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