April 30, 2004

VIA EMAIL: jstevenson@osc.gov.on.ca

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto Ontario M5H 3S8

Attention: Mr. John Stevenson, Secretary

Re: Fair Dealing Model Concept Paper

We thank you for the opportunity to provide our comments on the Fair Dealing Model (FDM) Concept Paper (Paper).

General Comments

FDM is premised on the recognition that the primary service provided by firms and representatives to investors is advice, not transaction execution. Raymond James Ltd. (Raymond James) agrees with that premise but notes that this has always been the case in our industry. We also support the core principles of FDM being:

1. clear documented allocation of rules and responsibilities amongst the firm, the registered representative and the client;
2. that all dealings be transparent and that transparency means understandable disclosure; and
3. that all conflicts of interest be appropriately managed to ensure no preferential treatment to the firm or the registered representative.

FDM is very prescriptive and we generally have concerns about a prescriptive as opposed to a principles-based approach to securities regulation. Fundamentally, adopting a prescriptive approach tends to minimize accountability and responsibility resting with market participants. It encourages a mentality characterized by dotting i's and crossing t's as opposed to one that is characterized by "doing what is right". We will point to examples of this prescriptive approach below.

Representatives of the OSC including its chair David Brown, frequently emphasize the importance of national harmonization of securities regulations and initiatives. A high degree of harmonization is essential to avoid inconsistencies, fragmentation and duplication in regulation and regulatory arbitrage. It is therefore unfortunate that the OSC has proceeded with this project without the involvement and support of the other members of the Canadian Securities Administrators. It is essential that the OSC work to obtain that involvement and support to ensure harmonization between FDM and other regulatory initiatives.

Many of the proposals in FDM duplicate or replace rules already applied by self-regulatory organizations (SROs). We trust that the OSC will continue to involve the SROs such as the IDA in the ongoing development and implementation of FDM. We commend the OSC for establishing the Implementation Working Groups and expect that the OSC will continue to involve those groups going forward.

FDM if implemented as proposed, will result in significant costs to firms and other market participants. These costs will ultimately be passed on to investors. It is essential that the OSC conduct a thorough cost benefit analysis to ensure that the benefits flowing from the measures being purposed outweigh the costs. That analysis should be performed as soon as possible as the results of such analysis should have a significant bearing on the development of FDM and the final model. We provide some examples of anticipated costs of FDM in this letter.

We are also concerned that there is virtually no mention of the role regulators would play in an FDM regime. For example, although the Paper places great emphasis on education which emphasis we strongly support, there is little mention of the role regulators should play in delivering educational programs. Instead, the Paper outlines very prescriptive requirements for firms in education while minimizing opportunities that regulators could play.

Our comments relating to specific aspects of FDM are provided below.

FDM Based on Relationships

The emphasis in the Paper on getting the relationships between representatives and investors right is a logical and appropriate extension of regulation based on the model of advice giving, not transaction execution. However, there are many instances where clients have their own ideas on what securities to transact and the FDM cannot be so rigid as to prevent a client from self-managing some of his portfolio while getting advice on the remainder.

In the description of the Managed-For-You relationship at page 24 of the Paper, the OSC poses the question as to whether representatives who do not meet current ICPM compensation and proficiency requirements should be able to form such relationships under FDM. Clarification is required. Are you proposing that representatives who are

not registered as either Portfolio Managers or Associate Portfolio Managers (collectively PMs) be granted ability to operate discretionary accounts? If that is the proposal, Raymond James does not agree. At our firm, we have requirements going well beyond registration as PMs. Before a representative can have discretion over an account, we require that the representative:

- have a CFA or CIM designation;
- submit a detailed application to an internal committee covering areas such as prior discipline, business background, business plan and investment model; and
- undergo a satisfactory interview with the internal committee.

Once a representative is approved, the internal committee conducts quarterly reviews monitoring transactions and fees in the accounts, comparing performance against indexes and the weighting in the portfolio against the account model's weighting. We take these steps because we believe that it is important people exercising discretion are qualified and capable of doing so as the risks of that not being the case are very significant. Accordingly, we believe that there would not be cost savings to clients if appropriate designations were not required as the increase in supervision and compliance costs incurred by firms would outweigh the savings from not having to obtain PM designations.

Perhaps the most fundamental concern in a model based on types of relationships is the difficulty firms would have in supervising and ensuring compliance with the obligations of each category. On page 25 of the Paper, the OSC outlines how a registered representative would steer a client toward one type of relationship or another. At page 26, it says that the branch manager and firm would face the possibility of regulatory action for inadequate supervision of that process. We wonder how a firm is to monitor what a client is saying to a representative and what a representative is saying to a client which determines the category chosen. At page 30 you say:

> *First, compliance staff will have a clear record in the form of the Fair Dealing Document, of what a representative has agreed to do. They can cross-reference this with actual results.*

We query how that cross-reference would take place. What results would firms be able to monitor? In any event, this kind of supervision is more labour intensive than the expectations of tier 1 and tier 2 supervision today. This impact should be studied as part of the cost benefit analysis to be conducted by the OSC.

Educational Requirements

The OSC is mandating the provision of educational materials to investors. We are not aware of any other profession or industry with a positive duty imposed on its regulated to educate its clients or customers. Although such a requirement is in itself overly prescriptive, the Paper does not provide enough guidance as to what such educational tools should look like so that firms will know when the test has been met. Having said

this, we are please to note that it is indicated at page 49 of the Paper that such educational tools could be produced by the OSC. Given the strong views of the OSC on this point and to avoid each firm producing its own educational materials resulting in significant incremental costs to investors, it would make sense for one organization such as the OSC or the IDA to produce such materials.

FDM would require the production of Securities Information Sheets by each firm to cover topics such taxation of investments, borrowing to invest and the various types of risks. Documents known as Information Sheets covering specific types of securities would also be required. Again, it makes sense if one body were to undertake to prepare those materials thus minimizing the incremental costs to investors while ensuring consistency and high standards in the materials produced.

Risk Transparency

In an ideal world, firms and representatives would be able to determine with exact precision the degree of risk associated with every security. However, assessing the risk of individual securities is subjective. It is conceivable that 5 experts analyzing one security could result in 5 different ratings based on the same criteria. In any event, sophisticated and automated risk rating goes beyond the current capabilities and systems of most firms. This is another area in which a detailed cost benefit analysis should be performed at the earliest possible moment to determine whether the OSC expectations on this front are realistic.

Raymond James' US parent has spent over a year developing a system to electronically monitor suitability in client accounts. The resources devoted to that project have been substantial. The project is not yet complete. Notwithstanding very sophisticated work, the parameters for each risk category are necessarily broad with a number of built in exceptions. Work on the project included an initial risk rating being attributed to every security sold by the firm. Establishing those ratings took into account a number of factors. After the initial risk rating had been determined for each security, those rating need to be updated daily to remain accurate taking into consideration changes in the market and to the individual securities.

Rather than each firm developing its own systems to rate and monitor the risk of every security thus significantly increasing the incremental costs passed on to investors, it would make more sense for one organization such as OSC or the IDA to perform this function.

At page 68 of the Paper the question is posed as to whether it is possible to achieve risk measurement consistency across the industry. That goal is only achievable if one body is responsible for the initial and daily assessment of risk of each security.

Compensation Transparency

You state that the OSC is considering three alternative approaches to addressing conflicts arising from third-party compensation. Raymond James is fundamentally opposed to regulation of compensation, as the Regulators should not be involved in the payment for services as competition in the market place will govern the issue. However, we do agree that transparency is a key factor.

It is important that, as you suggest in the Paper, a working group be established to consider the all issues raised dealing with compensation.

Account Information

While Raymond James applauds the focus on transparency, FDM would require a significant increase in information to be provided to investors. As stated above, it is important that the costs of providing the information as outlined below, be weighed against the benefits gained.

We note that there are references throughout the Paper to firms providing monthly statements to investors. Currently the obligation is to provide monthly statements only where there have been transactions during the month and quarterly statements in any event. Is it the OSC's intention to change that requirement? In addition to increasing costs to investors, feedback from our clients is generally to the effect that they receive too much, not too little, information.

The provision of transaction summaries is another area in which it is anticipated that costs to the client would increase. (We note that the obligation to provide summaries is in addition to confirmations.) In addition to those increases, we anticipate a number of clients will become impatient with such documents. Often a decision to make an investment is arrived at interactively between the client and advisor. To require a representative to provide a repetitive transaction summary at the end of that interaction will annoy many clients. In response to your request for comment at page 59, we do not believe that the transaction summary should be made mandatory although it should remain a voluntary best practice. Should the OSC decide that transaction summaries are mandatory, there should be circumstances where investors are able to opt out.

Obligations of Investors

We commend the OSC for making it clear that investors also have obligations. However, we note that the obligations imposed on investors are qualified. For example, at page 17 of Appendix A to the Paper, the obligation is only to provide information to the firm "with reasonable accuracy". The obligation on clients to let a firm know about discrepancies in statements only arises "as soon as they can". By contrast, the obligations of advisors and firms throughout the Paper are very clearly defined and of a high standard. Is it the intention of the OSC that the standards placed on investors for information sharing be lower than those of firms and advisors?

Ongoing Registrant Obligations

Another example of overly prescriptive and cost burdensome requirements is found at page 53 where it is said:

> *There is flexibility **within the model** for investors and representatives to accept different levels of responsibility for asset allocation decisions, **as long as they document their choice.*** **[emphasis added]**

This suggests there is no flexibility outside the model. It also appears to be burdensome as every suggestion provided by a client as opposed to a representative would have to be documented.

We note that the OSC suggests at page 56 maintaining records of client conversations. Are you recommending the taping of client calls?

FDM purposes an additional onus on the representative to filter any biased information including research supplied by the firm. Analysts have significant expertise in the areas for which they are preparing research materials. They spend significant time researching one company becoming experts in a sector in order to prepare detailed, complex and sophisticated reports. It is unrealistic to expect representatives to be able to be critical of reports prepared by research analysts.

In conclusion, we emphasize that it must be clearly demonstrated that FDM addresses specific problems in the industry. Each proposal in the Paper must be costed and those costs weighed against perceived benefits. Lastly, steps need to be taken to ensure that FDM is harmonized across the country and in conjunction with SRO rules. We look forward to further details and particulars of FDM as this project advances.

Yours truly,

Peter Bailey

President

cc: Ian Russell, Investment Dealers Association of Canada

bcc: Ken Shields
PCG Operating Committee
Deb Armour