



April 28, 2004

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Fair Dealing Model Concept Paper Comments

Our council has reviewed your concept paper and thank you for the opportunity to provide comments.

General

It is hard to argue against the principals of fair dealing because it is principals that should guide all of our activities. Regulation is needed but those who wish to survive in ours or any other industry must have developed a reputation for honesty. As U.S. Federal Reserve Chairman, Alan Greenspan, commented in Atlanta, Georgia on April 16th, “Rules cannot substitute for character”. He added that “the plethora of laws of the past century have not eliminated the less-savory side of human behavior”. We believe that the current rules have served us well and what we need is penalties that are enforced expeditiously.

The transgressions that have demoralized investors have, for the most part, not been those of investment advisors; it has been corporate fraud that has blind-sided both investors and their advisors and, quite bluntly, they seem to be getting away with it.

Comments

We have decided to provide comment on the Commission’s broad rationale for developing the model. The implication that the rules that now govern the activities of registrants of the IDA are inadequate leads one to conclude that every provincial commission has been negligent in not requiring change.

We agree that transparency is desirable. We have it now on exchange traded equities. Bond sales do not lend themselves to precise calculation of profit or loss insofar as dealers normally hedge their positions against interest rate risk. However, government bond trading is very competitive and the IDA Capital Markets committee, with the input of other parties, is developing rules of transparency in

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the corporate bond market. There is undoubtedly the potential for abuse in publishing the costs associated with mutual funds. The investor should be able to access full and plain disclosure of sales and management fees.

One final comment on disclosure of costs; most of what we do is buy and sell in markets which are quoted each day in the news. Moreover, lasting relationships are not built on unfair dealing. We would suggest that the insurance industry and the auto industry, to name a few, do not come under the scrutiny of the buyer to the extent that we do.

On page 49 of your paper you suggest that an investor must have the opportunity to view a video about the basics of investing and the choices available under the Fair Dealing Model. This suggests a simplistic solution to describing a complex and ongoing advisor-client relationship. It is not in the interest of a new investor that he or she be required to make “important choices very early in the relationship”. Every client must be treated different from all others. To suggest that three types of relationships fits all is like a sick patient 1) prescribing his own medicine 2) seeking the advice of a doctor or 3) having the doctor say “Don’t tell me where it hurts, I have all the answers”.

We do not mean to be cynical but the present rules demand that we adhere to the ‘Know Your Client’ rule. It is very much in the interest of the advisor to do what is in the best interest of the client and we have robust compliance procedures in place for those who do not comply. We agree that we should move towards more transparency and that we be accountable for our role in every client’s financial success, or lack of it. We encourage clients to become knowledgeable about investing, at least to the extent that they want to learn. Your model attempts to broaden the regulatory focus to consider not just what is communicated, but how, when and by whom. Best business practices and current rules require us to act fairly, honestly and in good faith.

We thank you for providing us with this opportunity to comment and look forward to future discussion on your paper.

Sincerely,

John Fitzpatrick
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Investment Advisor, TD Waterhouse Canada Inc.

cc. Donne Smith, Administrator, New Brunswick Securities Administrators