



Canadian Life
and Health Insurance
Association Inc.

Association canadienne
des compagnies d'assurances
de personnes inc.

May 29, 2003

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

Dear Mr. Paglia:

Re: Joint Forum Practice Standards Project

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

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

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

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

1 Queen St. East
Suite 1700
Toronto, Ontario
M5C 2X9

1, rue Queen est
Bureau 1700
Toronto, (Ontario)
M5C 2X9

Tel: (416) 777-2221
Fax: (416) 777-1895

Tél: (416) 777-2221
Fax: (416) 777-1895

Toronto | Montreal | Ottawa



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

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

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

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

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

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

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

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



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

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

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

1. Ask those industry associations that choose to develop a code of conduct for intermediaries (and many already have) to consider the "Principles and Practices" as a reference template in developing those codes. A natural consequence would be that, over time, all codes would come to have common elements.
2. Adopt the principles as a condition of licensing or registration. In this way, non-compliance has regulatory consequences.

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

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

Sincerely,

Leslie Byrnes, CLU
Vice President, Distribution