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Mr. Jim Hall  
Chair  
Sub-committee on Practice Standards  
Joint Forum of Financial Market Regulators  
C/o Financial Services Commission of Ontario  
5160 Yonge Street, Box 85  
North York, ON M2N 6L9

Dear Mr. Hall:

The CBA would like to thank the Joint Forum of Financial Market Regulators (JFFMR) for the opportunity to comment upon its initiative to establish Principles and Practices for the Sale of Products and Services in the Financial Sector. This letter adds to the comments we provided on October 8, 2002.

Canadian banks have been leaders in developing and applying best practices in relation to dealings with individual and small business clients in the sale of financial products and services. Further, the banking industry has also been a leader in self-regulatory initiatives, particularly in the area of consumer dispute resolution, establishing the Canadian Banking Ombudsman in 1996 and playing an instrumental role in the creation of the Canadian Financial Services OmbudsNetwork to extend ombudsman services to other parts of the financial sector. The industry has also been a leader in the development of voluntary codes of conduct, introducing, for instance, the first detailed industry privacy code that went beyond basic principles. It is in the context of this leadership role, that we wish to offer the following comments on the Joint Forum's proposals.

As proponents of strong standards established through self-regulation, the banking industry welcomes your efforts to identify, standardize and make uniform best industry practices which would be promoted across the financial services sector where needed. We generally support the principles and practices you have circulated and wish to note that the self-regulatory initiatives which the banking industry has undertaken (including our recent code of conduct on the promotion of authorized insurance products) are consistent with those principles. Apart from the principles themselves, we have a few comments on the application of your initiative to the banking industry.

As we noted in our October 8, 2002 letter to you, it is our view that it is inappropriate, both for jurisdictional and practical reasons, for the Joint Forum to include bank employees in your Principles and Practices document. As you know, banks and banking are federal responsibilities, as has recently been clarified and re-asserted by the British Columbia Court of Appeal.

The Court also adopted the position that banking should be subject to a uniform scheme of legislation for all Canadians and that provincial regulation with its overlap and duplication is

undesirable in this regard. I would note on this point that what the Joint Forum wishes to achieve with respect to the promotion of creditor insurance in banks has already been achieved through a code of conduct (the insurance code noted above) which is uniformly applied across the country and monitored by the federal Financial Consumer Agency of Canada. By contrast, it is our understanding that the Joint Forum's best practices initiative (even if it were constitutional with respect to bank employees) would not represent a uniform standard across the country. You note, for example, that one province is not participating in the initiative, which will mean that there will be at least two different approaches in this area at the provincial level. In our view, this is illustrative of the need in Canada for a national approach to financial services regulation, of which the Canadian Bankers Association is a strong advocate. We believe that the solution does not lie in a variety of provincial and territorial harmonization initiatives, but rather a comprehensive approach to national market conduct regulation.

In our earlier letter, we commented on our concerns about the role that the Joint Forum had contemplated for industry associations. The CBA is pleased that the Joint Forum has attempted to deal with the industry's concerns about the role of industry associations such as the CBA. As we noted last October, the Canadian Bankers Association is not an SRO that exercises regulatory functions over its members through the imposition of rules or standards, and it does not serve as a regulatory, enforcement, or compliance body. The original proposal to have trade associations enforce the principles was not practical. While the idea of norms or standards that associations endorse on behalf of members has merit, there is still, in our view, too much uncertainty regarding future enforcement of the standards once endorsed by industry associations. While the principles and practices are being promoted as voluntary measures, you also note that implementing rules and regulations to achieve the proposed principles may be considered (albeit as a last resort), and that "Detailed questions of enforcement by individuals or organizations that endorse or "sign onto" the standard will be dealt with further by the Sub-committee when it considers the issue of implementation." This suggests that the Joint Forum is considering the principles and practices as tantamount to regulations, to be enforced either through associations or the provincial regulators. As noted, this gives rise to a range of jurisdictional and practical concerns.

We would like to reiterate our support for the principles themselves, as good examples of industry best practices. As a sector with a strong track record in employing high standards of practice, the CBA expects that initiatives undertaken by the banking industry, within the regulatory and jurisdictional environment governing it, will continue to be consistent with the Joint Forum proposals.

If you would like to discuss these points in more detail, we would be pleased to meet with you at your convenience.

Yours sincerely,

*Original signed by Terry Campbell*