

Joint Forum of Financial Market Regulators

Forum conjoint des autorités de réglementation du marché financier

Summary of Comments and Responses on Principles and Practices for the Sale of Products and Services in the Financial Sector

1. INTRODUCTION

On March 6, 2003, the Joint Forum of Financial Market Regulators (Joint Forum) published a consultation package entitled *Principles and Practices for the Sale of Products and Services in the Financial Sector*.

This project is the result of the Joint Forum's recognition of the varying levels of regulation that currently exist for intermediaries. These regulations vary by jurisdiction, by type of intermediary, and by the regulator(s) responsible for oversight.

The consultation package was developed by the Joint Forum Sub-committee on Practice Standards which has the following mandate:

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

This project provides an opportunity for the Joint Forum to develop, in a uniform, forward-looking way, standards of professionalism and fair conduct that Canadian consumers should be able to expect in their financial transactions. The result of this project, therefore, will be to provide a common language to express best practices that should apply to the conduct of all financial intermediaries in their dealings with consumers of financial products and services.

2. COMMENTS RECEIVED

During the comment period, which expired on May 29, 2003, the Joint Forum received 17 submissions (a complete list can be found in Appendix 1). The Sub-committee on Practice Standards has considered all submissions received and would like to take this opportunity to thank everyone for providing their comments.

Copies of the comment letters may be viewed at either of the following websites:

- Ontario Securities Commission (www.osc.gov.on.ca under "Rules & Regulation\ Rulemaking & Notices\ Rules, Proposed & Final"); or
- Canadian Council of Insurance Regulators (www.ccir-ccra.org under Joint Forum of Financial Market Regulators\Joint Forum News\Joint Forum Practice Standards Project Stakeholder Submissions)

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3. SUMMARY OF REVISIONS

The Sub-committee on Practice Standards established a Working Group to consider the comment letters that were received. Each comment was carefully considered and a response was developed. Where appropriate, revisions have been made to both the Principles and Practices document and the Consumer's Guide. A blackline copy of each is attached.

Changes made to the Principles and Practices document were as follows:

- The introduction was revised to clarify the voluntary nature of the project, as well as more clearly outline the fact that there is no intention to supercede regulatory requirements.
- Principle #9 dealing with compliance has been deleted from the Principles and Practice document. Instead, regulators' expectations regarding this project have been more clearly set out in the introduction.
- Principle #4b dealing with holding out has been revised to deal with concerns that the wording was in conflict with s. 44 of the *Securities Act (Ontario)* which prohibits advertising a registration.
- Principle #4f dealing with financial accountability has been slightly revised to indicate that there may be situations where intermediaries will want to exceed minimum regulatory requirements for items such as professional liability insurance and E&O insurance.
- Principle #5 dealing with confidentiality has been revised to deal with concerns that the wording was potentially in conflict with federal and provincial privacy legislation.
- Principle #6 dealing with conflicts of interests has been revised to clearly indicate that the intermediary must avoid potential conflicts that he or she is aware of.
- Principle #7 dealing with general information disclosure has been revised with suggested wording from CAFII to help clarify that only information relevant to the purchase decision should be provided to the consumer.
- Principle # 8 has been revised to clear up confusion as to the timing of the intermediary's obligation to provide clients with information pertaining to redress mechanisms.

Changes made to the Consumer's Guide were as follows:

- The introduction has been revised slightly to make more neutral the wording of the suggestion that consumers should "shop around" before dealing with any particular intermediary more neutral.
- Paragraph #4 has been revised to remove the vagueness of the reference to "high standards of professionalism" and to remind consumers that if they are in doubt about any intermediary's qualifications or conduct, they can always contact the appropriate regulatory authority.

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4. SUMMARY OF PUBLIC COMMENTS

The following is a summary of the comments received, together with the Joint Forum's responses:

Issue	Comment	Response
Inappropriate Attempt to Fill Perceived "Gaps" in Provincial Legislation	One commenter stated that the overall intent of the project appears, at times, to be to fill perceived "gaps" or inadequacies in provincial legislation. In certain areas the principles and practices and the supporting documents would impose obligations that are "higher" than those currently specified in relevant provincial laws. The commenter believes that this is neither appropriate nor feasible.	In some areas the principles and practices may ask intermediaries to go beyond what is explicitly required by law. That is because regulatory requirements only specify minimum obligations that must be complied with. This document, on the other hand, sets out best practices for the sale of financial products and services that intermediaries should strive towards as professionals. Furthermore, we believe the principles and practices will help to provide consumers with a benchmark to assess the conduct of any financial intermediary with whom they currently have a relationship, or are considering establishing a relationship.
Overlap or Conflict with Regulatory Requirements	Five comment letters indicated concern that the documents propose measures that are potentially, if not fully, inconsistent with certain federal or provincial laws. This could create confusion, particularly if there is a conflict between the principles and practices and existing rules and regulations.	This is no intention to create any confusion or regulatory overlap. If any principle or practice is inconsistent with a provision of an applicable law, regulation or rule, the latter will take precedence. It must be remembered that this project is not a regulatory initiative since, at this point in time, it depends completely on the willingness of industry associations and intermediaries to voluntarily adopt the standards that have been laid out. What the Joint Forum is seeking to do, however, is set out some general best practices that should apply to all intermediaries regardless of the product or service being sold or the regulatory regime that applies.
Jurisdictional Authority	Two comment letters indicated that potential jurisdictional issues might come into play. For example, banks and bank employees are a federal responsibility, therefore, the principles and practices should not apply to them. Furthermore, the Financial Consumer Agency of Canada has been mandated with the task of monitoring the implementation of voluntary codes of conduct or practice that have been adopted by federally regulated financial institutions.	Since this is not a regulatory initiative, the issue of jurisdictional authority should not be a concern. If banks, for example, agree with the principles that have been put forward, they could voluntarily create a code of conduct reflecting the Joint Forum's principles and practices.

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Issue	Comment	Response
Relevance of Principles and Practices to the P&C Sector	One commenter noted that some of the measures proposed appear to either lack relevance to, or consideration for, the nature of the P&C sector. Some of the provisions are at odds with how P&C regulators and industry associations currently operate, or would significantly increase the administrative burden of insurance brokerages, most of which are small businesses.	The principles were not written to reflect the way the sectors currently operate. They were written to identify best practices that should apply in the sale of financial products and services so as to ensure a consistent level of service and protection for consumers. The Joint Forum does not expect industry associations to adopt the principles and practices word for word, however, if an association were to do so, that would certainly be acceptable. From this perspective, there is nothing that would stop the P&C sector from developing a code of conduct that is more in line with the realities of that particular sector, as long as that code reflects the principles and practices that have been set out.
Principle #1 – Interest of the Client	One commenter stated that a very narrow interpretation of Principle #1 could limit an insurer's legitimate activities to address fraud.	Individual principles should not be looked at in isolation. There is no intention to limit the ability of intermediaries to address possible cases of fraudulent activity. The very narrow interpretation being advanced is clearly contrary to the spirit of the principles and practices as a whole. This is especially the case when one considers that Principle #3 states that an intermediary must not act on behalf of a client when there are reasonable grounds to believe that the transaction is of an unlawful nature.
Principle # 3 -	One commenter suggested deleting 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.	The term “reasonable” is used in various statutes and has been judicially interpreted so it should not create any confusion. What the Joint Forum is trying to convey here is that there will be certain situation where the facts and circumstances known by the intermediary should cause the intermediary to believe that there is a possibility that a transaction may not be lawful. When such situations arise, the intermediary should not turn a blind eye to the facts and circumstances and should instead refuse to assist the client in carrying out the transaction. Intermediaries should be relying on common sense to ascertain whether or not a problem might exist and should not ignore any warning signs.

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Issue	Comment	Response
Principle #4 Professionalism	One commenter stated that Principle 4 needs to be clarified because financial intermediaries could be confused by the term “high standards of professionalism”.	<p>This principle already sets out examples of what the concept of professionalism pertains to. In reviewing the principle, however, we have decided to delete the word “high”. This change was made to denote the fact that standards are either ethical or they are not. A corresponding change was made to the Consumer’s Guide.</p> <p>It is important to note that all principles were purposely written at a high level. In adopting them as the underlying basis of their own codes of conduct, industry associations and other organizations are free to provide any additional specific guidance that might be relevant to the intermediaries that they represent.</p>
Principle # 4(a) Education	One commenter noted that this principle sets a high standard of training and education for “intermediaries”. The standard seems appropriate for investment representatives, securities advisers, etc., but it may be too high when applied to staff who handle routine transactions.	<p>Principle # 4(a) clearly states that intermediaries “must acquire an appropriate level of knowledge relating to their particular business” (emphasis added).</p> <p>It is important to remember that the principles and practices are intended to highlight best practices for all intermediaries in all financial services sectors. From this standpoint the principles are drafted at a very high level. In developing their own codes of conduct, industry associations or other organizations can further tailor these principles and practices more closely to the realities of their particular industry.</p>
Principle # 4(b) Holding Out	One commenter noted that this principle 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.	<p>The principles and practices are not legal requirements. They are meant as best practices and where there is a conflict with legal requirements the latter will prevail. However, we have reviewed the wording of this section and have made revisions that we believe should adequately address the concern set out in this comment.</p>

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Issue	Comment	Response
Principle # 4(b) Holding Out	One commenter noted that a financial planner can and should put their licences and credentials achieved in full view of all clients but asked if they need to actively draw attention to them.	We believe that the change made in response to the previous comment above also addresses the concern outlined in this comment. While there is no need to actively draw attention to any particular license or registration that is held, the consumer should be informed of the type of activities the intermediary is licensed or registered for.
Principle #4(c) Advertising and all Other Client Communication	One commenter noted some difficulties with this principle from the mutual fund side. The commenter stated that MFDA rules would not allow the advisor to comply with this Principle. As an example the commenter referred to the MFDA's requirement that signage and/or logos of the advisor and the dealer be of equal size and prominence.	This comment deals with a regulatory matter that falls outside the scope of this project. The commenter has already alerted the MFDA to this concern and it is up to the MFDA to determine whether any changes to their rules are required.
Principle # 4(e) Fair Practices	One commenter noted 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'.	We agree that there is some overlap but we do not feel any change is necessary. The purpose of this section is to provide intermediaries with some examples of what professionalism means in practice. There is bound to be some overlap as many of the principles are interrelated.
Principle #4(f) – Financial Accountability	Three comment letters expressed concern with the suggestion that financial intermediaries should "strive to exceed" all existing regulatory requirements pertaining to financial accountability.	Although certain intermediaries may already have appropriate coverage requirements in place, other intermediaries may not. The document is written generally to cover all intermediaries that are involved in the sale of financial products and services and is not limited to any particular sector. Regulatory requirements that are in place generally set out minimum standards that intermediaries are required to follow whereas the purpose of this document is to set out best practices which may, in some cases, exceed what is required by regulation. On this basis, all intermediaries should review their particular businesses and determine what is appropriate for their circumstances. This could mean going above and beyond what regulators require. To clarify this point we have added the words "where appropriate" to this principle.

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Issue	Comment	Response
Principle # 5 Confidentiality	Two comment letters expressed concern that the wording of this principle could be in conflict with federal and provincial privacy legislation.	The introduction to the Principles and Practices clearly states that “[if] any principle or practice is inconsistent with a provision of an applicable law or regulation, ...the applicable law, regulation or rule will take precedence”. However, we have revised the wording of this Principle to ensure greater consistency with federal and provincial privacy legislation. We have also revised the definition for “personal information”.
Principle # 6 Conflict of Interest	One commenter suggested incorporating the word “try” or ‘attempt’ so the sentence would start out “The intermediary should try to avoid situations...”	Conflicts of interest can be avoided by simply making appropriate disclosure of the conflict to a client. Clearly an intermediary will not be able to avoid a conflict if he or she is not aware that a conflict exists. At the same time, however, an intermediary should not ignore the possibility that a conflict might exist. In this regard, we have added wording to the commentary to point out that intermediaries should conduct proper due diligence to ensure no actual or potential conflicts of interest exist.
Principle # 6 Conflict of Interest	One commenter asked whether a better explanation could be provided for what a conflict of interest consists of.	Although this comment addresses a valid concern, it would be impossible to define every conflict that could potentially exist. The possibilities would also probably vary depending upon the industry. The onus here is really on the intermediary. They are the ones with the pertinent information necessary to know whether or not a conflict exists and it is up to them to inform clients.
Principle # 7 General Information Disclosure	One commenter noted that clients are certainly entitled to full disclosure but asked whether financial planners need to proactively force this information on to the client in every case.	It is the intermediary’s obligation to provide clients with appropriate disclosure. It is then up to the client to decide whether or not they wish to make use of the information provided.

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Issue	Comment	Response
Principle # 7 General Information Disclosure	One commenter noted that this principle contemplate the provision of relevant information before the client makes an investment decision. This does not reflect the model used by most intermediaries in the mutual fund industry, who are required to provide the prospectus within two days of the investment decision. Until the Joint Forum’s Concept Proposal 81-403 - Point of Sale Disclosure is further developed and possibly adopted as a rule, the Principles and Practices should reflect the range of methods of product disclosure used by various financial intermediaries.	The practices and principles set out in this document do not supercede any regulatory requirements that may exist. Instead they set out best practices that intermediaries should follow in their dealings with consumers. On this basis, information would ideally be provided either before or at the time of sale, as is contemplated by Concept Proposal 81-403.
Principle # 7(a) Product information	One commenter stated that this item appears to have been drafted with intermediaries other than 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 this point. To the extent that the issue of product information should be addressed at all, greater care must be taken to ensure that provisions are suitable to the sector, even if this means adopting wording that is considerably different for P&C brokers than other intermediaries.	Some of the wording may not be consistent with what happens in the P&C sector but the overall principle of product disclosure surely applies. It must be remembered that the principles and practices are drafted rather broadly and are meant to capture all types of intermediaries involved in the sale of financial products and services. Some of the examples of the type of information that must be provided may not apply to a particular industry. The commenter would certainly be welcome to provide its members with additional guidance on this point, or develop its own code that better fits the realities of the P&C industry while still reflecting the underlying spirit of the principles and practices outlined by the Joint Forum.
Principle # 7(b) Intermediary/Busi ness Relationship Information	One commenter expressed concern with the portions of the text dealing with compensation. 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.	Although it may exceed what provincial laws currently require, we believe it is appropriate for intermediaries to provide this type of disclosure to consumers. Again, these are intended to be best practices that should apply to the conduct of all financial intermediaries in their dealings with consumers of financial products and services. Furthermore, it is important to note that the focus of the disclosure is on the type and not the amount of compensation. It is not clear why this would be an administrative burden since, presumably, insurance brokers are aware of the compensation arrangements they have with the various companies they deal with.

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Issue	Comment	Response
Principle # 8 Client Redress	One commenter expressed concern that the wording in this principle suggests 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.	These principles have been developed to reflect financial industry best practices, rather than establishing entirely new or onerous requirements. Furthermore, many of the client redress mechanisms that exist have been established by industry groups (OBSI, CLHIO, GIO). This principle recognizes and reinforces the value of these industry initiatives.
Principle # 8 Client Redress	One commenter stated that 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.	Making adequate financial redress compulsory for all injured consumers is beyond the scope of this project. Industry associations are free to communicate with the public with respect to the benefits that exist in dealing with their members.
Principle # 9 Compliance	Several comment letters highlighted concern with this particular principle. They indicated that industry associations are voluntary in nature, and vary greatly in size and mandate. It would be inappropriate to expect industry associations to adopt compliance mechanisms to enforce the principles and practices which is the purview of regulators.	We have received a number of comments pertaining to Principle # 9. We have determined that this principle seems to have caused confusion as to the intended nature of this project and the role that industry associations might play. As such, we have decided to remove the principle from the document and we have clarified the project's purpose in the document's introduction. In particular, we are hopeful that the principles and practices will be incorporated or reflected into the codes of conduct of the various financial industry associations. If such a code of conduct is adopted, we would certainly encourage industry associations to have systems in place to promote and monitor adherence among their members. It should be made clear, however, that the Joint Forum cannot, nor does it intend to, force industry associations to put such mechanisms in place. Furthermore, although we think industry associations can play a key role, we do not intend to forget about financial intermediaries that are not part of any industry association. We hope to reach out to them through the publication and promotion of these documents within the financial services industry and among consumers.

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Issue	Comment	Response
Principle # 9 Compliance	One commenter expressed concern that financial intermediaries who do not belong to an industry association will essentially “fall through the cracks”. 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.	Requiring intermediaries to earn a designation is beyond the scope of this project. It is our intention to make sure these principles and practices are generally disseminated to all intermediaries, including those that are not a member of any industry association. We will also be communicating with consumers to make sure they are aware of these best practices and to make sure they know the types of questions they should be asking when they are dealing with an intermediary.
Definitions “Client”	One commenter stated that a ‘potential client’ should be limited to someone who is in the process of retaining an 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.	Determining when a consumer goes from becoming a “potential client” to an “actual client” would only increase complexity. Standards of ethics and professionalism are important in dealing with the public at all times, not just after a transaction takes place.
Definitions “Intermediary”	One commenter stated that the language in the definition of Intermediary is very broad and wondered whether retailers and car dealers offering creditor insurance through affiliated or non-affiliated insurance companies during the course of financing sales would be caught. Clarification in the definition was requested to ensure that insurance transactions that are incidental to a sale on credit are not captured by the definition.	The degree of applicability will depend on what retailers and car dealers are doing. Although they may not be “participants in the financial service industry” they may be “market[ing] products or provid[ing] financial advice or service to clients”. We believe the commenter would be in the best position to look at what principles apply to their members and would encourage them to adopt those principles as best practices. In the end, however, this is a voluntary initiative that is aimed at setting out best practices for intermediaries.
Definitions “Intermediary”	One commenter asked for clarification of the definition of intermediary. Specifically, they noted that intermediary should not include company adjusters because of their primary responsibility to represent the interest of the company.	The definition of intermediary does not include company adjusters since they do not market financial products or services to clients.

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Issue	Comment	Response
Definitions “Personal Information”	One commenter suggested that the definition of “personal information” be amended to be consistent with the one provided in <i>PIPEDA</i> , and any other pieces of provincial privacy legislation that may apply. The definitions in this Code should not result in intermediaries being held to a higher standard than provided in legislation.	It was never the intent of this project to define privacy requirements. Nor is it an attempt to supercede existing laws. The definition of personal information has been changed to reflect this.
Consumer’s Guide	One commenter indicated that substituting the term “salesperson/advisor” for “salesperson” would improve this public document.	We believe that the concern highlighted in this comment is already addressed by the fact that the Consumer’s Guide sets out several examples of “salespeople” that a consumer might deal with. Adding the term advisor might lead to some confusion since “advisor” is a defined term under securities laws.
Consumer’s Guide Introductory Paragraph	One comment letter stated that the Guide goes too far in suggesting that the consumer ‘should shop around’. At most the Guide should say that one ‘may’ want to shop around.	We have revised the wording in the Consumer’s Guide to deal with the concern that was raised.
Consumer’s Guide Introductory Paragraphs	One commenter stated that the Consumer’s Guide should highlight to the consumer the need to ask themselves whether they really need the service at all.	We believe that the concern outlined is adequately addressed by the principles relating to the interests and the needs of the client. All recommendations made by an intermediary should be for products and services that meet a client need.
Consumer’s Guide Introductory Paragraphs	One commenter suggested that the last sentence of paragraph 2 should also include brokers as sources for telephone, mail or Internet transactions.	We have already indicated in the document that there are various alternatives available to consumers. We do not think it would any value to come up with a non-exhaustive list of all the different types of intermediaries and methods of communication that are available to consumers.

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Issue	Comment	Response
Consumer's Guide Item #7	<p>One commenter suggested ending the paragraph after the word "involved" and then 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." The purpose of such a change would be to reduce the administrative and cost burden on intermediaries.</p>	<p>There is no intention to increase the administrative and cost burden on intermediaries. What we are trying to make clear, however, is that consumers are entitled to receive all information that is relevant to a transaction. We have added additional wording that we believe helps clarify this intent.</p>
Consumer's Guide Item #8	<p>One commenter noted that this item deals with complaint and client redress information which should be provided by the company in the contractual documentation and be made available through the broker or company when a problem arises. In addition, the availability of the various OmbudServices and their web addresses could be shown.</p>	<p>Although we like the idea that was proposed, it is beyond the scope of this project to mandate any specific manner of disclosure.</p>
Companion Documents - Industry Examples	<p>A number of comments were received with respect to the industry example companion documents.</p>	<p>The companion documents will not be part of the final package. They were only provided for illustrative purposes to give intermediaries in particular sectors an idea of how the principles might be applied. The principles and practices themselves are intended to be of general application. Industry associations and other organizations can use them as a basis for developing their own codes of conduct which can be drafted in a way that deals with the specific circumstances of the particular industry they represent.</p>

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APPENDIX 1

LIST OF COMMENTERS

Date	Party	Organization
March 11, 2003	Bob Lesperance	Canadian Association for the 50 Plus (CARP)
May 15, 2003	J. M. Roberts	SGI Canada
May 15, 2003	Donald Johnston	Financial Planners Standards Council (FPSC)
May 23, 2003	Oscar Zimmerman	Canadian Association of Financial Institutions in Insurance (CAFII)
May 26, 2003	David Barber & John Whaley	Independent Financial Brokers of Canada (IFBC)
May 28, 2003	Marvin G. Baer	FSCO Consumer Advisory Committee and Professor Emeritus Faculty of law Queen's University
May 29, 2003	Brian Evans	Federation of Canadian Independent Deposit Brokers
May 29, 2003	Rita Minucci	Association of Canadian Financial Corporations
May 29, 2003	Leslie Byrnes	Canadian Life and Health Insurance Association (CLHIA)
May 29, 2003	Terry Campbell	Canadian Bankers Association (CBA)
May 29, 2003	Priscilla H. Healy	Association of Canadian Pension Management (ACPM)
May 29, 2003	John Mountain	Investment Funds Institute of Canada (IFIC)
May 30, 2003	Mark Yakabuski & John Karapita	Insurance Bureau of Canada (IBC)
May 30, 2003	Steve Howard	Advocis
June 6, 2003	Brian Gilbert	Insurance Brokers Association of Canada
June 17, 2003	Stephen Stewart	Atlantic Blue Cross Care
July 3, 2003	David Phillips	Credit Union Central of Canada

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APPENDIX 2

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

The Joint Forum statement of *Principles and Practices for the Sale of Products and Services in the Financial Sector* has been developed by regulators from all jurisdictions except Quebec and across all financial product sectors.

The purpose of this document is to set out best practices that should apply to the conduct of all financial intermediaries in their dealings with consumers of financial products and services. It will also help to provide consumers with a benchmark to assess the conduct of any financial intermediary with whom they currently have a relationship, or are considering establishing a relationship. To this end, the Joint Forum has also developed a companion Consumer's Guide to help clarify the stated principles and practices for the benefit of consumers.

The Joint Forum is seeking voluntary endorsement of these principals and practices. It is expected that industry associations will inform their members of the existence of this document and encourage their members to adopt these best practices. ~~these principles and practices will be incorporated into the codes of conduct of financial industry associations and followed by all financial intermediaries in the distribution of financial products and services.~~ Ultimately regulators would like the principles and practices to be incorporated or reflected in the codes of conduct of financial industry associations and for adherence to those codes to be actively promoted. For financial intermediaries that are not part of any industry association, we hope to reach out to them through publication and promotion of these standards within the financial services industry and among consumers.

~~These principles and practices should apply to all financial transactions, without regard to the product category, the type of intermediary, or the means by which the purchase of a product or service is transacted.~~

In some areas the principles and practices may ask intermediaries to go beyond what is explicitly required by law. That is because regulatory requirements only specify minimum obligations that must be complied with whereas this document sets out best practices that intermediaries should strive towards as professionals. It is important to note, however, that the principles and practices are not intended to supercede regulatory requirements. If any principle or practice is inconsistent with a provision of an applicable law, ~~or regulation or rule, including a rule of a self-regulatory organization, whether recognized, exempt from recognition or otherwise authorized,~~ the

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applicable law, regulation or rule will take precedence. This includes any rule of a self-regulatory organization, whether recognized, exempt from recognition or otherwise authorized,

~~Associated with the principles and practices is a consumer guide and an industry specific set of examples. The purpose of these documents is to clarify the stated principles and practices for consumers and intermediaries respectively.~~

1. Interests of the Client

The client's interests take priority over the intermediary's interests and should not be sacrificed to the interests of others.

Commentary: This principle is paramount. All remaining principles and practices expand upon this fundamental principle.

2. Needs of the Client

In order to understand the client's interests, the intermediary must obtain or confirm information about the needs of the client and, when making a recommendation, must reasonably ensure that any product or service offered is suitable to fulfill those needs.

Commentary: In assessing the needs of the client, the intermediary should take into account the financial significance and complexity of the product or service being sold.

3. Legitimate Business Interests

The intermediary must collect enough information about the client and the transaction to reasonably determine the identity of the client and that the transaction is lawful. The intermediary must not act on behalf of a client when there are reasonable grounds to believe that the transaction is of an unlawful nature.

Commentary: When obtaining information about the client and his/her business, the intermediary must not continue to act for the client if it is known or should be known that the transaction is unlawful. In some circumstances, the intermediary will be required to report the transaction to regulatory authorities.

4. Professionalism

Intermediaries must act in good faith at all times. They must acquire an appropriate level of knowledge relating to their particular business and meet high professional ethical standards of professional ethics, including acting with honesty, integrity, fairness, due diligence and skill.

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The concept of professionalism includes but is not limited to the following:

- a. **Education:** In a rapidly changing financial marketplace, intermediaries must keep abreast of changes in products, regulations and other factors that will affect their ability to provide high standards of service to clients. Education, including continuing education, is a necessary component of professional skill.
- b. **Holding Out:** An intermediary must inform the client of the types of activity -he or she is licensed or registered for, as well as the business licenses and registrations held, as well as the business name(s) of firm(s) under which he or she is licensed/authorized to operate.
- c. **Advertising and all other Client Communications:** Intermediaries must ensure that all references to their business activities, services and products are clear, descriptive and not misleading.
- d. **Business Operations:** Intermediaries must ensure that their financial records are properly maintained and that they follow sound business practices.
- e. **Fair Practices:** Intermediaries must not engage in practices that intentionally mislead the client or place the interests of others ahead of the client's interests. Unfair practices are contrary to the underlying spirit of the principles and practices set out in this document. The intermediary must refrain from practices that contravene, directly or indirectly, the spirit or intent of any of the requirements of these principles and practices.
- f. **Financial Accountability:** Intermediaries should have appropriate resources in place to compensate clients who suffer a loss as a result of an error, omission or fraudulent activity that is caused by the intermediary or someone for whom he or she is responsible. The intermediary must ensure that all financial obligations are met and should strive to exceed all existing requirements, where appropriate, for professional liability insurance, errors and omissions insurance, trust accounts, deposits or other fiduciary measures.

Commentary: Professionalism means that intermediaries will strive to adhere to best practices and will not be limited to standards required under law or regulation.

5. Confidentiality

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, or as required by applicable laws or regulations, -to divulge personal information to others for reasonable purposes. Intermediaries must not use personal information to the detriment of the client. However, personal information may be divulged without client consent to, for example, law enforcement agencies when required

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~~or authorized by law.~~

Commentary: The requirement of confidentiality extends to participants in group plans. A basic requirement for intermediaries is to ensure that proper care is taken when handling documents that contain personal information provided by clients/group plan participants. Intermediaries must not use personal information to the detriment of the client. The damage to the client is the same regardless of whether personal information is divulged to someone willfully or as a result of careless handling of files.

6. Conflicts of Interest

The intermediary must avoid entering into situations where the underlying circumstances could ~~tend to~~ prejudice or bias the direction of advice he or she provides. In the case of a conflict of interest, the client must be made aware of the nature of the conflict before the transaction takes place.

Commentary: Intermediaries should always turn their mind to all the facts and circumstances with an eye towards determining whether any actual or potential conflicts of interest might exist. If a situation arises where a conflict does exist and cannot be avoided, the condition can only be mitigated by objective, plain-language disclosure to the client of the nature and impact of the conflict. The client must then be given an opportunity to halt the transaction, to seek other professional advice, or to knowingly proceed with the transaction.

7. General Information Disclosure

The intermediary has the responsibility to ensure that the client is fully informed of all relevant information before the client makes a decision. The client is entitled to disclosure of the risks and benefits of the financial products being considered and information about the intermediary's business relationships that are relevant to ~~as they pertain to~~ the transaction.

Commentary: There are two aspects to disclosure and both must be satisfactorily taken into account under these principles and practices: (1) "product information" regarding product or service features, as well as the main risks and benefits inherent in the transaction or purchase; and (2) "intermediary information" regarding relationship issues which are important to the consumer.

- a. **Product Information:** In addition to clearly describing the product or service for the client and the ways in which the transaction will fulfill the needs of the client, product information includes disclosure of important assumptions underlying any illustrations or examples that have been provided to the client, as well as the fact that actual results may differ significantly from those shown. The intermediary should avoid using examples or illustrations which he or she knows, or ought to know, are based on unusual results or a period that generated much better than normally anticipated performance.

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- b. **Intermediary/Business Relationship Information:** The intermediary must include the names of organizations or persons that are, to his or her knowledge, directly ~~or indirectly~~, providing remuneration to the intermediary; the relationship between the intermediary and the firm whose product is being considered; and any relationship(s) among the firms directly involved in a transaction. The intermediary should also disclose any ~~Any other~~ direct or indirect relationships that are relevant to the transaction ~~should also be disclosed by the intermediary~~. In cases where this information has not been disclosed because the intermediary is unaware of it, it is expected that he or she will have first made a reasonable effort at due diligence. The intermediary must also disclose all fees payable by the client, the method of the intermediary's remuneration (disclosure of specific amount is not required, but disclosure of the type of compensation is, i.e., fixed and percentage commission, salary, or other) and must disclose the existence of any other benefits from sales incentive programs related to the transaction (note: as with compensation, this disclosure only applies to the type of compensation the intermediary receives, not the specific amount).

8. Client Redress

The intermediary must deal directly with all formal and informal complaints or disputes, or refer them to the appropriate person or process, in a timely and forthright manner. In situations where a dispute cannot be resolved intermediaries should provide to clients, preferably in writing, the redress mechanisms that can be pursued, depending on the product and type of complaint involved. The intermediary, therefore, must be fully aware of all applicable processes for dealing with complaints ~~as well as and must disclose to all clients~~ the channels available for pursuing different types of complaints (e.g., regarding conduct, service, or product performance). ~~In the case of an individual authorized to do business in more than one sector, it is particularly important that the client be made aware of the different lines of accountability for complaint handling that are associated with each transaction. In situations where a dispute cannot be resolved intermediaries should provide to clients, preferably in writing, the redress mechanisms that can be pursued, depending on the product and type of complaint involved.~~

9. Compliance

~~If a financial industry association purports to set standards for its members, it is expected that such standards would be set out in a code of conduct which would incorporate the principles and practices set out in this document. The association is also expected to have a system to promote compliance and develop systems to resolve complaints against their members. Intermediaries who are not members of an association are expected to follow the principles and practices on the basis of adhering to industry best practices.~~

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109. Definitions

“**Client**” means any customer or potential customer with whom an intermediary interacts in the course of his or her business.

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

“**Personal Information**” has the same meaning as defined by existing federal and provincial privacy legislation. ~~means information that the client would expect to remain confidential because it was conveyed for the purpose of the financial transaction.~~

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APPENDIX 3

A Consumer's Guide to Financial Transactions

As a financial consumer, it is in your interest to find a suitable company and/or accredited financial salesperson to handle your business. You have the responsibility to provide fair and honest information about your financial needs. 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

Salespeople may be insurance agents or brokers, investment advisors, educational savings plan salespeople, loan brokers, mortgage brokers, financial planners or other advisors, securities sales representatives and others. You ~~should~~may want to take the time to shop around meet with and talk to several salespeople to find the right person for your particular needs. You may also choose to deal directly with companies through telephone, mail or the Internet.

In your dealings with a salesperson or a 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.

This document sets out basic principles of fair transactions which you, as a consumer, should expect when you buy a financial product, whether you deal directly with a company or through a salesperson.

- 1. Your interests come first, before the interests of salespeople and companies.*
- 2. If you choose to have a salesperson, you should expect to have your financial needs assessed by the salesperson and, when he or she makes a recommendation, to be offered products that meet your needs.*
- 3. You should expect your instructions to be carried out faithfully. Your salesperson or company must not transact business which is unlawful.*
- 4. You should expect your transactions to be handled with high standards of professionalism by a qualified salesperson. If you have any doubts you may inquire about the salesperson's qualifications or conduct with the appropriate regulatory body.*

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5. *You should expect to have your personal information safeguarded and only used for the purpose for which it was originally collected, unless you have given permission for it to be used for other reasons. Your personal information may be divulged without your consent to law enforcement agencies when required or authorized by law.*
6. *If you choose to have a salesperson, you should expect to be informed if he or she has a “conflict of interest”, and be given the opportunity to halt further dealings with the salesperson.*
7. *You ~~should expect~~ are entitled to receive all relevant information before making a decision about a financial product. This includes product features, risks and benefits, the company(ies) involved, all fees that will be charged to you, how the salesperson is paid, and whether he or she may receive benefits from sales incentive programs. It also includes 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.*
8. *You should expect to have any complaints dealt with in a timely and forthright manner. In the event that a dispute with your salesperson or company cannot be resolved, you should be given information, preferably in writing, about available avenues for resolving your complaint.*