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Mr. John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

Dear Mr. Stevenson:

Re: The Ontario Securities Commission's Fair Dealing Model Concept Paper

I am writing to you on behalf of Sun Life Assurance Company of Canada with respect to the recent release for comment of the Ontario Securities Commission's (OSC) Fair Dealing Model (FDM) Concept Paper.

Sun Life Financial is a leading international financial services organization providing a diverse range of wealth accumulation and protection products and services to individuals and corporate customers. Tracing its roots back to 1865, Sun Life Financial and its partners today have operations in key markets worldwide, including Canada, the United States, the United Kingdom, Hong Kong, the Philippines, Japan, Indonesia, India, China and Bermuda. As of December 31, 2003, the Sun Life Financial group of companies had total assets under management of CDN$359.0 billion. The Canadian operations of Sun Life Financial include ownership interests in various insurance and mutual fund distribution arms representing over 5,500 insurance and mutual fund representatives.

We appreciate the opportunity to comment on the FDM. However, we reserve the right to re-visit any of the comments or conclusions that we have made on this proposal as many of the details concerning licensing and registration requirements, costs, regulatory overlap, harmonization, and actual legislative changes are currently unknown.

Overall concept

We agree that the three principles outlined in the FDM (clear roles and responsibilities for investors and representatives, enhanced transparency for investors and clarity with respect to any conflicts of

interest) are an appropriate basis for a regulatory regime intended to protect the financial services consumer. In fact, we believe that these concepts are at the heart of existing securities and insurance regulation.

However, referring to this model as the "Fair Dealing Model" unfairly implies that the current regulatory regime does not embrace these principles and, equally, that industry participants do not currently conduct their businesses fairly.

Life and Health Insurance Regulatory Overlap

Currently the Financial Services Commission of Ontario (FSCO) regulates life and health insurance representatives in Ontario. From the concept paper, it is unclear how the FDM will impact dual licensed representatives (representatives having both an insurance license and a mutual fund representative registration) and if there will be any impact on their life insurance business. Equally, if there is an impact to a dual licensed representative's insurance business, what will the consequential impact be to an agent licensed only for insurance who is sponsored by the same MGA as a dual licensed representative? Needless to say, this is a key point for us as all of our sales representatives are insurance licensed and a majority are also registered to sell mutual funds.

Although the concept paper states that the FDM does not apply to the sale of life and health insurance products, discussions with OSC staff have indicated that there is an objective to extend the FDM to the regulation of life and health insurance agents. We would strongly object to this expansion of the OSC's jurisdiction. Life and health insurance agents are ably regulated by FSCO, and that regulation includes licensing, proficiency standards, errors & omissions insurance, holding out to the consumer, and unfair and deceptive practices. To layer additional regulation is inappropriate. We ask that you confirm whether or not the OSC's position is to extend the FDM regime to insurance agents.

We question the practicality of the FDM for dual licensed salespersons. Dual licensed salespersons will be subject to two very different regimes even when they are selling similar products to the same client. This will create more confusion for customers due to the lack of harmonization. Furthermore, given the regulatory conflict between FSCO's regulations and the FDM it would seem that a dual licensed representative must only be able to deal with a client in one of the proposed relationship types outlined in the FDM. This would conflict with the FDM's goal of giving clients the choice in the services and relationship being offered by a representative.

Harmonization

Currently there are a variety of initiatives being introduced by the Joint Forum of Financial Market Regulators, the Canadian Securities Administrators (CSA), and the Canadian Council of Insurance Regulators (CCIR). Each of these is designed with the goal of ensuring consumer protection in a cost-effective, harmonized fashion. Some examples of these include proposed National Instrument 81-106 *Investment Fund Continuous Disclosure*, the Joint Forum of Financial Market Regulators' Consultation Paper 81-403 *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual*

Funds, the National Registration Database, the proposed National Registration System, the Uniform Securities Legislation Project and the proposed national regulator or passport model to securities regulation. The OSC has been an open supporter of these initiatives.

Therefore, we question why the OSC has decided to re-engineer securities regulation with the FDM without the endorsement of the rest of the CSA or involvement of CCIR. This unilateral action on the part of the OSC seems to conflict with the principles of uniformity and harmonization which the OSC has endorsed and fought for on the above noted initiatives. The FDM consequently appears to be at cross-purposes to broader harmonization objectives. We worry that this initiative will further increase the costs and complexities of an already fragmented financial services regulatory environment.

Does the OSC intend to implement the FDM even if it is never endorsed by the CSA? How does the OSC intend to manage the conflict between the rules of the Mutual Fund Dealers Association of Canada (MFDA) and the FDM if the various provincial regulators who have approved the MFDA as a self-regulatory organization in their province do not endorse the FDM?

More broadly, we question the need for the onerous re-engineering of the securities industry as contemplated in the concept paper. We do not believe these changes are necessary given the fact the FDM core principles are already engrained in existing securities regulation. Equally, the above noted regulatory initiatives, along with others, are already working to improve the principles of fair dealing while at the same time ensuring regulatory harmonization.

The Middle Market Investor

The FDM requires representatives in an advisory relationship, among other things, to

- compel investors to watch and understand an educational video;
- complete a lengthy fair dealing account opening application;
- complete new transaction-related documentation;
- have additional account monitoring and account statement responsibilities; and
- ensure understanding by investors of all product disclosure, including the continuous disclosure issued by manufacturers but not required to be delivered to investors.

These duties are costly, increase a representative's liability and are time-consuming. Consequently, representatives may no longer maintain relationships with clients whose net worth does not merit the expense and effort required under the FDM. This means that small to mid net worth investors would no longer have access to the products and services they currently enjoy. Denying such a broad group of investors access to such seemingly fundamental products and services could be an unintentional side-effect of the FDM.

Missing Information

Many of the details surrounding this concept paper are missing. These include the regulatory overlap and harmonization questions and issues outlined above, the licensing and registration

requirements for dealers and their representatives, the cost benefit analysis and even a high level description of the actual legislative changes required to implement the FDM. All of these issues are integral to the FDM yet remain unknown.

The OSC has stated that the missing information relating to licensing and distribution issues is to be provided in a second concept paper. It is our understanding that a true cost benefit analysis of the FDM will also be published at a later date. Ideally all of these publications should have been issued for comment at the same time. Our overall reaction to this concept paper will be influenced by our assessment of the practicalities of the second paper along with the cost benefit analysis.

It is also our understanding that the Joint Industry Group (JIG), in its meeting with the OSC early in 2003, asked for details to be provided in the FDM concept paper about which existing statutes and regulations would be replaced by the FDM (as distinct from the FDM merely providing another layer of financial services regulation). The concept paper did not provide these details. Without understanding which regulations will be replaced or repealed and what the actual changes will be, even in concept, our ability to formulate our response to this paper is restricted.

While we commend the OSC for establishing industry-working groups as a means of consultation on the FDM, it does concern us that these groups are to consider aspects of FDM implementation while essential details of the model remain unknown. Given the lack of detail provided thus far for the FDM it seems premature to even consider implementation strategies.

Consequently, we are unable to comment on the FDM proposals comprehensively, and reserve the right to further comment on this first concept paper once the second concept paper and other details are released.

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We thank you for this opportunity to comment on the FDM concept paper. Given the impact this model could have on our national operations, we have copied our comments to members of the CSA and CCIR and to the MFDA.

Yours truly,

Jack F. Garramone