ASSOCIATION OF CANADIAN FINANCIAL CORPORATIONS | **ASSOCIATION DES COMPAGNIES FINANCIERES CANADIENNES**

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By E-Mail

May 29, 2003

Stephen Paglia
Senior Policy Analyst
Joint Forum Project Office
Joint Forum of Financial Market Regulators
5160 Yonge Street, 17th Floor, Box 85
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email: spaglia@fsco.gov.on.ca

Dear Mr. Paglia:

Re: Joint Forum Practice Standards Project – Stakeholder Consultation

The member companies of the Association of Canadian Financial Corporations (ACFC) have been serving Canadians for more than 70 years.

Membership in the ACFC is open to companies that act as financial intermediaries, or that finance retail installment sales and inventory, make or purchase unsecured and secured loans to consumers or industrial and commercial enterprises, own and lease property, and factor and finance industrial and commercial accounts receivable.

The current members of the Association are[1]:

- CitiFinancial Canada, Inc.
- Household Financial Corporation Limited
- Trans Canada Credit Corporation

Finance companies provide important financial services to Canadians including such products as small balance loans, private label retail sales financing and mortgages. Combined, the member companies serve 1.74 million customers and have $6.3 billion in assets.

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[1]The ACFC has five associate members: Assurant Group, Equifax Canada Inc., First Canadian Title Company Limited, Sykes Canada Corporation, and Trans Union of Canada Inc.

The ACFC has reviewed the proposed principles and practices and has the following comments:

1. Definition of Intermediary

Intermediary is defined as follows:

> "Intermediary" means a participant in the financial services industry who markets products or provides financial advice or services to clients. In particular instance this could be a person, firm and/or financial institution.

Although the principles and practices seem to apply to financial services professionals such as life insurance agents and brokers, and employees of financial institutions who market financial products such as creditor insurance, the language in the definition is very broad, referring to anyone participating in the financial services industry. Our members have retailers and car dealers offering creditor insurance through affiliated or non-affiliated insurance companies during the course of financing sales. The insurance transaction is incidental to the sale transaction. We do not believe these retailers or dealers are "participants in the financial services industry." However, we would like some clarification in the definition to ensure that insurance transactions that are incidental to a sale on credit are not captured by the definition.

2. Disclosure of the Intermediary/Business Relationships

Paragraph (b) of Principle 7 – General Information Disclosure requires the intermediary to include the names of organizations that are directly or indirectly providing remuneration to the intermediary. The required relationship disclosure may become complicated and confusing for consumers if detailed information about company organization needs to be disclosed. This is particularly the case with large multinationals whose organizational structure may be complex. The ACFC believes that as long as meaningful information is provided on the parent or affiliated companies so as to identify the major organization, this is sufficient for the purpose of disclosing significant and useful relationship information.

It may also be difficult to assess which direct or indirect relationships are relevant to the transaction and need to be disclosed. It would be helpful to have more specific criteria outlining what constitutes direct or indirect relationships "relevant" to the transaction.

3. Definition of "Personal Information"

   This definition should directly refer to existing or future legal privacy protection requirements to ensure a consistent approach to regulation. To introduce a different or more onerous standard would result in a more complicated regime to address privacy concerns in the financial services sector.

4. Overlap or Conflict with Existing Federal and Provincial Regulation

   Since these standards and practices will be in addition to existing federal and provincial regulation, any overlap or conflict may further complicate the applicable regime regulating financial services providers, resulting in additional administrative burdens for the financial services industry. Harmonization with existing legal requirements is necessary in order to streamline regulation.

We look forward to receiving a revised draft of the standards and practices, once input from stakeholders participating in the consultation has been reviewed and considered.

Yours truly,

Rita Minucci

Rita Minucci
Corporate Secretary

RM/sa

ACPM · ACARR
The Association of Canadian Pension Management
L'Association canadienne des administrateurs de régimes de retraite

May 29, 2003

Mr. Stephen Paglia
Senior Policy Analyst
Joint Forum Project Office
Joint Forum of Financial Market Regulators
5160 Yonge Street
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Dear Mr. Paglia:

Re: CSA Notice 33-402
Principles and Practices for the Sale of Products and Services in the Financial Sector (the "Notice")

The Association of Canadian Pension Management (ACPM) is the national voice of private and public sector pension plan sponsors in Canada, as well as the professional advisory firms they retain. The ACPM's 1000 members represent over 500 pension plans with total pension assets of $400 billion, representing 80 percent of Canadian pension fund assets.

ACPM's mission is to promote the growth and health of Canada's retirement income system by championing the following principles:

- clarity in pension legislation, regulation and arrangements;
- good governance and administration; and
- balanced consideration of stakeholders' interests.

We are writing in response to the request for comments on CSA Notice 33-402 (the "Notice").

There are many features of the retail market that are not applicable to the group environment because of the active role of the plan sponsor in selecting and monitoring investment options, and who, unlike intermediaries in the retail market, has no conflict of interest with the plan members in respect of this role. However, one could foresee how concerns that apply in the retail market could also apply to group plans if more of the retail features were imported.

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The ACPM supports the concept of "a consistent level of service and protection" for consumers, but reiterates that the group plan environment is different from the retail market. The possibility for increased costs (to comply with these principles and practices, when the group environment has already developed its own set of "best practices") is of concern to the ACPM. This would be of particular concern to us if the advantage to plan members of the lower costs of group plans were to be eroded by increased administration costs where the benefit was not evident.

As you are no doubt aware the Joint Forum has released its Proposed Guidelines for Capital Accumulation Plans. It is the hope of the ACPM that the Joint Forum will monitor the impact of these various regulatory initiatives to ensure that any potential overlap or duplication is eliminated.

We thank for your attention to this important matter.

Yours truly,

The Association of Canadian Pension Management

"Priscilla H. Healy"

Priscilla H. Healy
Chair, Advocacy and Government Relations Committee

cc: Stephen Bigsby
Executive Director, ACPM

Steve Howard, CA
President and CEO
Email: showard@advocis.ca

VIA E-MAIL

June 4, 2003

Mr. Jim Hall, Chair
Joint Forum Sub-committee on Practice
Standards for the Sale of Products and Services in
the Financial Sector
Joint Forum of Financial Market Regulators
Joint Forum Project Office
5160 Yonge Street 17th Floor Box 85
North York, Ontario, M2N 6L9

Dear Mr. Hall:

Thank you very much for your invitation to comment on the information that the Task Force of the Joint Forum of Financial Market Regulators has prepared on the principles and practices for the sale of products and services by all financial intermediaries. We were very pleased to have an opportunity to meet with the Joint Forum Task Force members on March 6 to discuss these issues. Our own thoughts continue to evolve and we share with you today, our current thinking. In doing so, we look to continue our dialogue with you, in order that together we can establish a model that promotes the interests of consumers and welcomes the initiatives that professional advisors have established and are considering.

Your Principles and Practices for the Sale of Products and Services in the Financial Sector document indicates that, since regulations vary by jurisdiction, type of intermediary and regulator, the Joint Forum's objective will be to apply best practices and principles in the form of minimum standards on a voluntary basis to the conduct of all financial intermediaries in their dealings with consumers of financial products and services. This is a positive step and we commend you for it.

As we mentioned in our meeting, in our view, your initiative will be better received and more effective, if it takes into account the efforts that are forthcoming from industry participants themselves. In particular, the role that associations are now playing and could further play needs to be considered even further. So too, does the role of designations.

As progressive as your proposals are with reference to the current regulatory paradigm, without these considerations, we feel your proposals are inherently limited because they focus on a transactions-based model, rather than considering the nature and role of advice in the support of consumers. Simply put, our suggestion of incorporating within your model the role of designations and the associations that support them establishes a direct accountability between the consumer and the individual providing advice. This accountability would be established by embedding appropriate designations as a requirement to "hold out" the ability to offer prescribed advice – that is to say advice in the areas of portfolio management, complex investing, financial planning and advanced life underwriting.

Advocis members have adhered to a code of professional conduct for many years. Currently, Advocis is developing a series of "Best Practices" manuals to encode the elements of regulatory compliance and define such generally accepted practices that would serve as the application standards for investment advice, financial planning and insurance underwriting. We believe it is through such a body of knowledge, widely recognized within the industry, that true references of appropriate, consistent compliance can be upheld. We are at the early stages, and the project will pick up steam as we go and the industry recognizes the true depth and benefit of our efforts. In the manuals prepared to date, each of your nine principles is referenced. In these manuals, we have taken the approach that we will set out not only what advisors "must do" (regulatory compliance) but also what they "should do" if they want to practice at the highest level. Furthermore, these codified practices provide a means of objectively evaluating practice readiness and continuing education requirements.

The fundamental element in the advisor-client relationship is the letter of engagement and disclosure. This document clearly sets out what services the client is to receive, whether any conflicts exist and the method of advisor compensation that will be employed. A significant portion of the manuals is devoted to this topic. Advocis would be pleased to provide copies of these manuals to the Joint Forum as they become available. What we would prefer, however, is to consult with us as to how to leverage the higher standards that the 16,000 or so Advocis members have already committed to, rather than trying to regulate them through a lower common denominator.

Although we support your approach to travel the voluntary route in terms of the code of conduct, we are concerned that financial intermediaries that do not belong to an industry association will essentially "fall through the cracks". In our view, the best way to ensure that this does not happen is for all intermediaries to earn one of several approved designations, within a certain time period after they begin their practice.

We would like to stress that in our model the education entities – particularly the FPSC, Canadian Securities Institute and the CLU Institute should have one singular focus – the maintenance of the standard for those who hold out that they are qualified to give advice in the respective areas. The

associations that provide member services or promote member interests should have discrete mandates. None of the parties in the industry today need be disadvantaged by such a shift. It is merely necessary that a group such as yours, which has already demonstrated its leadership interests, take the further step to partner effectively with those associations.

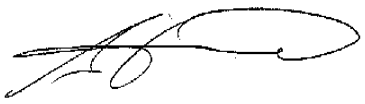
I recently wrote about the joint forum's initiatives and Advocis' designation-based approach in the CEO's Comments in our monthly Forum magazine. I have included a copy of my article for your review.

We support the ideas that you have presented in the Consumer Guide to Financial Transactions and have no problem with the approach that you are suggesting in the Industry Examples.

We hope that our comments are helpful. We appreciate being included in your consultation process.

Thank you again for this opportunity to comment on these issues that are of importance to all our 16,000 members and 10 million clients across Canada.

Sincerely,



CEO's Comments
By Steve Howard

All Roads Lead To Rome

It's funny how things connect. Sometimes everything keeps coming back to the same point. That is what is happening with the Chartered Life Underwriter (CLU) designation these days. Instead of Rome, all roads seem to be leading to the CLU.

Advocis met recently with representatives of the Joint Forum of Market Regulators. This group represents insurance, investment, and pension regulators across the country. They are asking the associations that support advisors to voluntarily adopt codes of conduct and best practices. No problem. Advocis is already there. But we asked, "Shouldn't your regulatory model recognize that many people in this industry have already committed to professional practice in their fields of activity?" For example, the CLU for insurance, the Certified Financial Planner (CFP) for financial planning, and other various designations in respect of securities. Doesn't it make sense for regulators to partner with the professional commitment that such members are already demonstrating rather than seeking to lay another level of compliance on them? "Good question," they said. "We'll think about it."

We work at being good friends and neighbours with our colleagues at the Financial Planning Standards Council (FPSC). Insurance concepts are an integral part of the financial planning process, but the CFP only goes so far; the CLU goes the rest of the way for advisors looking to specialize in advanced insurance and estate planning matters. Strengthening the CLU Institute – in fact, making the CLU Institute as vibrant and distinct a body as the FPSC – seems to make sense. We make good partners, the FPSC and the CLU Institute. Just like for CFPs, the Code of Professional Conduct for CLUs could rest with the designation. The designation is the key in how you hold out to the public. Protecting the public through the regulation of holding out is how we can partner with the regulators.

The Bank Act opens up in 2005. Will the banks be allowed to sell insurance products? The same arguments that caused the Association to fight so vigorously against this 10 years ago still apply. We cannot accept tied or coercive selling. It's not in the consumer's interest. Could we, however, accommodate the banks' interest in selling insurance by insisting that such sales occur only under the auspices of CLUs – who, as part of the Code of Professional Conduct, would be bound to place the client's interests at the forefront through the practice of objectivity and integrity? No forced selling, just professionalism.

What would really cap all this off is if the securities side of the equation could get onto the same page. That way, the map of the world becomes really clear. To hold out as a financial planner, one should have a CFP. To hold out as an insurance professional, one should have a CLU. To hold out as an investment specialist, one should have a Fellow of the Canadian Securities Institute (FCSI).

Is all of this a pipe dream? Maybe. I do know that if you want to find your way in the world it's a good idea to have a map and a destination. Right now, all roads lead to the CLU and the CLU Institute.

June 17, 2003

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Joint Forum of Financial Market Regulators
5160 Yonge Street, 17th Floor, Box 85
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Re: Joint Forum Practice Standards Project - Stakeholder Consultation

Dear Mr. Paglia:

On behalf of Atlantic Blue Cross Care and our President, Pierre-Yves Julien, I am pleased to provide a qualified expression of support for recommendations the Joint Forum has developed. We view the move toward regulation of our industry that is consistent across provincial boundaries as a positive step forward. On the whole we are quite supportive of the intent and the scope of the principles and practices described in your document. There are a few areas I would like to specifically address:

1. Your document describes a preference for voluntary regulation and acknowledges potential problems with enforcement. I have a concern about the same points. We recognize that most insurers and intermediaries will have no problem adhering to the principles and practices being proposed. I also have no doubt that the vast majority of industry practitioners currently meet or exceed what is being proposed. The reliance upon industry associations to self-enforce will only have an impact on individuals and organizations that see a need to maintain their memberships in these associations in good standing. I suspect that most of the likely offenders do not currently have such memberships. In that light, there is little incentive for them to improve their professionalism and they face little, if any consequences for failing to do so. While we support the document in general, we see this area as requiring more work, in order to be effective.

2. We would support a requirement for an intermediary to have appropriate Errors and Omissions (E&O) coverage as a mandatory condition for licensing in all provinces. This suggestion is stronger than your principles and practices recommendations. The majority of responsible insurance agents and brokers would most likely voluntary have this coverage in place. However, I suspect those who are most likely to need E&O will opt to save the money and take their chances in the absence of regulatory requirements. It is my understanding that E&O coverage is becoming increasingly more difficult to obtain and more expensive. This may encourage the less responsible agent or broker to forego coverage, unless required by his/her licensing authority.

3. We are pleased to see the issue of compensation disclosure addressed. We support disclosure by an intermediary of the type of compensation he/she receives and believe that disclosure is essential for a client to clearly understand the options presented to him by the intermediary. We would suggest that in order to avoid potential conflicts of interest, the intermediary should be required to disclose **differences** in compensation level on a product by product basis, when products of a similar nature (i.e. Term 10 Life insurance) are presented for a client's consideration. Without this knowledge, it is difficult (at best) for a client to evaluate the objectivity of the intermediary.

Thank you for the opportunity to comment on your document and if you have any questions or concerns regarding this response or any other issues of interest please contact me at any time.

Sincerely,

Stephen Stewart
Vice President, Sales

Canadian Association of CAFII Financial Institutions in Insurance

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May 23, 2003

Jim Hall
Chair, Joint Forum Sub-committee on Practice Standards for the Sale of Products and Services in the financial Sector
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Dear Mr Hall,

CAFII has had the opportunity to review the consultation package on *Principles and Practices for the Sale of Products and Services in the Financial Sector* and is pleased to offer comments. These relate to Point 7 General Information Disclosure, and Point 9, Compliance.

First, we would like to say that CAFII supports the goals of the committee and believes it is worthwhile to develop a common set of guidelines for intermediary sales practices. With a convergence in the functions of the various financial pillars, it makes sense to ensure that intermediaries undertake consistent sales practices across increasingly similar products and services for the benefit of consumers. The Practices Standards document will be very useful to any organization in the industry that undertakes the task of developing a code of conduct. It will provide a consistent and thorough guide to ensure all relevant aspects of sales practice have been included.

Point 7 - General Information Disclosure

On the Principles and Practices document, point 7 on disclosure, CAFII members question the degree to which all Intermediary/Business Relationships need to be disclosed. In particular we note that the intermediary must disclose "any relationship amongst the firms involved in the transaction". We recommend that this clause be deleted as it is covered by the statement which follows- "Any other direct or indirect relationships that are relevant to the transaction should also be disclosed by the intermediary". It may be difficult to assess which direct or indirect relationships are relevant to the transaction and need to be disclosed. Also, the degree of disclosure required may differ from sale to sale depending on the knowledge level of the customer, the type of product being sold and the experience of the intermediary. Intermediaries

with a long business history with their customers should not have to disclose their relationship to the same degree as someone who is new to the customer or to the business. It would be helpful to have more specific criteria outlining what constitutes direct or indirect relationships "relevant" to the transaction. We believe that only a relationship that would be relevant to a client's purchase decision should be disclosed. We were pleased to see that this is the phrasing used for the Consumer's Guide relating to point 7. It speaks of disclosing "information on the existence of any business relationships that the salesperson knows of, with other companies or people, which may be relevant to your purchase." This would help to clarify for industry the type of disclosure that is appropriate.

Paragraph (b) of Principle 7 also requires the intermediary to include the names of organizations that are directly or indirectly providing remuneration to the intermediary. The required relationship disclosure may become complicated and confusing for consumers if detailed information about company organization needs to be disclosed. This is particularly the case with large multinationals whose organizational structure may be complex. As long as meaningful information is provided on the parent or affiliated companies so as to identify the major organization, this should be sufficient for the purpose of disclosing significant and useful relationship information.

Point 9 – Compliance

CAFII' s role is to provide professional monitoring and analysis of on-going and prospective government initiatives. CAFII is not an SRO and, therefore, is not involved in monitoring the sales practices of intermediaries of member companies. Therefore, CAFII would not be developing a code of conduct for its members. Instead, we would advise our members of the Principles and Practices document and note that this document sets out a guide that companies could use in setting their own policies and practices.

Thank you once again for the opportunity to input to this process. If we can be of further assistance in answering your questions, please feel free to contact us.

Yours truly,

Mr Oscar Zimmerman
Chair, CAFII

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May 29, 2003

Mr. Jim Hall
Chair
Sub-committee on Practice Standards
Joint Forum of Financial Market Regulators
C/o Financial Services Commission of Ontario
5160 Yonge Street, Box 85
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Dear Mr. Hall:

The CBA would like to thank the Joint Forum of Financial Market Regulators (JFFMR) for the opportunity to comment upon its initiative to establish Principles and Practices for the Sale of Products and Services in the Financial Sector. This letter adds to the comments we provided on October 8, 2002.

Canadian banks have been leaders in developing and applying best practices in relation to dealings with individual and small business clients in the sale of financial products and services. Further, the banking industry has also been a leader in self-regulatory initiatives, particularly in the area of consumer dispute resolution, establishing the Canadian Banking Ombudsman in 1996 and playing an instrumental role in the creation of the Canadian Financial Services OmbudsNetwork to extend ombudsman services to other parts of the financial sector. The industry has also been a leader in the development of voluntary codes of conduct, introducing, for instance, the first detailed industry privacy code that went beyond basic principles. It is in the context of this leadership role, that we wish to offer the following comments on the Joint Forum's proposals.

As proponents of strong standards established through self-regulation, the banking industry welcomes your efforts to identify, standardize and make uniform best industry practices which would be promoted across the financial services sector where needed. We generally support the principles and practices you have circulated and wish to note that the self-regulatory initiatives which the banking industry has undertaken (including our recent code of conduct on the promotion of authorized insurance products) are consistent with those principles. Apart from the principles themselves, we have a few comments on the application of your initiative to the banking industry.

As we noted in our October 8, 2002 letter to you, it is our view that it is inappropriate, both for jurisdictional and practical reasons, for the Joint Forum to include bank employees in your Principles and Practices document. As you know, banks and banking are federal responsibilities, as has recently been clarified and re-asserted by the British Columbia Court of Appeal.

The Court also adopted the position that banking should be subject to a uniform scheme of legislation for all Canadians and that provincial regulation with its overlap and duplication is

undesirable in this regard. I would note on this point that what the Joint Forum wishes to achieve with respect to the promotion of creditor insurance in banks has already been achieved through a code of conduct (the insurance code noted above) which is uniformly applied across the country and monitored by the federal Financial Consumer Agency of Canada. By contrast, it is our understanding that the Joint Forum's best practices initiative (even if it were constitutional with respect to bank employees) would not represent a uniform standard across the country. You note, for example, that one province is not participating in the initiative, which will mean that there will be at least two different approaches in this area at the provincial level. In our view, this is illustrative of the need in Canada for a national approach to financial services regulation, of which the Canadian Bankers Association is a strong advocate. We believe that the solution does not lie in a variety of provincial and territorial harmonization initiatives, but rather a comprehensive approach to national market conduct regulation.

In our earlier letter, we commented on our concerns about the role that the Joint Forum had contemplated for industry associations. The CBA is pleased that the Joint Forum has attempted to deal with the industry's concerns about the role of industry associations such as the CBA. As we noted last October, the Canadian Bankers Association is not an SRO that exercises regulatory functions over its members through the imposition of rules or standards, and it does not serve as a regulatory, enforcement, or compliance body. The original proposal to have trade associations enforce the principles was not practical. While the idea of norms or standards that associations endorse on behalf of members has merit, there is still, in our view, too much uncertainty regarding future enforcement of the standards once endorsed by industry associations. While the principles and practices are being promoted as voluntary measures, you also note that implementing rules and regulations to achieve the proposed principles may be considered (albeit as a last resort), and that "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." This suggests that the Joint Forum is considering the principles and practices as tantamount to regulations, to be enforced either through associations or the provincial regulators. As noted, this gives rise to a range of jurisdictional and practical concerns.

We would like to reiterate our support for the principles themselves, as good examples of industry best practices. As a sector with a strong track record in employing high standards of practice, the CBA expects that initiatives undertaken by the banking industry, within the regulatory and jurisdictional environment governing it, will continue to be consistent with the Joint Forum proposals.

If you would like to discuss these points in more detail, we would be pleased to meet with you at your convenience.

Yours sincerely,

Original signed by Terry Campbell

Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

May 29, 2003

Mr. Stephen Paglia
Senior Policy Analyst
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Joint forum of Financial Market Regulators
5160 Yonge Street, 17th floor, Box 85
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Dear Mr. Paglia:

Re: Joint Forum Practice Standards Project

The Canadian Life and Health Insurance Association (CLHIA) is pleased to respond to the Joint Forum of Financial Market Regulators' consultation paper, ***Principles and Practices for the Sale of Products and Services in the Financial Sector***.

The CLHIA, established in 1894, is the oldest association operating in the insurance industry in North America, representing 75 life and health insurance companies who, together, account for about 98 percent of the life and health insurance business in the country. The industry provides life insurance for over 17 million Canadians, and health insurance for over 24 million Canadians. In 2001, the industry made benefit payments to its policyholders of $36 billion from life insurance, annuity and health insurance policies.

The life and health insurance industry has long been committed to furthering fair practices for its policyholders. It has guidelines on consumer disclosure and insurance practices. For almost 30 years, the industry has operated the Consumer Assistance Centre, a consumer help-line. And in 2002, it created the new independent Canadian Life and Health Insurance OmbudService, part of the Financial Services OmbudsNetwork.

It follows that the industry very much supports the objectives set out by the Joint Forum, that is, that Canadian consumers should be able to expect standards of professionalism and fair conduct in their financial transactions and, further, that these expectations should be met throughout the financial services industry. The industry commends the Joint Forum for the initiative and for the strongly consultative process that has been followed.

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As a reference that various industry associations could draw upon should they choose to develop a code of conduct for their intermediaries, the "Principles and Practices" document is certainly useful. It contains a mix of the theoretical and the practical that could be interpreted and applied as appropriate.

If the intent, however, is to make this an enforceable code, we would recommend that clear, measurable standards are needed. Principles that are tied to regulatory obligations (errors & omissions insurance, anti-money laundering legislation, holding out regulations) are straightforward to measure. General statements of ideal practices, while not inappropriate in a high-level code, are not easy to measure.

The paper talks both about the value of a voluntary approach and the need for enforcement. We would submit that greater clarity of intent is needed. If the intent is to set out a sample code that associations can drawn on in developing their own practices, then this may already have been substantially met. On the other hand, if the intent is that all financial services intermediaries be required to comply with an enforceable code, then greater work is needed on how best to achieve this.

The discussion paper suggests that industry associations adopt and enforce a "voluntary" code that, in some cases, would "strive to exceed" regulatory requirements. We have concerns with this approach, from both a practical and theoretical point of view.

From a purely pragmatic viewpoint, industry associations are not structured, financed or mandated to be compliance bodies.

Not all financial services intermediaries belong to an industry association which means that, as the paper acknowledges, there will be gaps in the system. The possibility exists that requiring associations to be enforcement bodies could contribute to widening those gaps as this could be construed as a disincentive to joining an industry association.

For those who choose not to abide by an association code, the consequences for non-compliance would be relatively inconsequential. An intermediary might be expelled from an association that he was not required to belong to in the first place, but he remains licensed. In this situation, what has been done to encourage appropriate behaviour and to protect the consumer's best interests?

A code that restates regulatory requirements or states principles that are regulatory requirements in some jurisdictions but not in others introduces additional layers of expectation and a great deal of confusion for enforcement. Page 1 of the "Principles and Practices" states that where there is inconsistency, the regulation will take precedence. Page 3 of the same document, in relation to Financial Accountability, states that intermediaries "should strive to exceed all existing requirements" for professional liability insurance. Page 6 of the Backgrounder states that "where the practice standard addresses an area covered by existing regulation, the higher standard will prevail". To use errors & omissions insurance as an example, an agent who does not carry e&o insurance may be entirely compliant with the regulatory provisions in their province but be non-

compliant with a voluntary code. It seems inappropriate to require an association to enforce that code against someone who is abiding by regulatory requirements.

In another vein, there are jurisdictional issues that come into play, as the Financial Consumer Agency of Canada (FCAC) has been mandated with the task of monitoring the implementation of voluntary codes of conduct or practice that are designed to protect the interests of customers, have been adopted by financial institutions and are publicly available. The conduct of agents has, to this point, resided entirely in the realm of provincial jurisdiction.

Clearly, good work has gone into this project to date. Moving forward, we would recommend consideration of two possible approaches, each, as it turns out, at opposite ends of the spectrum:

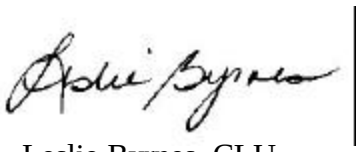
1. Ask those industry associations that choose to develop a code of conduct for intermediaries (and many already have) to consider the "Principles and Practices" as a reference template in developing those codes. A natural consequence would be that, over time, all codes would come to have common elements.

2. Adopt the principles as a condition of licensing or registration. In this way, non-compliance has regulatory consequences.

We would submit that, unless the central intent is to ensure compliance of all regulated intermediaries, a logical approach would be to proceed along the lines of the first option. If over time, experience shows that this is unsatisfactory, movement towards the second option may be warranted.

We appreciate having the opportunity to comment, and are at your disposal should you wish to discuss further.

Sincerely,



Leslie Byrnes, CLU
Vice President, Distribution

CREDIT UNION CENTRAL OF CANADA
300 The East Mall, Toronto, Ontario M9B 6B7 Telephone: (416) 232-1262 Facsimile: (416) 232-9196
Website: cucentral.ca Email Address: cucc@cucentral.com

July 3, 2003

Mr. Jim Hall
Chair, Sub-committee on Practice Standards
Joint Forum of Financial Market Regulators
c/o Financial Services Commission of Ontario
5160 Yonge Street, Box 85
North York, ON M2N 6L9

Dear Mr. Hall,

Principles and Practices for the Sale of Products and Services in the Financial Sector

I am writing to provide the Joint Forum with a brief comment from the perspective of Credit Union Central of Canada regarding the proposed "Principles and Practices for the Sale of Products and Services in the Financial Sector".

As you are aware, credit union regulators and the credit unions are not participants in the Joint Forum. Nevertheless, credit unions are an active and important part of the Canadian financial services sector. Consequently, we have an interest in monitoring the work of the Joint Forum since this work may have implications for the sector as a whole.

In general terms, we view the proposed Principles and Practices to be reasonable and consistent with good business practice. There are two aspects of the proposal that cause us some concern. Both of these concerns relate to the use of the word "intermediary".

Firstly, section 4 of the document, on the subject of "Professionalism", sets a high standard of training and education for "intermediaries". It is not clear to us what the term "intermediaries" is intended to cover in this context. The standard seems appropriate to investment representatives, securities advisers, etc.. The standard seems high when applied to staff who handle routine transactions in credit unions and other deposit-taking organizations. These staff require training, but not to the extent suggested by the standard.

The problem, in general terms, seems to be that the meaning of "intermediary" shifts throughout the document. In some cases, the term refers to organizations while in other cases it pertains to individuals.

In some instances, the term appears to be relevant only to intermediaries that provide financial advice, and in other cases the terms seems to have broader application.

A second example of this issue is the following. Section 7(b) of the document, under the heading of "General Information Disclosure", suggests that financial intermediaries should disclose a range of information about compensation and remuneration arrangements with respect to the sale of specific products, including the names of organizations and persons who are providing remuneration to the intermediary.

This provision seems to be aimed at financial services providers who hold themselves out as providing independent advice on financial products so that recipients of the advice are in a position to ascertain whether the advice might be affected by compensation considerations. In our view, the pricing of financial products commonly sold by credit unions is sufficiently transparent. To the extent that legislated disclosure requirements are in place, such as with mutual funds, the credit union system complies with these requirements.

For this reason, we would not support, for financial transactions undertaken by credit unions, the suggested level of detailed disclosure regarding names of organizations and persons whose product is being considered, as well as indirect relationships that may be related to the transaction. Provided that the credit union member has a clear understanding of the fees that will be charged with respect to a product and provided that the sale of the product otherwise complies with legislated disclosure requirements, it should be left to the intermediary to determine whether any additional information about a supplier or other relationship affecting the product is relevant to the transaction.

We agree, in the case of an intermediary that holds itself out as providing independent advice, that the fee structure should be disclosed. We would also agree that this disclosure should only apply to the type of compensation that the intermediary receives and not the specific amount.

Thank you for this opportunity to comment on the proposed Principles and Practices. We would be pleased to respond to any questions from the Joint Forum.

Yours Sincerely,

David Phillips
Vice President, General Counsel & Corporate Secretary

----- Message from "Brian Evans Financial Services" <brian@investsmart.ca> on Thu, 29 May 2003 00:05:24 -0400 -----

To: <spaglia@fsco.gov.on.ca>
cc: "Michael Harding" <mharding@hewmactoronto.com>, "David J. Newman" <mailroom@fiscalagents.com>
Subject: DOCUMENT FOUND

Stephen:

Here are my comments and questions.

Could you please change the title to read ***"Companion Piece - Examples for Deposit Brokers and Agents"*** instead of just agents as you have it now?

I noticed that most of the examples that we had submitted for use in this document were not used. Many areas or sections of the Deposit Brokers & Agents examples do not include any examples at all. Once again you are using many examples from the Saskatchewan regulations which really only covers one province. We are aware that there are a couple of other provinces who are looking at regulations for our industry similar to Saskatchewan, but still it only represents one province. ***Shouldn't we be more generic with our examples?***

Why were our examples left out in many sections completely?

Secondly, I noticed that you refer to a '6 Step' Financial Planning process. I have just completed some of the main industry FP courses and we have always been taught the 5 step program. (Establish Objectives, Gathering Data, Develop Plan, Implement Plan, Monitor Plan.) ***What is the sixth step?***

Thirdly, under section 7 (Disclosure), I wonder if there is not a big difference between ' The intermediary has the responsibility to disclose...' and ' The client is entitled to disclosure...' I find in the practical realm of this business that most clients don't care to know. ***They certainly are entitled to full disclosure, but does the Financial Planner need to proactively force this information on to the client in every case?*** I guess the same comments could be made about the 'holding out' in 4(b). A financial planner can and should put their licenses and credentials achieved in full view of all clients, ***but do they need to actively draw attention to them?***

Fourthly, I am wondering if there should be a better explanation of what a Conflict of Interest is (in section 6). I find that this is a very misunderstood and grey concept. ***Is a conflict of interest in the perception of the client or the law?***

Finally, in 4(f), Financial Accountability, Is this referring only to having appropriate insurance in place to cover errors, omissions or frauds? ***Or are we attempting to encourage bonding or personal or corporate resources available to compensate clients any loss they suffer?***

Having participated in the discussions at our last meeting about section 9, Compliance, I am still a little unclear of the power of this document. ***Does every association need to adopt these principles into their professional standards, or is there still some choice on their part? Is it up to the associations perception how they develop these codes or is there a review process through your organization that ensures compliance?***

I would appreciate your responses to these questions. Please accept my apologies for the delay in getting this to you.

Brian Evans *on behalf of the Federation of Canadian Independent Deposit Brokers.*

May 15, 2003

Stephen Paglia
Senior Policy Analyst
Joint Forum Project Office
Joint Forum of Financial Market Regulators
5160 Yonge Street, 17th Floor, Box 85
North York ON M2N 6L9

Dear Mr. Paglia:

Re: Joint Forum Practice Standards Project

Thank you for affording Financial Planners Standards Council (FPSC) the opportunity to comment on the documents constituting the output of the Practice Standards Project to date.

We will offer general observations as well as more focused comments on the Financial Planning Industry. It is noteworthy that although a representative of FPSC was not asked to sit on the Industry Liaison Group, Rules 302, 402, 401(a), 401(b) and 402(c) of FPSC's Code of Ethics constitute a significant portion of the Financial Planning Industry Example. We can only assume that FPSC is unknown to the Joint Forum of Financial Market Regulators, and therefore, we will also submit some pertinent background information on our organization and the standard-setting and monitoring functions we carry out on behalf of over 15,000 Certified Financial Planner™ (CFP™) professionals across Canada.

General

The Joint Forum Practice Standards Project has been divided into four components:

- Practice Standards
- Competency Rules
- Continuing Education Requirements
- Licencing Guidelines

This phase of the project attempts to outline best practices for intermediaries in the sale of financial products and services. Presumably, the general principles will be used as a framework by various industry segments for developing or assessing their Practice Standards and Codes of Ethical Conduct. We assume the Joint Forum in due course, will use these minimum guidelines to evaluate the adequacy of industry guidelines.

…/2

Principles and Practices for the Sale of Products and Service in the Financial Sector

We believe our Code of Ethics and draft Practice Standards articulate in detail the professional responsibilities of a CFP professional and exceed your minimum standards. However, as a result of examining your document, we will improve our guidance to our CFP licensees in the area of Client Redress – specifically in situations where a dispute cannot be resolved by the financial planner and his/her client.

We suggest that where a Code of Ethical Conduct and Practice Standards promulgated by an industry participant in a specific financial services sector such as those published by Financial Planners Standards Council for CFP licensees, the Joint Forum approval of such guidance should be published in order to avoid what may appear to CFP licensees as confusing duplication of regulatory guidance.

A Consumers Guide to Financial Transactions

We believe that substituting the term "salesperson/advisor" for "salesperson" would improve this public document.

Principle 4 needs to be clarified. There are many financial intermediaries who would be confused by the term "high standards of professionalism". To expect users of the services of financial intermediaries to formulate their expectations in relation to the term "high standards of professionalism" will require guidance similar to that offered in the industry document.

For the information of the Industry Liaison Group, we include a copy of FPSC's Code of Ethics, draft Practice Standards, and our Disciplinary Rules and Procedures.

Thank you for keeping us apprised of the progress of this initiative. If we can be of further assistance going forward, please let me know.

Sincerely,

Donald J. Johnston
President

INSURANCE BROKERS ASSOCIATION OF CANADA
ASSOCIATION DES COURTIERS D'ASSURANCES DU CANADA

June 6, 2003

Mr. Jim Hall
Chair
Joint Forum of Financial Market Regulators
5160 Yonge Street, Box 85, 17th Floor
North York, Ontario
M2N 6L9

Dear Mr. Hall,

The Insurance Brokers Association of Canada (IBAC) is pleased once again to provide you with comments on three of the Joint Forum's consultation documents in support of the Practice Standards Project. We greatly appreciate the opportunity for input on this important matter.

At the outset, however, we express disappointment with the relatively minor nature of the changes made to the consultation documents from their original version. This revised version of the consultation documents addresses few, if any, of the concerns we expressed last September. Accordingly, our general and specific concerns with this proposed Code are similar to those we initially provided.

Our specific comments can be found below under the headings corresponding to the documents of relevance to our industry. In general terms, however, you will notice the emergence of recurring themes throughout our comments.

One of our greatest concerns is that the overall intent of the Code and supporting documents seems, at times, to be to fill perceived "gaps" or inadequacies in provincial legislation. We will cite examples where the Code and supporting documents would impose obligations on brokers that are "higher" than those currently specified in relevant provincial laws. We believe this to be neither appropriate nor feasible.

Similarly, the documents propose measures that are potentially, if not fully, inconsistent with certain federal or provincial laws. We believe that a Code such as this one should be drafted to ensure consistency with, but without exceeding, the specific requirements of laws from all affected jurisdictions. While we acknowledge that there may be significant variations between various provincial measures in a given area, at no time should this Code be used to "raise the standard" above what is common to all, to the extent that a common standard can be found at all.

In addition, we also have concerns that some of the measures proposed in the Code and supporting documents appear to either lack relevance to, or consideration for, the nature of the P&C sector. Specifically, we refer to provisions that are at odds with how P&C regulators and industry associations currently operate, or that would significantly increase the administrative burden of insurance brokerages, most of which are small businesses.

Finally, we have significant concerns about the overall compliance and administrative burden that this Code—regardless of its final form—would impose on P&C insurance brokers. Brokers are facing an increasing burden of federal and provincial laws and regulations with which they must comply in order to do business.

These laws, regulations, and other Codes such as this one are becoming increasing complex to understand and administer. Moreover, they do not appear to surface in a coordinated manner, with each one being proposed with apparent disregard for what is already in existence, sometimes even creating inconsistencies between items. (The references to rebating and "personal information" contained in this Code are examples of such inconsistencies). The ultimate result of this growing body of rules and regulations is to increase the cost of operating a business in Canada—particularly for the thousands of small businesses for whom we speak.

Document 1: Principles and Practices for the Sale of Products and Services in the Financial Sector

3. Legitimate Business Interests

We propose the deletion of the second sentence of the paragraph because it is overly broad and confusing. For example, the word "reasonable" could be interpreted in many different ways

4. Professionalism

f. Financial Accountability

In spite of the addition of the word "should", we continue to have concerns with the second sentence of the section. We believe that all financial intermediaries, including P&C brokers, should adhere to their respective industry best practices in the area of financial accountability. The suggestion that intermediaries should strive to exceed the obligations that are specified in their relevant provincial laws is, in our view, overly idealistic and superfluous.

5. Confidentiality

We question the relevance of this section. By January 1, 2004, all intermediaries will be bound by either the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, the new piece of federal legislation dealing with private sector privacy matters, or a provincial equivalent. Intermediaries will therefore be bound by new legislation of some form which will have to be respected regardless of this Code.

To the extent that this section is needed at all, we would recommend that it be reworded in a very general way in order to ensure consistency with all the pieces of private sector privacy legislation intermediaries will have to comply with across the country. This could be achieved by adding a period after the word "regulations" in the first sentence, and the deleting the remainder of the text. The sentence would therefore read as follows: "Intermediaries must protect clients' personal information and take all reasonable steps to ensure that personal information is not divulged and is only used for the purpose for which it was collected, unless the client provides proper authorization, as required by applicable laws and regulations."

7. General Information Disclosure

a. Product Information

We have serious concerns with this item which, at the outset, appears to have been drafted with intermediaries other than Property & Casualty (P&C) insurance brokers in mind. The inclusion of passages such as "actual results may differ significantly from those shown" and "unusual results or a period that generated much better than normally anticipated performance." illustrates the point of a lack of relevance to the P&C sector. Making this point further obvious is that the entire "Product Information" text was carried over verbatim from this document to the companion piece intended specifically for P&C insurance brokers without as much as a deletion of the passages that clearly don't apply to the sector.

We are also concerned that, as worded, this item appears to limit or control the examples given to a client. For example, the requirement to disclose "important assumptions underlying any illustrations or examples that have been provided to the client" is a near-impossible task for P&C brokers to do given the endless possibilities associated with the way clients handle their personal property and the wording of different policies. Brokers would therefore likely refrain from providing clients with any examples if required to disclose "important assumptions" while doing so.

In the course of carrying out their duties, however, P&C brokers currently provide their clients with multiple examples in order to help them make an informed decision. To limit P&C brokers from providing their clients with examples would not only prevent them from practicing their jobs to the best of their ability, but would also deprive the clients of the information they expect from a broker.

We are also concerned that, as worded, this item does not take into account the nature and knowledge base of the individual client. For example, an intermediary will discuss "product information" very differently with someone known to little or no knowledge of the subject matter than with one who has in-depth knowledge because of training or experience. On a related note, we would suggest additional wording to suggest that providing "product information" to a client should not absolve that individual from reading his or her policy.

Notwithstanding the foregoing, the issue of product information is a contentious one that has generated considerable litigation in the P&C sector. Therefore, to the extent that the issue of "product information" should be addressed in a Code such as this one at all, greater care must be taken to ensure that its provisions are suitable to the sector, even if this means adopting wording that is considerably different for P&C brokers than other intermediaries.

b. Intermediary/Business Relationship Information

In spite of the revisions made to the text, we continue to have concerns with the portions of the text dealing with compensation. The text in question appears to have been drafted with intermediaries other than Property & Casualty insurance brokers in mind, in addition to being ill-suited for the SME community (of which most insurance brokerages are a part).

More importantly though, in line with previous examples, the disclosure of remuneration details to clients could hold many insurance brokers to higher standards than those specified by provincial laws. A requirement for insurance brokers to disclose remuneration information to clients would also saddle them with a significant administrative burden, particularly since their compensation arrangements vary with the companies with which they deal.

To the extent that this Code should make any mention of remuneration, references should not extend beyond what is common knowledge, i.e., that most insurance brokers are remunerated directly by insurers through commissions, and not by the buying public. We also would not take issue with disclosure requirements for intermediary fees over and above commissions.

8. Client Redress

The revised wording to the last sentence does little to address our concerns about the proposed measures concerning client redress. Specifically, the new wording suggests that intermediaries should undertake duties that are not only the purview of regulators, but also duties for which they have neither the appropriate qualifications nor training to do. Furthermore, this sentence raises the possibility that intermediaries would be held to account for any incorrect information they may have supplied to the consumer concerning redress mechanisms; information for which they are not ultimately responsible.

Therefore, we suggest the deletion of the entire last sentence of the paragraph. Alternatively, the duty of intermediaries should not go beyond making written information concerning redress mechanism available to consumers, provided that such information is prepared by the regulating body ultimately responsible for it, and clearly identifies this body as

the one the consumer should contact for additional information. However, such a task would have to be carried out in a way that is neither costly nor administratively onerous.

9. Compliance

We believe the first sentence proposes undue intrusiveness into the individual business decisions of associations. Associations in the P&C sector are voluntary in nature, and vary greatly in size and mandate. Some associations choose not to have codes of conduct for their members, sometimes for no other reason than not having sufficient resources to administer them. We believe that proposals concerning the types of services and lines of business that voluntary associations should be in are neither realistic nor appropriate. If implemented, they would also significantly add to the cost of doing business.

In the P&C industry, the matters referred to in the second sentence are currently handled by regulators, not by industry associations. Requiring industry associations to enter such lines of business would therefore result in a duplication of existing mechanisms.

The last sentence implies that intermediaries who are not members of an industry association would be held to a lower standard than those that are. Moreover, it also implicitly discourages industry association membership because non-members would only be subject to one compliance process whereas association members would be subject to two, one being the government or its agent, the other being the association. We therefore suggest that the adherence to industry best practices could apply to <u>all</u> intermediaries, whether or not they are members of an industry association.

10. Definitions

We suggest that the definition of "personal information" be amended to be consistent with the one provided in the *Personal Information Protection and Electronic Documents Act (PIPEDA)*, and any other pieces of provincial privacy legislation that may apply. The definition of "personal information" proposed by this Code seems very dissimilar from the PIPEDA's. In keeping with previous comments, the definitions in this Code should not result in intermediaries being held to a higher standard than provided in legislation.

<u>Document 2:</u> <u>A Consumer's Guide to Financial Transactions</u>

Introductory Paragraphs:

We support the addition of the last sentence of the first paragraph which reads as follows: "If you do not fully disclose your needs, it is possible that the salesperson may unknowingly offer products which are not suited to your financial requirements."

We suggest it be followed by a sentence from Item 7. See item 7 for details.

We support the addition of the third paragraph which reads as follows: "In your dealings with a salesperson or company, you should always seek further information if you do not feel comfortable with your level of understanding of products or services that you are purchasing. Asking questions will help you avoid any potential misunderstandings regarding the information that is being presented to you."

Item 5:

See comments provided under "Confidentiality" section of "Principles and Practices" document.

Item 7:

To reduce the administrative and cost burden on intermediaries, we suggest ending the paragraph after the word "involved" and the removing all the words that follow. The paragraph would therefore read as follows: "You should expect to receive all relevant information before making a decision about a financial product. This includes product features, risks and benefits, [and] the companies involved."

Furthermore, we suggest that this sentence be moved to the end of the first paragraph of the document. The numbered item 7 would therefore disappear.

Item 8:

See comments provided under "Client Redress" section of "Principles and Practices" document.

Document 3: Companion Piece—Examples for Property & Casualty Insurance Agents

2. Needs of the Client

We propose the deletion of the last sentence of the section which discusses the updating of information. We believe it is worded too prescriptively, could expose the insurance broker to undue risk in the event of error, and most importantly, is a near-impossible task to undertake.

3. Legitimate Business Interests

See comments provided under same section of the "Principles and Practices" document.

4. Professionalism

c. Advertising and all other Client Communications

The term "rebating of commissions" provided in the example must be deleted. Rebating is currently allowed in Alberta, and may also eventually be allowed in other provinces. A practice that is allowed by law cannot be prevented in a Code such as this one.

f. Financial Accountability

See comments provided under same section of the "Principles and Practices" document.

5. Confidentiality

See comments provided under same section of the "Principles and Practices" document.

7. General Information Disclosure

a. Product Information

See comments provided under same section of the "Principles and Practices" document.

b. Intermediary/Business Relationship Information

See comments provided under same section of the "Principles and Practices" document.

8. Client Redress

See comments provided under same section of the "Principles and Practices" document. Moreover, in many cases, this information is already in the policy wordings provided to consumers by insurers.

9. Compliance

See comments provided under same section of the "Principles and Practices" document.

10. Definitions

See comments provided under same section of the "Principles and Practices" document.

IBAC thanks the Joint Forum for the opportunity to present its views on this important matter once again. Please do not hesitate to contact Francesca Iacurto, our Director of Public Affairs, if you have any questions, or would like to further discuss any matters raised herein. She can be reached by telephone at (613) 786-9937, or by e-mail at fiacurto@ibac.ca.

Sincerely yours,

Brian Gilbert
President

c.c. Executive Committee
Board of Directors
Member Associations

---- Message from "Karapita, John" <jkarapita@ibc.ca> on Fri, 30 May 2003 09:23:13 -0400 ----

To: "'spaglia@fsco.gov.on.ca"'
<spaglia@fsco.gov.on.ca>
Subject: Practice Standards response

Original to follow by mail...

May 29, 2003

Stephen Paglia
Senior Policy Analyst
Joint Forum Project Office
Joint Forum of Financial Market Regulators
5160 Yonge Street
17th Floor
Toronto, Ontario
M2N 6L9

Dear Mr. Paglia:

We are pleased to provide comments to the Joint Forum once again on the consultations surrounding the Principles and Practices for the Sale of Products and Services in the Financial Sector and Examples for the Property and Casualty (P&C) Insurance Industry.

In general, we remain supportive of the direction of the Draft with some significant comments about particular enumerated Principles. We note that changes have been made since the previous version and our comments are directed to those sections of the document where we continue to note concerns.

We are still seeking clarification of the definition of intermediaries as it relates to the Principles and Practices. Specifically, we are concerned that intermediary should not include company adjusters because of their primary responsibility to represent the interest of the company. We note that Principle #5, Confidentiality, has been modified to allow for companies to divulge personal information "without client consent to law enforcement agencies when required or authorized by law." We note, as well, that this principle appears to reflect the provisions of the federal privacy legislation (Bill C-6) by taking into account that the intermediary would obtain consent on behalf of the insurer for the sharing of information for "reasonable" purposes. We would recommend that Principle #1, Interest of the Client, be modified in order to be consistent with Principle #5. A very narrow interpretation of Principle #1 could limit an insurer's legitimate activities to address fraud.

Similarly, we acknowledge the intention to clarify or illustrate the Principles through examples. In light of the clarity of the Principles, however, examples may not be needed at all. In fact, the examples may only serve to limit Principles or confuse the matter. At the very least, an example should be broad and generic so as to apply to a national marketplace.

The provisions of the Principle dealing with General Information Disclosure (Principle #7) should not impose overly onerous responsibilities on the intermediary to disclose proprietary information concerning compensation or remuneration or all relationships involved in the transaction. This information is not pertinent to the transaction particularly in the heavily regulated auto insurance market.

It is in the best interest of all intermediaries to establish a good relationship with their clients so that questions about coverage and exclusions will be welcomed and encouraged. It is, however, impractical to expect that agents will explain or that clients will be interested in all policy exclusions and limitations. Currently, this information is provided to consumers as part of their plain-language policies and clarification is available on request. In our experience, this appears to be meeting their needs. It should be sufficient to inform clients that every insurance contract has certain terms including policy conditions, limitations and exclusions.

The Principle dealing with client complaints, Principle #8 Client Redress, should recognize that nearly all P&C clients are satisfied with their dealings with the industry. Furthermore, the competitive nature of P&C marketplace goes a long way toward ensuring widespread satisfaction in our industry. Therefore, the Principle should be changed as follows, (suggested change in italics):

> "The intermediary must be fully aware of all applicable processes for dealing with complaints and must *be prepared to provide information on the* channels available for pursuing different types of complaints."

We suggest that this wording is consistent with the subsequent description of the intermediary's responsibility to provide information on redress mechanisms "in situations where a dispute cannot be resolved."

Once again, we appreciate the opportunity to comment.

Sincerely,

Mark Yakabuski
Vice President, Ontario

John Karapita
Manager, Government Relations
Ontario
Insurance Bureau of Canada
Tel: (416) 362-2031 x 4326
FAX: (416) 644-4961

May 26, 2003

Stephen Paglia,
Senior Policy Analyst, Joint Forum Project Office,
Joint Forum of Financial Market Regulators,
5160 Yonge Street, Box 85,
North York, ON
M2N 6L9

Dear Stephen:

We are writing you to provide the comments and suggestions of our Association in response to your letter of March 6, 2003 and to the proposed *Principles and Practices for the Sale of Products and Services in the Financial Sector*.

As we advised the Chair of the Sub-Committee of Jim Hall in our letter of September 16, 2002, Independent Financial Brokers of Canada ("IFB") is an association comprised of independent life insurance and mutual fund brokers - financial services professionals. As our name suggests, our members operate as 'independents' - free of ties to any one insurance or mutual fund company. As independents, providing reliable, trustworthy and accurate advice is the key to building a strong and viable business. Our members answer directly to their clients – not to insurance or mutual fund companies, and as a result, they have a deep concern for customer service and consumer protection.

Based on the recommendations of the Sub-Committee we found to be relevant, we are in the process of amending our Code of Ethics. We hope that the amended version (which will be sent to our members shortly) will be approved by the members at our annual meeting this summer. We'll refer to this amended Code as our 'Code' and bear in mind that it is possible that changes may be made in it, although we aren't aware of any problems at this time.

Principles And Practices For The Sale Of Products And Services In The Financial Sector

We have perused the draft Principles and Practices dated March, 2003 and will comment on them in the order in which you have set them out.

1. Interests of Client

We agree with this principle. A similar wording will be present in our Code.

2. Needs of the Client

We have a similar provision in our Code, and are pleased to see that the Joint Forum added the second part of this Principle "... when making a recommendation, must reasonable ensure that any product or service offered is suitable to fulfill those needs" as we suggested.

3. Legitimate Business Interests

This provision has been included in our Code. We feel it is an appropriate recommendation.

4. Professionalism

We have adopted the recommended wording in the first part of this section in our Code under the headings "Behaviour" and "Professional of Broker".

a. Education:

We have included a paragraph in our Code which focuses on CE and reads as follows:

> A broker should possess an appropriate level of knowledge relating to his/her particular business. Continuing education should be pursued as a means of keeping skill and knowledge levels current in accordance with regulatory requirements.

b. Holding Out:

We have adopted the Joint Forum wording in our Code on this and the 'Advertising and all other Client Communications' section under the heading "Disclosure of Broker Information".

c. Advertising and all other Client Communications:

In our letter of September 16, we said:

> In regard to 'advertising and all other client communication', we see some difficulties in the mutual fund side. The MFDA rules with respect to the use of the advisor name and the dealer name in relation to one-another are in our view unfair to the advisor, but, above all, are confusing to the public and would not allow the advisor to comply with this Principle. We have written to the MFDA indicating the problem and will continue to pursue this matter on behalf of our members. An example of this is MFDA's requirement that signage and/or logos of the advisor and the dealer be of equal size and prominence which we believe does not serve

to inform the investor, but rather, it serves only to further confuse the investor as to the relationship that exists.

Our recommendation is that, although the dealer name should be clearly stated in all communications, but that the dealer name should be smaller and less prominent than the advisor name.

d. Business Operations

We think it is important that brokers maintain sound financial records and follow sound business practices and have added this provision to our Code.

e. Fair Practices

We believe that the unfair practices prohibited in this section are covered off to a large degree under the sections 'Interests of Client' and 'Needs of Client'. Our Code contains the following wording:

A broker should possess an appropriate level of knowledge relating to his/her particular business and meet high standards of professional ethics, including acting with honesty, integrity, fairness, due diligence and skill.

f. Financial Accountability

As we said in our letter of September 12 about this topic:

We have some concerns with what is recommended under this head. While we support brokers having errors and omissions insurance and fraud cover, we do not believe that we should impose such a requirement beyond what is required by the provincial regulator. We do not believe that an association such as ours should be excluding those who meet regulatory requirements – we are an association which considers itself open to all brokers operating in Canada – not an elite group.

We do promote the advisability of all brokers to have errors and omissions insurance and, indeed, we provide one of the most attractive plans in Canada in order to do so. Fraud cover is available under our plan only in the provinces where it is mandates by the regulator. In this difficult market for errors and omissions and related insurances, it is probably not available otherwise.

Similarly we believe that the provincial regulators are best able to set the standards in their jurisdictions for such matters as professional liability insurance, errors and omissions insurance, trust accounts, deposits and other fiduciary measures.

We do not believe that brokers should be required to "exceed" requirements for liability and E&O insurance. It is now quite expensive and, for some, difficult to get. The provisions of our Code reads as follows:

> A broker must ensure that all financial obligations are met and strive to meet all regulatory requirements for professional liability insurance, errors and omissions insurance, trust accounts, deposits or other fiduciary measures.

5. Confidentiality:

We currently have a provision respecting confidentiality in our Code. With the various provinces considering Privacy legislation, this Principle might require watching and amending as such legislation is in place throughout Canada or in regard to federal legislation where provincial legislation isn't forthcoming.

6. Conflicts of Interest

As we set out in the comments we submitted to the Sub-Committee:

> We have a provision in our Code, which reflects the recommended conflicts of interest Principle. The first sentence of your Principle causes us to try to envision the various circumstances a broker might run into. It seems that some would not arise through the acts of the broker and might be best 'worked' through by the broker and client. Perhaps it would be best to use the word "try" or 'attempt' so the sentence would start out "The intermediary should try to avoid situations…"

7. General Information Disclosure

a. Product Information

We have adopted the wording this section in our Code.

b. - Intermediary/Business Relationship Information

In considering this section, we have broken it into two parts, the first dealing with the business relationship and the second with compensation.

Disclosure of Business Relationship

In regard to this section, we see no problem with the requirements set out in the initial sentence. We believe that there ought to be a requirement for the protection of the client that the intermediary disclose if he/she is contractually bound to sell the products of one or more financial institutions or, alternatively, is free to sell the best product for the client. We have a requirement in our Code as follows: "An IFB broker must maintain his/her independence within IFB membership requirements." This lets the client know

that the broker isn't recommending a financial product over another because he/she has no alternative.

As independents, our members are not aware of the inner workings of the financial institutions they deal with which are often complex organizations with cross dealings between internal or related units which aren't widely disclosed. A captive agent would be expected to have a more thorough knowledge than an independent one.

Disclosure of Fees and Commissions:

In our above-mentioned letter to the sub-Committee, we said the following about this topic:

> Disclosure of commissions in the life insurance industry is a difficult and controversial issue, and one which we see little benefit for the consumer. We think that, as part of the disclosure process, an intermediary should disclose to the consumer whether he/she will be compensated paid by means of salary, commission, or on a fee for service basis should a transaction be entered into. However, we do not believe that the disclosure should include the amount of the commission or salary. (A fee for service would, of course, need to be agreed to between the parties.)

We were therefore pleased to see that in the current proposal, this section has been changed from that initially recommended and feel that the amendment has gone in the right direction.

However, we believe that is should simply require a disclosure which would indicate to the client what type of monetary incentive the agent or broker would receive for the proposed transaction. It might make a difference to the client if there is to be a form of incentive compensation i.e. commission, or if there isn't any such incentive i.e. salary only.

This would require disclosure of the relevant compensation information for corporate employees which we think that this is appropriate, particularly where there is an element of incentive compensation behind it. The definition of 'intermediary' includes 'person, firm and/or a financial institution' and so the compensation of the financial institution employees would be included.

8. Client Redress

The requirements contained in the first sentence appear to us to be appropriate and are included in our Code.

However, in regard to sentences 2 and 3, we advised the sub-Committee as follows;

> It is our experience that while brokers do generally understand how to refer a client to the appropriate area to deal with complaints about the broker, there isn't

> a similar understanding about all the avenues the client can use for redress on complaints involving the companies. We believe that the insurance companies and other financial institutions are making great headway into making their Ombudservice known to the public and to brokers. Also, there are Ombudservices available through a regulator. We are using our Educational Summits and other means to assist brokers gain this knowledge. Due to these complexities we see some difficulties with the complying with the last sentence.
>
> It is our view that general industry redress mechanisms should be included in the transaction documentation provided by the financial institution so that the client can have ready access to it upon becoming aware of a problem – when he or she reviews the contractual material. The broker should be responsible for providing such information when a problem arises and he/she is consulted. At that time the client's focus is on redress and current information will be important as opposed to information which might have been relevant years before and has subsequently changed.

It seems to us that this information perhaps should be included in the Consumer document with a reference to the appropriate web sites.

9. Compliance

Again, we advised the sub-Committee in our September 16 letter, while IFB has a Code of Ethics for the guidance of our members, we do not consider ourselves to be a regulatory organization which polices compliance and provides a consumer complaint mechanism. We are a member driven trade organization which considers its main role to advocate on behalf of our members and provide them with the benefits they find helpful in carrying on their day-to-day business such as Errors & Omissions Insurance, continuing education, etc. Our Code is useful as a means to promote greater professionalism within the brokerage area in Canada and breaches of this Code can result in expulsion from the IFB.

We went on to say:

> We believe that what the Joint Forum is asking for should be limited to those organizations which perform a real regulatory role – not those which have primarily an advocating role for their members.
>
> As there are no recognized SROs in the life insurance industry, IFB suggests that the Principles and Practices enunciated by the Joint Forum would be best considered by the provincial regulators for the Financial Institutions, and Insurance Acts and Regulations of the various provinces. Of course, some of the Principles and Practices are already contemplated in regulations of some provinces.

IFB position on trade associations purporting to act as self-regulatory organizations ("SROs") was set out in our response to the Ontario Securities Commission Five Year Review Committee Draft where we stated as follows:

> IFB agrees that there is a potential conflict of interest between a SRO's role as a trade association and its responsibilities as a SRO and suggests that before any new SRO be approved, that it divest itself of its role as a trade association.

The Committee considered this issue and came to the following recommendation:

> The Committee recognizes that there is considerable potential for conflict between an SRO's role as a trade association and its responsibilities as an SRO. Ideally, we believe that trade association and SRO functions should be carried out by two separate bodies, each with distinct governance structures. In this regard, the body charged with the SRO role should ensure that at least 50 per cent of its directors are independent from its members. We support the model adopted by the Securities Industry association and the NASD in the United States."

As we advised, we are utilizing these Principles and Practices to a large extant in our Code of Ethics which will form a guide to our members of 'best practices'. We consider this to be of considerable value. However, we also believe that it is unrealistic to expect the vast majority of non-IFB intermediaries to follow these practices unless and until they are adopted as part of the regulatory framework.

We also should point out that the vast majority of life insurance and mutual fund brokers and agents in Canada do not belong to any industry association.

10. Definitions

The inclusion of 'potential client' in the definition of 'client' might be better included if there was an element of the potential client being in the process of retaining the intermediary. Otherwise, the standards might be too high for an intermediary dealing with a potential client who never becomes a client and may not have even intended to. We use the word 'client' in our Code.

Industry Examples:

With regard to the industry examples, we advised the Sub-Committee as follows:

> We note that in the Companion Piece – Examples for Life Insurance Agents the most of the examples given relate to regulations already in place in at least one jurisdiction. If the regulators could develop a standardized wording throughout Canada, these items could be covered off as requirements for all brokers.
>
> The Companion Piece – Examples for Securities Representatives relates to our members who engage in the mutual fund business. The MFDA is an SRO for

Dealers. There are many issues relating to sales representatives which are not regulated. An example is the example relating to business operations. It relates to the dealer not the representative. As mentioned above, there are issues with MFDA concerning the confusion caused by it's requirements about advertising and client communications. Our members feel that such requirements serve to confuse the client.

A Consumer's Guide To Financial Transactions

We advised the Sub-Committee in our letter that we felt that the Guide went too far in suggesting that the consumer 'should shop around' when life insurance sales, in particular, is a field based on trust often built up through years of interaction between broker and client. It seems to us that the client may be better served in relying on an existing long term relationship that to jump to Internet transactions, for example. It should at the most say that one 'may' want to shop around.

We also suggested that the next sentence should also include brokers as sources for telephone, mail or Internet transactions – some of our members provide such services.

Considering the individual items, item number 6 should include companies and entities – it isn't just salespersons who might have a conflict of interest. Number 7 deals with the issue of disclosure of compensation about which we commented above.

Number 8 deals with complaint and client redress information which we believe should be provided by the company in the contractual documentation and be made available to through the broker or company when a problem arises. As well, the availability of the various Ombudservices and their web addresses could be shown.

Conclusion:

IFB commends the Joint Forum for this initiative, particularly as the consultation involves regulators and industry participants from across Canada and across the financial services industry. We also believe that the adoption of such Principles and Practices with a proper enforcement mechanism would be a huge step in protection of the customer for financial services. This is a far better and more workable process than the highly intrusive *Fair Dealing Model* being sponsored by the Ontario Securities Commission.

We will be pleased to discuss or answer any questions you may have. Please feel free to contact John Whaley at the address shown on the letterhead, by phone at (905) 279-2727, fax (905) 276-7295 or by Email at jaw@ifbc.ca.

Sincerely,

David Barber
President

John Whaley
Executive Director

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May 29, 2003

Mr. Stephen Paglia
Senior Policy Analyst
Joint Forum Project Office
Joint Forum of Financial Market Regulators
17th Floor - 5160 Yonge Street
Box 85,
North York, ON
M2N 6L9

Dear Mr. Paglia:

Re: Joint Forum of Financial Market Regulators - Principles and Practices for the Sale of Products and Services in the Financial Sector

We are writing in response to the request for comments on the Principles and Practices for the Sale of Products and Services in the Financial Sector ("Principles and Practices") released by the Joint Forum of Financial Market Regulators (the "Joint Forum") on March 6th, 2003. We have reviewed the Principles and Practices with our Members and are pleased to offer the following comments.

General

We applaud the Joint Forum's goal to develop the Principles and Practices as a way of ensuring that all financial intermediaries conduct themselves fairly and professionally in their dealings with Canadian consumers. We have frequently emphasized the need to ensure consistent consumer protection measures across participants and products in the financial services sector. We are pleased to see the Joint Forum taking strides in that direction through the release of the Principles and Practices, particularly given the Joint Forum's acknowledgement that some intermediaries remain unregulated.

Specific Comments on the Principles and Practices

Intermediaries that are already regulated

The Principles and Practices define "financial intermediary" to include "a participant in the financial services industry who markets products or provides financial advice or services to clients", noting specifically that this is intended to include "securities registrants". You confirmed that the intention was not to capture product manufacturers but as currently drafted, the definition appears broad enough to capture them. Perhaps the definition of "financial intermediary" could be clarified to ensure there is no confusion on this point.

As registrants and members of a SRO, our distributor Members find that many of the Principles and Practices replicate what is already contained in their SRO rules and the applicable securities

legislation in the jurisdictions in which they conduct business. They are already required to have compliance structures in place to meet those requirements. For these reasons, we are unsure if layering the Principles and Practices overtop of existing rules and regulations will serve to enhance investor protection. In fact, we are concerned that this may create confusion for our Members, particularly if there is a conflict between the Principles and Practices and existing rules and regulations.

Conflicts with existing rules and regulations

Elements of the draft Principles and Practices conflict with the rules and regulations to which our Members are already subject, as examined below.

1. Disclosure

The disclosure requirements in the Principles and Practices contemplate the provision of relevant information before the client makes an investment decision. This does not reflect the model used by most intermediaries in our industry, who are required to provide the prospectus within two days of the investment decision under legislation which also gives investors the right to void an investment decision after the fact. The status of the Joint Forum's Concept Proposal 81-403 - Point of Sale Disclosure is still very preliminary. Until that Concept Proposal is further developed and possibly adopted as a rule, we think the Principles and Practices should reflect the range of methods of product disclosure used by various financial intermediaries.

2. Holding Out

Section 4.b of the Principles and Practices would require intermediaries to inform clients of the business licenses and registrations held by the intermediaries, thereby potentially inviting conflict with s. 44 of the *Securities Act (Ontario)* which prohibits advertising a registration.

3. Financial Accountability

The Principles and Practices suggest that financial intermediaries should not only have insurance in place to compensate clients who suffer a loss but that they should "strive to exceed" all existing requirements for professional liability and errors and omissions insurance. Mutual fund dealers are already required to meet minimum capital requirements (depending on their dealer level) and obtain insurance coverage and financial institution bonds as conditions of membership in their SRO. They are also required to participate in an investor protection fund. These requirements were designed to provide appropriate coverage of risks.

Enforcement

In the Backgrounder published with the Principles and Practices, the Joint Forum observes that if the Principles and Practices are adopted widely by various SRO's and industry associations, the standard they set will become the norm and that it then "might be possible for regulators to cite the standards to bolster their decisions in individual cases".

This gives us cause for concern, particularly where the Principles and Practices exceed the standard in existing regulation, for example, in relation to disclosure. We have no difficulty with firms voluntarily choosing to exceed a standard, but we are very concerned if regulators review and enforce against voluntary standards. In effect, this is a way to make a new legislative standard without going through the legislative amendment or rule-making process. It is one thing for industry participants to define a voluntary standard. It is, in our view, a very different thing for regulators to create a "voluntary" standard and then tell the industry that it is in its best interests to comply. At that point, the word "voluntary" is no longer applicable. In those circumstances, we believe it would be improper to hold an intermediary accountable to the "voluntary" standard in a compliance review or an enforcement proceeding.

Voluntary Adoption

The Joint Forum is currently proposing that the Principles and Practices be adopted on a voluntary basis and that industry associations and SROs promote their adoption, for example, by making them a condition of membership or by developing some type of enforcement mechanism. IFIC has no regulatory oversight or enforcement capability to ensure compliance with the Principles and Practices by our Members.

The voluntary approach will lead to gaps in coverage for financial intermediaries that (i) are not regulated and do not belong to an industry association or, (ii) do belong to an industry association that has no ability to monitor its members for compliance. In fact, the latter group may be afforded undue credibility for representing that they uphold the Principles and Practices, since no regulator or industry association will be able to verify it.

To the extent that the Joint Forum is seeking to raise the bar for certain financial intermediaries that are currently largely unregulated, we think that its focus should turn to finding ways to bring those intermediaries under an appropriate regulatory framework.

We appreciate having the opportunity to make these comments. Should you wish to discuss any of them further, please do not hesitate to contact me at (416) 363 2150 ext. 271 (jmountain@ific.ca) or Leslie Byberg, Senior Counsel, Regulation at (416) 363 2150 ext. 473 (lbyberg@ific.ca).

Sincerely,

"ORIGINAL SIGNED BY LESLIE BYBERG FOR JOHN MOUNTAIN"

John Mountain
Vice President, Regulation

----- Message from Marvin G Baer <mgb1@qsilver.queensu.ca> on Wed, 28 May 2003 11:35:21 -0400 (EDT) -----

To: Stephen Paglia <SPaglia@fsco.gov.on.ca>
Subject: Re: Joint Forum Consultation on Practice Standards Closes on May 29, 2003

Dear Mr. Paglia

Thank you for reminding me of the deadline for comments on the proposed "Principles and Practices for the Sale of Products and Services in the Financial Sector." I think the Consumers Advisory Committee of FSCO should support the adoption of these Practice Standards. However, I am disappointed that at least some of the principles are not compulsory.

The principles that should be compulsory include adequate handling of complaints, adequate financial redress, quality assurance by industry associations, and compensation schemes for intermediaries that do not create a conflict of interest. These relate to Principles 4,6,8 and 9 of the document.

Principle 8 Client Redress and 9 Compliance

While intermediaries should be encouraged to handle complaints or disputes in a timely and forthright manner, they should be required to refer them to the appropriate person or process established by industry associations in a timely way. Industry associations should be required to establish a process for handling complaints and should be required to report to government regulators on the number, nature and disposition of complaints or disputes.

Adequate financial redress for injured consumers ought to be compulsory. This should be arranged through industry associations and not be dependent on the financial resources of individual intermediaries.

If membership in an industry association is not a prerequisite to acting as an intermediary, then industry associations ought to be encouraged to foster a public campaign indicating the benefits to consumers of dealing with members. Of course this assumes that are some advantages, such as active enforcement by the association of the Principles and Practices, a dispute handling mechanism and financial redress for injured consumers.

6. Conflict of Interest

There should be more emphasis on the obligation of the financial service providers not to create potential conflicts of interest. This should specifically identify compensation structures which cause intermediaries not to act in the client's best interest.

2. Needs of the Client and 5. Confidentiality

In addition to making at least some of the principles mandatory, I think there needs to be fuller explanation of how the intermediary should act to meet Principles 2 Needs of the Client and Principle 5 Confidentiality. Clients will continue to be reluctant to make full disclosure of their financial needs if they believe this information will be used by the intermediary to pressure the client into switching existing financial products to a new provider. I do not believe that the general exhortation in Principle 1 will prevent this from happening.

The principle of confidentiality will have very little force if intermediaries routinely ask for the client's permission to waive the requirement. The permission may be too readily granted by clients who are not fully informed of the extent and significance of the proposed disclosure.

Please convey my comments to the Sub-committee on Practice Standards.

Yours sincerely,

Marvin G. Baer
Member, FSCO Consumer Advisory Committee and
Professor Emeritus
Faculty of law
Queen's University
Kingston, Ont. K7L 3N6.

----- Message from "Bob Lesperance" <boblesp@cogeco.ca> on Tue, 11 Mar 2003 14:08:44 -0500 -----

To: "Stephen Paglia" <SPaglia@fsco.gov.on.ca>
Subject: 3-11-03 - ConsultationPackage = Formal comments -Bob Lesperance

Dear Mr. Paglia,

My formal comment letter regarding the consultation package if the previous questions asked are not meaningful and my concerns have not been addressed, is as follows.

The reports, samples I reviewed were long and logically created. The flow of each document was easily followed and appear to address all know concerns in a very professional manner.

I am looking forward to receiving to receiving a draft and or final copies of all the same document you sent to me to review and comment on.

Robert J. Lesperance, CARP
Canada's Association for the Fifty-Plus

May 15, 2003

Mr. Stephen Paglia
Senior Policy Analyst
Joint Forum Project Office
Joint Forum of Financial Market Regulators
5160 Yonge Street, 17th Floor, Box 85
North York ON M2N 6L9

Dear Mr. Paglia:

RE: Joint Forum Practice Standards Project – Stakeholder Consultation

A Consumer's Guide to Financial Transactions, Item 1 states "Your interests come first before the interests of sales people and companies."

Your umbrella document "Principles and Practices for the Sale of Products and Services in the Financial Sector, Item 4 (F) Financial Accountability states that "The intermediary must ensure that all financial obligations are met and should strive to exceed all **existing** requirements."

We believe it is incumbent upon the Project to review the existing requirements and to set minimum requirements that reflect the obligations an intermediary has to the consumer. Bonds of $20,000 and "held in trust" rather than obligatory Trust Accounts do not ensure all financial obligations are met.

Yours truly,

J. M. Roberts
Assistant Vice President
Commercial Lines

cc: Larry Fogg
J.M. Hall