



October 15, 2007

Mr. Neil Mohindra
Acting Policy Manager
Joint Forum Project Office
5160 Yonge St.
Box 85, 17th Floor
North York ON M2N 6L9

Sent by Email: jointforum@fsco.gov.on.ca

Dear Mr. Mohindra:

Subject: Joint Forum of Financial Market Regulators: Proposed Framework for Point of Sale Disclosure for Mutual Funds and Segregated Funds

Independent Financial Brokers of Canada (IFB) is pleased to provide our comments on the Joint Forum of Financial Market Regulators (Joint Forum) *Proposed framework 81-406, Point of sale disclosure for mutual funds and segregated funds* which was released for comment on June 15, 2007.

At the outset, IFB would like to commend the Joint Forum on its objective to create simpler, more meaningful disclosure documents for consumers to better understand their financial investments. IFB supports this objective, as does our membership.

Who we are and why we are responding to this proposal.

IFB is an advisor association comprised of approximately 4,000 members, the majority of whom are licensed to provide insurance, mutual fund and/or securities products and advice to clients. In doing so, they help to ensure their clients are financially capable to meet the demands of everyday life and save for the future. It is noteworthy that a recent survey conducted by Investor Education showed that very few Canadians have any financial plan whatsoever, whether it be to purchase a house or save for retirement. It is important then that regulators be aware of the contribution that these financial advisors make to the security of Canadians and that they not create a regulatory system which is so burdensome that only the largest of players can continue to participate.

IFB was created over 20 years ago by a handful of insurance agents who believed that consumers are best served by an agent who could source the financial market to bring them the product most suited to address their particular need – rather than being restricted by contractual agreement to offer only the product of their employer. From this early beginning, IFB has grown to represent some 4,000 independent advisors, across Canada. It is a fundamental belief of this Association and its members that unencumbered access to financial products provides one of the cornerstones of consumer protection.

It is important in understanding our position on the point of sale proposals, that as independent advisors, our members are self-employed businesspeople. These individuals operate small enterprises, often located in smaller or rural communities. It follows then that they will not necessarily be located in close proximity to the major offices of the companies they do business with. As a result, some of the delivery requirements being proposed in this paper will undoubtedly slow down their ability to service their clients and, indeed, may well place them (in terms of lost business) and their clients at a competitive disadvantage (i.e. if the client perceives there to be a lost market opportunity, or actually experiences a lost market opportunity).

Since many IFB members sell mutual funds and/or segregated funds, our comments will address point of sale (POS) issues related to both. In preparation for our response, we undertook to survey our members to ascertain their views of the Key Facts/Fund Facts documents and related proposals. We will reference their remarks throughout, as appropriate.

Point of Sale Disclosure

The Key Facts and Fund Facts contain useful information for consumers who wish to have an overview of their investment choice or to compare investment options. However, they should not be viewed as a replacement for the more detailed information contained in an insurance folder for segregated funds, or the simplified prospectus for mutual funds. A two page summary cannot replicate the details contained in these documents and consumers should not be led to believe otherwise.

A system of disclosure

The main rationale for introducing these simplified documents is to reduce confusion for consumers. However, there is already in place a system of disclosure requirements and documents related to financial products – only one piece of which is the Fund Facts/Key Facts documents. Some of this documentation stems from regulatory demands and some have been implemented by insurers and mutual funds to help consumers understand the product they are investing in or purchasing more fully. Therefore, the Fund Facts/Key Facts cannot be viewed in isolation.

There is considerable potential for overlap and confusion as new documents are added. For example, much of the information related to IVICs and segregated funds, in the Key Facts/Fund Facts, already exists as part of the insurance company's Information Folder and Summary Fact Statement (which contains fund highlights). This information, along

with an explanation to the client of their rights and obligations under the contract, is required to be provided to the policyholder prior to their signing of the application.

Under the POS proposal this will not change, but insurance consumers will be forced to also receive the Key Facts and Funds Facts. This stands in contrast to mutual fund customers who, under this proposal, will receive the two page Fund Facts and receive the simplified prospectus only if they request it. Mutual fund clients will benefit from an overall reduction in the paperwork, while insurance policyholders will have added requirements. Regulators must be conscious of the increased costs inherent in these proposals. This information could be accessible at lesser cost on secure company websites. In addition, this would ensure consumers receive the most up-to-date information.

Another source of potential overlap comes from the Registration Reform Project, a separate initiative currently underway by the Canadian Securities Administrators (CSA). The RPP contains proposals relating to the development of a relationship disclosure document (RDD). It is our understanding that the development of this document rests with the MFDA and IDA and has not been made publicly available for industry input as yet. How the RDD will interface with the POS documents is unknown at this point. IFB suggests that if these documents are not developed in tandem, the outcome may well be an added disclosure burden which will further frustrate consumers and advisors alike.

Unfortunately, problems arise from the attempts to create rigid documents for two products that may share some similarities, but have fundamental differences which are ignored in this approach. A better approach, and one which would be more beneficial for consumers, is for regulators to define parameters of disclosure relevant to each product. This less prescriptive approach would allow each industry to provide the level of disclosure the Joint Forum wishes to achieve, while avoiding further duplication and information which may be incomplete. There are a number of successful examples of a principles-based approach - the most recent being the CCIR's adoption of the three principles to manage potential conflicts of interest situations between clients and insurance sales intermediaries. The investment of time and effort by regulators and industry stakeholders, including IFB, resulted in a solution endorsed by all. We urge the Joint Forum to consider the many benefits of a less prescriptive approach, and to allow each industry to assist in the development of separate, but equal, disclosure documents.

The following comments deal with the issues we see arising from the delivery requirements contained in this Proposal.

Point of Sale delivery requirements

We are of the view that the POS delivery requirements, as proposed, have the strong potential to lead to inequalities amongst existing channels of segregated fund and mutual fund sales distribution that could ultimately have a negative impact on consumers.

IFB fully supports the Committee's intent to ensure that consumers who wish to purchase mutual fund and segregated funds products receive clear and meaningful disclosure and

we endorse the concept of limiting the Key Facts and Fund Facts documents to two pages. However, we are concerned that the inflexibility we see in the actual delivery of these disclosure documents will lead to customer frustration and potentially place the independent system of sales distribution (such as our members) and their clients at a competitive disadvantage relative to other sales channels.

Those who invest in mutual funds, like purchasers of other types of investment products, expect purchases and sales to be made promptly once the instruction has been received. Under the proposed POS delivery, clients would have to receive the Key Facts and Fund Facts documents before their order can be executed. This lag time will undoubtedly lead to consumer frustration and potentially even negatively affect their investment in the event the unit price has increased between the time they request that a purchase be made and the delivery of an updated Fund Facts document.

In-home and telephone sales may be most adversely affected.

Many of our members conduct business with clients in the client's home or over the telephone. In fact, our survey of members showed that over 90 percent conduct sales meetings in their client's homes. This type of personalized client-broker interaction is a hallmark of the type of convenience and level of service our members provide. Often, these meetings will be informational or instructional in nature, in which case neither party will know in advance which segregated fund or mutual fund product will best suit the client. The requirement that the Fund Facts be delivered *at or before* the time a client instructs the advisor to purchase a mutual fund will create barriers for these types of sales meetings by delaying the transaction if the advisor does not physically have the applicable Fund Facts document with him/her.

We are concerned that insufficient consideration has been given in the drafting of these delivery requirements to the full range of advisory relationships that exist. It appears to us that these requirements are biased in favour of larger brokerages with significant in-house support services. Below are several representative responses from IFB members who responded to our survey:

“Regulators have the misconception that all licensed reps work out of an office with a staff to assist them. This is far from the truth.”

“These kinds of requirements are fine if the agent lives and works in an urban area or does most of his/her business in the office. For an agent whose sales area consists of a large rural area and conducts business in the client's home, the delivery requirements will be impossible to follow on many occasions. It seems to me that the regulators have come up with this plan without considering the logistics for agents living and working outside large, urban areas.”

The requirement for intermediaries to recommend only suitable products could be negatively affected.

IFB members are bound by the association's Code of Ethics as a condition of membership. Our Code reflects the Joint Forum's own guidelines for conducting

financial transactions as well as the three principles for the sale of insurance endorsed by the CCIR. Each of these requires that advisors must recommend only those products which meet the needs of the client.

The IFB Code of Ethics begins with the following statement:

“This Code of Ethics applies to all financial transactions, without regard to the product category, the type of intermediary, or the means by which the purchase of a product or service is transacted.”

The sections of our Code most relevant to this discussion are that the member must:

1. *Place the interests of the Client ahead of the broker’s own interests.*
2. *Ensure the needs of the Client are met by learning the client’s needs, objectives and circumstances **before** giving advice or making recommendations.*
3. *Provide full disclosure of any conflicts of interest and financial product information, including a clear description of the product or service and how it will fulfill the needs of the client.*

We submit that the requirement to provide the Fund Facts at, *or before*, the point of sale may well place our members in a conflict situation related to their fiduciary responsibilities. It will also undermine the principle of product suitability if investors, seeking a more immediate solution, choose a product whose literature the advisor has at hand rather than wait for alternate product documents to be delivered at a future time. This is more likely to be a problem where sales are conducted in a client’s home or over the telephone.

In addition, consumer frustration arising from these new POS rules may be directed at individual advisors in that consumers may perceive that other sales distribution channels have the ability to be more responsive in carrying out their investment instructions. For example, a consumer may choose to walk into a bank branch, rather than wait for his/her broker to return at a subsequent meeting with the appropriate Fund Facts. In this case, the bank is likely to have the administrative capability to supply the Fund Facts document without such a delay. However, the actual product choices available to the consumer may be more limited and s/he may not receive the same degree of detailed financial needs analysis that an independent advisor would provide.

We are very concerned that the proposed POS will undermine independent brokers - who are legitimate, licensed participants in the financial marketplace - and place them at a competitive disadvantage. Regulatory rules and procedures should not inadvertently advantage one channel of distribution over another or create a regulatory climate which only large dealers or bank-owned dealers can comply with. There is already a great deal of pressure on the individual advisor channel. Individual advisors operate in a highly competitive marketplace and face an increasingly heavy regulatory burden – especially as it relates to the mutual fund industry. Furthering this pressure may well lead to a reduction in those entering and remaining in this industry. It is our **strongly** held view that the demise of the independent channel of advice is not in the best interests of consumers.

Point of sale requirements need to recognize that there are different levels of investor expertise

IFB appreciates the difficulties and challenges of ensuring consumers receive appropriate information on segregated and mutual fund products in a plain language format.

Certainly, few investors read the plethora of information related to such funds already available to them. However, we caution that in trying to implement a “one size fits all” approach to the POS delivery, consumers may turn away from mutual and segregated funds and seek out other types of investments, which may well carry a higher risk.

Investors will range from the first time buyer to those who have invested in a variety of funds over a number of years. There are those who choose to use a discount broker, and receive no investment advice, and those who choose to set up a discretionary account, where they have delegated decision making to the advisor.

Experienced investors should not be faced with being forced to wait to receive the Fund Facts document, which may delay their transaction and add market risk. In addition, the proposed rules will change the way these investors have been used to transacting business with their advisor. Such changes will not be welcome if they lead to delays and inconvenience. Indeed, for segregated funds, it appears to interfere with the contractual rights which already exist under the IVIC.

IFB suggests that more sophisticated, or experienced investors (for example, those who have chosen to use a discount broker or conduct their trades over the internet, and those with discretionary accounts) should have the option to waive the requirement to receive the Funds Facts document in advance of executing a trade. At a minimum, they should be able to defer receipt of the Fund Facts and receive it with their trade confirmation. This would have the added advantage of having it come directly from the fund company and reduce the potential for outdated material being erroneously distributed.

Subsequent transactions

The requirement that additional Fund Facts must be delivered on all subsequent transactions is overly-onerous for consumers and advisors alike. Many of our members’ clients currently enjoy the convenience of transacting business over the telephone. This is extremely frequent where the client is adding to an existing investment. Under this proposal, clients would be forced to receive a much lower standard of service while they wait for another Fund Fact document to be delivered. This will be particularly difficult for advisors to comply with during the busy RSP season where many transactions occur late in the year and in the first quarter of the following year. Clients who face delays and even potentially miss out on the tax advantages of an RRSP contribution will be frustrated and angry, and may well lead to complaints against the advisor.

We submit that the requirement to not transact until another Fund Facts document has been received will undermine the objective of providing consumers with meaningful and timely information and reduces the choices that consumers have available to them now. We suggest that subsequent purchases should be exempt from the delivery requirements.

In the alternative, clients could elect to receive an updated copy once a year or simply be directed to the company's website to obtain this information.

Family of fund information

The proposal requires that information presented in the Fund Facts be fund specific and not fund summary documents reflective of the funds in a fund family. In our view, the fund specific approach ignores some of the valuable investment features that a family of fund approach offers, such as the various investment options available and the ability to switch within the family for no cost. Furthermore, because of the way some of the costs and compensation information required to be disclosed in the Fund Facts is not accurate when looked at on a fund specific level. It would not be consistent with the intent of these POS proposals to provide consumers with reduced disclosure. In addition, and as noted in our comments earlier, there are also practical considerations as to the number of Fund Facts that an advisor will have to carry with him/her to client meetings which may lead to the consumer choosing from readily available materials.

One of our survey respondents summarized his concern as follows:

"I use a portfolio approach, using a defined Investment Policy Statement. The funds held by the client fit within defined asset classes. This is NOT a product based approach. The product is secondary to the asset allocation decision. The Regulators seem to think all clients are buying a product, when my clients buy a financial plan. The fund is merely one vehicle for executing this plan."

Failure to deliver the Fund Facts

Under this proposal, mutual fund investors will have the right to cancel their purchase at any time if they do not receive the Fund Facts. Such an entirely open-ended cancellation right is fraught with compliance difficulties and creates new liability for advisors, dealers, fund companies and other pooled investors. In the event of a market downturn, for example, investors could argue that they did not receive the Fund Facts and attempt to cancel the original purchase. If a large number were successful, there would be negative repercussions for the remaining unit holders who would have to bear the loss of these rescissions. No doubt a great deal of time and money would be spent trying to ascertain whether such claims have merit. In addition, the same right to cancellation is not available to segregated fund policyholders who would have to go through a different complaint process.

Comments related to the content of the Fund Facts

In this section we will provide input on some of the specific sections of the Fund Facts document.

In the section dealing with how the advisor is paid, the trailing commission for segregated funds is better described as a fee earned for servicing the contract.

Not all advisors are paid by commission. Some operate on a fee only basis and others may be employees who earn a salary plus bonus.

There is no mention of 'no load' funds.

We note that the Fund Facts tells the consumer that s/he may cancel the purchase by notifying the advisor in writing within 2 days. The consultation paper indicates that the consumer must notify the dealer or insurer in writing in order to cancel the purchase.

Our members have identified some other wording changes to increase the clarity of some sections. We would be pleased to work with the Committee on further wording changes.

Concluding remarks

In conclusion, the delivery of insurance and mutual fund products and advice through individual brokers and agents, who bring a personalized approach to consumers often in their own homes, is of great value. It concerns us deeply then that initiatives that increase the regulatory burden on all market participants may well prejudice smaller, independent players – like our members. The unfortunate result will be a reduction in choice for consumers who wish to access sound financial advice from their local broker, and ultimately negatively impact the very consumer protection that regulators seek to increase.

IFB would welcome the opportunity to work with the Joint Forum to find solutions to those aspects of the POS regime which will negatively impact on the level of customer service clients of our members currently enjoy. We believe that the goals and objectives of the Joint Forum can successfully be met through a less prescriptive approach. In this regard, we encourage you to look to the experience of the life insurance industry and its regulators as an example of successful collaboration.

We look forward to our further participation in this initiative. Should you require further clarification on any of the above, please contact the undersigned.

Yours truly,



John Whaley
Executive Director
Email: jaw@ifbc.ca

200 – 4284 Village Centre Court
Mississauga ON L4Z 1S2
Tel: (905) 279-2727 Toll-free: 1-888-654-333
Website: www.ifbc.ca