Joint Forum of Financial Market Regulators

Forum conjoint des autorités de réglementation du marché financier

Principles and Practices for the Sale of Products and Services in the Financial Sector

The Joint Forum statement of *Principles and Practices for the Sale of Products and Services in the Financial Sector* has been developed by regulators from all jurisdictions except Quebec and across all financial product sectors.

The purpose of this document is to set out best practices that should apply to the conduct of all financial intermediaries in their dealings with consumers of financial products and services. It will also help to provide consumers with a benchmark to assess the conduct of any financial intermediary with whom they currently have a relationship, or are considering establishing a relationship. To this end, the Joint Forum has also developed a companion Consumer's Guide to help clarify the stated principles and practices for the benefit of consumers.

The Joint Forum is seeking voluntary endorsement of these principals and practices. It is expected that industry associations will inform their members of the existence of this document and encourage their members to adopt these best practices. 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. For financial intermediaries that are not part of any industry association, we hope to reach out to them through publication and promotion of these standards within the financial services industry and among consumers.

In some areas the principles and practices may ask intermediaries to go beyond what is explicitly required by law. That is because regulatory requirements only specify minimum obligations that must be complied with whereas this document sets out best practices that intermediaries should strive towards as professionals. It is important to note, however, that the principles and practices are not intended to supercede regulatory requirements. If any principle or practice is inconsistent with a provision of an applicable law, regulation or rule, the applicable law, regulation or rule will take precedence. This includes any rule of a self-regulatory organization, whether recognized, exempt from recognition or otherwise authorized.

1. Interests of the Client

The client's interests take priority over the intermediary's interests and should not be sacrificed to the interests of others.

Commentary: *This principle is paramount. All remaining principles and practices expand upon this fundamental principle.*

2. Needs of the Client

In order to understand the client's interests, the intermediary must obtain or confirm information about the needs of the client and, when making a recommendation, must reasonably ensure that any product or service offered is suitable to fulfill those needs.

Commentary: *In assessing the needs of the client, the intermediary should take into account the financial significance and complexity of the product or service being sold.*

3. Legitimate Business Interests

The intermediary must collect enough information about the client and the transaction to reasonably determine the identity of the client and that the transaction is lawful. The intermediary must not act on behalf of a client when there are reasonable grounds to believe that the transaction is of an unlawful nature.

Commentary: *When obtaining information about the client and his/her business, the intermediary must not continue to act for the client if it is known or should be known that the transaction is unlawful. In some circumstances, the intermediary will be required to report the transaction to regulatory authorities.*

4. Professionalism

Intermediaries must act in good faith at all times. They must acquire an appropriate level of knowledge relating to their particular business and meet professional ethical standards, including acting with honesty, integrity, fairness, due diligence and skill. The concept of professionalism includes but is not limited to the following:

a. **Education:** In a rapidly changing financial marketplace, intermediaries must keep abreast of changes in products, regulations and other factors that will affect their ability to provide high standards of service to clients. Education, including continuing education, is a necessary component of professional skill.

b. **Holding Out:** An intermediary must inform the client of the types of activity he or she is licensed or registered for, as well as the business name(s) of firm(s) under which he or she is authorized to operate.

c. **Advertising and all other Client Communications:** Intermediaries must ensure that all references to their business activities, services and products are clear, descriptive and not misleading.

d. **Business Operations:** Intermediaries must ensure that their financial records are properly maintained and that they follow sound business practices.

e. **Fair Practices:** Intermediaries must not engage in practices that mislead the client or place the interests of others ahead of the client's interests. Unfair practices are contrary to the underlying spirit of the principles and practices set out in this document. The intermediary must refrain from practices that contravene, directly or indirectly, the spirit or intent of any of the requirements of these principles and practices.

f. **Financial Accountability:** Intermediaries should have appropriate resources in place to compensate clients who suffer a loss as a result of an error, omission or fraudulent activity that is caused by the intermediary or someone for whom he or she is responsible. The intermediary must ensure that all financial obligations are met and where appropriate , should strive to exceed all existing requirements for professional liability insurance, errors and omissions insurance, trust accounts, deposits or other fiduciary measures.

<u>Commentary:</u> *Professionalism means that intermediaries will strive to adhere to best practices and will not be limited to standards required under law or regulation.*

5. Confidentiality

Intermediaries must protect clients' personal information and take all reasonable steps to ensure that personal information is not divulged and is only used for the purpose for which it was collected, unless the client provides proper authorization, or as required by applicable laws or regulations.

<u>Commentary</u>: *The requirement of confidentiality extends to participants in group plans. A basic requirement for intermediaries is to ensure that proper care is taken when handling documents that contain personal information provided by clients/group plan participants. Intermediaries must not use personal information to the detriment of the client. The damage to the client is the same regardless of whether personal information is divulged to someone willfully or as a result of careless handling of files.*

6. Conflicts of Interest

The intermediary must avoid entering into situations where the underlying circumstances could prejudice or bias the direction of advice he or she provides. In the case of a conflict of interest, the client must be made aware of the nature of the conflict before the transaction takes place.

<u>Commentary</u>: Intermediaries should always turn their mind to all the facts and circumstances with an eye towards determining whether any actual or potential conflicts of interest might exist. If a situation arises where a conflict does exist and cannot be avoided, the condition can only be mitigated by objective, plain-language disclosure to the client of the nature and impact of the conflict. The client must then be given an opportunity to halt the transaction, to seek other professional advice, or to knowingly proceed with the transaction.

7. General Information Disclosure

The intermediary has the responsibility to ensure that the client is fully informed of all relevant information before the client makes a decision. The client is entitled to disclosure of the risks and benefits of the financial products being considered and information about the intermediary's business relationships that are relevant to the transaction.

<u>Commentary:</u> There are two aspects to disclosure and both must be satisfactorily taken into account under these principles and practices: (1) "product information" regarding product or service features, as well as the main risks and benefits inherent in the transaction or purchase; and (2) "intermediary information" regarding relationship issues which are important to the consumer.

a. **Product Information:** In addition to clearly describing the product or service for the client and the ways in which the transaction will fulfil the needs of the client, product information includes disclosure of important assumptions underlying any illustrations or examples that have been provided to the client, as well as the fact that actual results may differ significantly from those shown. The intermediary should avoid using examples or illustrations which he or she knows, or ought to know, are based on unusual results or a period that generated much better than normally anticipated performance.

b. **Intermediary/Business Relationship Information:** The intermediary must include the names of organizations or persons that are, to his or her knowledge, directly providing remuneration to the intermediary; the relationship between the intermediary and the firm whose product is being considered; and any relationship(s) among the firms directly involved in a transaction. The intermediary should also disclose any other direct or indirect relationships that are relevant to the transaction. In cases where this information has not been disclosed because the intermediary is unaware of it, it is expected that he or she will have first made a reasonable effort at due diligence. The intermediary must also disclose all fees payable by the client, the method of the intermediary's remuneration (disclosure of specific amount is not required, but disclosure of the type of compensation is, i.e., fixed and percentage commission, salary, or other) and must disclose the existence of any other benefits from sales incentive programs related to the transaction (note: as with compensation, this disclosure only applies to the type of compensation the intermediary receives, not the specific amount).

8. Client Redress

The intermediary must deal directly with all formal and informal complaints or disputes, or refer them to the appropriate person or process, in a timely and forthright manner. In situations where a dispute cannot be resolved, intermediaries should provide to clients, preferably in writing, the redress mechanisms that can be pursued, depending on the product and type of complaint involved. The intermediary, therefore, must be fully aware of all applicable processes for dealing with complaints as well as the channels available for pursuing different types of complaints (e.g., regarding conduct, service, or product performance).

9. Definitions

"Client" means any customer or potential customer with whom an intermediary interacts in the course of his or her business.

"Intermediary" means a participant in the financial services industry who markets products or provides financial advice or services to clients. In a particular instance this could be a person, firm and/or a financial institution.

"Personal Information" has the same meaning as defined by existing federal and provincial privacy legislation.