



BACKGROUND

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

1. INTRODUCTION

The regulation of financial services intermediaries currently varies by jurisdiction, by type of intermediary, and by type of product or service provided. As a result, the Joint Forum of Financial Market Regulators (Joint Forum) decided to embark on a project to establish standards of professionalism and fair conduct that Canadian consumers should be able to expect in their financial transactions, regardless of the product or service they are buying, or the regulatory regime that applies. 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.

The Joint Forum's work in this area has resulted in the release of *Principles and Practice for the Sale of Products and Services in the Financial Sector*. The Joint Forum has also released a companion document entitled *A Consumer's Guide to Financial Service Transactions*.

2. ABOUT THE JOINT FORUM

The Joint Forum was established in January 1999 to address common issues among Canadian securities, insurance and pension regulators arising from the growing integration of the financial services sector. It consists of designated representatives from each of the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA), and the Canadian Insurance Services Regulatory Organizations (CISRO).

The Joint Forum's mission is to proactively facilitate and coordinate the development of harmonized cross-sectoral and cross-jurisdictional solutions to financial services regulatory issues.

3. JOINT FORUM PROJECT ON INTERMEDIARY PROFICIENCY AND LICENSING

The Canadian financial services sector is subject to regulatory systems that are designed for specific functions like securities trading, insurance sales and deposit-taking. Despite the different approaches and terminology of those systems, however, consumers should be able to expect some basic standards of conduct from all financial services providers.

The Joint Forum decided, as one of its principal projects, to look at developing a harmonized approach to intermediary proficiency and licensing. Based on the recommendations of a Joint Forum working group, this project was divided into the following four components:

1. core practice standards which other organizations would be able to build upon;
2. competency rules (i.e., a unified, common, minimum qualification and entry standard);
3. minimum continuing education requirements, and
4. the licensing of financial services intermediaries who provide more than one category of service.

The Joint Forum initially decided to pursue the four components sequentially, beginning with practice standards.

4. SUB-COMMITTEE ON PRACTICE STANDARDS

To address the first component of the Joint Forum's intermediary and proficiency licensing project, namely practice standards, a Sub-Committee was formed with the following mandate:

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.

The Sub-Committee included representation from the following organizations:

- Canadian Council of Insurance Regulators (CCIR)
- Canadian Securities Administrators (CSA)
- Canadian Insurance Services Regulatory Organizations (CISRO)

- Mutual Fund Dealers Association (MFDA)
- Investment Dealers Association of Canada (IDA)
- Real Estate Council of Alberta (RECA)

Although Quebec is not a participant in this project, they have had representatives on the Sub-Committee and have been monitoring the progress of the project since it's beginning. Those representatives were drawn from the:

- the Chambre de la la sécurité financière
- the Bureau des services financiers (BSF) and
- the CVMQ.

The latter two organizations have recently been merged into the Autorité des marchés financiers.

5. INDUSTRY LIAISON GROUP

To assist the Sub-Committee in its task, an Industry Liaison Group was established. This group's role was 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.

The organizations that nominated a representative to the Industry Liaison Group were as follows:

- 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
- Financial Planners Standards Council.

6. SCOPE OF THE PROJECT

During the initial phase of the project, the “universe” of financial intermediaries to be covered by the principles and practices was considered. 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. The definition is intended to include the following intermediaries:

- life insurance agents and brokers
- property and casualty 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).

7. DEVELOPMENT OF THE JOINT FORUM PRINCIPLES AND PRACTICES AND THE COMPANION CONSUMER'S GUIDE

At the beginning of the project, a comprehensive matrix of regulation affecting all industries and across all jurisdictions was compiled to highlight and compare existing rules governing intermediaries. In addition, dozens of existing codes of conduct in the financial sector in Canada and in other countries were examined. From this material, the Sub-Committee did a comprehensive review of the major themes and principles.

As a result of this work, the Sub-Committee identified a number of key principles that appeared regularly in different codes. The most relevant common core principles were extracted and were included in the Joint Forum's *Principles and Practices for the Sale of Products and Services in the Financial Sector*. In order to make the principles and practices more accessible to consumers, a companion document was created entitled *A Consumer's Guide to Financial Transactions*.

The results of the Sub-Committee's work culminated in the release of a consultation package on March 6, 2003. The comment period closed on May 29, 2003. There were 17 submissions in total. All submissions can be viewed on the Joint Forum website (www.jointforum.ca).

As a result of reviewing the comment letters received, some changes were made to the Principles and Practices document, as well as the Consumer's Guide. The changes were not substantive in nature and were outlined in a *Summary of Comments and Responses* that was published on February 13, 2004.

8. OVERVIEW OF THE PRINCIPLES AND PRACTICES

With this initiative, the Joint Forum sought to develop a common language to express minimum obligations that should apply to the conduct of all financial services intermediaries in their dealings with consumers of financial products and services.

The eight principles and practices outlined by the Joint Forum are as follows:

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. VOLUNTARY APPROACH

From the beginning the Joint Forum’s preference has been to develop voluntary principles that intermediaries would adopt. The Sub-Committee, therefore, set out to create principles and practices that industry associations and associations representing intermediaries would endorse on behalf of their members. 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. A benefit of this approach is that they are general enough to dovetail with the existing codes of industry associations. In addition, voluntary codes can complement requirements set down by law and can be adapted to changing circumstances more quickly than a statutory code can.

Once the principles and practices are widely adopted by industry associations, the Joint Forum is confident that they will come to be seen as the norm. Competition and market forces will operate to encourage higher standards to the benefit of consumers.

10. EXPECTATIONS OF THE JOINT FORUM

It is expected that industry associations and associations representing intermediaries will inform their members of the Joint Forum’s work in this area and encourage their members to adopt the principles and practices that have been set out. Ultimately, the Joint Forum would like to see the principles and practices incorporated or reflected into the codes of conduct of these organizations and for adherence to those codes to be actively promoted. These groups would be free to add additional details designed to accommodate the

unique characteristics of their own particular sector. Furthermore, these organizations are being looked upon to play a role in the socialization of the principles and practices through educational programs and professional literature aimed at intermediaries.

For those financial intermediaries that are not attached to any association, the Joint Forum intends to reach out to them through publication and promotion of the principles and practices within the financial services industry and among consumers. The Principles and Practices could serve as a “best practices” guide.

11. INTERPLAY WITH REGULATORY REQUIREMENTS

In some areas the principles and practices may ask intermediaries to go beyond what is explicitly required by law. In fact, for some types of intermediaries, there may be no regulators and no regulations governing their actions. It is important to note, however, that regulatory requirements only specify minimum obligations that must be complied with. The principles and practices, on the other hand, are intended to set out standards that intermediaries should strive towards as professionals and as such, they are intended to complement rather than override regulatory requirements. At the same time, the Joint Forum is mindful that some intermediaries are already subject to enforceable regulatory standards that address the particulars set out in the voluntary practice standards. As a result, if any principle or practice is inconsistent with a provision of an applicable law, regulation or rule, the latter will take precedence.

12. BENEFIT FOR CONSUMERS

From the consumer perspective, the Joint Forum believes that the companion Consumer’s Guide can help consumers understand how financial services intermediaries are expected to deal with them. In this way, consumers will have a benchmark against which they can evaluate any financial services intermediary they choose to do business with.

13. ASSESSING THE PROJECT’S IMPACT

Although the Joint Forum’s work in developing the principles and practices is complete, there still is a role for the Joint Forum to play in terms of following up on the project’s impact and determining how effective this voluntary approach has been. Such an assessment can be used to determine whether a voluntary approach should be considered for future projects as well.