

# Fiduciary Roundtable 2011

**Wednesday, February 23, 2011**

**Osgoode Professional Development Centre**

## Schedule

- 9:00 to 9:30      Registration and Breakfast
- 9:30 to 10:30    **Topic 1**  
**Current Framework**  
Moderated by: Tanis MacLaren
- 10:30 to 10:45    Break
- 10:45 to 11:45    **Topic 2**  
**Considering Changes to the Current Framework**  
Moderated by: Ilana Singer
- 11:45 to 1:00     **Topic 3**  
**Working Lunch: Practical Implications for Industry  
and Regulators**  
Moderated by: Ed Waitzer
- 1:00 to 1:15      **Closing Remarks and Call for Action**  
Ed Waitzer

**FAIR**

Canadian Foundation for  
Advancement of Investor Rights

THE **Hennick Centre**  
FOR BUSINESS AND LAW



### **Topic 1: Current Framework – Moderated by Tanis MacLaren**

- a) Do financial advisors and their clients understand the duties, responsibilities and entitlements relevant to their relationship? From the financial advisor's perspective, is enough guidance provided within the current system to inform financial advisor behaviour?
- b) Does the current system surrounding client/financial advisor relationships provide sufficient investor protection? Are there problems with how incentives are structured in the current financial services supply chain? Do the means by which advisors are compensated for providing financial services help or hinder investor protection? Are changes needed to improve this situation?
- c) Under the current system, is enough information provided to investors about potential conflicts, investment alternatives and fee structures? For example, there are initiatives underway by IIROC and the MFDA with respect to enhanced disclosure under client relationship models. Is enhanced disclosure sufficient, or should further requirements be added?

### **Topic 2: Considering Changes to the Current Framework – Moderated by Ilana Singer**

- a) Who should draft this type of standard for the investment industry? Should it be clearly laid out in a prescriptive rule, or would a general principle suffice? How would this relate to the common law fiduciary standard?
- b) Should Canada be reviewing recent developments in the US, UK and Australia in the area of fiduciary duty and compensation mechanisms for financial advisors? What can we learn from these jurisdictions? What can reasonably be applied in the Canadian context?
- c) Would introducing a statutory duty offer better protections for investors?
- d) Would introducing a statutory duty raise professional standards within the financial advisory community?

### **Topic 3: Practical Implications for Industry and Regulators – Moderated by Ed Waitzer**

- a) Would introducing an unambiguous duty into law change the way that financial firms operate? Would investor protection be strengthened? If so, how? Should such a standard be absolute or subject to some limited qualifications?
- b) What kind of practical impact would introducing a statutory duty have on the business model of financial firms and advisors? For example, what practices would need to be changed? How could these changes be documented, and what would the potential costs be to the business of firms and advisors?
- c) From a regulatory perspective, how would such a standard be monitored and enforced?
- d) If a statutory duty were to be introduced into law, what would be preferable: a broader principles-based approach, or an approach that prescribes specific behaviours/practices?

## **Tanis MacLaren, Kempenfelt House Consulting Inc.**

Tanis MacLaren is a consultant whose practice focuses on capital markets and financial institution issues, both in Canada and internationally. In Canada, she advises capital market participants (issuers, intermediaries, investors, self-regulatory organizations and service providers) on Canadian financial services regulation matters. Internationally, she advises governments, regulatory agencies and international financial institutions on matters relating to securities market regulation and general market development.

Prior to becoming a consultant, Ms. MacLaren worked for the Ontario Securities Commission (the OSC) in various senior roles in capital markets, international markets, compliance, general counsel's office and international affairs. At the OSC, she chaired several CSA committees and the international Joint Forum Working Group on Corporate Governance. She also has been counsel at a major Canadian financial conglomerate and a large investment dealer.

In addition to her LL.B., Ms. MacLaren has an honours B.Sc., in Chemistry and an M.B.A. She received her Chartered Financial Analyst charter in 1990.

## **Ilana Singer, Deputy Director, FAIR Canada**

Ilana Singer is Deputy Director at the Canadian Foundation for Advancement of Investor Rights (FAIR Canada). At FAIR Canada, Ms. Singer, together with the Hennick Centre, organized the first Canadian conference focused on the fiduciary standard debate. Ms. Singer represents FAIR Canada on the IFIC Investor Education Council and, on behalf of FAIR Canada, has presented at and participated in meetings of the International Organization of Securities Commissions. She is an Adjunct Instructor for the Osgoode Hall Law School "Investor Protection Seminar", and co-chairs the Canadian Bar Association's International Business and Regulations Section. Given her fluency in French, Ms. Singer is FAIR Canada's key liaison in Quebec, and she has been featured on Canal Argent and Le Devoir.



Prior to joining FAIR Canada, Ms. Singer was Senior Advisor, International Affairs at the OSC, where she focused on shareholder and investor rights from a global perspective. She also led the OSC team during the International Monetary Fund's assessment of the securities regulatory framework in Ontario. Ms. Singer's extensive understanding of securities markets and regulation stems from her domestic and international work at the OSC, as well as her experience as a corporate and securities lawyer at McMillan LLP.

## **Edward Waitzer, Director, Hennick Centre for Business and Law**

Former Falconbridge Professor of Law at Osgoode Hall Law School, Mr. Waitzer currently holds the Jarislowsky Dimma Mooney Chair in Corporate Governance and is Director of the Hennick Centre for Business and Law at Osgoode Hall and the Schulich School of Business at York University.



Mr. Waitzer was Chair of Stikeman Elliott LLP from 1999 to 2006 and remains a senior partner whose practice focuses on complex business transactions. He also advises on a range of public policy and governance matters. He served (1993-1996) as Chair of the Ontario Securities Commission (and of the Technical Committee of the International Organization of Securities Commissions) and (until 1981) as Vice-President of The Toronto Stock Exchange.

Mr. Waitzer has written and spoken extensively on a variety of legal and public policy issues and serves or has served as director of a number of corporations, foundations, community organizations, editorial boards and advisory groups.

Mr. Waitzer Earned his LL.B. (1976) and LL.M. (1981) from the Faculty of Law, University of Toronto. Called to the Ontario (1978) and the New York (1985) Bars.

## Background Materials

1. Australian government press release regarding their “Overhaul of Financial Advice” initiative (April 26, 2010)
2. Frankel, Tamar, “Trust me! Sales talk, advice and financial planning”, Reuters (August 25, 2009)
3. FSA press releases regarding strengthened advisor licensing requirements (January 20, 2011) and banning of embedded commissions (March 26, 2010)
4. IIROC Notice – Republication of proposals to implement the core principles of the Client Relationship Model (January 7, 2011)
5. MFDA Bulletin – Transition Periods for MFDA Rule and Policy Amendments Implementing the Client Relationship Model Proposals (December 3, 2010)
6. SEC press releases regarding the SEC fiduciary study (January 21 and January 22, 2011)
7. SEC Study on Investment Advisers and Broker-Dealers - executive summary and select excerpts (January 2011) - attached
8. Select excerpts from Fair Dealing Model Concept Paper (January 31, 2004) – attached
9. Waitzer, Ed, “Make advisors work for investors”, Financial Post (February 14, 2011)
10. Waitzer, Ed, “The client must always come first”, Financial Post (August 12, 2009)

## FAIR Canada

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As the voice of Canadian investors, FAIR Canada keeps investors informed about emerging investor rights issues and is committed to advocating for stronger investor protections in securities regulation.

The mission of FAIR Canada is to be a national voice for investors in securities regulation and a catalyst for enhancing the rights of Canadian shareholders and retail investors.

[www.faircanada.ca](http://www.faircanada.ca)



## CFA Society - Toronto

Founded in 1936, Toronto CFA Society (formerly Toronto Society of Financial Analysts Inc.) is a not-for-profit organization supporting the professional development and advancement of CFA® charterholders. The society provides member services including educational programs, sponsored events, employment postings, and networking opportunities. Toronto CFA Society, with over 7,000 members, is the second largest member society in the world.

Toronto CFA Society is affiliated with CFA Institute, the global body that administers the Chartered Financial Analyst curriculum and sets voluntary, ethics-based performance-reporting standards for the investment industry.

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## The Hennick Centre for Business and Law

Launched on February 6, 2009, the Jay and Barbara Hennick Centre for Business and Law is the first Canadian centre to promote and develop joint business and law scholarship and education. Made possible by a transformational gift from Jay and Barbara Hennick, the Hennick Centre is a hotbed for initiatives and programs that deliver the competencies professionals need to analyze business and legal problems in a holistic way.

The Hennick Centre is a joint initiative of Osgoode Hall Law School and the Schulich School of Business.

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