IFB CISF
Independent Financial Brokers of Canada
Courtiers Indépendants en Sécurité Financière du Canada

30 Eglinton Avenue West, Suite 306
Mississauga ON L5R 3E7
Tel: (905) 279-2727
Website: www.ifbc.ca

September 11, 2008

Gregory J. Ljubic
Corporate Secretary
Mutual Fund Dealers Association of Canada
121 King St. West, Suite 1000
Toronto ON M5H 3T9

Sarah Corrigall-Brown
Senior Legal Counsel
British Columbia Securities Commission
701 West Georgia St.
P.O. Box 10142, Pacific Centre
Vancouver BC V7Y 1L2

Delivered by Email: gljubic@mfda.ca; scorrigall-brown@bcsc.bc.ca

Dear Sir/Madam:

Subject: **MFDA Proposed Amendments to Rule 2.2 (Client Accounts); Policy No. 2** ***Minimum Standards for Account Supervision;*** **Rule 5.3 (Client Reporting) and Rule 2.8 (Client Communications)**

Independent Financial Brokers of Canada (IFB) is pleased to provide comments, on behalf of our members, to the request for comments on the proposed amendments referenced above. Because our perspective reflects the potential effects of these proposals on individual advisors, rather than Dealer Members, we have chosen to provide our comments jointly on the two consultations currently underway.

Introductory Remarks

IFB is a non-profit association comprised of 4,000 licensed financial advisors across Canada. The majority of our members are licensed to provide life/health insurance and mutual fund products and advice. Our members are independent, self-employed contractors. It has become an increasing concern to our organization that regulators are implementing regulatory solutions that negatively impact on our members' ability to offer independent advice to their clients.

We believe, as do our members, that their ability to provide this independent perspective is an essential component to ensure clients receive product advice that is suitable to their personal circumstances. Our members place a great deal of value on the service they provide to clients – often establishing long term relationships, extending to other family members. Unfortunately, this process is being undermined by regulatory measures which seek to transfer increasingly intrusive supervisory responsibilities to dealer members.

The livelihood of many mutual fund companies and advisors, like our members, is dependent on an independent channel of distribution. Regulatory initiatives should not, however inadvertently, disadvantage one model over another. The burden of compliance has become so great that it has become a barrier to entry and to continuing to offer mutual funds for many advisors. Clearly this is counterintuitive to the concept of ensuring that consumers have widely available to them a range of financial investment options.

We believe that increased regulation should only be introduced where there is a proven need to address a regulatory gap in consumer protection that cannot be addressed through more effective enforcement of existing rules.

We note that there is no indication in "Part II Detailed Analysis, A. Relevant History" in either of these consultations that the MFDA has sought the input of advisors, either directly or through their associations. We find this to be a significant short-coming in such consultations as clearly many of the proposed changes affect Approved Persons directly, or indirectly as they are passed down from the Dealer's compliance departments. Indeed, the success of many of these proposals is dependent on Approved Persons meeting the new compliance standards. For example, there are significant proposals which expand upon the requirements to document client information and establish suitability. In most cases, advisors will conduct suitability reviews and complete or amend KYC information. Advisors can offer a practical perspective on information clients want or do not want to receive. Dealers often have a different perspective and cannot be considered to be an effective substitute.

Similarly, we were interested to note that the Joint Standing Committee on Retail Investor Issues, a committee comprised of the Ontario Securities Commission, MFDA, IIROC and Ombudsman for Banking Services and Investments, recently issued an investor survey for consumers *"to identify the information they want and need when making a decision to invest and how they think investment products should be regulated*". Since this survey is open until early October, we suggest that the results may well be of significant importance to this process and need to be integrated into these proposals.

Below follow our more specific comments related to the proposed Rule changes under consideration.

Client Relationship Model (CRM)
IFB supports a principles based approach whereby broad categories of disclosure are set out but permits discretion to choose information relevant to a particular client or client's account. This approach also reflects more closely the approach put forward by the Canadian Securities Administrators in its revised Registration Reform proposal, NI 31-103. Generally, we find the MFDA proposal to be preferable relative to the more prescriptive approach proposed by IIROC in its CRM, earlier this year.

We have suggested in previous consultations that securities regulators look to the Canadian life and health insurance industry as an example of a workable approach to achieving principles based requirements. Provincial insurance regulators examined the sales practices of insurers and intermediaries and endorsed 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 insurance regulators expect insurers and intermediaries to adhere to these principles, they have permitted flexibility for the industry to develop materials specific to meet their business needs and the needs of their clients. This is an example of how a collaborative approach can be successful.

Client Accounts (Rule 2.2) and Policy No. 2, *Minimum Standards for Account Supervision*
Together the amendments to these sections are intended to more clearly define the relationship between the client and advisor and expand upon the information provided to the client on account opening to set a new minimum standard of relationship disclosure. They also clarify requirements related to suitability of investments.

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 Fair Dealing Model when it was proposed, and we are disappointed that in spite of this, securities regulators continue to carry forward aspects of this as part of the CRM project.

We note that, unlike the Permitted Client category in the Registration Reform project, there is no opportunity for designated clients to opt out of some of the more onerous aspects of the SRO's approach to the CRM.

Under both the MFDA and IIROC proposals, the contents and procedures related to the relationship disclosure document do not recognize the different levels of service a client may choose to have with an advisor or firm. While a detailed KYC may be appropriate for a client who seeks to establish a full-service, managed account, that same level of detail may not be appropriate for a client who engages in occasional or infrequent transactions. For example, a client who wishes to invest a nominal amount in a mutual fund to make a one-time contribution to his or her RRSP is likely to find this level of detail unnecessary and perhaps even objectionable. Furthermore, not all investors wish to place their investments with a single advisor or firm. Clients should not be forced to divulge detailed personal information related to their financial circumstances when they find it to be inappropriate. A simple solution which would remedy these situations is to provide clients with an "opt-out" provision, which would clearly state that more detailed information is not being collected at the client's direction. At a minimum, clients should have the ability to decide whether a material change to their information has occurred that affects their risk tolerance and whether that change is significant. As well, there should be some recognition paid to the onus clients have in communicating this information to their advisor or dealer firm.

Client Reporting (Rule 5.3) and Client Communications (Rule 2.8)
We are concerned with the proposal in 5.3.1(b) that:
"A Member may not rely on any other person (including an Approved Person) to send account statements as required by this Rule."

And, Rule 2.8.3(b) that:
"In addition to complying with the requirements in Rule 2.8.2 and Rule 2.8.3(a), any client communication containing or referring to a rate of return regarding a specific account or group of accounts that is provided by an Approved Person must be approved and supervised by the Member."

These proposals mean that dealers will be required to be responsible for the content of and approve any account performance reports before the Approved Person can provide them to their client. This represents a substantive change in regulation and is intrusive to our members' relationships with their clients.

The MFDA has stated this Rule is required because some compliance reviews "*have noted inconsistencies and potentially misleading information in performance reports provided to clients directly by some Approved Persons*". We believe it is incumbent on the MFDA to provide substance to this remark, including evidence of whether clients have been harmed, before an onerous system of pre-approvals and supervision is invoked. It is our understanding that generally advisors rely on the dealer's back office systems to generate performance information. In our view, Rule 2.8.3 (a) and (c) are sufficient as they require a "rate of return to be calculated in accordance with standard industry practices". Part (b) should be deleted. It is unnecessary for dealers to pre-approve client communications which meet the requirements of (a) and (c). Approved persons who intentionally ignore these requirements would be subject to disciplinary action.

Lastly, we encourage the MFDA, IIROC and the CSA to work toward a simplified, harmonized approach to these issues as they are under consideration concurrently by each regulator. This would not only benefit those who conduct business in the financial services field and must deal with differing standards of regulation, but the retail investor, who should not face varying standards of disclosure or protection based on the registrant's statutory requirements.

IFB would be pleased to discuss any of our comments in further detail. We look forward to commenting further as future drafts become available.

Yours truly,

John Whaley
Executive Director
Email: jaw@ifbc.ca