

Joint Forum of Financial Market Regulators

Forum conjoint des autorités de réglementation du marché financier

BACKGROUND

March 2003

PRINCIPLES AND PRACTICES FOR THE SALE OF PRODUCTS AND SERVICES IN THE FINANCIAL SECTOR

I BACKGROUND

Developments in the Canadian financial services sector have led to a fragmented system of regulation across financial industries and jurisdictions. As the marketplace continues to converge, protecting consumers and enhancing the quality and consistency of regulation are key goals for regulators.

Three years ago, the Joint Forum of Financial Market Regulators (the Joint Forum)¹ was established as a national coordinating body for insurance, securities, and pension regulators. One of the principal projects of the Joint Forum is the development of harmonized approaches to intermediary proficiency and licensing. This project has been divided into the following four components:

1. Practice standards – the development of industry best practices for intermediaries in the sale of financial products and services. These practices are to be adopted by industry associations in the development of codes of conduct.
2. Competency rules – the development of unified, common, minimum qualification and entry standards.
3. Minimum continuing education requirements.
4. Licensing of financial intermediaries who provide more than one category of service.

¹ In response to an increasingly integrated financial services marketplace, the Joint Forum was established early in 1999 as a mechanism through which pension, securities and insurance regulators could coordinate, harmonize and streamline the regulation of financial products and services in Canada. The Joint Forum consists of designated representatives from each of the Canadian Association of Pension Supervisory Authorities (CAPSA), the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR), the Canadian Insurance Self Regulatory Organization (CISRO) and the Bureau des services financiers (BSF).

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The Joint Forum decided to pursue the four components one at a time, beginning with practice standards.

II PROGRESS TO DATE

1. Sub-committee on Practice Standards Established

To address the issue of practice standards, a sub-committee was created, made up of the following members:

- Canadian Council of Insurance Regulators (CCIR) – (Ontario and Saskatchewan)
- Canadian Securities Administrators (CSA) – (Nova Scotia, Ontario and Quebec)
- Canadian Insurance Services Regulatory Organization (CISRO) – (British Columbia and Quebec)
- Mutual Fund Dealers Association (MFDA)
- Investment Dealers Association of Canada (IDA)
- Bureau des services financiers (BSF)
- Real Estate Council of Alberta (RECA) - (Alberta)

The Joint Forum Project Office is providing project management support. The consulting firm of Lawrie Savage & Associates Inc was retained to provide research and analytical support to the project.

2. Sub-committee Mandate

The Sub-committee's mandate, as approved by the Joint Forum, is:

To develop for adoption by the Joint Forum, a Canada-wide practice standard that would apply to all financial service intermediaries. This national standard would complement other, more detailed standards created by other organizations.

3. Industry Liaison Group

An Industry Liaison Group was established. The Liaison Group's role is to facilitate the research phase of the project, review and advise on emerging recommendations, and provide appropriate linkages to the financial community. Invitations were extended to a number of organizations representing financial services intermediaries and companies.

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Those groups nominating a representative to the Industry Liaison Group are outlined below:

- Canadian Bankers Association
- Canadian Life and Health Insurance Association
- Canadian Securities Institute
- Advocis (formerly Canadian Association of Insurance and Financial Advisors)
- Federation of Canadian Independent Deposit Brokers
- Insurance Brokers Association of Canada
- Independent Financial Brokers of Canada
- Investment Funds Institute of Canada
- Credit Union Central of Canada
- Canadian Association of Financial Institutions in Insurance
- Insurance Bureau of Canada

4. Intermediaries Defined

The “universe” of financial intermediaries to be bound by the practice standard was considered during the initial phase of the project. The Sub-committee determined that the term “financial service intermediary” should be defined to mean a participant in the financial services industry who markets products or provides financial advice or services to clients. In a particular instance this could be a person, firm and/or a financial institution. This definition is intended to include the following intermediaries:

- Life insurance agents and brokers
- P&C insurance agents and brokers
- Securities registrants
- Loan brokers
- Mortgage brokers
- Deposit brokers
- Financial planners
- Employees of financial institutions who market financial products (e.g., bank employees who market creditor insurance).

5. Matrix of Existing Regulations

A comprehensive and accurate matrix of regulation affecting all industries and across all jurisdictions was compiled to highlight and compare the existing rules governing the universe of intermediaries.

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6. Existing Practice Standards, Rules and Codes of Conduct Analyzed

Literally dozens of existing codes of conduct in the financial sector in Canada and other countries were examined. From this material, the Sub-committee did a comprehensive review of the major themes and principles, and structural and enforcement issues.

7. Development of the Joint Forum Principles and Practices, and Companion Documents

After much discussion and deliberation about the compilation and analysis of existing codes, the Sub-committee determined which principles and practices were to be included in the Joint Forum's proposed *Principles and Practices for the Sale of Products and Services in the Financial Sector*. In order to make the principles and practices understandable to consumers, a companion document was created entitled *A Consumer's Guide to Financial Transactions*. In addition, the Sub-committee decided it would be beneficial to produce a set of documents which would provide examples to illustrate how the principles and practices would apply to intermediaries in each industry. The industry examples documents have been developed in consultation with industry representatives.

III OVERVIEW OF PROPOSAL

This project provides an opportunity for the Joint Forum to develop, in a uniform, forward-looking way, standards of professionalism and fair conduct that Canadian consumers should be able to expect in their financial transactions. Articulating these standards and obtaining the endorsement of key industry associations across financial services sectors will result in benefits for consumers without imposing burdensome regulatory requirements on financial intermediaries.

1. Purpose of the Standards

There are varying levels of regulation that are currently in place for intermediaries. These regulations vary by jurisdiction, by type of intermediary, and by the regulator or regulators that are responsible for oversight. The result of this project will be to provide a common language to express minimum obligations that should apply to the conduct of all financial intermediaries in their dealings with consumers of financial products and services.

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It is worth noting that for some intermediaries, there are no regulators and no regulations governing their actions. For these intermediaries, therefore, the principles and practices that have been developed may result in a “raising of the bar”. For those intermediaries who are already regulated, these standards may replicate or slightly amplify the conduct that is already required under regulation.

2. Voluntary Approach

The Joint Forum’s preference has always been to develop voluntary principles that intermediaries would adopt. The Sub-committee, therefore, set out to create a standard that industry associations would endorse on behalf of their members, rather than creating a code of conduct that regulators in each jurisdiction would enforce. For this reason the principles and practices that have been identified are expressed in general terms and rely on high-level principles rather than specific details. One benefit of this approach is that they are general enough to dovetail with the existing codes of industry associations. At the same time, however, they are practical enough to be easily implemented and measured. For those intermediaries not represented by associations, the principles would serve as a “best practices” guide.

3. Enforcement

The Joint Forum acknowledges that there is a potential concern regarding the regulatory outcome of voluntary standards, specifically, whether such standards could realistically be expected to change the behaviour of intermediaries given the lack of enforcement by regulators. To deal with this concern, the Sub-committee has considered enforcement mechanisms and has identified and reviewed a range of options for addressing enforcement issues.

In keeping with the Joint Forum’s preference for adopting a voluntary approach, the Sub-committee contemplated that association codes should include consequences for non-compliance, or require adherence to the code as a condition of membership. Implementing rules and regulations to achieve the proposed principles will only be considered as a last resort.

The Joint Forum sees value for both consumers and regulators in having a standard, albeit a voluntary one, which articulates a common nation-wide standard of behaviour for financial intermediaries. Once it is adopted widely by industry associations, the Joint Forum is confident that it would come to be seen as the norm. In addition, it might be possible for regulators to cite the standards to bolster their decisions in individual cases.

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At the same time, consumers would have a benchmark against which to evaluate their financial intermediaries.

Detailed questions of enforcement by individuals or organizations that endorse or “sign onto” the standard will be dealt with further by the Sub-committee when it considers the issue of implementation.

4. Impact on Existing Regulation

The practice standard could create some confusion in areas where there is overlap with the application of existing laws and regulations that may prescribe specific conduct for financial intermediaries in certain circumstances. This concern has been dealt with by stipulating that, in cases where the practice standard addresses an area covered by existing regulation, the higher standard will prevail. On this basis, the practice standard provisions would have no impact on areas where more detailed and rigorous regulations already exist since the existing rules would continue to apply.

5. Proposed Principles

The principles embodied in the Joint Forum’s proposals deal with the following:

1. Interests of the Client
2. Needs of the Client (“Know Your Client”)
3. Professionalism
4. Confidentiality
5. Conflicts of Interest
6. Disclosure
7. Unfair Practices
8. Client Redress
9. Compliance

These principles have been reviewed against the International Organization of Securities Commissions (IOSCO) and International Association of Insurance Supervisors (IAIS) codes to ensure that they are consistent with international standards.

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IV PUBLIC CONSULTATION PROCESS

In order to proceed with the Practice Standards project, the Sub-committee seeks the input of industry and consumer stakeholders. Documents included in this consultation are:

- Principles and Practices for the Sale of Products and Services in the Financial Sector**
- A Consumer's Guide to Financial Transactions**
- Industry Examples:**
 - **Securities**
 - **Property and Casualty Insurance**
 - **Life Insurance**
 - **Deposit Agent**
 - **Loan Broker**
 - **Financial Planning**

A complete description of the consultation is set out in the Chair's covering letter, dated March 6, 2003.

Please note that regulators in Quebec are not participating in the Practice Standards Project, or in this consultation. However, they continue to monitor the Joint Forum's work in the development of principles and practices for financial services intermediaries.

IV NEXT STEPS

After the consultation period, the Sub-committee on Practice Standards will meet to review the comments received. Necessary changes will be made to the documents, and the package will be submitted to the Joint Forum and its constituent groups for approval.

During the consultation period, the Sub-committee will also begin to study methods of implementation. It is anticipated that final recommendations and an implementation plan will be developed by summer 2003 for the approval of the Joint Forum and its constituent groups.