



May 29, 2008

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Dear Sir/Madam:

**Subject: Proposed Rules to Implement the IDA Client Relationship Model**

Independent Financial Brokers of Canada (IFB) welcomes the opportunity to provide our comments on the proposed client relationship model (CRM). IFB has been an active participant in the various consultations related to the development of similar approaches, including those contained in the former Fair Dealing Model initially proposed by the Ontario Securities Commission several years ago.

Introduction

IFB is a professional, not for profit association which represents the interests of approximately 4,000 licensed, financial services providers across Canada. The majority of our members provide advice and products to consumers that are related to insurance and mutual funds. A smaller number would be securities registrants, or licensed in other fields.

The advisors we represent are independent in that they are self-employed, often small business men and women who provide clients with access to a range of financial products from a variety of providers in communities across Canada.

Our organization is dedicated to supporting the continued viability of the independent channel of product distribution and advice. We believe, as do our members, that their independence – the ability to source the products most suitable to meet a client’s financial needs, not promote the product of one provider – is, in itself, a major contributor to consumer protection.

Continued regulatory pressure and mounting costs of compliance are making it increasingly difficult for small, independent financial advisors, like our members, to continue to sustain successful businesses and create disincentives to attract new entrants.

IFB is concerned that current regulatory trends favour large financial institutions with the ability to staff in-house compliance departments and absorb these increasing costs due to their size. We believe this trend will result in consumers having less access to personalized financial advisory services. This will be particularly acute for small retail clients and those situated in smaller or more remote communities. It is our view that regulatory policy should promote financial inclusion for all levels of investors and any new governance models should be subjected to this test prior to implementation.

Our specific comments related to the IDA proposals follow below. Our comments are primarily directed at the Relationship Disclosure Requirements (RDD), conflicts resolution/disclosure and retail client suitability aspects of the CRM, as these are the most likely to affect how our members conduct business with their clients.

#### Client Relationship Model (CRM)

The proposed CRM incorporates four core principles which formed part of the former Fair Dealing Model, as well as build on requirements already set out in current IDA rules. These principles aim to promote increased clarity and transparency so that clients are informed about the essential features of their account, specifically as they relate to the account relationship, performance, conflicts of interest and risk. While IFB supports openness and transparency for consumers, we are troubled by the continuing regulatory attempts to go beyond these principles and impose rules on the relationship between advisors and their clients. This was a common industry complaint to the FDM when it was proposed, and we are disappointed that in spite of this, the IDA continues to propose a substantively similar approach.

We also wish to highlight the fact that there are several other regulatory initiatives underway which are also focused on developing strategies to increase clarity and transparency for consumers. Specifically, these include the CSA’s Registration Reform Project, the Joint Forum’s proposed Point of Sale Disclosure for Segregated and Mutual Funds and the yet to be released MFDA CRM proposal. We are concerned that lack of harmonization in a consistent approach to such disclosure will result in confusion for advisors and the public alike.

IFB supports the client’s right to receive clear disclosure of information pertinent to their account. We agree that this disclosure should be written in plain language so that the disclosure is meaningful. Where we differ is on the best means to achieve this disclosure.

The IDA is proposing to entrench many of the details of this disclosure in a relationship document. We submit that such a prescriptive approach will undermine the IDA's goal of greater transparency because it will result in lengthy documents that many clients will either set aside or ignore. IFB supports a more principles based approach whereby broad categories of disclosure are set out but permits discretion to choose information relevant to the client or client's account relationship. This approach also reflects more closely the approach put forward by the CSA in its revised Registration Reform proposal.

Securities regulators may also look to the Canadian life and health insurance industry as a further example of principles based requirements. Provincial insurance regulators examined the sales practices of insurers and intermediaries, which culminated in the endorsement of three principles aimed at managing conflicts of interests and increasing consumer protection. These principles are:

- The client's needs must be paramount
- Actual or potential conflicts of interest must be disclosed to the client
- The product recommended must be suitable for the client

While regulators expect insurers and intermediaries to adhere to these principles, they have permitted flexibility for the industry to develop materials specific to their business needs and the needs of their clients. IFB supported this approach by developing a template conflict of interest disclosure form for use by advisors, accessible through our website for downloading. Advisors can customize it to meet their disclosure needs, thus not inundating clients with extraneous information which is not relevant to their situation. We would be pleased to share our disclosure template with the IDA or it can be viewed on our website, [www.ifbc.ca](http://www.ifbc.ca).

IFB also participated in a parallel industry initiative which developed disclosure content for insurance companies to make available to advisors – a particularly important initiative for those who do not belong to an advisor association. Insurers, in turn, ask advisors for proof that such disclosure has been made to clients during the application process. This is an excellent example of how a collaborative effort on the part of industry and regulators can result in effective solutions.

Another industry example may be found in the Joint Forum of Financial Market Regulators' (Joint Forum) "*Principles and Practices for the Sale of Products and Services in the Financial Sector*". This document was developed to harmonize the market conduct of all financial intermediaries when dealing with consumers, regardless of the type of financial product or service involved. As the Joint Forum stated, "*Ultimately regulators would like the principles and practices to be incorporated or reflected in the codes of conduct of financial industry associations and for adherence to those codes to be actively promoted.*" In our view, this comment endorses a principles based approach and underscores their objective that consumers should receive the same treatment across all financial sectors.

More recently, IFB has been actively engaged in the consultations surrounding the Joint Forum's proposed point of sale disclosure for segregated funds and mutual funds. Again,

a common industry observation related to this undertaking is that the proposal as presented attempts to prescribe the elements of disclosure around two different products, leading to excess information that consumers may well find irrelevant or overwhelming, thus undermining the regulatory objective of greater transparency and clarity.

IFB urges financial regulators to seek a harmonized, co-ordinated approach to enhancing consumer understanding of the products and services they are purchasing, utilizing a principles-based methodology.

Relationship disclosure materials:

We are concerned that the proposed IDA rule<sup>1</sup> outlining the review process for relationship disclosure materials will be onerous, frustrate the client who wishes to open an account and transact business in a timely manner, and have a negative effect on the client-advisor relationship. In reality, clients often demand quick market reaction from their advisors when they wish to execute trades. We are concerned that this process will be significantly slower in instances where an advisor wishes to use a customized disclosure document and has to wait for head office or supervisory approval. This will be further complicated where the advisor is conducting an off-site client meeting or transacting business over the telephone.

In addition, the proposed Rule amendment requires a system of approvals by head office or branch managers which differs from the approach in the CSA's revised Registration Reform proposals. Again, we are concerned that this lack of regulatory harmonization will lead to confusion and the likelihood that clients of an IDA registrant will be treated differently than those who conduct business outside of the IDA platform.

Suitability:

We agree that providing clear information to clients at account opening is important as it defines their relationship with the advisor and, to a lesser extent, the dealer. We support a document which identifies the responsibilities of each party, including the client. Obviously, it will be impossible in most instances for an advisor to have knowledge of a material change in a client's circumstances that, under this proposal, would trigger the requirement for a suitability review, unless informed by the client. The distinction between these situations as compared to other types of suitability triggers should be made clear so that the advisor is not held responsible.

Also, the CRM largely ignores the importance of the relationship that exists between the client and advisor, and the information exchanged at such meetings. Different circumstances, transactions and geographic distance may dictate different suitability

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<sup>1</sup> ***XX06. Review of relationship disclosure materials***

*(1) Pursuant to Regulation 1300.2, the relationship disclosure provided to the client must be approved by a partner, director, officer or branch manager. This approval must occur regardless of the form the relationship disclosure takes. If the document is a standardized document, the document must be approved by head office and the branch manager or supervisor who approves new accounts must ensure that the correct document is used in each client circumstance. If the relationship disclosure is a customized document for each client, the branch manager must approve each document.*

requirements, where a singular approach will not be useful. The financial services sector is already heavily-regulated and its participants subject to extensive rules related to suitability, risk analysis and know-your-client procedures. We do not see where further rules in this regard will be helpful to consumers.

Cost Benefit Analysis:

We believe that there is an onus on regulators to demonstrate the value to consumers of any new regulatory initiative before enacting further regulation on registrants. Increased regulation represents additional costs. If these costs are significant enough they will affect the market by reducing the ability of smaller dealers to remain competitive, as ultimately they must pass these costs onto to their clients. The IDA states that no such cost-benefit analysis has been done due to a lack of industry consensus. We are of the view that without supporting analysis there is little rationale for imposing further rules.

In fact, the results from the 2007 OSC Investor Forum clearly demonstrate that investors are most concerned with access to timely complaint mechanisms and complaint resolution. The following quote was taken from a report on the Investor Forum, delivered by Susan Wolburgh Jenah, President and CEO, Investment Dealers Association:

*“What did investors tell us two years ago?”*

- *I don't know where to go if I have a problem or complaint. It's hard to find my way through the regulatory system.*
- *Making a complaint is slow and can be costly, especially if I need a lawyer.*
- *I don't know how to get my money back. What options do I have? Where should I go?*
- *I don't know how to find out if a financial advisor, broker or a firm has a bad track record. Why isn't this information more easily available?*
- *Sometimes the information that is available to me is hard to understand. It's too technical, not in ordinary everyday English.”<sup>2</sup>*

Focusing on resolving these types of problems along with prosecuting registrants who engage in fraudulent behaviour or fail in fulfilling their fiduciary responsibilities will be much more successful in increasing the confidence of consumers and reducing their frustration with the current system, than prescribing new, complex relationship disclosure standards.

In conclusion, IFB appreciates the opportunity to present our views, on behalf of our members. We trust that you will find them useful as you develop your proposals further and would be pleased to discuss our suggestions at your convenience.

Consumers of financial products and those who work in the financial industry alike will benefit from a more flexible approach which recognizes the dynamic, competitive nature of this marketplace.

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<sup>2</sup> Working Together: Progress Report 2007 Investor Forum, October 24, 2007

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', with a large, stylized flourish at the end.

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