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May 8, 2018

Financial Services Commission of Ontario
5160 Yonge Street
16th Floor
Toronto, Ontario
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Submitted by email: marketconduct@fsco.gov.on.ca

Dear Sirs/Mesdames:

Subject: Consultation draft- Superintendent's Guideline, Treating Financial Services Consumers Fairly

Independent Financial Brokers of Canada (IFB) is responding to FSCO's request for comment on the draft *Superintendent's Guideline: Treating Financial Services Consumers Fairly* (the Draft Guideline).

IFB is a national, not-for-profit association representing approximately 3,500 licensed financial advisors. The majority of IFB members are life insurance licensees residing in Ontario. As independents, they are not bound by proprietary contracts and are able to provide the products of more than one company. IFB does not represent career agents or employees of financial institutions.

Most IFB members are small business owners with financial practices located in communities across Canada. To be an IFB member, an advisor must voluntarily subscribe to the IFB Code of Ethics which, as a first principle, requires them to place the interest of clients before their own. This aligns with the concept of treating customers fairly (TCF) as outlined in this consultation draft.

Many IFB members are licensed in more than one jurisdiction, and often in another regulated sector, like securities. Accordingly, a harmonized approach to regulation is important for them as registrants and for consumers, who should be able to rely on similar treatment and protection regardless of where they reside.

IFB understands that FSCO has developed the Draft Guideline to assist the sectors it regulates to better understand its expectations on applying the FTC principles. However, because the Guideline applies to a variety of diverse financial services, we think Licensees may struggle at times to see how each of the points applies to them or their business. In particular, the use of the term "Licensee(s)" throughout to apply interchangeably to individual advisors or corporate entities may prove confusing to the reader.

IFB agrees with the principle of proportionality. Most IFB members should be able to meet the FTC expectations in a simplified manner. We look forward to assisting FSCO as it considers how the small business owners, who make up the majority of IFB's membership base, can demonstrate compliance.

There are many references in the Draft Guideline to adherence to a code of conduct, training on ethics and integrity related to a Licensee's own code of conduct, and monitoring compliance with the code. In reality, a Licensee may be subject to various codes of conduct/ethics. For example, an IFB member who is a life insurance broker would be subject to the IFB code, the codes of the insurers s/he is contracted with, and those of the MGAs s/he places business through. While these various codes may contain similar elements, it is unlikely that they are identical. This raises the question: how does the advisor demonstrate compliance? A better approach is for Ontario to put a code in place applicable to all its Licensees, as some other jurisdictions have done. The Code would then align with the Guideline, and provide FSCO with a consistent standard against which to assess compliance.

FSCO expects individuals, sole proprietors, or partnerships to align their business decisions and priorities, and to scrutinize daily business decisions as to whether these decisions support the FTC. What will 'proof' of compliance will look like for these small businesses under these circumstances?

The requirement to apply the FTC principles to "consumers" encompasses both existing and prospective clients. In practice, this may be difficult for advisors to implement for prospective clients. The requirement that advisors obtain information on a consumer's personal circumstances and financial needs should be limited to a client in an advised relationship, or who has demonstrated a tangible interest in the advisor's services. It is unlikely that all consumers would want to divulge such information before such a relationship is established.

IFB supports the disclosure requirements, and access to complaints procedures, and the need for consumers to understand their own responsibilities (e.g., disclosing material changes) through the life of the product.

IFB agrees that the same requirements must be applied to digital sales, including access to a licensed intermediary when the consumer requests advice.

The Draft Guideline says that Licensees, when recommending suitable products, should take into account the personal circumstances and financial condition that the consumer has disclosed. While many life insurance advisors already follow these processes as part of the industry guidance on needs based selling, reason why letter and suitability, this Draft Guideline formalizes the elements and requires that these discussions be documented. While we agree with these outcomes, and certainly recommend these procedures for IFB members, we would prefer that regulators rely on legal requirements as an enforcement tool, rather than industry practices. Unlike statutory requirements, industry practices can vary. This could leave Licensees at risk of violating a regulation that does not, in fact, exist.

The guidance around conflicts of interest is generally in line with current requirements for life insurance licensees. In keeping with FSCO's disclosure requirements and the CCIR/CISRO FTC draft guideline, we suggest that, rather than saying, "Actual or potential conflicts of interest are best managed by avoidance," this should read, "Where an actual or potential conflict of interest cannot be managed, it should be avoided".

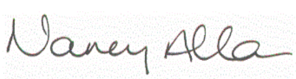
IFB agrees that consumers should be encouraged to first address their complaints to industry, as some complaints may be misunderstandings that can be successfully resolved at this stage, or, as is sometimes the case, they may be without substance. This should be taken into account when monitoring complaints from consumers.

The protection of client information is essential and a priority for those in the life and health insurance industry due to the sensitive nature of personal health and financial information required to be collected from clients. However, the requirement to inform consumers of "any" privacy breach goes beyond the requirements under PIPEDA, the federal privacy legislation that governs life licensees in Ontario. IFB supports the use of the materiality threshold of significant harm. Some advisors may choose to voluntarily inform clients, but they should not be held to a standard beyond the current statutory requirements.

In closing, IFB supports the concepts and principles guiding the FTC proposals. We believe that this is a responsibility that all those involved in providing service to consumers, or regulating those who provide service to consumers, share jointly. A key component in this, alongside the responsibilities of advisors and insurers, is that the regulators act swiftly and with due diligence in order to protect consumers when complaints of unethical behaviour are received.

IFB looks forward to working with FSCO as more details of the FTC guidance become available.

Yours truly,



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