether an investment is appropriate for a particular client. It requires that before the trade, if a broker is receiving trade instructions, or making a recommendation that it be suitable for the client.

So what does that mean?

The factors that have to be looked at -- and I'm going to be talking about the enhanced suitability regime that's coming into force March of 2013 because there have been a couple of factors that have been added in the prescription.

The factors are looking at the client's current financial situation, their investment knowledge, their investment objectives, their time horizon, their risk tolerance and the account's current investment portfolio composition and risk level.

It's really a tall order.

The suitability of the investment is inherently linked to the know-your-client obligation. And we call that KYC. Registrants collect information. For example, the client's age and their income and their employment status, their marital status, number of dependents, their net worth, their investment experience and their tolerance and their time horizons for when they might need money.

So these client's investment objectives and risk tolerances must be assessed for reasonableness, based on the client's financial and personal circumstances.

So IIROC's guidance, they put out a guidance note in March of this year and it states this:

> For example, designating an 80% high tolerance for an elderly client may be unreasonable if the client has a modest net worth and has opened the account to invest a

substantial portion of her net worth.

On the other hand, the 80% high risk tolerance may not be unreasonable if the elderly client has a substantial net worth and opens an account to invest a small fraction of her net worth.

So it just shows you the challenge from the point of view of subjectivity.

But I'll go further to say that some investors do experience investment losses and they attempt to recover from the firm. Every complaint is investigated and the risk level of the investments and the portfolio composition are examined in light of the reasonability of the risk tolerance and the investment objectives of the account. The holdings are compared to the KYC information and then a determination is made with respect to whether anything had been done improperly and whether the portfolio is suitable.

So with respect to where we're at today, we went through the complaint handling procedures and I hope I've given you a little bit better understanding of how a suitability standard is applied.

From the point of view of fiduciary duty, as I mentioned, fiduciary duties are applicable if you have a fiduciary relationship and so it may be different from the perspective of having a very experienced and sophisticated investor of high net worth with the ability to be able to withstand investment losses. An account for our clients such as that could very well have higher risk tolerance and more aggressive investment objectives.

Whereas if you end up having a client that is very vulnerable and not knowledgeable, perhaps with not sufficient net worth or ability to be able to withstand investment losses, you will end up seeing investment objectives and risk tolerance that are low risk and you will end up seeing investments that are much more conservative, perhaps investments in GICs and government bonds and treasury bills.

Whereas a more sophisticated client that would not be considered in a fiduciary relationship would likely be seen to have, if they chose, more complex investments that are high risk.

MR. BOURQUE: So Jeff, Sharon has just talked about the suitability standard and it's a standard that is employed by the firms today. It's well understood. It's embedded in the SRO rules. It's been applied over the years.

What's wrong with that? And what are the problems that the CSA has identified with the suitability standard? In other words, why are we changing things?

MR. SCANLON: Well, what the CSA did as part of this paper, is step back and didn't just focus on suitability. It looked at the entire standard of conduct that advisors owe to their clients.

And they identified five key investor protection concerns and those are set out in the paper. I'm not saying anything new here.

So the first concern has to do with the foundational nature of the relationship. And again the focus in the paper is on retail clients. So in the retail space, I mean, there are two schools of thought, right? On the one hand, maybe this is a caveat emptor situation. Maybe this is a situation where clients, just like any other commercial, arms-length transaction, should be left to their own devices.

Obviously, that's not quite the case, currently, as we talked about in the suitability regime and the other requirements that are placed on advisors. It's clearly not just caveat emptor. It's caveat emptor with a lot of regulation backstopping it. But fundamentally, that's how some people see that relationship.

Other people see that relationship as really one where it's really a fiduciary nature.

And when courts look at when do you need to protect clients in the fiduciary relationship is when there's a lot of trust and reliance and when there is relationships of such importance to the person, that the clients need the protection of a best-interest standard.

So that was one of the concerns, that sort of foundational nature of the concern.

We've talked about the information and financial literacy issues. Again these are stubborn problems and they don't go away.

We try our best, at the CSA, in terms of disclosure. We've talked about a lot of the disclosure initiatives we've got going on, the latest one the CRM-2 cost disclosure and performance reporting. These are all disclosure initiatives in an attempt to close the gap on information asymmetry and people continue to work on financial literacy, but these are stubborn problems.

There's an expectation gap. This is the third issue.

A recent study -- quite a large study was done on clients in non-managed accounts, accounts where clients have the ultimate ability to decide how they invest. And 70% of them believe that they're owed a legal fiduciary duty, a legal duty for their advisor to act in their best interests.

So the majority of Canadians investors have this expectation. So there's a gap there.

As we've talked about -- and this gets to Floyd's point, it's arguable that suitable investment need not necessarily be the best investment. And Floyd makes an excellent point. I mean can you say there's one best investment? You probably can't.

But there might be three. Of the three that were provided in that newspaper article, they might actually all be equivalently good and they could all meet a best interest standard.

What's important to note here is what the CSA has done in this paper is not necessarily recommending a best-interest standard. What we're saying is, "We've put one on the table. There's been a lot of debate but there wasn't anything that anchored the debate. So we've put one on the table and we want to hear your opinion."

At the end of the day, it might turn out that what we hear back from all of our stakeholders is that, "You know what? The best you can do is suitability. You can't really get to a best investment." But we're holding back to hear from all of you on that.

And the last one has to do with the rules around conflicts of interest. They're principle-based rules but sometimes they don't always play out the way that we think they're going to play out.

And one very quick interesting kind of story about this, and it's just sort of mentioned in a footnote in the paper, is that there's been some interesting research done in behavioural psychology and especially around advisor relationships and the role of disclosure. And I want to share with you one interesting experiment that was done.

So there was a client and there's an advisor in this experiment, and there are two options that the advisor can recommend. Option A is clearly superior to option B. And then there are three scenarios that the experimenters put everyone through.

So in the first scenario, the advisor is incented to sell the better option, option number 1. So in that case, not surprisingly, 95% of clients were put into the best option. Excellent result.

In the second scenario, the advisor is told, "We're going to incent you to actually sell the worst option, the less ideal option." In that case, the advisor is able to sell that product 50% of the time, which, in and of itself, is actually an interesting snapshot of how influential advisors are when dealing with clients.

But really the nub of it, the really interesting part, for me, was the third scenario. And the third scenario -- the experimenters said, "Okay, Advisor, we want you to sell again the weaker product, the less good product to the client, but we want you to disclose the fact that you're given an incentive for that product."

And you would think that maybe if clients are put on notice that they should pick up this product for something less than 50%, 25%, 10%, because they're put on notice that the advisor who's giving them advice, there's a conflict there.

Well, it turns out they are sold the product 80% of the time.

And so the experimenters took a look at it and figured out there might be social pressures around how disclosures actually work in practice and that there might be social pressure essentially to ignore the fact that you're given the disclosure because there is social pressure not to suggest that the person you're dealing with would somehow ever act unethically.

So this is not determinative of the issue at all, but it's just some interesting research that has gone into some of the issues we're talking about.

MR. BOURQUE: Susan, do you want to jump in on that one?

MS. ENG: Yes. From the perspective of the client, words like "caveat emptor" and "financial literacy obligations" is always shattering. The profession has to decide whether you're a profession or not.

The average person going in for heart surgery has no obligation other than to show up. They don't need to know how the heart is supposed to work.

They go into a lawyer's office, they get any other kind of transaction done, they're not obliged to have that historical knowledge or that learning.

In fact, what they need to be able to rely on the profession for is a certain amount of accountability.

And so when we ask our members, "What do you think these designations mean?" In fact, we gave them some fake ones. Some of them picked those that they'd been aware of. And we said, "Well, do you know how much continuing education, how much original education is necessary for these designations? What does it mean when they lose it? Do they get to keep working or not? What happens if despite having these designations, you lose money on advice you think was unfair or improper?"

Nothing at the moment.

And so if you look at the landscape and compare yourself to other professions, regulated professions, self-regulated professions, for that matter, lawyers, doctors, chartered accountants, etc, engineers, is that there is an entire standard that's carried on through, including responsibilities to the client and losing one's ability to work at the end of the spectrum.

And not only that, the individual has some room for remedy.

So if that's the landscape we want to be in when we're dealing with financial advice, which has become so complicated and so important to a person's lifetime -- it used to be that you saved a few dollars. It was for a holiday or something. Now people are living on that in their retirement. They're depending on that money to pay for home care and dialysis and all of these other things that they need.

So this becomes almost as much an essential service as any of those others. It becomes much more important for the profession to professionalize.

And the responsibility of a client is, of course, to educate themselves as much as possible. But really, they're never going to replace your job. They expect a certain amount of accountability.

And so it's from that perspective that our members are looking at this entire array of things. I could hear their eyes rolling as I listened to all of the rules and regulations that we're talking about.

And even when they're filling out the form. They have no idea where to slot themselves. "Am I going to make a mistake if I put myself into medium? Is my advisor going to be interested in me if I put in low risk?" That kind of thing.

So I think that there needs to be a wholesale review of what we're dealing with here.

This is one piece of it. It's an important piece, but all of it against the context of the responsibility and accountability of the profession to the clients.

MR. BOURQUE: We could spend a couple of panels talking about investor education and literacy and financial industry education and designations. Those are great topics.

I'd like to move now to just talking about some of the research that has been done to either support or not support the movement to a fiduciary standard and try to see if there's some data around the topic that we can look at and perhaps take some guidance from.

So in that respect I'm going to move to a question for Jeff. And Jeff, there was a recent US study. It found that retail investors would be negatively affected by a uniform best-interest standard. There were problems around access to advice, product selection.

Is the proposed standard in Canada similar to what's being proposed in the US and do you feel there would be some negative side effects?

MR. SCANLON: Let me start in terms of how the standards match up. And we're at early days both in Canada and the US on this. But in a lot of ways they're quite similar in the sense that they apply to anyone providing advice about securities to the retail space.

The definitions around the retail space are a little different and we're running short on time so I won't go into those differences. They obviously both have the core concept of having to act in your client's best interest.

So I think they are quite similar, but we'll have to see as things develop and whether or not the US pursues them and whether or not the CSA pursues them.

But the study that Paul was referring to was a SIFMA study. SIFMA commissioned it. Oliver Wyman was the group that looked at the issue.

And what SIFMA asked them to do -- and this is a bit of a narrow issue in the US debate, so one of the ways that one might introduce fiduciary duty is kind of through the back door of the US, where currently broker/dealers take advantage of an exemption under the *Investment Advisors Act* in the US. Some law makers in the US quite cleverly said, "Well, I mean if we want to apply a fiduciary duty" -- and in the US, investment advisors are subject to a fiduciary duty -- "why don't we just essentially get rid of the exemption so that we just bring broker/dealers into the fold, as it were, in the investment advisor space in the US?"

And so that was the context and that's important to understand that. And so it was in that context that that SIFMA study was conducted.

And Paul's quite right. SIFMA identified a number of issues, where they thought services would be more expensive, there would be arguably some products that wouldn't be available.

Sharon had mentioned the possibility of that happening.

So the SIFMA study identifies the possibility of some of these happening.

Now, I think you need to take it on face value. I think it's something we're looking closely at. There are other studies out there but certainly we've looked at the SIFMA study. We're taking a close look at it and trying to figure out to the extent you can, it's relevant and meaningful for us, as we go through our regulatory analysis.

MR. BOURQUE: So SIFMA is the Securities Industry and Financial Markets Association in the United States. It's the US industry advocacy group. And they did a survey of, I think, 18 firms and looked at the cost of compliance and the availability of advice and found there would be some negative impacts.

Sharon, there was another study done in the US at the University of Texas in 2012, so it's quite recent. And it took advantage of differences in the state broker/dealer regulation.

For example, California has a fiduciary standard for broker/dealers. Other states don't. So they took advantage of that differential to survey both states to see what the impact would be of a fiduciary standard versus a suitability standard.

And the study found no evidence that the industry would be significantly affected by the imposition of a stricter, legal fiduciary standard.

Do you think that's true in Canada? What do you think the impact would be in Canada?

MS. MORRISROE: I don't think that's true in Canada because we've talked about the nature of a fiduciary relationship and that duty to avoid conflicts. I mentioned just even in the commission-based account offering, strictly is not a situation where you're avoiding potential conflicts of interest.

The comparable to SIFMA in Canada is the Investment Industry Association of Canada, we call the IIAC. And the IIAC did prepare a paper for the OSC in June of this year with respect to some of the implications and potential implications, obviously depending upon how the best-interest statutory standard is defined. If it was like common law, that strict duty, they anticipated or observed that there could be some really unintended negative consequences.

For example, with respect to trading with a retail customer on a principal basis. In fixed income trading with respect to firms selling clients the bonds from inventory, that may perhaps no longer be permitted. Or even firms purchasing securities from a client to provide client liquidity. So principal trading would have to be looked at.

It could reduce client's access to financial products. Firms may no longer be able to offer proprietary products, for example, proprietary mutual funds.

Now Raymond James doesn't have a proprietary context so you could come to our firm as a client.

From the point of view of initial public offerings, when pricing an initial public offering, underwriters generally try and establish a price that balances the interests of the issuer and the purchasers in the IPO. An imposition of a fiduciary duty for dealing with retail customers could complicate an underwriter's ability to strike a fair balance between the issuer, perhaps leading to the exclusion of retail customers from participations in IPOs where the firm had been part of the syndicate.

I think it will definitely alter the common law, if the best-interest standard is a mirror of the fiduciary duty and best interest duty at common law. What we do is we take the sophisticated, experienced, not vulnerable client and we put them into the same bucket as the vulnerable, and we could be in a situation where we have some very experienced clients that want to do a particular trade that is suitable in the regulatory environment, and I could perceive, especially if I was an FA and I'm rather conservative, if I had a particularly aggressive, experienced and wealthy client that wanted to invest in a particularly risky stock, I could see there being an issue if I didn't think it was in the best interest of that client and the client did.

So I do think that there could be increased costs of compliance, potentially increased fees to cover those costs.

The standard might provide investors with a false sense of security and result in them becoming more passive and less active with respect to the relationship.

There's a potential loss of access to product or potentially, a potential loss of access to small investors to be able to receive advice. There may be more situations where the truly vulnerable client actually is encouraged to be in a fully-managed account, a discretionary fully-managed account.

And in the industry today, most portfolio managers want to have a minimum account size, in order to take on those responsibilities.

I think at this juncture, from reading the consultation paper, there isn't really much discussion with respect to the implications and I think maybe as a result of the fact that it's going to be I think very difficult to define what is "best interest" and I do agree with Floyd's comment.

So query, would we end up having a situation where there's a new common law interpretation of a statutory phrase called "best interests" that would run parallel or in addition to our today existing fiduciary common law duties and other particular facts and circumstances?

I mean, the query, what steps can an advisor take to satisfy the duty in these situations when you've got three or potentially 12, different opinions with respect to different investments or strategies?

What measures does the advisor have to take if the client makes investments that the advisor reasonably deems not to be in the client's best interest?

You had suggested, Jeff, that you could turn around and tell them, "It's not in your best interest," and proceed with the trade.

If that's the way that's defined in the statute, that would be different than what would be expected at common law, if you were totally a trustee in a beneficiary relationship.

So I think there's lots of challenges. And to conclude, like the presence or absence of a best interest duty just doesn't address what the core issue for the industry would be, in terms of what can or could not a registrant do?

MR. BOURQUE: Maybe we could just have a 30-second wrap up from each panelist, starting with Susan.

MS. ENG: I think when we're talking about knowing your client, and I know that a few times we were worried about poor, vulnerable seniors, often widows. That is not your only set of clients.

I used to be a tax lawyer, along in the mist of time. I used to have neurosurgeons as clients. One was actually a rocket scientist. And yet these people couldn't financially plan their way out a wet paper bag. So in that context, they are as naive as the stereotype widow.

And so when you're talking about knowing your client, that's what you're dealing with, that knowledge gap between you and your client and the professional responsibility that you have towards them.

MR. BOURQUE: Sharon, any final words?

MS. MORRISROE: Well, I would repeat that I think that a statutory standard would be very difficult to define, and I don't think it's necessary to impose that, given the new regulatory CRM requirements that are underway.

I actually think that regime should be implemented and then evaluated and the question should be asked whether any remaining concerns exist. And if so, then at that point, I think the regulators should look at their tool kit and say, if there's still concerns, how are we going to address them? Will we tinker with the CRM regime or will we provide more disclosure or more education, or do we take this, what I consider, more uncertain step, in terms of how will it be defined and what the implications will be, in terms of developing a legislative change.

MR. BOURQUE: And Jeff, the last 30 seconds to you.

MR. SCANLON: So the consultation paper in the very first paragraph is really clear. We have not made a decision yet.

Part of the reason why we've posed some language was to anchor the debate. There was not enough anchoring. We gave enough granularity, we believe, to our stakeholders, to share with us their thoughts and their comments on the possibility of going down this path.

I encourage you all to comment. We need your comments, so please make your voice heard.

MR. BOURQUE: So thank you Susan, Sharon and Jeff, for your expert and enlightened comments.

And thank you all for listening so attentively and having questions for us.

--- PROCEEDINGS ADJOURNED

--- PROCEEDINGS RECONVENED

MS. LEONG: As you can see, there's no shortage of discussion and debate around the fiduciary standard.

As one individual said to me over the break, "that was one of the best discussions that I've heard so far." And I said, "Well, there's still lots of time for many more of them." And I'm sure we're going to hear more about them.

So I want to thank Susan, Sharon and Jeff, again, for an excellent presentation.

Now, I'd like to introduce our next panel and this is entitled "Innovation in Venture Capital Financing." In this panel discussion, you will hear from experts about the financing challenges facing early-stage venture companies, whether they be in the mining industry or the high tech sector, and particularly in these very tight economic times, what does that mean for companies seeking capital?

They will discuss some innovative ideas in venture financing, including the much-discussed and debated phenomena -- we can thank the US for this one, too -- called crowdfunding, a proposal that was introduced in the United States through the *JOBS Act*.

Panelists, I'm hoping, will demystify what crowdfunding is, what the rules and regulations are around crowdfunding in the United States, if, indeed, there are any, and answer questions such as, what impact could crowdfunding have on Canadian competitiveness? And what challenges would crowdfunding bring for businesses who might consider it as a financing vehicle? And what about the challenges for investors, who might choose to invest in private stage companies through this type of financing?

Once again, Paul Bourque will moderate this panel.

I'd like to introduce Catherine McLeod-Seltzer. She's chair of Bear Creek Mining. Catherine is a recognized leader in the minerals industry and has won many awards, including Mining “Man” of the Year. For over 20 years, she has been instrumental in building successful mineral companies, raising over $600 million directly and $4 billion in corporate transactions for exploration and development.

Welcome, Catherine.

To my immediate left is Dan Miller. Dan is a partner with Dorsey & Whitney LLP. Dan's practice focuses largely on US/Canada cross-border securities transactions, mergers, acquisitions and corporate governance matters. Dan has extensive experience advising Canadian companies on US public and private financings.

And our last panelist is Bill Tam. Bill is the President and CEO of the BC Technologies Industry Association here in Vancouver. Bill has been guiding the success of entrepreneurial companies for over 20 years. Bill has held senior positions with AT&T, Rogers Communications and Bell Canada.

MR. BOURQUE: I'm very happy to be sitting on the sidelines here with three experts, legal and two industry people who are going to discuss today a very current and, from my perspective, very controversial initiative. Two really. One around the state of junior company financing in British Columbia for the mining and technology side, and then the whole issue of crowdfunding and how that may impact on the ability of small businesses to raise money.

So I'm going to begin with my first question to Catherine and I'm going to context it a bit with a couple of numbers from the TSXV in terms of the money raised last year. September year-to-date last year was 5.4 billion. September year-to-date 2012 2.1 billion.

And then another number from the exempt market, both private and public issuers, year-to-date 2011, 3.7 billion; 2012 year-to-date, 2.1 billion.

So just some numbers, I think, to illustrate where the trend is.

So the question is, as a recognized leader in the mining industries with over 20 years raising money for mining companies and having seen trends like the one I just described, how would you rate the current climate for mining financing today?

MS. MCLEOD-SELTZER: I think the numbers you just gave actually tell a better picture than what it feels like on the ground.

One of the people I had lunch with last week came from Toronto from one of the firms that regularly raise money for sort of the emerging juniors. And they had some statistic that out of 62 private placements into companies of small market cap, $10 - $20 million, only 12 closed in the last year.

So I think the trend has been, for about two years, probably about a year and three-quarters, has been down both in value and in the market caps of these companies and in the amount of money they've been able to raise. So it's been a long dry period.

Something like 70% of the junior companies, listed on the Venture, need to raise money in the next year.

The statistics are the same for the Australian market, apparently. A lot of companies are kind of just running on fumes right now.

So the smaller companies are really, really suffering.

I think where the bulk of that money was raised is in the more advanced projects. Investors have become very, very risk adverse. So if your project is in Ecuador or Venezuela or Argentina or some of those other countries where political risk has become a big factor, you've been almost essentially shut out.

So investors are looking at things like liquidity.

I was told by one major funder of junior companies out of Toronto, one of the investment funds there, that liquidity has become an asset class. So the smaller companies are essentially locked out of that with the funds in Toronto.

They are facing redemptions, which means if they are going to buy your private placement or your bought deal, they have to sell somebody else's.

What else is going on out there?

It's been pretty dismal actually, to tell you the truth.

I think we've seen a little bit of glimmer of hope. August people were basically shut down. September, the precious metal prices have started to recover a little bit from the downturn that they were in. So we've seen the financings that have been recent, have been mostly driven by more advanced-staged development, producers in the precious metal space.

MR. BOURQUE: Bill, the financing of small businesses are the lifeblood of the BC economy. Mining is in a low spot. Perhaps you can give us, from your perspective, as an experienced entrepreneur and now the president of the Association, can you tell us what challenges you particularly face raising financing for technology companies?

MR. TAM: I'm not sure that the story is much different than Catherine's. It's been challenging, for sure.

Over the last number of years, there have been very, very few new public issues from technology companies and so the bulk of the capital that has been raised, since probably 2008, has been on the private capital side.

And if you kind of do a historical, over the last decade, we probably peeked, in terms of venture capital investments, in around 2000. There was roughly about $5 billion put to work in Canada; in BC it was roughly about $500 - $600 million.

We're probably, in 2011, at 20% of that level. Canada, overall, was maybe about a billion-two that was invested in venture capital; in BC it was roughly a couple hundred million that was invested there.

So that's sort of the traditional venture capital industry side.

I think one of the bright lights has been on the angel investing side. We've seen, since 2003, when the *Small Business Venture Capital Act* came into being in British Columbia, that there has sequentially been growth in the number of individual angel investors who have participated in private placements into tech companies.

Last year we saw about 220 companies get financed through angel mechanisms. I think that's an all-time high of roughly about $87 - $88 million worth of investments that was there. So I think we're starting to see, at least, a ground swell of where investments are likely coming from and it's from private individuals, more than it has been from institutional investors.

MR. BOURQUE: So things may be improving from perhaps historic lows.

The current regulatory framework I'd like to talk a bit about now.

Catherine, a question for you about the current framework for raising capital and the regulations.

We have, in British Columbia, exemptions from the prospectus requirement that allow companies to sell through private placements to friends and family, to accredited investors, to people who are prepared to invest a minimum amount and also investors who would get an offering memorandum. So there are various techniques that are available now under the current statutory regime to assist companies, small mining companies.

How important is this private placement market for junior mining companies, with the exemptions I just mentioned, and are there any exemptions that are used more often than others? Are there any preferred routes to financing, and if so, what are those routes?

MS. MCLEOD-SELTZER: Well, in my experience, which is really only what I can talk about, the private placement market is extremely important. Every company that I've been involved with, we've relied on the private placement mechanism.

The one that has been the most useful for us has been the accredited investors, which is the high net worth investor, the sophisticated investor. And we generally have a list of those people who financed us before, and because we've had some successes, they're willing to finance us again.

I think for some of the smaller companies who are looking to raise just enough money to keep the lights on, I think the friends and family are probably, at this point in time, a very important mechanism.

MR. BOURQUE: And Bill, from your perspective, any particular exemptions more advantageous to a technology financing than others?

You've talked a bit about angel investors.

MR. TAM: First of all, BC is really the centre of start up activity in Canada. We have more people working in start ups than anywhere else in the nation. So by definition, I think a large proportion of our companies are juniors by design.

But I would say there are probably four categories of where capital comes from for these sorts of organizations.

The first is sort of customer funding, boot strapped operations, ways to kind of finance the operations based on revenues that you're receiving.

Angel investing, there are a number of different vehicles within that. Traditionally it's been high net worth individuals, accredited investors that have participated in that.

I think increasingly we've seen the emergence of a category we call "super angels". It's those that are investing not just in one or two or a dozen plays but hundreds of plays, simultaneously.

There are a number of exemptions that people are making use of, the offering memorandum exemption and minimum investment exemptions. Perhaps less so in the last few years.

And I think the other area is just this onset of crowdfunding, which I know we're going to be talking about. Certainly, there's lots of buzz around what that's going to do to transform angel investing in the wake of what's been happening in the US scene.

I think the third category of financing is really venture capital. There are really two flavours that we see. There's the institutional venture capital side, which is traditionally limited-partner based and the fund managers will deploy amounts of capital over a period of time. But we are seeing the re-emergence of strategic investment from large corporates that are making investments into companies where it could be a game changer for their core business. So we're starting to see a bit more of that in venture capital activity.

And I think the fourth area which as I said earlier is probably not as pertinent now in the last few years, is the public route. And reverse takeover transactions and ways to kind of raise money through sort of the junior exchange has always been there, but I think the ability to follow through and have additional amounts of capital available, has probably, limited the appeal of that avenue over the last number of years.

MR. BOURQUE: So Dan, you've heard the current situation in Canada. I think we sort of pride ourselves on being a centre for small business financing and from the regulatory side, doing it in a safe way that addresses investor protection issues. But from a US perspective, can you just give us a brief description of how small businesses in the US raise money and what the landscape there is for small business financing?

MR. MILLER: In most respects it's not a whole lot different than what we're hearing here. I mean, private placements and -- there are more issues in the US with reverse takeovers than perhaps in Canada, but generally it's a private placement market. In many cases, it's basically the same thing, accredited investors, high net worth individuals, etc. But there are some differences that in some ways make it actually more difficult to raise money in the US.

For example, under most of the exemptions in the US, you're not permitted to engage in any sort of general solicitation. It's not enough to be an accredited investor. You have to have a reasonable basis for believing the person is accredited before you speak to them. That's under current rules.

There is no explicit friends and family exemption. There is no explicit minimum investment amount exemption. It's really just do you meet a private placement test or not.

And there are ways of getting to, for example, a friends and family exemption, but you need to look both at federal law and state law. And, it's not as simple as I'm investing $150,000 or I'm a friend or family or whatever. There's more to look at.

That's the current rules.

The more interesting thing is what's going on. Earlier this year when the *JOBS Act* was adopted by Congress as the *Jump Start our Business Start Ups Act*, which many people have sort of said should be called the Jump Start our IPO market because it's not clear how it's actually going to create jobs, but it is intended to get the capital markets going.

There are a few changes to the laws that are coming out of the statute that may have significant implications in helping small companies raise money.

One aspect is crowdfunding and we're going to get into that later.

But another example is that in a Regulation D offering, so long as all investors are accredited investors, the prohibition on general solicitation is being removed.

Those rules have been proposed by the SEC. They are not yet final and there are various reasons why. There's some debate going on as to what the final rules will look like.

However, once the rules are adopted, small companies will be able to put out press releases, take out ads, do whatever they want to do and basically say, "If you're an accredited investor, come to me." People are going to have to satisfy the company within SEC rules that they are, in fact, accredited.

And that's one of the areas of debate right now about what the SEC will require, in terms of the company determining accredited investor status, because the *JOBS Act* told the SEC to tell companies what they had to do to determine it, but the SEC, when it adopted -- when it proposed its rules, actually came out and explicitly said, "We're not doing that. We don't want to get in the way of company discretion so you figure it out on your own."

There's been extensive comment on that portion of the proposal and I think that's probably the biggest area that we're waiting for the SEC to figure out what to do with.

But the bottom line is, at the end of the day, general solicitation will be able to be done, small companies will be able to take out ads or do anything else in order to get some money, so long as people are accredited.

Another exemption which people are colloquially calling "Regulation A+", which is sort of an amended version of an existing regulation called "Regulation A". We're waiting for proposals and rules on that, as well, but it could allow issuers to raise up to $50 million in any 12-month period without ongoing SEC reporting on the back end, and then, as you said, crowdfunding, which we'll get to.

But I mean, in general, it's a private placement market like in Canada.

MR. BOURQUE: So it sounds like governments everywhere are alive to the fact that small businesses need funding and it's really an engine for economic growth and so there's obviously different legislative and regulatory initiatives to try to encourage that.

Catherine, just to close this section off, beyond the private placement market that we talked about a little bit, are there any other ways that you've seen or you would recommend for mining companies, junior mining companies, to raise money for exploration projects?

MS. MCLEOD-SELTZER: It's funny because I'd been in this industry about 25 years raising money for companies, but my father was in this business for like 50 years, so I've seen these cycles come and go for my entire life. One of the interesting things is we are so cyclical.

And back when my father was doing business, the joint venture tech corporation had probably 500 joint ventures with junior companies.

That is going to come back, I think, stronger, because two reasons. I mean, it's a very symbiotic relationship. With a junior company, a basic drill program is $1 to $3 million. That's not even, a big drill program. And it's costing junior companies something like $500,000 to $1,000,000 just to keep the lights on.

So to be able to have somebody else spend the money into your drill program does two things. One, it covers the expense of something like a drill program, and number two, for the big company -- the junior companies can usually do it better, faster, cheaper. And that's because there's generally less bureaucracy, they're the hungry entrepreneurs.

So I think we're going to see more joint ventures done.

I think we're probably going to see more M&A, not necessarily the M&A of the big takeover but two companies with projects; one junior company has money and another junior company has no money and they have a project, so some mergers of that sort.

The big acquisition, like some of the ones that I've been involved with, I don't think are going to be happening right now. The major companies are much more focussed on optimizing the projects that they currently own. They're not necessarily going out and acquiring other projects.

That will change because one thing about the mining industry is every day that you put a shovel in the ground and dig out your ore, you're diminishing the size of your resource. So I think we're going to see more of that more aggressive acquisition activity in the future.

The streaming companies -- that was Silver Wheaton. Now, Sandstorm, as well, which is the top market cap company listed on the Venture Exchange. It's, I think, over a billion dollars now. That's a relatively new company. And basically, what they do -- it's a little spiff off the old royalty model, but they will put up a big chunk of cash for you to put your project into production. They don't usually do early-stage funding but they'll put that money up, in exchange for purchasing a %age of your production at a set cost.

And if you look at Sandstorm, they've done numerous deals in the last year, and they're in the sort of the $10 to $15 million range. They just did a $150 million -- I think it was a bought deal. And they take that $150 million and they go do 10 deals with it or five deals with it. So they've sort of taken the place of some of the private placements or the other types of funding done by the brokers.

That's been a really important part for several companies to get their project onto production. That doesn't help the junior start ups.

And then there's the royalty model that's been going on. Franko-Nevada and some of the other companies like that.

So those are the ways people are looking.

Strategic investments, also another way, where the major company doesn't really want to buy the entire project but they want to get a toe hold. And that would allow them, if the project did turn out to be successful, to then have that toe hold and keep away any other interlopers and then eventually buy the company.

MR. BOURQUE: So why don't we move right to talk about the “crowdfunding” phenomena. Because it truly is, I think, a phenomena.

And Dan, my first question is for you. Crowdfunding is a means of raising capital for small businesses. They raise small amounts of money from many investors over the Internet.

Can you tell us about the new crowdfunding legislation in the US? What are the restrictions and what is the current status?

MR. MILLER: This version of crowdfunding - because there are others - is raising equity money from lots of small, non-accredited investors through the Internet in small amounts.

And that's to be distinguished from, for example, the pre-sale type of crowdfunding and other types of crowdfunding.

The *JOBS Act* brought in this concept of crowdfunding back in April; however, the SEC is required to propose rules. Much of the legislation is subject to SEC rules. The rules were supposed to be in effect as of December 31 this year. Since Dodd-Frank was adopted in 2010, the SEC has missed pretty much every rule-making deadline it's had since then. This one is no exception. And this one is so controversial that we don't even have proposed rules yet. I think we're probably looking at the middle of 2013, at a minimum, before we have actual effective rules. But in theory, the deadline is December 31 of this year.

Under the crowdfunding provisions -- these have received lots of press and lots of hype and who can argue against small companies being able to raise money easily and quickly.

But it is important to understand what the legislation in the US actually says because I'm not sure it's exactly what a lot of people think it is.

So I just want to take two minutes here and just kind of run through what the provisions of the crowdfunding actually say in the statute.

The crowdfunding provisions allow private US companies -- so Canadian companies cannot use the US funding portals -- to raise up to $1,000,000 in any 12-month period.

Most investors, if your income is less than $100,000, you can basically invest up to $2,000 or 5% of your annual income or net worth in that year period. So higher incomes can invest a little bit more. But basically, you could get up to 500 investors in a one-year period.

The transaction must be conducted through a registered funding portal. So you can't just do it through your own website; it's got to be through a registered SEC or FINRA registered portal.

The broker or funding portal must screen possible investors for sophistication, financial resources, obtain a background and a securities regulatory history check on officers, directors, and 20% holders, ensure that the offering proceeds are provided only after a minimum target amount is obtained.

Investors have rescission rights.

The portal cannot compensate finders or promoters for providing information about the financial investors.

The issuers must file with the SEC and give to investors, information about the company, including a description of financial condition. Depending on the offering size, that could include audited financial statements or tax returns, description of the offering price purpose, use of proceeds, target offering amount, capital structure, risk factors, etc.

I mean, it's an offering memorandum.

And then annually, reports on the issuer's results of operations and financial statements.

We're not quite sure what that means because it's hard to believe that this would actually lead to SEC reporting kind of ongoing. But we don't know.

All of the information will be made available to the State regulators so they can chase down whoever they want to chase down.

Crowdfunding transactions may not be advertised except for notices directing investors to the broker or funding portal.

And the securities are basically not transferrable for a year.

So that's a lot of stuff for $1,000,000.

Our view on it, as a firm, is that this is a lot less likely to be used, as structured in the US, as start up money for high-flying, mining companies or technology companies and more likely to be last chance money or an avenue for some sort of fraud. Not necessarily explicit fraud, but people who don't necessarily tell the company that they're going to end up with 500 investors, small investors, that they need to deal with after the transaction.

It's clearly not what people think as what it is, particularly in light of the changes to Regulation "D" and you can do general solicitation now or you will be able to do general solicitation, as long as your investors are accredited.

There is likely to be easier ways in the US to raise more money on a more timely or more than once-a-year basis.

MR. BOURQUE: Well, Dan, that's a bit of a disappointment, I suppose, for those that were hoping for faster, easier, financing for small businesses.

And of course, the SEC rule-making process is underway and these are the proposed restrictions.

So Bill, a bit of a tough question, but given what the crowdfunding proposal has been in the US, do you think Canada is at some kind of competitive disadvantage, in terms of raising money for small businesses, in the absence of such a similar regime? Is there something we can learn, is what I'm asking, from what the US is proposing, that would benefit small Canadian companies?

MR. TAM: If I hadn't of heard Dan's answer already I would have thought that was a set up question.

I would answer it this way because there are really two levels. What you heard from Dan is there's sort of a practical level that says, "There's a lot of doubt as to how this thing is going to be implemented." And the practicality of it all -- is it any better than the current regime on how companies are raising money? So that's sort of the practical level.

What I'm more concerned about, the nuance debate, I think, right now is around more the positioning and the marketing of all of this. And so what we're looking at, from the tech sector standpoint is, it again provides an avenue to kind of spotlight US innovation, in some ways ahead of Canadian innovation, at a higher level.

The other thing that it risks doing is disenfranchising, symbolically if you will, Canadian entrepreneurship versus US entrepreneurship. Now, that's more in symbolism as opposed to substance, but I think that is the cornerstone of the debate about whether it puts us at a competitive disadvantage, is with all of the policy work that's happening at the federal level, and certainly, at the provincial level, the question is, are we actually embracing the entrepreneurship model to drive the new economic realities. And to what extent do vehicles like crowdfunding, in all of its cause-related -- it's really a movement, if you will, about how you're really democratizing the ability for innovations to be conceived, capitalized and really, ultimately, commercialized. So it's really at that level that I think the debate around the substance of competitiveness really lies.

MR. BOURQUE: Well, the US has a wonderful way of labelling its legislation as part of the promotion. So the *JOBS Act* clearly foreshadows economic growth in jobs and perhaps, as you say, Bill, that was a big part of the rationale behind it. Maybe not so much in the detail.

Now, in Canada, and certainly in British Columbia, we believe we currently have a competitive regulatory regime for raising money for small business and one of those key features is the offering memorandum, where you can raise unlimited amounts of money from a limited number or set of people, as long as they comply with a number of rules.

And just a couple of quick numbers. Issuers in British Columbia file about 280 offering memorandums annually and between 2009 and 2011, issuers raised about $2,000,000,000 through the offering memorandum. And these issuers predominantly were investment companies with real estate or mortgage specialisation.

So given that we have the offering memorandum avenue for raising money from any number of investors, any amounts, do you think that people are focused on crowdfunding -- and perhaps just the concept -- but focused on lobbying for crowdfunding because they don't understand the current regime in Canada for private placements?

MR. TAM: That's certainly part of the answer.

I think if you look at all of the areas around offering memorandum exemptions, or exemptions in general, it's usually a category that's well known to securities lawyers and perhaps sophisticated investors and sophisticated issuers, if you will. So for the large unwashed masses, they're perhaps not as cognisant of those vehicles.

But I think there's another thing which really comes back to this notion of crowdfunding having this effect of being a bright, shining light because it's more cause-related; it's more democratic, at least in its allure.

So I think one of the issues in differentiating between the mechanics and sort of the promise of what crowdfunding is, is really quite important.

For a lot of the folks that are enthusiastic about crowdfunding, it's vehicles that perhaps aren't available in the US, around things like solicitation and broad sort of awareness. It's tying into elements like social media to provide sort of the reach and the promotion of the company's capabilities, which didn't exist perhaps in the traditional way in which OMs or other exemptions are created.

And if you think about the last 50 or 60 years, institutions have been created around the structures that we have in place today. And so for that 1%, if you will, that has access or knows about it, that's really where the deal flow has happened.

And what this does is it creates sort of this -- whether it's real in a practical sense or whether it's just kind of the utopian view of things, it has sort of the appeal of appealing to the other 99%.

MR. BOURQUE: Bill, back to you. I talked a bit about the offering memorandum, trying to promote that as a useful financing technique. And you've talked about some of the more maybe intangible advantages of the crowdfunding phenomena, democratisation of investing, highlighting and identifying investors and entrepreneurs. But to bring you back to the OM, in your view, what are the barriers to using the offering memorandum as a useful technique for raising money for small business, for technology venture companies? And could it take the place of crowdfunding in Canada or does it need to be tweaked or revised or fixed?

MR. TAM: I think as a vehicle, it has many of the attributes that could undertake what's needed in crowdfunding. But I think it's the manifestation of how it's used, is perhaps the thing that has to change.

I'll come to that 1% piece. If you kind of think about how it's structured today, there's almost a sense that there's those that provide the issuance, those that market the securities, it's a bit of a proprietary deal flow, if you will. There are folks that they will go back and access. To the extent that the same OM vehicles could be used in a different way, to kind of access broader-bases. Then absolutely, I think there's potential there.

I think there's upscale friction in the current piece. And by that, I mean it's gated by transaction size and sort of the cost of actually doing it in the first place. So necessarily, you're looking at transactions that are probably at least $500,000 - $1,000,000, which is, I think, reasonable, if you're actually in that stage of company. But for a lot of smaller tech companies who are just conceiving their innovations, maybe only need $50,000 or $100,000 to get things going, it's a very different economic reality.

So you get into things like some of the requirements around audited financial statements, the legal aspects of it, disclosure pieces. I think it's just really tweaking around the edges that can make some of those elements a little bit more sensitive to the realities of start-up businesses and perhaps there's a more graduated scheme that could be put in place.

MR. BOURQUE: Okay. Dan, next question for you. And you've already indicated that Canadian companies will not be able to use US portals for soliciting US investors for crowdfunding. Is there any upside in this for Canadian companies? Are there any advantages for Canadian companies to the US initiative?

MR. MILLER: I suppose if a Canadian company set up a US subsidiary and raised the money on the subsidiary, they could use the portal. That would, create its own issues and potentially have a lot of shareholders in your subsidiary. But I suppose that corporate structure could raise money through the US portal. But generally, Canadian companies can't use the US portals.

In terms of upside for a Canadian company, I mean other than in moving innovation into Canada, there's probably not a whole lot there. There are other "crowdfunding websites" like Angel List, which are not true crowdfunding like we're talking about here, but it's basically where your pre-qualified, accredited investors and accredited investors can invest in private placement transactions and people are calling that crowdfunding now, all the time.

Canadians can certainly use that. Canadian companies could use that, as long as you're selling to accredited investors. But that's not the crowdfunding that is contemplated by the *JOBS Act*.

That kind of crowdfunding has been around for a long time and it works reasonably well and the regulators are okay with it.

MR. BOURQUE: Bill, back to you. Something Dan just said in terms of sort of portals that exist today to match up entrepreneurs with accredited investors, online techniques to make those connections. There's a new term that's come into our dialogue called "portals", which is new to me, and portals are becoming quite significant, in terms of the US scheme.

So my question is, are there any Canadian portals and do they do the same thing in the US as they do in Canada? And can these portals be utilized to take advantage of social media or some of the new communications technologies?

MR. TAM: As a matter of fact, I was having a conversation with Mike Volker, who is one of the more experienced angel investors in tech. And we were talking about this very thing.

I think the term "portal" is maybe not the best term for this because I think there have been traditionally sort of angel groups that form, either on a national basis, regional basis, provincial basis, where deals flow through. And that's really I guess the focal point where accredited investors, can do everything from looking at due diligence on the companies to what the aspirations of the companies are. So by definition, I think, some of that stuff really falls under the portal category.

The difference is I think for the most part, those are sort of closed off. You need to be a member; you need to have password access or whatnot, and you had to kind of meet a number of criteria to have really the accessibility.

I think Angel List and a few others, as Dan had mentioned, have taken that to a new level because I think there's more disclosure on the part of companies as to what they're looking for. It's right up front. They're trying to access a broader base, beyond sort of a local market regime. And now I think Angel List has a fair bit of investment that happens on a global basis.

The pace of investments, then, tends to go a little faster. You don't quite have the same sort of physical friction that's required in sort of investor pitches that you do in front of investors. In fact, a lot of this can be done virtually and the diligence can be done online on the Internet.

So I think that's really the essence of what the promise is for a more bountiful, kind of freer flow capital among jurisdictions.

MR. BOURQUE: So Catherine, next question for you. We've heard a bit about crowdfunding. There seems to be perhaps a belief, perhaps a hope that there's an ocean of small investors out there, waiting to be harnessed and brought into the capital markets. Do you think that this model works for junior mining companies? Is there any application here for a scheme that would reach out in a way that's been described to thousands of small investors, raising small amounts of money? Or is this something that just is not going to work for the kind of businesses that you're involved in?

MS. MCLEOD-SELTZER: Well, I'd like to think it would work. I have some reservations.

But I will tell you a funny story. I think my dad was the first crowdfunder in 1972. His company, North Air, had a land package, next to the big Afton discovery which is still storied, huge like from 12 cents to $30 run in a few days on the Vancouver Stock Exchange. And his stock started to run. And I think there were five million shares outstanding in those days. That was probably a fair amount of stock. And the Commission or the Exchange got worried because his stock was moving so fast and there was no liquidity. It was such a small float. And so they made him go onto the floor of the Vancouver Stock Exchange, where it was open outcry, with the treasury book from the company and he was signing share certificates out to the traders, back in 1972. So I'm not sure if it was such an innovation.

MR. BOURQUE: Think how it would work with social networking.

MS. MCLEOD-SELTZER: You could be there, signing it with electronic signatures.

MR. BOURQUE: You could "friend" everybody.

MS. MCLEOD-SELTZER: But I know that would give the regulators here in the room a lot of heartburn today.

I'm hopeful that we could find something that would work from the regulatory framework and the capital needs of the companies.

One of the things that I think our industry was a little skeptical on, certainly very concerned about in the early days, was 43-101, brought on by the big Bre-X scandal, which has certainly increased costs. But I think it's been really important to us as an industry, it's increased our credibility as an industry. And I think that's something, no matter what happens, we have to maintain. That is credibility is everything. And despite the costs of 43-101, I think it's been a really big positive for our industry.

So as I said, I would really like to see something like this.

I think some of the numbers you talked about, like I said, to keep the lights on as a listed company -- I had my accountant, who audits a lot of different companies, look at what the cost is, look at the least expensive, maintain your listing, be a public company, was $250,000. That's the company that really has no employees, that's run by the directors, no one takes a salary. That's their listing, these are legal fees, their regulatory fees, etc. That's somebody who's doing nothing, up to $750,000 a year for a company who has a project in a foreign jurisdiction. And this is not paying salaries. This is just the administrative and regulatory side.

So I think our industry is really high cost. I mean, we can't do a $50,000-a-year start up. It's just near on impossible.

So our capital needs are much higher to actually have a company that's going to make investors money. The important thing is you have to spend money to make money in our industry.

MR. BOURQUE: So the upside has yet to be realized and it may well be depending on how it's developed.

But Dan, you alluded, very briefly, to the downside of this kind of proposal. And I know chatting with some people at the break, there was a concern that in fact legitimate money would not find its way to worthy enterprises but people would use it as a means to defraud or act dishonestly.

Is there some risk of that in this proposal? I mean, is that a real problem?

MR. MILLER: Probably too early to know for sure.

I think the chances of true outright fraud are not huge because you have minimum amounts and broker portals after you registered, etc, and there are certain safeguards there.

But on the other hand, you've got lots of people investing small amounts of money and who's going to sue over that, at the end of the day when you lose your $2,000?

So certainly somebody can come up with an offering memorandum and do it through a funding portal that maybe there is a drill business there or something.

And that's part of the concern that people have is just what is the disclosure that these people are getting?

And how you balance the liability, particularly in the US, where we have this Rule 10B5 liability for the statements and omissions. And every time a company raises money through this, or through anything, they're exposing themselves to liability.

And if you end up in shareholder litigation in 18 months, it's going to chew up whatever's left of the $1,000,000 just on legal fees, whatever is left of the $1,000,000 that you raised through the crowdfunding.

So I, too, am hopeful there's some way that could balance it. It's just difficult to see a lot of the ultimate benefits a company can have, given the small amounts, given how expensive it will be just to get one of these things done. And then the ongoing costs, both in terms of potential ongoing reporting and just dealing with hundreds of small shareholders.

I've heard proposals, people say, "But I've got a trustee -- and everyone will, when they invest, they'll automatically sign all of their voting rights over to this trustee."

In theory, if the SEC knew that, I suspect they'd probably adopt some sort of rule to kind of limit that. But who would take on that role and take on that fiduciary duty to your shareholders? Who's going to pay them? I just don't know how that would work in practice.

Maybe there's a way that can make it work. But I think this is really more like there are other easier ways to raise money, more money.

MR. BOURQUE: Let me be a bit provocative. We've been looking at this, of course, from the perspective of a regulatory regime, the US regime. I've been talking a bit about the Canadian regime and the advantages of the OM.

But there's a lot of this activity going on now and has been going on for some time in different ways. People get a product. Maybe they get a CD from the band if they send the band some money. They get a t-shirt from an organization that's raising money. They get their name on a movie credit because they've sent in some money. So there's been a lot of accessing people's wallets over time.

Is this an area where the regulators should just get out? And it's a small amount of money, if you lose it; you lose it. Obviously if the regulators weren't involved, it would be a lot cheaper, probably.

Certainly the US model.

Is there any sense that maybe this is not an appropriate venue for regulatory oversight and let the crowds go where they will and let the chips fall where they may?

MR. MILLER: Well, I mean I think the *Securities Act of 1933* was adopted because people didn't want to let the crowd go where they may.

But where you're selling securities, what are clearly securities -- and I think some of those other models you asked about, in certain cases there are questions about whether those really are securities. But putting that aside, I think there's a distinction between what is essentially a pre-sale of a product versus sale of something that is clearly a security, covered by a statute that governs the offer and sale of securities.

And if you change the statute, sure, but that's not happening in the US anytime soon.

MR. BOURQUE: From the industry perspective, any interest in a regime where you could access any number of investors but they would be strictly limited in how much they could invest and so the individual impact would be reduced and it would be sort of a caveat emptor with really no regulatory costs?

MS. MCLEOD-SELTZER: Well, I think for the people in the mining industry here and their lack of access to capital is -- the numbers I talked about before. It costs, 250,000 to $750,000 just to keep the lights on.

I think, from a regulatory point of view, we need to look at what is the cost to be a public company and try to lower that so more of the money can go into the ground, not into administration and regulations. So I'm a very much pro that.

But on the other hand, as I said, our credibility that we gained so hard fought post Bre-X with the 43-101 and some of the other regulations that came in, I don't think we can risk losing that because that is our future for raising the big money in our industry. If we can raise $1,000,000 -- maybe it's as a private company. Maybe that's the cut off, private versus public. And it's sort of semi-private, even though it's got 1,000,000 investors, they've only got a little bit of money into it, each. But that kind of access to money is really important to our industry, keeping the regulatory costs low.

One thing that I found interesting was that apparently there is crowd funding and it's been active for a while in Australia.

Although I read in this Solomon Partners comment about the 70% of the companies who need to raise money in Australia in the coming year, it says, "Their capital markets are broken."

So maybe they have it but it's not working?

I'm asking a question.

MR. BOURQUE: So I think that brings us to the end of our panel discussion and I'm going to turn to the audience now

MR. MILNTHORP: Hi. My name is Tyler Milnthorp and we've been spending actually a lot of time in terms of crowdfunding. So I'm just kind of curious. You brought up a really good point.

When you're speaking about profit, crowdfunding runs into the regulation aspect. But we see it from a different side where we see an opportunity in terms of betting technologies that have forced corporations into social responsibilities, where it's basically based on an interest-free loan.

So you take Kiva, for example, that's done 385 million since 2007. Their default rate is less than 2% and the fraud rate, is 1.5% actually.

So it's interesting when you see the bank and the fraud rate and people complaining about it or being generally concerned about it, when you see the credit card fraud rate at like 30%.

So I was just kind of curious what you guys think of, in terms of the other side of crowdfunding, where if it's socially responsible and people are willing to put their money in and they get that money back out but they've also now funded an opportunity that could foresee profits in the future. So not necessarily them putting money in for their own personal gain, but putting money in to support a particular social event or technology that will just help out the world by putting in a better technology, and then that company, from there, now has the ability to go out and make equity gains and then again build a better economy. So just kind of curious what you guys thought of that other side of the fence.

MR. BOURQUE: Go ahead.

MR. TAM: So it was a great point because I think in the crowdfunding models, even in the most recent crowdfunding markets study, it's clear that things around either product funding or donation-based stuff or lending, are really where crowdfunding is today.

There are some differences, though, that we observed.

And we looked at Crowdcube, just as an example, UK based, crowdfunding platform for equity. In the roughly 20 transactions that they've done, the average transaction size, in terms of the amounts that were raised by companies on that, was somewhere around $100,000 or about $150,000, if you will.

If you contrast that to donation-based portals or even in some cases lending, donations are probably closer to $5,000 - $7,500 is the average raise. It's probably, for donations, in around the tens of thousands, if you will.

So there's a scale issue, in terms of the size of the transactions that I think it's quite pertinent.

From an investor mindset, I think there's also a nuance there because when you make a donation or you -- lending money is obviously a different tier, but when you make a donation, that it's going towards a cause. You're not expecting returns. And therefore, how that organization goes and uses those proceeds, is really, based on the good will that you put into it.

There's long lasting reverberations when people make investments in equity and I think that's, perhaps, why the categories that Dan said, around 1933 *Securities Act* came into being, is that there's a long standing sort of relationship that the investor now has with the issuer and the rights and obligations that go along with that.

MR. BOURQUE: Any other comments on that?

MR. ARIAS: Yes. My name is Antonio Arias. I wear two hats - ALA Midas Capital, we're merchant bankers in the junior mining industry, as well, and Healthy Crowdfunder, and we're trying to launch a portal, connected with financing health.

What I'd like to say is more like a comment. I'd like to respond to Catherine's comment about what's going on in Australia.

It is true. In Australia, crowdfunding is already being done. In fact, if you could check out Paul Niederer. He's the CEO of Australia [CEO Australian Small Scale Offerings Board(ASSOB)]. They did two deals in crowdfunding connected with mining. So it's doable. It's actually quite doable.

And not too long ago, I met with some prudent Canadian business people who were also contemplating on doing crowdfunding in junior mining.

But like anything else, it's a new phenomenon. So the issuers have got to educate their target audience.

And I agree. There are a lot of issues, controversy, connected with crowdfunding, when it comes to the retail. The thing is what's really doable now are the accredited investors and when you commented about the private company model, as well, I think that's what's going to work. Crowdfunding would work very well with private companies, as opposed to public companies.

MR. BOURQUE: So that's a comment and I think you would support that.

MS. MCLEOD-SELTZER: Yeah.

MR. BOURQUE: All right. Any other questions or comments?

MR. VOLKER: Yeah. Mike Volker here. I run a couple of angel networks, as Bill mentioned.

I think we have an opportunity here in British Columbia, to do crowdfunding better than what's proposed in the US because we're so close already. We have the offering memorandum. It's just expensive, as Bill mentioned, for start up entrepreneurs to use.

So the solution is to get rid of, for example, the requirement for audited statements. Why would a start up even have statements to audit? So eliminate that.

But what I also advocate is to make it a little harder - not cheaper, but harder. Raise the barrier a little bit. Make entrepreneurs, for example, have an independent Board of Directors, for a start, that would sign off on the offering memorandum. Put in some typical angel terms and conditions, that we now, as an angel organization, have developed over time and have put into our deals to make sure that the quality is better and the standards are higher.

So why not improve it a little bit, not make it easier, just cheaper, and we've got crowdfunding.

And we won't have that problem of a lot of small investors. We might have a few small investors but with the current offering memorandum, we're not limiting the amounts. So if somebody wants to invest $100, $150, $25 or even a few small investors at a few thousand dollars each. Nothing wrong with that.

That's a recommendation and I'd be interested in the comments on that.

It really would be nice if we could show that kind of leadership here in Canada and for once get ahead of the US and not just follow their lead.

Thank you.

MR. BOURQUE: Good question. Get rid of audited financial statements for the OM exemption, independent board of directors, a little more sweat on the part of the entrepreneurs but what do you think of that proposal?

MS. MCLEOD-SELTZER: Well, as I said, trying to cut costs is huge in our industry and probably yours, too, because the less you have in overhead, the more you can spend on developing your product or drilling your holes. So I'm all for it.

MR. MILLER: I certainly can't advise a completely different jurisdiction as to what they should do, but something like that seems reasonable.

What happened with the *JOBS Act* is there was this crowdfunding proposal and it took a lot of flack from a lot of people and then some of the Senators got involved and basically went out of their way to water it down and it appears that a couple of them actually went out of their way to try to kill it. And to a large extent, they seem to have been fairly successful.

So I think there is an opportunity for Canada to do something that achieves some benefits while still taking into account investor protection.

And I don't know if that specifically, but something like that seems reasonable.

MR. BOURQUE: Okay. Any other questions or comments from the audience?

MR. ARIAS: It's Tony Arias again. I just want to comment on the offering memorandum. One of the issues with the offering memorandum is audited financial statements.

I'm an accountant myself. Auditing the past doesn't predict the future.

What I would recommend to the regulators is put more emphasis on the onus and responsibility of protecting investors, on the merchant bankers themselves, as well as the entrepreneurs, the companies that they're trying to sponsor. And focus more onto the future. Do conduct due diligence on the business plan and the ability of management to deliver or execute on the milestone targets. That's more important, rather than putting the burden on the retail investors and also the issuers.

MR. BOURQUE: Okay. Thank you, Tony.

Any other comments or questions?

MS. MCLEOD-SELTZER: If I could make a comment?

You were talking about the audited financials and I think you're right. Audited financials are backward looking.

For us, as an exploration company, the one thing that should be audited is cash. What is our cash position? We can say how we spend it in unaudited financials, but audit our cash? And audit it hard. And the rest of it -- when you're an exploration company, there's two things to worry about, money in and money out. And what does that leave on our balance sheet to execute the business plan?

MR. BOURQUE: I'll just take a moment to thank our guests, Dan and Catherine and Bill, for their expert views and commentary. I think it's been an interesting discussion. I think it's illuminated some of the sort of reality behind the crowdfunding phenomena. So thank you all.

And thank you for your attention and questions.

MS. LEONG: Let me also take this opportunity to thank our panelists for an illuminating discussion. I think if one thing that I'd take away from that is a comment that Bill made. I think he's kind of thrown the gauntlet down for Canada, that we need to get a little bit more creative in what we call our innovative techniques in Canada. He uses the term "a shining light", a "beacon". The US seems to have a savvy way of coming up with words like *JOBS Act* and crowdfunding, which gets peoples' blood going. So maybe that's a call for Canadians to get a little bit more creative.

That wraps up our session on Capital Ideas this year. I hope you've learned something. I hope it stirs up some ideas, provokes new discussions.

--- PROCEEDINGS CONCLUDED