



THE INVESTMENT FUNDS INSTITUTE OF CANADA
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May 29, 2003

Mr. Stephen Paglia
Senior Policy Analyst
Joint Forum Project Office
Joint Forum of Financial Market Regulators
17th Floor - 5160 Yonge Street
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Dear Mr. Paglia:

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

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

General

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

Specific Comments on the Principles and Practices

Intermediaries that are already regulated

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

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

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

Conflicts with existing rules and regulations

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

1. Disclosure

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

2. Holding Out

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

3. Financial Accountability

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

Enforcement

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

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

Voluntary Adoption

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

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

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

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

Sincerely,

“ORIGINAL SIGNED BY LESLIE BYBERG FOR JOHN MOUNTAIN”

John Mountain
Vice President, Regulation