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Jim Hall, Chair
Joint Forum Point of Sale Project Committee
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Sent by Email: jointforum@fsc.gov.on.ca

Dear Jim:

Subject: Proposed point of sale disclosure for segregated and mutual funds

Thank you for presenting us with the opportunity to attend the June information session at which the Working Group presented its proposed changes to the Point of Sale (POS) disclosure framework. Independent Financial Brokers of Canada (IFB) appreciates the effort put forth by the Working Group to balance the concerns expressed by those in the insurance and mutual fund industries related to some of the previous proposals, with the Joint Forum's mandate to find more successful strategies for consumers to access meaningful information related to their mutual fund and/or segregated fund purchases.

As the Working Group continues its efforts to refine what its final proposal will look like, we feel that it is important at this juncture to highlight certain issues which we think would benefit from further clarification or review.

As a general comment, IFB is pleased that the revised proposal provides for greater flexibility in the delivery requirements for the POS documents. In addition, we believe that the removal of an investor's right to cancel the purchase in perpetuity is a very positive step, as this would have been highly problematic.

There are, however, some further observations we would like to make at this time arising from the Working Group's presentation and which we urge you to take into consideration as you refine the POS framework.

Consultative process and harmonization

It is our understanding from the June meeting that there is no intention for the Working Group or the Joint Forum to provide a further period of public consultation related to the next set of proposals. Instead, a ‘final’ framework and implementation schedule will be presented to the Joint Forum for approval at its Fall meeting, after which each provincial securities and insurance regulator will determine its acceptance of the framework and provide individual comment periods on any changes that may be required to their respective insurance and securities Acts and Regulations.

Our concern with this approach is two-fold. First, because stakeholders have received only a relatively high-level oral summary of the proposed changes at this stage, we believe that the Working Group could well benefit from further consultation and input. All stakeholders, including regulators, have invested a great deal of time and effort in commenting on these and previous POS proposals, dating back to 2003, in order to develop a framework that will ultimately be successful – both in providing consumers with more meaningful information and ensuring that this information is delivered in a timely manner. We submit that it is essential, then, that this consultative process not be cut short at a time when all parties appear to be close to a resolution of outstanding issues.

Second, as approval of this framework will involve each province and the securities and insurance regulator within each province, this greatly increases the probability that POS requirements may well be enacted differently across Canada and between industries – increasing the complexity for companies, advisors (especially those who are dual-licensed) and consumers alike and leading to undo confusion. We believe that without provincial and industry buy-in, the success of this initiative will be seriously undermined. In our view, this risk could be substantially reduced by adopting a more principles-based approach which sets out regulatory guidelines rather than rules to be incorporated into various provincial statutes. It will also be a less burdensome structure for regulators into the future as they respond to the changes which will inevitably occur over time.

Delivery of Fund Facts/Key Facts

We are pleased that there has been recognition paid to the potential volume of Fund Facts required by exempting subsequent sales in the same fund and reducing compulsory updates to annually or on material change, from semi-annually. However, we continue to be concerned that the requirement to provide the Fund Facts documents at or before the sale for every other transaction, including subsequent purchases within the same fund family, will delay or disrupt the trade process.

IFB is an association representing only independent financial advisors. Our members provide both mutual fund and insurance products to consumers in communities across Canada. We see very real consequences in these delivery requirements for independent advisors, especially those who provide services to clients who reside outside of urban centres. Access to a particular Fund/Key Fact may well be more difficult to obtain in short order in such situations. Obviously, regulatory policy should not constrain the consumer’s ability to receive access to the most suitable financial product. We continue

to be concerned that where timing is a constraint, consumers may choose to invest in a fund that the advisor has the Fund Facts on hand rather than delay the trade. In addition, we believe that consumers may well perceive that making such purchases through a large financial institution, with the capability to store a large array of Fund Facts, is preferable, thereby disadvantaging independent advisors. Again, regulatory policy should not inadvertently provide more favourable circumstances for one sales distribution channel over another.

Under the proposed framework, mutual fund dealers and insurance agencies may have less incentive to place new funds on their list of approved products if it requires producing and distributing additional Key Facts and Fund Facts to brokers. Also, consumers may choose to trade in products not subject to these rules. Each of these situations serves to undermine existing market conditions and create a shift in the competitiveness of mutual/segregated fund products relative to other investment products. In our view, this will eventually lead to product arbitrage and reduced choice for consumers.

While the Working Group has suggested a waiver for a purchase in a money market fund, in part to address the industry concerns related to RRSP season deadlines, we think this introduces a two step process which may not always be in the consumer's best interest and, in fact, may increase their costs if the intent is to invest the money in a different investment vehicle shortly after the initial money market purchase.

Prescriptive Nature of Fund Facts/Key Facts Wording

We note that while there have been some changes suggested from the original proposal, such as the potential to go to a 3 page document and some content changes, we remain concerned about the overall level of definition put forth by the Working Group. We understand and support the Working Group's desire for consumers to have access to simplified documents where they may more readily draw comparisons between products. However, we feel that this mandate could be more successfully achieved if the Working Group provided guidance on the information to be covered in such documents while leaving the specific wording to be developed by the insurance or mutual fund industries. For example, when the CCIR identified its 3 principles to manage potential conflicts of interest arising from the sale of insurance products and advice to consumers it advocated adherence to these principles but did not define an industry methodology. The industry responded by developing templates and procedures to support these principles. In our view, this project would benefit from a similar approach. Regulators could set a trial period to monitor the success of the industry response and monitor consumer complaints.

Implementation and Compliance

It is our understanding that the additional compliance requirements required to implement the new framework will be left with the MFDA, IIROC and provincial insurance regulators to define. At this point, the industry has not seen what new compliance requirements will be introduced to support the POS framework. We believe that it is absolutely essential to the success of this project that all industry stakeholders be engaged in an open discussion on the related implementation and compliance issues. This

discussion may well lead to further refinement of the framework. For example, while the Working Group made reference at the June meeting to possible options for electronic delivery of the Fund Facts to consumers, the fund industry has expressed concerns related to its ability to address electronic delivery of sensitive financial information to consumers in a safe and secure way. Effective resolution of this may lie in a POS framework which provides for electronic or paper delivery of the Fund Facts but does not attempt to prescribe in detail how this is to be achieved.

We believe that if the Joint Forum approves a detailed, overly prescriptive framework, it will limit the financial industry's ability to develop appropriate solutions, and be unduly restrictive for regulators and industry alike when dealing with the inevitability of future change. The financial services industry operates in a constantly, often rapidly, changing environment requiring it to be responsive to national and global trends. The flexibility inherent in a principles-based system is better suited to meeting the demands of such change, than one constricted by a detailed, prescriptive set of rules.

In conclusion, the delivery of insurance and mutual fund products and the personalized advice individual brokers and agents bring to their clients is of great value to thousands of Canadians. It concerns us deeply, then, that initiatives that propose increasing the regulatory burden on all market participants may well have a greater, prejudicial effect on smaller, independent players – like our members. The unfortunate result for consumers will be a reduction in choice for those who wish to access sound financial advice from their local broker. Ultimately, this will have a negative impact on the very consumer protection that regulators seek to increase.

We trust you will find these comments useful as you consider further refinements. We would be pleased to discuss or provide further clarification on any of the above-mentioned points at your convenience.

IFB looks forward to continuing to work with the Joint Forum and other stakeholders to ensure that Canadian consumers, regardless of where they live or the sales channel they choose to use, have access to sound advice and a full range of products from the financial community. A vital component of this includes ensuring that the competitiveness of the independent channel of advice is not compromised.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', written over a light blue horizontal line.

John Whaley
Executive Director
Email: jaw@ifbc.ca

Cc: David Wild, Chair, Joint Forum Point of Sale Steering Committee