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September 30, 2010

To:
British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Financial Services Regulation Division, Consumer and Commercial Affairs Branch, Department of Government Services, Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Attention:
John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
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Email: jstevenson@osc.gov.on.ca

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Email: consultation-en-cours@lautorite.qc.ca

Submitted via Email.

Dear Sirs and Mesdames:

Subject: National instrument 31-103 *Registration Requirements and Exemptions*, and National Instrument 33-109 *Registration Information*

Independent Financial Brokers of Canada (IFB) is pleased to comment on the proposed amendments to NI31-103, NI33-109 and associated Companion Policies, published June 25, 2010.

Independent Financial Brokers of Canada (IFB) is a national, not for profit association representing approximately 4,000 licensed professionals who make their living in the financial services sector as independent agents of the companies they represent. They have specifically chosen not to be in an employee relationship or operate under an exclusive contract with a single provider. Their ability to access the products of multiple companies means they have the ability to offer clients a variety of products to find those most suitable to meet their clients' financial need.

In order to provide this level of service to their clients, the majority of our members have chosen to be dual licensed, as both Approved Persons with an MFDA dealer and life insurance licensed with their provincial regulator. Some may be licensed or have authority to offer complementary financial services or products such as mortgages, registered education savings plans, stocks and bonds, guaranteed deposit instruments, financial planning, and general insurance, for example. Many would have referral arrangements in place with other, trusted, financial services professionals so that their clients can receive comprehensive advice and access to a full suite of products and services to address their financial needs. Either way, their goal is to ensure their clients can receive comprehensive advice and access to a full suite of products and services to address their financial needs.

IFB supports the CSA's core objectives to harmonize and streamline the registration rules and duties of registrants in order to increase consumer protection. In reviewing the amendments, however, we feel the rules on referral agreements will negatively impact how our members conduct business, while not achieving the goal of providing consumers with any increased protection.

Referral Arrangements

As noted above, the majority of our members are Approved Persons of a mutual fund dealer and, therefore, subject to extensive, often stringent, MFDA rules. It has long been the practice in the mutual fund industry and its regulators to recognize the permissibility of certain outside business activities, subject to their insurance regulator and mutual fund dealer approval, and adherence to rules which provide for written disclosure to clients and managing conflicts of interest.

Under NI31-103, the referral rules have been expanded to include a definition of a referral and how referrals are to be monitored, reported and tracked through the dealer. As a result, referrals have been highlighted for our members and even more so as a consequence of the MFDA replacing its existing referral rule with language consistent with NI31-103.

In keeping with this, the MFDA issued MFDA Bulletin 0396, outlining the new referral arrangements, effective March 31, 2010, for mutual fund dealers and advisors to comply with the referral arrangement rules as set out under NI31-103.

Unfortunately, this means the new MFDA referral rules no longer distinguish between securities and non-securities related referrals. This much broader application will significantly impact how our members will be forced to conduct business when they offer or advise their clients on products other than those regulated under securities regulation. We are already experiencing complaints from some members whose mutual fund dealers are now requiring them to place all their referrals through the dealer, even when those referrals are not related to mutual funds. It is further troubling that this requirement extends to referral arrangements that were in place before NI 31-103.

Compliance with NI 31-103, Division 3, will pose a significant limitation on our members' ability to provide their clients with the independent advice and access to products that is the cornerstone of their business model. We trust that this was not the intent of NI31-103. It is our understanding the intent was to bring consistency to the disclosure of referral arrangements, which had varied across provincial jurisdictions, and to reduce confusion for consumers as to whom they were dealing with in various circumstances and the cost to them, if any, of the referral.

However, this was not the situation in the mutual fund industry, which already had requirements, as set out in Member Regulation Notice #0030, for APs to disclose referral arrangements to the client and dealer, and for the dealer to establish procedures to manage any conflicts of interest. However, under the NI31-103 rules, APs not only have to disclose the referral but the dealer must be a party to the referral, even when it relates to the APs non-securities related approved outside business.

In practice, the application of this rule to our members will result in situations which will confuse clients and potentially even reduce the choice of non-securities related products our members can offer clients, particularly if dealers use this referral rule to influence sales and grow their profitability under the guise of regulatory compliance.

The fact is that many mutual fund dealers operate a related business to process insurance sales, known as a Managing General Agency or MGA. This has evolved in recognition of the fact that many of their APs are dual licensed and dealers see this as an opportunity to grow the profitability of their operation. Some dealer/MGAs have established policies to force their contracted advisors to place all their insurance related business through their MGA arm. However, under the previous rules, this constituted a business decision – not one forced upon advisors by regulatory compliance. Independent advisors who disagreed with the dealer's decision had the ability to move their business to other dealers who operate a less restrictive business model. We believe this choice is appropriate in an otherwise open, competitive market. The new rules severely restrict the advisor's ability to exercise such freedom of choice.

Furthermore, we note that in the proposed amendments, the word "products" has been replaced in many sections with the word "securities". We welcome this clarification as it clearly places the onus within the jurisdiction of securities regulation. We question, then, why this same intent

is not carried forward to referral arrangements which now make the registered firm a party to the referral and responsible for monitoring, recording and supervising referral agreements for as long as they remain in place.

We are very concerned that this presents a significant threat to dual-licensed advisors and, by extension, to their ability to provide independent investment advice to their clients. Further, it has been made clear that referral arrangement requirements apply to arrangements between affiliates. We seek further clarification on what constitutes an affiliate. For example, is a dual-licensed AP who operates under the business name "XYZ Financial" for his mutual fund and life insurance business considered an affiliate of the mutual fund dealer?

It is equally concerning to us that securities regulators are imposing a regulatory standard on non-securities related business arrangements – especially where that outside business operates under a separate and robust regulatory and compliance regime, for example the insurance industry. Our life licensed members are already subject to extensive legislative and regulatory standards aimed at protecting clients and ensuring their needs are placed ahead of the interests of the agent.

In our view, a viable solution lies in distinguishing amongst the various types of referral arrangements that exist amongst financial services providers, based on whether they are separately licensed, regulated and subject to disciplinary action by their regulatory body. This is certainly true for the many APs who are dual licensed.

Therefore, we recommend an exemption for MFDA members from the referral rules in NI-31-103 in recognition that the disclosure in place before MFDA Bulletin #0396 was issued sets a sufficient standard to satisfy the goals of securities regulators.

At a minimum, we recommend that this issue be the subject of a more extensive consultation where the apparent impacts are more visible to all industry stakeholders.

IFB would be pleased to discuss our comments with you, as required.

Yours truly,

John Whaley
Executive Director
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