



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

February 27, 2009

Bob Christie, Chair
Joint Forum of Financial Market Regulators and
CEO and Superintendent, Financial Institutions
Financial Services Commission of Ontario
5160 Yonge Street, 17th Floor, Box 85
North York ON M2N 6L9

Sent by email: ceo@fsc.gov.on.ca

Dear Bob:

I would like to begin by thanking you for inviting Independent Financial Brokers to attend the recent meeting at FSCO to gather our input on the issues facing the life insurance industry today and, in particular, independent brokers. As we noted at this meeting, IFB appreciates the consultative approach FSCO has with its stakeholders and we trust our input will be useful as you draft your Statement of Priorities for 2009/10.

The purpose of this letter is to follow up on some of the issues raised at our meeting as we feel that they are important to ensuring the future of the life insurance industry and the distribution of its products through the independent broker channel.

In your additional role as the Chair of the Joint Forum, you will be well aware of the many differences that exist between how securities regulators regulate and how insurance regulators regulate. An issue of particular concern to us is what we call the growing scope of regulatory 'creep' that we are finding when responding to securities related issues. As many of our members are licensed to sell both life/health insurance and mutual funds, we keep abreast of changes affecting these fields and any regulatory undertakings.

MFDA Bulletin on regulating PPNs

Evidence of the most recent example of this regulatory creep is the Bulletin issued by the MFDA on Principle Protected Notes (PPNs)¹. Briefly, the CSA has asked the MFDA to

¹ MFDA Bulletin #0354-P: Principle Protected Notes (PPNs), January 23, 2009

amend its Rules to “ensure that KYC and suitability obligations apply to all dealings in PPNs by Approved Persons of its Members” ... “whether or not it falls within the definition of a security”. It would include “PPNs that are deposit instruments sold by Approved Persons outside of a MFDA Member” and those sold by bank employees.

We believe that this direction from the CSA oversteps its jurisdiction. Furthermore, it will change how these deposit instruments can be sold by dual-licensed Approved Persons and infringes on our members’ right to operate a legitimate outside business activity that is not subject to oversight by their Mutual Fund Dealer. A PPN is not a “security” but a deposit instrument. Deposit instruments are exempt securities under securities legislation. The principle guarantee in a PPN is often provided by Schedule I or II banks, which are federally regulated financial institutions and subject to the provisions of the Bank Act, including the Regulations governing PPNs which were implemented in July 2008.

The CSA further proposes that dual licensed advisors must place their PPN business through their Mutual Fund Dealer, not the insurance agency they place their insurance business with, and that the MFDA must enforce their compliance with the KYC and suitability requirements required under mutual fund regulations. This directive represents, in our view, a dangerous shift in regulatory attitude by securities regulators.

Leaving aside some of the more technical arguments based on existing legislation, we wonder if sales related to a PPN become subject to MFDA oversight, what will prevent securities regulators from including segregated funds or an index-linked GIC investment product offered by an insurance company in future regulatory directives²?

Financial planning regulation proposed by IIROC

Equally disturbing to us is that this initiative follows closely on the heels of a move by the Investment Industry Regulatory Organization of Canada (IIROC) to formally bring the financial planning activities of its salespersons, including those who are dual licensed in insurance, under the auspices of their Dealer. IFB strongly objected to this in our submission to IIROC as oversight of financial planning is not in their purview and would effectively create a system where an insurance licensed advisor would have to submit his/her financial plans to the Dealer for approval in advance of presenting them to the client – even when the advisor is conducting non-securities related financial planning services.

Many insurance advisors feel strongly that the processes they use to establish their clients’ needs and search for suitable products are far superior to the standardized KYC forms prescribed for securities and mutual fund clients.

² Source: CSA Notice 46-305: “A PPN is an investment product that offers an investor potential returns based on the performance of an underlying investment and a guarantee that the investor will receive, on maturity of the PPN, not less than the principle amount invested. For the purpose of this notice, PPNs include the instruments commonly described as market-linked GICs and market-linked notes.”

This undertaking by IIROC not only would result in a fragmented approach to regulating financial planning activities, in that it would provide a different standard for IIROC advisors and clients of those advisors compared to clients utilizing other financial services, but would reduce the ability of our members to provide independent advice. For example, this proposal would require that “*Financial planning services must be offered and provided only through the Dealer Member, not as an outside business activity*”.

In our response we said:

If Dealer oversight extends to the activities of our members when they are conducting non-securities related financial planning services, this may well lead to situations where the Dealer could pressure the advisor to promote a specific provider or service, thereby undermining our members’ ability to offer independent advice and the public’s ability to source such advice.

To us, there is no doubt that Dealers, if responsible for the provision of financial planning activities of their advisors, will narrow the scope and number of financial planning methodologies that will be approved to simplify compliance. This may well increase the number of conflict of interest situations for advisors and their clients.

Financial planning is a very broad term that includes many of the activities financial advisors undertake on a daily basis. Thus it is not easily separated as a distinct activity. Because of this, we believe any guidance, if needed, is more appropriately sited with a multi-sectoral body like the Joint Forum. Financial services clients and advisors need to rely on consistent and sensible regulation. Insurance licensed advisors already have statutory obligations to place the needs of the client first, to disclose potential conflicts of interest and to ensure any advice given or products recommended are suitable. Insurance companies also have obligations to supervise their agents/brokers activities and to ensure ongoing suitability. Duplication and fragmentation is ineffective and inefficient and will create confusion. The Joint Forum, in this instance, could be instrumental in developing a cohesive, integrated approach to a multi-sectoral activity based on guiding principles.

IFB challenges MFDA amendment

As you may be aware, IFB has retained a securities law firm to challenge certain amendments that were made to MFDA By-Law 1 that affect Approved Persons (like our members) and which we regard as prejudicial and unfair. While we are challenging specific aspects of these amendments, we believe it is representative of the heavy-handed approach and blatant disregard for process that the MFDA displays in dealing with its members and their advisors.

Concluding remarks

Life/health insurance products, as you know, are intended to serve a long-term financial replacement need in the event of a catastrophic event like death or disability. They play a different role in the financial arrangements of individuals and families than does investing in mutual funds or securities. While both have a valuable place in securing one’s financial future, if securities regulation and its regulators are permitted to continue to interfere with this process, we believe that it will bring negative change to the nature of the life insurance industry and those who service it.

Independent brokers are an integral part of the distribution of financial services and financial service products to consumers across Canada. They are unique in their ability to offer consumers a wide range of choice in products and providers. Reducing their ability to offer independent advice and product selection will reduce the competitive nature of the financial services industry and lead to a reduction in consumer protection and service.

On behalf of IFB and its members, I hope you will take the opportunity to raise these concerns within FSCO and with other provincial regulators. We believe that it is important that financial advisors, who provide clients with a full suite of insurance and investment products, are not subject to competing – possibly contradictory – regulatory demands.

I would be happy to discuss any of the above in greater detail with you and/or your staff.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', written over a white background.

John Whaley
Executive Director
Email: jaw@ifbc.ca