

Joint Forum of Financial Market Regulators Forum conjoint des autorités de réglementation du marché financier

NEWSLETTER

FALL 2000

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NEWS...

FROM THE FALL BUSINESS SESSIONS

This is the second newsletter published by the Joint Forum of Financial Market Regulators (Joint Forum) for the purpose of keeping interested stakeholders informed about cross-sectoral, cross-jurisdictional developments and initiatives in Canada. This edition will focus on news from the fall meeting of the Joint Forum, held in Vancouver on October 23, 2000.

In response to a marketplace increasingly characterized by change and convergence, the Joint Forum was established early in 1999 by the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA), as a mechanism for coordinating and streamlining the regulation of financial products and services.

The driving force behind the Joint Forum's work is the recognition that by working together, securities, insurance and pension regulators can:

- \$ enhance consumer protection;
- \$ streamline and make more effective the regulation of financial services; and
- \$ adapt the regulatory system to the changing marketplace in a way that will enhance market efficiency, control costs and increase confidence in the regulated sectors.

Currently, the Joint Forum's ambitious agenda continues to focus on regulatory harmonization in the following areas:

- \$ proficiency requirements for financial planners,
- \$ individual variable insurance contracts (IVICs) and mutual funds,
- \$ investment disclosure in capital accumulation plans, and
- \$ intermediary proficiency and licensing.

In addition, the majority of securities and insurance regulators have now joined The Memorandum of Understanding that facilitates information sharing among jurisdictions. Moreover, initiatives are underway to bring CAPSA members into the agreement.

Since its inception, the Joint Forum's value as a mechanism for responding to new issues and to new opportunities for coordination has been illustrated on several occasions. A new project, undertaken over the course of the summer of 2000, provides further evidence. This project has involved the examination of various mechanisms to ensure that financial services consumers across Canada have access to a consistent, adequate level of service when they have concerns or complaints, irrespective of the type of product they purchase, the organization from which it was purchased, or the distribution channel used.

Following are details on this and other projects, as discussed at the Joint Forum's fall meeting.

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Consumer Complaint Management and Dispute Resolution

The driving force behind this new Joint Forum project is the belief that consumers and regulators will benefit from a comprehensive and integrated system that reflects the harmonization that is taking place across the financial services sector.

To consider the feasibility of creating such a system, the Joint Forum established a Sub-committee that met several times over the course of the summer. The recommendations that emerged from these discussions were first tabled and approved at the fall meetings of the CSA, CCIR and CAPSA, following which they were tabled and approved at the Joint Forum's Vancouver meeting.

The Sub-committee's principal recommendation is that the Joint Forum take the lead in establishing a cross-sectoral, cross-jurisdictional task force, with representation from the public and private sectors, that will have the mandate to design a consumer-centred, comprehensive and integrated approach to the management of complaints and the resolution of disputes for financial services consumers across Canada.

Furthermore, the Sub-committee has developed recommendations regarding the task force's authority, the scope of its inquiries, the anticipated deliverable and overall time line for its work, and the components to be included in a project and implementation plan for the new system. Those components include a definition of the sectors that should be included, a description of the services to be offered, and an explanation of how the new system will relate to regulators and to existing services. A number of governance and funding issues have also been identified for the task force's consideration.

In a nutshell, the concept is that financial services consumers would have “one window” access to a system that would handle their complaints and disputes promptly and fairly, in an inexpensive and independent fashion. (It should be noted that while Quebec has signalled agreement in principle with the objective of enhanced consumer protection, that province’s active participation in the Joint Forum’s dispute resolution project will be subject to further discussion with Quebec authorities.)

The Sub-committee is now in the process of setting up the task force. Once that is accomplished, further details will be communicated to interested and affected stakeholders.

The Sub-committee on Dispute Resolution is chaired by Doug Hyndman, Chair of the CSA, and Chair of the British Columbia Securities Commission.

Proficiency Requirements for Financial Planners

Insurance and securities regulators have been considering for some time how to adopt a common approach to standards for securities registrants and insurance licensees who hold themselves out to the public by any one of a number of titles that convey the concept of financial planning. Accordingly, a project to establish uniform proficiency requirements has been developed under the auspices of the Joint Forum. The model that has emerged will achieve harmonization for those provinces that intend to regulate financial planning (currently Ontario, Manitoba, Saskatchewan and Newfoundland). Other provinces (with the exception of Quebec, which already has a financial planner proficiency regime in place and British Columbia, which will be making some amendments to its financial planner proficiency and disclosure requirements) will be observing the experience.

A major step was taken in December 1999 when the CSA released proposed Multilateral Instrument 33-107, ***Proficiency Requirements for Registrants Holding Themselves out as Providing Financial Planning Advice***. The proposed Instrument creates uniform proficiency standards for individuals who are registered to trade or advise in securities and who use business titles that convey to consumers the impression that they are providing financial planning or similar advice, or offering financial planning or similar services.

Concurrently, insurance regulators have been considering the development of analogous regulations, by-laws or other instruments, so that insurance licensees would be bound by the same requirements.

Since the spring meeting of the Joint Forum, a number of significant developments have occurred:

- The CSA Financial Planning Committee has assessed the commentary received following publication of MI 33-107 and has proposed several changes. The revised Instrument and a summary of the comments received will be published in late December 2000 or early January 2001.
- Excellent progress has been made in developing the Financial Planner Proficiency Examination (FPPE) that will underpin the new proficiency regime. The FPPE was subjected to a pilot test on October 20, with some 138 volunteers in British Columbia, Saskatchewan, Manitoba, Ontario and Newfoundland completing a three-hour multiple choice test, plus a three-hour written test involving case studies. The results of the pilot test are now being assessed so that the FPPE can be refined and improved in preparation for the first formal sitting of the examination, which is expected to occur in March 2001. The new regime will come into effect shortly thereafter.
- Considerable progress has been made in the development of a governance structure for the new proficiency regime. Representatives of the educational providers for the Canadian Association of Insurance and Financial Advisors (CAIFA), the Investment Funds Institute of Canada (IFIC), the Canadian Bankers Association (CBA) and the Investment Dealers Association of Canada (IDA), have developed draft recommendations for the administration and delivery of a national, uniform and rigorous examination, including measures to ensure that there are common policies, practices and procedures in place to ensure fairness and equity for all who write the exam.

This work on the governance front is crucial. In order to meet the target date of early 2001 for orderly delivery of the FPPE and implementation of the proficiency regime, a workable governance structure that achieves regulators' public policy goals must be in place.

The structure developed and approved by the Joint Forum will see the establishment of an industry-based National Examination Steering Committee reporting to the Joint Forum. The Steering Committee will be supported by a National Examination Working Committee and a small, permanent Secretariat.

The Joint Forum's role will be to provide overall direction and oversight, to ensure harmonization across sectors and jurisdictions, and to resolve issues when agreement or consensus cannot be reached. The Steering committee will report at least annually to the Joint Forum.

The Joint Forum's role is pivotal to the new regime, since it is the only group with national and cross-sectoral dimensions and, therefore, the only group positioned to make the necessary decisions.

At the Vancouver meeting, Joint Forum members received a progress report on the financial planning initiative and discussed implementation of the governance structure. A key decision in this regard was that a sub-committee of the Joint Forum will be created for the purpose of executing the Joint Forum's responsibilities for the new regime.

Julia Dublin, Senior Counsel at the Ontario Securities Commission (OSC), is Chair of the CSA Financial Planning Committee. The committee includes a number of insurance regulators and Insurance Council representatives.

Regulatory Harmonization of IVICs and Mutual Funds

This Joint Forum project has as its goal the implementation of comparable Standards in the regulatory regimes that apply to mutual funds and individual variable insurance contracts (IVICs). IVICs are sometimes referred to as segregated funds.

While past studies have demonstrated that the regulation of IVICs and mutual funds is essentially the same, the Joint Forum has agreed that harmonization is warranted in several areas that cluster under the headings of: product regulation, disclosure regulation, manufacturer regulation, and distribution regulation.

A two-year plan for implementing 15 specific recommendations in these areas was approved in April.

At its October meeting, the Joint Forum received and discussed a report on the considerable progress that has been made in a number of areas, including :

- development of amendments to the insurance industry's IVIC guidelines to define the rights of consumers when fundamental changes are made to the product or contract;
- initiatives to harmonize the investment rules for derivatives usage and for investment practices (such as short selling, securities lending and investment in physical commodities);
- creation of a standardized consumer's guide that will enhance consumer education and simplify product disclosure;

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- development of amendments to the insurance industry's guidelines and the securities industry's rules to harmonize the provision to consumers of regular financial reports about the products they own;
 - release in July of a report ***Making It Mutual: Aligning the Interests of Investors and Managers - Recommendations for a Mutual Fund Governance Regime for Canada***, prepared by Stephen Erlichman;
 - establishment of a working group of insurance and securities regulators to develop relevant standards to protect the interests of consumers who have investments in small or start-up funds; and
 - development of initial commentary on the recommendation that deals with the need to make clear to consumers the respective duties and responsibilities of the product manufacturer, the product distributor and sales representatives.

In Vancouver, the Joint Forum also agreed to add to the mandate of the Regulatory Sub-committee on IVICs and Mutual Funds, a project to address concerns that have arisen as a result of inappropriate employee trading in IVIC units. Specifically, the Sub-committee will review whether or not controls are necessary. If controls are deemed to be appropriate, recommendations will be developed regarding the purchase, sale, and transfer of IVIC and mutual fund units by employees of product manufacturers. In addition, the Sub-committee will review the mechanisms for determining the value of IVIC and mutual fund units with particular regard, but not limited to, securities traded outside of North America, and the implications of 24-hour trading.

A draft of the consumer's guide will be brought forward at the Joint Forum's winter conference call meeting. It is anticipated that the final product will be completed and approved at the April 2001 meeting.

In the meantime, the Regulatory Sub-committee will continue to pursue implementation of the recommendations, in part through a working group comprised of members of both the mutual fund and securities industries and in part through working groups of insurance and securities regulators working within their own structures.

The Regulatory Sub-committee on IVICs and Mutual Funds is co-chaired by Grant Swanson, Director of Licensing and Enforcement for the Financial Services Commission of Ontario (FSCO), and Rebecca Cowdery, Manager of Investment Funds for the OSC.

Investment Disclosure in Capital Accumulation Plans

A project to examine the adequacy of the investment disclosure provided to members of defined contribution plans was launched by the Joint Forum a year ago.

Since then the scope of study has expanded to include other capital accumulation plans (CAPs) used as vehicles for providing retirement benefits to employees (i.e., group registered retirement savings plans, deferred profit sharing plans and employee profit sharing plans). At issue was concern that these plans are not uniformly regulated across jurisdictions, nor are they uniformly regulated across the insurance, pension and securities sectors within each jurisdiction. The Joint Forum's view is that regardless of the CAP and the applicable legislative regime, uniform protection should be provided to investors in different yet functionally similar products.

At the Joint Forum meeting in Vancouver the Working Committee on Investment Disclosure in Capital Accumulation Plans tabled a draft report that had earlier been reviewed and endorsed by CAPSA, CCIR and the CSA. The draft report was approved

Leading up to the Joint Forum's winter conference call meeting, the Working Committee will be reviewing and refining the document, and developing a consultation plan. The intent is to release the report as a concept paper in February 2001 with a 90-day comment period. At the close of the comment period the report will be redrafted for the Joint Forum's approval, and a final proposed regulatory model and implementation strategy will be prepared.

The Working Committee on Investment Disclosure in Capital Accumulation Plans is chaired by Sherallyn Miller, Superintendent of Pensions for British Columbia.

Intermediary Proficiency and Licensing

The Joint Forum's view is that consumers are entitled to the same protection, irrespective of the type of financial product purchased or the distribution channel used. Therefore, the laws and regulatory systems governing the distribution of all financial products should be harmonized and coordinated to the extent possible. This is the objective of the project on intermediary proficiency and licensing.

The first phase of the project has involved the development of a common code of conduct, or standard of practice, for all financial services intermediaries in Canada, regardless of how they are regulated or what products they sell. A preliminary draft of this new code was discussed and approved at the Joint Forum's fall meeting.

The draft code is based on a number of principles, including:

- \$ interests of the client,
- \$ needs of the client (“know your client”),
- \$ professionalism,
- \$ confidentiality,
- \$ conflicts of interest,
- \$ disclosure,
- \$ unfair practices, and
- \$ client redress.

Conceptually, the new approach involves one generic, high level code to which other groups – such as those selling insurance or mutual funds – will be able to add details to accommodate the unique characteristics of their own particular specialties.

The draft code will be sent shortly to members of the Industry Liaison Group for their comments. The Liaison Group is a unique aspect of the Sub-committee’s operating framework and currently includes representation from the Canadian Securities Institute, the Canadian Association of Insurance and Financial Advisors, the Federation of Canadian Independent Deposit Brokers, the Insurance Brokers Association of Canada, the Independent Financial Brokers of Canada, the Investment Funds Institute of Canada, the Canadian Life and Health Insurance Association, the Canadian Bankers Association and the Canadian Association of Financial Institutions in Insurance. The Group’s role is to provide guidance and to ensure appropriate consultation as developments occur.

It is expected that the draft code will be ready for broader consultation following the Joint Forum’s winter conference call meeting in January.

To support its work in developing the draft code, the Sub-committee on Practice Standards has created a detailed matrix that sets out who the intermediaries are and how they are currently regulated. This matrix will be a key component in the consultation and implementation plan now being developed by the Sub-committee.

The next phases of the Joint Forum’s intermediary proficiency and licensing project will focus on uniform qualification and entry standards, minimum continuing education requirements and, finally, a common approach across the sectors to the licensing of intermediaries.

Jim Hall, Superintendent of Insurance for Saskatchewan, chairs the Sub-committee On Practice Standards.

Memorandum of Understanding (MOU)

The majority of jurisdictions have now signed the Memorandum of Understanding (MOU) that was developed by the CCIR and CSA to facilitate and govern the sharing of enforcement information among regulators. The MOU is now in effect for those jurisdictions.

In addition, initiatives have been taken to bring members of CAPSA into the Agreement as signatories. These initiatives were discussed in Vancouver.

Other Matters Discussed

The Joint Forum's October 23 agenda also included discussion of:

- rules for the Mutual Fund Dealers Association and the measures being proposed to address the concerns of dually-licensed intermediaries;
- the current priorities and projects of the CSA, CAPSA and CCIR;
- reports from the meeting of the International Association of Insurance Supervisors (IAIS) held earlier in October in South Africa, and from the May meeting of the International Organization of Securities Commissions (IOSCO) held in Australia; and
- the creation of a Sub-committee to consider how to further strengthen the Joint Forum's role.

The last two items are particularly important with today's open financial borders and real-time communication, where there is only one financial market – the world.

This environment creates new challenges for regulators, some of which have been compounded by the lack of formal regulatory structures at the international level.

Fortunately, world financial regulators and industries have responded. An international regulatory framework is taking shape and a basic network is emerging. It includes the Basle Committee on Banking Supervision, which provides a rule-setting body in the field of banking supervision; IAIS, which promotes high standards in insurance supervision; and IOSCO, which promotes the integrity of securities and derivatives markets. It also includes channels for central banks, through the Committee on the Global Financial System; for stock exchanges, through the International Federation of Stock Exchanges (FIBV); and for finance ministers, through the G7, G10 and G22. Coordination,

information, analysis and monitoring, are provided by a number of agencies such as the Organization for Economic Cooperation and Development (OECD), the International Monetary Fund (IMF), the World Bank and the Bank for International Settlements (BIS).

Moreover, the early beginnings of a convergence point came in 1999 when the G7 finance Ministers and central bank governors created the Financial Stability Forum to strengthen international cooperation and coordination in financial market supervision and surveillance. The Financial Stability Forum is made up of two representatives from IAIS, three from each G7 country (finance ministry, central bank and senior supervisory authority), two each from the IMF, the World Bank, the Basle Committee and IOSCO, and one each from the BIS, the OECD, the Committee on Payment and Settlement Systems (CPSS) and the Committee on the Global Financial System (CGFS).

Canada plays a leading role on this international stage and many Joint Forum Members are active participants in international organizations such as IOSCO and IAIS. Meetings of the Joint Forum therefore provide an ideal venue for sharing information on developments, assessing implications, and establishing linkages that will support the goals of harmonization and coordination, at home and abroad.

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It is hoped that this newsletter has served its purpose of keeping interested stakeholders abreast of the Joint Forum's initiatives and plans.

Moreover, it is hoped that this communication will foster an important and continuing dialogue among those with an interest in Canada's financial services sector. Toward that end, we would be pleased to hear any views, comments or questions you might have about the role of the Joint Forum, and any suggestions you have for future collective initiatives. Your comments can be directed to any Joint Forum member or to Isabel Wegg, who has responsibility for the management and coordination of the Joint Forum and its projects. Isabel can be reached at (416) 590-7107 (e-mail: iwegg@fscs.gov.on.ca).

Electronic copies of this newsletter are available in English and French, in PDF format only, at the web site of the Financial Services Commission of Ontario at www.fscs.gov.on.ca. Look under "What's New" and "Publications/Joint Forum Releases".

The Joint Forum's winter conference call meeting will take place in January. In April, the Joint Forum will meet in Toronto at the time of the CSA, CCIR and CAPSA meetings. We look forward to communicating with you again following the spring meeting.

Ce bulletin est aussi disponible en français.

