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Paige Ward
Director of Policy and Regulatory Affairs
Mutual Fund Dealers Association
121 King Street West, Suite 1000
Toronto ON M5H 3T9

Sent by email: pward@mfd.ca

Dear Ms. Ward:

Subject: MFDA Bulletin #0354-P: Principle Protected Notes (PPNs)

Independent Financial Brokers of Canada (IFB) has prepared the following comments with regard to this Bulletin. We understand that this Bulletin has been issued at the request of the Canadian Securities Administrators (CSA) to clarify the procedures related to the distribution and sale of PPNs, in particular ensuring that know-your-client (KYC) and suitability obligations are followed by mutual fund registrants. We further understand that it is the intent of the MFDA to engage shareholders in a more robust consultative process after this matter has been considered by the Policy Advisory Committee. However, we feel there is merit in providing comments, on behalf of our many members who are registered as Approved Persons, at this time so that the Policy Advisory Committee can consider the perspective of the individual advisor, not just the dealer member.

In particular, we are concerned with the intent of the MFDA to impose KYC and suitability obligations on dual licensed advisors who sell PPNs and to require these advisors to sell these products through their dealer. Many of our members are licensed to sell both life/health insurance products and mutual funds. To date, while the MFDA requires all securities related business to be placed through the Approved Person's dealer; this has not been the case for deposit instruments or insurance. Under the CSA definition of a PPN, it is "an investment product". It would appear then that PPNs are not by definition a 'security', which raises the question as to whether securities regulators have jurisdictional authority over the sales of such products. It is our understanding that these products are exempt from securities legislation in most provinces or considered to be exempt securities if issued by Schedule I or II banks. Therefore, we believe it is incumbent on securities regulators to provide the premise from which it gets its authority.

Financial advisors already have a duty to understand their client's needs before recommending a product, to ensure the product is suitable and to place that client's needs before his/her own. Requiring dual licensed advisors to place their deposit business through their dealer goes well beyond this duty and infringes on their independence and ultimately the investment choices available to their clients. Regulatory convenience, in the form of audits and paper trails, should not take precedence over the ability of investors to choose the product they want from the advisor they wish to do business with. Furthermore, if mutual fund registrants are held to a different standard than non-registrants who sell such products it will lead to confusion in the marketplace and amongst the investing public. The need for separate regimes must be addressed and confirmed.

We see a further jurisdictional issue in that most PPNs sold in Canada have a bank guarantee at the end of the term. Since banks are federally legislated, we wonder how the CSA can impose obligations on "Approved Persons of MFDA members, regardless of whether or not the Approved Person is also an employee of a bank". Investors may acquire these products from various sources, including individual financial advisors or directly from the seller. PPNs sold by bank employees are subject to the requirements of the federal *Bank Act*, not provincial securities regulators. This is evidenced by the changes to the *Bank Act*, put forth by the federal Department of Finance, when it issued new point of sale disclosure rules for PPNs for federally regulated deposit-taking institutions, which became effective July 2008. These changes increased the level of disclosure for consumers, particularly concerning fees, expenses and projected rates of return. It was our understanding that the CSA confirmed that these increased disclosure requirements, along with the existing obligation of its registrants to understand their client and recommend only suitable products, had satisfied most of its concerns related to the sale of PPNs to the general public. We are surprised then that it has asked the MFDA to go further and require dual licensed advisors to sell PPNs only through their dealer.

In summary, we do not believe that this should provide the MFDA with an opportunity to increase its regulatory authority over the products it covers under the guise of regulating the salesperson. It must be held accountable for any proposed changes in regulatory scope and/or products regulated by providing industry stakeholders with a clear statement which identifies a clearly defined need, a cost-benefit analysis and, in this case, support for its jurisdictional authority.

For example, it is not enough to argue jurisdiction based on the investment component of PPNs. Other deposit instruments are also investments and do not fall under securities regulation nor do the activities of the Approved Persons who sell such products. It has been the view of the MFDA that such products may be legitimately sold outside the dealer. Securities regulators should not extend their purview over the sales process without providing sufficient rationale as to why they have such a mandate. Our members strongly believe in their ability to provide independent advice and product selection to clients. Regulatory intervention in this process, which forces their business to be placed through a single source, undermines their ability to remain independent. Ultimately, this reduces consumer protection in the marketplace.

We trust you will find our comments useful as you consider this proposal. Please contact the undersigned should you require further information or have questions.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', with a large, stylized initial 'J'.

John Whaley
Executive Director
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