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August 3, 2007

Mr. John Waugh  
Director of Compliance  
The Life Insurance Council of Saskatchewan  
310 2631 28<sup>th</sup> Avenue  
Regina, Saskatchewan  
S4S 6X3

Dear Mr. Waugh,

**Re: Proposed Segregated Fund Marketing Guideline**

Thank you for the opportunity to comment on the Life Insurance Council (“Council”) of Saskatchewan’s Proposed Segregated Fund Marketing Guideline (the “Guideline”).

Advocis, the Financial Advisors Association of Canada, is Canada’s oldest and largest voluntary professional membership association of financial advisors. Advocis represents life and health insurance licensees, and mutual fund and securities registrants across the country.

Advocis strongly supports consumer protection and has been working with federal and provincial regulatory authorities on various initiatives in this regard. However, it is not clear to us why Council believes that this proposed Guideline is necessary. We believe that segregated fund investors in Saskatchewan are currently well served under the existing regulatory framework, including Council’s principles-based Bylaws.

In our view, the Guideline is essentially an elaboration of existing Bylaws in the form of more regulatory requirements and policies to which our members must now comply. While Council states that its intention is not to create new regulation, we believe it has in effect done so by adding another layer of requirements and increasing the compliance costs of those involved in the marketing and sale of segregated funds.

Our members are currently aware of the Council Bylaws, and conduct themselves accordingly to ensure that they are acting in the best interests of their clients. Industry standards regarding the sale and marketing of segregated funds are in place and recently implemented insurance principles regarding appropriate management of conflicts of interest and suitability will serve to strengthen those standards.

In our view, Council has not clearly identified a particular problem that it is trying to address, or provided any clear evidence, research or rationale for this initiative. Certainly, we are not aware of any major consumer problems in the area of sales and marketing of segregated funds. Furthermore, to the best of our knowledge, other provincial jurisdictions are not contemplating new requirements for segregated funds.

In addition, it is not clear to us why Council seems to be calling for more regulation and oversight of segregated funds simply on the basis that mutual funds are subject to more regulation than segregated funds. We do not subscribe to the view that the products are sufficiently similar to warrant the same type or amount of regulation.

It is not clear to us how the proposed Guideline will enhance consumer protection or prevent misconduct. We encourage Council to consider alternative approaches to achieve its objectives, including conducting further research on the issue and a cost/benefit analysis.

As we note above and more fully in our response, we have been actively participating as a stakeholder in the work done by the Joint Forum of Financial Market Regulators on harmonizing certain aspects of regulations pertaining to segregated funds and mutual funds, and recommend that Council await the outcome of the Joint Forum's consultations.

Our attached submission regarding the Guideline contains the following three main sections: Section I) Executive Summary; Section II) General Comments, including a) policy implications and purpose and b) principles-based bylaws; and Section III) Specific Comments addressing each of the six sections referenced in Bylaw 8.

We appreciate your consideration of our comments and recommendations and would be pleased to meet with you to discuss them in more detail. We note that Advocis intends to have representation at Council's Guideline information session. Please do not hesitate to contact us if you have any questions regarding our submission.

Yours truly,



**Steve Howard, CA**  
**President and CEO**  
**Advocis**



**Roger McMillan, CFP, CLU, CH.F.C.**  
**Chair,**  
**National Board of Directors, Advocis**

## EXECUTIVE SUMMARY

- Advocis strongly supports consumer protection, including regulatory initiatives that truly protect consumers and investors. Moreover, we believe that any regulatory initiative such as a rule, policy, and/or guideline should typically only be considered when there is a specific public policy issue that can only be addressed by such measures once industry solutions have proven to be inadequate or are not feasible.
- We believe that Council's existing principles-based Bylaws are sufficient, and that a detailed interpretation can result in prescriptive requirements licensees must adhere to, which in our view have unintended consequences, that set a lower standard than those developed by the industry. Moreover, Council has not identified any specific deficiencies in the current regulation of segregated funds that needs to be addressed with prescriptive requirements, nor has it substantiated the need for a guideline by any research or analysis.
- Advocis believes that guidelines pertaining to principles, such as those within the Council Bylaws, should aim to provide broad parameters to assist the industry in developing the appropriate standards. Prescriptive requirements on how principles should be implemented are tantamount to more rules. We believe that any guideline that Council wishes to develop should be principles-based by focusing on the outcomes that it requires firms to achieve rather than on the process or actions firms must take. A principles-based approach would provide firms with the flexibility they need to find the most efficient way to achieve the desired outcomes.
- In our view, a focused approach on protecting the consumer should not be accomplished by comparing the amount of regulation for one investment product over that of another product. Instead, regulation should be based on the commensurate consumer risks and corresponding benefit of added regulation, among other specific factors.
- Given the absence of major consumer problems pertaining to the regulation of segregated funds among investors in the Province of Saskatchewan, and the current regulatory initiatives being explored at the federal and provincial levels on this issue, we recommend that the Insurance Council of Saskatchewan avoid pre-empting these regulatory initiatives and imposing unnecessary compliance obligations on industry participants. Should Council opt to retain the Guideline, we recommend that the Guideline only be used by Council as a reference document to assist its members in interpreting and applying its principles-based Bylaws on a case-by-case basis, and should only be issued in a form that does not create additional regulatory requirements on licensees.
- We believe that a high level of proficiency regarding the principles of investing can best be achieved through a professional platform in the delivery of financial advice, which encompasses professional designations, professional codes of conduct through best practice standards, meaningful continuing education and professional liability insurance. Many of these principles already form part of the regulatory regime of life and health insurance licensees in the Province.

## II) GENERAL COMMENTS – POLICY IMPLICATIONS AND PURPOSE

We have the following general concerns with the proposed Guideline in terms of its policy implications and its stated purpose:

- Council has not provided any empirical evidence to indicate that segregated fund investors are currently disadvantaged vis-à-vis mutual fund investors from a regulatory perspective or are not being protected or well served by the insurance industry.
- Council has not clearly identified the specific “problem” it is trying to address or articulated a public policy need for the proposed segregated fund guideline in terms of any specific investor protection violations. In fact, the lack of consumer complaints associated with the sale or marketing of segregated funds, as measured by recent statistics of Errors and Omissions (E&O) insurance claims, would indicate that the existing regulatory framework is working effectively to protect investors.
- Council’s justification for the Guideline seems to be that in its opinion “... *it is not appropriate to have significantly less oversight ... than is mandated in the marketing of mutual funds.*” Moreover, Council makes the assumption that the amount of mutual fund regulation is “appropriate” when it may actually be considered excessive by market participants in the securities industry.
- Council does not provide any explanation as to why it concludes that less oversight for a *guaranteed* product versus a *non-guaranteed* product is “*not appropriate*”. In our view, mutual funds are generally more risky than segregated funds and should be regulated accordingly. In fact, we note that segregated funds are regulated by two levels of government for different regulatory purposes: federal legislation/regulation as it pertains to solvency and corporate governance of life companies, and provincial legislation/regulation as it pertains to generally applicable elements of all life insurance contracts.
- Council’s assumption that the only “*single notable distinguishing feature* [in comparing mutual funds and segregated funds] *is a guarantee of the principal component of segregated funds*”, is too simplistic and is not substantiated by any research or analysis to support its assertion. We note that extensive work comparing the regulation of the two products has been conducted in recent years by regulatory authorities, which indicates that while there are some similarities there are significant differentiating elements.
- Council has not articulated the specific potential consumer protection benefit resulting from the Guideline.
- Council references federal and provincial regulatory initiatives that are currently being explored regarding the possible harmonization of mutual funds and segregated funds. However, by introducing the Guideline at this stage it is playing a lead role in initiating more regulation of segregated funds before the Joint Forum of Financial Market Regulators (consisting of the Canadian Securities Administrators (CSA) and the Canadian Council of Insurance Regulators (CCIR)) has determined what action or direction it believes should be taken on this issue as it pertains to disclosure, a key aspect of the regulatory requirement pertaining to sales and marketing. To the best of

our knowledge, no other province has publicly expressed the need for more regulation of segregated funds.

- While Council states that it “believes the current bylaws are adequate and does not intend to create new bylaws or regulations”, its proposed guideline in effect expands on the bylaws and in some cases duplicates current market practices and raises existing requirements perhaps beyond what was originally intended, potentially confusing market participants and imposing unnecessary compliance costs. Moreover, we do not believe that prescribing more rules in the form of a guideline will necessarily have the desired effect on enhancing consumer protection.

## **II) GENERAL COMMENTS – PRINCIPLES-BASED BYLAWS**

We agree that one of Council’s primary roles is to regulate in the interest of consumers. The Council Bylaws, and in particular Bylaw 8 regarding misconduct of licensees, forms a strong basis for consumer protection. Advocis supports these principles regarding consumer protection.

### ***Joint Forum of Financial Market Regulators***

In fact, these Bylaw principles form part of the Joint Forum of Financial Market Regulators (Joint Forum) *Principles and Practices for the Sale of Products and Services in the Financial Sector (January 2005)* which encompasses a principles-based approach endorsed by all provincial insurance and securities regulators across Canada.

The eight principles and practices outlined by the Joint Forum are:

1. *Interests of the Client*
2. *Needs of the Client (“Know Your Client”)*
3. *Professionalism*
4. *Confidentiality*
5. *Conflicts of Interest*
6. *Disclosure*
7. *Unfair Practices, and*
8. *Client Redress.*

In its backgrounder to the *Principles* document, the Joint Forum states that its preference is to develop voluntary principles that intermediaries would adopt. Therefore it set out to create principles and practices that industry associations and associations representing intermediaries would endorse on behalf of their members. For this reason, the principles and practices are expressed as high-level principles rather than specific details. The Joint Forum states that

*“... a benefit of this approach is that they are general enough to dovetail with the existing codes of industry associations and voluntary codes can complement requirements set down by law and can be adapted to changing circumstances more quickly than a statutory code can. Once the principles and practices are widely adopted by industry associations, the Joint Forum is confident that they will come to be seen as the norm. Competition and market forces will operate to encourage higher standards to the benefit of consumers.”*

Advocis believes in principles-based regulation along the lines outlined by the Joint Forum as a means of achieving a high degree of consumer protection. It is within this context that we offer our views on the proposed Guideline for segregated funds.

### ***Proposed Segregated Fund Marketing Guideline***

According to Council's interpretation of Bylaw 8 as it pertains to the sale of segregated funds, the intent of the Guideline is *"to alert and inform individual agents and managing general agents of how Council intends to apply the misconduct provisions"*. While this is within the mandate of Council in dealing with consumer complaints and market conduct of licensees, the Guideline, once finalized, will form an integral part of regulatory policy. Regulatory policy and the compliance requirements stemming from new policies that licensees must adhere to can be prescriptive in nature if the interpretation is overly detailed or if it draws on comparative regulatory regimes that are rules-based by nature, such as that of the MFDA. Council Bylaws that are principles-based afford the opportunity for the industry to determine the highest possible standard for the conduct of intermediaries, which, in our view, has worked extremely well to serve consumers and have resulted in the right balance between consumer protection and efficiency in the marketplace.

Incremental regulatory requirements are typically introduced to i) mitigate emerging or greater risks, ii) address a consistent pattern of consumer complaints, or iii) deal with serious regulatory gaps that have resulted in consumer harm or iv) address situations that may have tilted the playing field in favour of one set of market participants over another. We are not aware of any major situations that suggest consumer confidence is weaker in the marketplace for segregated funds or that consumers are being negatively affected by the manner in which they are currently being served by insurance licensees. Moreover, no other jurisdictions in Canada presently have identified major concerns with how the marketing of segregated funds is being regulated. Therefore, in developing new requirements such as through the Guideline, it is extremely important to clearly state the consumer problem or competitive issues that may have arisen from a market conduct or compliance standpoint that warrant new regulatory requirements.

If there are specific issues or concerns that Council wishes to address or if there are regional-specific issues that have emerged, we would be pleased to assist you in identifying the causes of these problems and developing appropriate and targeted solutions.

### ***Mutual Fund Dealers Association (MFDA) Rules***

Moreover, the Guideline states that there is less regulatory oversight in the sale of segregated funds relative to that of mutual funds under the Mutual Fund Dealers Association of Canada (MFDA). While the Guideline's stated intention is not to duplicate MFDA rules but rather provide guidance to licensees on how Council will consider how a licensee has dealt with a consumer, we believe that, where consumer protection is concerned, the appropriate level of regulation required should be commensurate to the potential risks posed to consumers. Choosing an arbitrary volume of regulation as being better has little meaning for consumers, especially as it pertains to their decision-making process and suitability of an investment. For example, a large amount of written disclosure may in fact be confusing to consumers.

The Guideline states that one rationale for greater alignment with mutual funds is that segregated funds are *"similar in design and performance"* to mutual funds and that the

*“single notable distinguishing feature is the guarantee of the principal component”.* However, as noted above, the guarantee is a substantive distinguishing difference. In addition to the guarantee component within the Individual Variable Insurance Contract (IVIC) there are significant differences that are attractive from a consumer’s perspective and are chosen by consumers for those reasons. From a consumer’s perspective, some of the important distinctions in the utilization of the products include the following:

1. Tax Planning: non-registered segregated funds are taxed at a preferred rate relative to mutual funds, and can benefit from personal tax credits.
2. Estate Planning: A preferred beneficiary designation is available in the segregated fund that allows for estate distribution outside the estate.
3. Asset Protection: All segregated funds including non-registered funds can be creditor-proof.

Therefore, given the significant differences that exist between the two products, applying certain features of the mutual fund regulatory regime to that of segregated funds may not necessarily result in tangible consumer benefits.

### ***Joint Forum – Point of Sale Disclosure Initiative***

Advocis is an active participant of the Joint Forum’s initiative on point of sale disclosure harmonization between mutual funds and segregated funds. The main stated purpose of *Proposed Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds* is to change the disclosure regime for these products so that investors have a clearer understanding of their purchases at point of sale, something prospectuses for mutual funds and information folders for segregated funds were not providing. While the Joint Forum has been looking at similarities and differences between these two products for some time, the intent of this initiative was not to favour one regulatory approach over another, but to come up with an approach that would work for consumers. Point of sale disclosure forms an integral part of the sale and marketing of segregated funds. Therefore, we would encourage Council, as part of its segregated fund Guideline initiative to allow industry stakeholders to fully engage the Joint Forum in its consultation process before developing its final Guideline for segregated funds.

### **III) SPECIFIC COMMENTS**

#### **Guideline 1: Priority of the client’s interest and competence of investing**

The main thrust of this first guideline is to ensure that licensees do not act in a manner that is contrary to the best interests of the consumer or other licensees or insurance companies. We agree that if a licensee does not exhibit a high level of competence, knowledge, care and skill, he/she may not be acting in the best interests of the client. We believe that a high level of proficiency regarding the principles of investing can best be achieved through a professional platform in the delivery of financial advice, which encompasses professional designations, professional codes of conduct through best practice standards, meaningful continuing education and professional liability insurance. Many of these principles already form part of the regulatory regime of life and health insurance licensees in the Province.

## ***Professionalism***

Advocis has been committed to professionalism among financial advisors for over a century, and remains so today. Since its inception, the Association has had a professional code of conduct in place, which our members agree to abide by in their business activities and in liaising with clients and suppliers of financial products and services as a condition of membership. Enshrined in the *Advocis Code of Professional Conduct* is the requirement that *“An Advocis Member shall act in the client’s best interest.”*

The primary reason for having a Professional Code of Conduct is to facilitate a principles-based approach to encouraging and promoting advisor professionalism. This is in contrast to a prescriptive-approach in dealing with issues that directly impact consumer confidence. In our view, the Professional Code of Conduct serves consumers well by establishing principles in the marketplace that are geared towards maintaining a high degree of professionalism amongst advisors who handle their financial affairs. This professionalism in turn enhances consumer confidence.

## ***Best Practices***

Advocis’ Best Practices Manual (BPM) is, by its very nature, grounded in the principle of the priority of the client’s interest. This principle is embedded in all aspects of the relationship with the client, beginning with the marketing stage, prior to any client interaction, and continuing throughout the entire life-long relationship the advisor builds with that client. Advocis members enhance their competence and professionalism in dealing with client’s needs and the suitability of investments through this industry practice tool.

## ***Continuing Education***

In addition, a high level of proficiency regarding the principles of investing can be achieved through continuing education. Beyond what is covered currently in the LLQP licensing exam regarding the marketing and sale of segregated funds, further education is voluntary and left to the discretion of the advisor. Advocis would be pleased to explore with Council the need to have a more focused continuing education program regarding the sale and marketing of segregated funds. This could include, for example, the introduction of a mandatory continuing education course for segregated funds encompassing, among other things, the most recent principles that insurance regulators have implemented for insurance intermediaries with the assistance of the entire industry. This would be a more favourable approach to additional regulatory requirements and we believe that such an approach could achieve widespread industry support and buy-in.

## **Guideline 2: Know-your-client and suitability**

Advocis strongly believes that adopting a mutual fund approach to know-your-client requirements for segregated funds is not appropriate for consumers of Individual Variable Insurance Contracts. The type of suitability exercise advisors undertake in the sales and marketing of segregated funds is quite different than that of mutual fund customers because the needs are fundamentally different. We would encourage Council to adopt the suitability principle for insurance intermediaries that was released last year by the Canadian Council of Insurance Regulators (CCIR) and the Canadian Insurance Services Regulatory Organizations (CISRO).

Following its extensive stakeholder consultation process and its own fact-finding activities, the Industry Practices Review Committee (IPRC) of CCIR and CISRO proposed broad principles-based recommendations for managing actual or potential conflicts of interest associated with insurance advice or transactions, as outlined in its final discussion paper *Managing Conflicts of Interest: A Consultation Paper on Enhancing and Harmonizing Best Practices (February 2006)*.

One of the IPRC's key recommendations is implementing the principle of **product suitability: the recommended product must be suitable for the needs of the consumer**. The IPRC states that it expects brokers and agents will explain to their clients and document the reasons for recommending a particular product. The recommendation is based on achieving the following expected outcomes:

- *A broker or agent should conduct fact finding appropriate to the circumstances and assessment of the client's specific needs;*
- *A needs assessment should be flexible — the assessment should reflect factors including the underlying risk, the client's objective, and the complexity of the product being sold; and*
- *An agent or broker's product recommendation should meet the client's identified needs.*

Advocis believes that the regulators' principles-based approach to enhance and harmonize best practices across the industry and in all jurisdictions is an appropriate response to achieve its objectives of enhanced consumer confidence.

The advisor community has responded favourably to these recommendations to further augment consumer confidence. Advocis has been meeting with insurance regulators across Canada to outline in detail the focused industry initiatives in response to the recommendations, which have been well received.

In support of the product suitability principle, Advocis launched its Best Practices Guideline, *Managing Conflicts of Interest: Product Suitability Principle for Insurance Intermediaries (June 2006)*. Our intermediary disclosure web based tool, developed to assist advisors in preparing disclosure letters on proposed recommendations or transactions, is our association's contribution to promoting widespread best practices. The interactive web-based tool, which also features a needs analysis tool, illustrates that a product recommendation is suitable based on the client's needs, offering consumers meaningful disclosure in the process.

As was indicated in its June 2006 open letter to the industry, the IPRC intends to focus on the consistent application of its recommended principles across the insurance industry. The IPRC acknowledges the industry's efforts to support the achievement of these principles in the marketplace. We believe that the insurance industry is taking the necessary steps to ensure widespread compliance with these principles through the implementation of best practices and various voluntary measures. Furthermore, we believe that industry associations are well positioned to implement such an approach, and are equipped to promote these principles to their members who deal directly with the public. We have been working extensively with all major industry stakeholders to ensure that a consistent approach to needs-based suitability will emerge in the industry.

We would recommend that Council adopt in its Guideline a principles-based approach to product suitability for segregated funds that applies to insurance intermediaries. If there are areas that Council believes need to be addressed specifically with respect to segregated fund recommendations or transactions, we would be pleased to explore what, if any, modifications are needed in the implementation of the CCIR and CISRO suitability principle, as it applies to insurance intermediaries.

### **Guideline 3: Disclosure**

In general, we agree with the Council's guideline on disclosure. In making financial decisions, consumers care most about the value they are receiving. In other words, the quality and characteristics of the product (does it meet their needs?), the cost of the product (what is the final price?), and the ongoing service associated with that product (to what extent will the financial advisor be of assistance?). Therefore, meaningful disclosure for consumers should be:

- Relevant to the transaction or proposed transaction;
- Easily employed by the buyer in the decision making process;
- Aimed at revealing bias or a reasonably likely bias on the part of the seller; and
- Reasonably quantifiable and remain relatively constant or at least predictable for a reasonable time into the future.

Advocis' BPM guidelines and its intermediary disclosure and suitability web tool, as described above, appropriately address these disclosure requirements through meaningful consumer disclosure regarding conflicts of interest, an industry accepted disclosure protocol, and the industry's implementation of the suitability principle. These principles and industry guidelines can be easily modified to apply equally to segregated funds.

As for the appropriateness of leveraged loan strategies, this also forms part of the suitability process a professional financial advisor undertakes. Advocis has recently updated its BPM to include a comprehensive section on leveraging, including the risks and rewards of such a strategy, and the appropriateness of applying such a strategy.

The other key aspect of disclosure is point of sale product disclosure. This is a major initiative of the Joint Forum, and we encourage Council to allow the industry to go through the consultative process established by the regulators before implementing final guidelines with respect to disclosure.

### **Guideline 4: Lawful instructions from a consumer**

We support the proposal that where a licensee disagrees with the instruction of the consumer, the licensee should have documented evidence of the advice given and the reasons for it. In fact this should form part of the suitability documentation for a product recommendation.

Notwithstanding, documentation alone does not fully protect the advisor. For example, if a licensee carries out the lawful instructions of a consumer, which are not in the client's 'best interests', the agent may be liable under common law for any damages that result. Furthermore, if a licensee carries out the lawful instructions of a consumer which are contrary to 'best practices', the agent may be liable in a civil action for the damages to the

consumer. Finally, if a licensee carries out the lawful instructions of a consumer despite the consumer refusing to listen to the advice of the licensee, the agent may be liable in a civil action for the damages to the consumer.

Therefore, the guideline as drafted leaves the impression that documentation alone provides sufficient protection to the advisor. While this may be the case with respect to Council's own Bylaws, and how it views the actions of a licensee, this is not the case with respect to how the Courts view this issue. A Court may rule that simply following Council's Guideline may not be sufficient in all circumstances and hold the financial advisor liable for certain actions or inactions. We would be pleased to provide you with relevant case law in this regard upon request.

We recommend that the Guideline provide greater clarity to reflect the true risks posed to licensees regarding lawful instructions from a consumer.

#### **Guideline 5: Documentation and record keeping**

Advocis' BPM deals at length with proper documentation. Advocis believes that with respect to know-your-client and suitability requirements, it is important for advisors to maintain a written account of this process, which we outline under Guidelines 2 & 3 above, for purposes of the client file. The process could include the following: information gathered from the client; the needs assessment analysis; copies of engagement letter; product comparison information presented to the client; intermediary disclosure documents addressing conflicts of interest; and any formal suitability statements/letters presented to the client, which goes beyond a KYC document as is the case with MFDA requirements.

#### **Guideline 6: Sound business practices and a compliance regime**

The Guideline proposes that as a result of the Bylaw that requires all licensed agencies to identify a designated person to be responsible for the overall management and supervision of the agency, that the designated person in a MGA provide a level of compliance that is comparable to that of a dealer in the mutual fund industry. Advocis does not believe that this approach will enhance consumer protection, as it suppresses professionalism of financial advisors by placing a layer of compliance oversight that is one-step removed from the direct accountability to the client. All licensees are responsible to ensure the priority of the client's interest is being met. This is best achieved through a principles-based approach to regulation in which all licensees gravitate to the highest possible industry standard in dealing with consumers.

Under the MFDA regulatory model, all advisors must place all of their transactions through one dealer. Therefore there is only one major distribution system for the sale of mutual funds. The distribution of insurance products takes on various forms and has always placed a great deal of accountability with the individual licensee dealing with the client. In this respect, we do not believe that transferring the compliance oversight to MGAs will do anything to enhance consumer protection.

## **CONCLUSION**

Advocis strongly supports consumer protection and has been working with federal and provincial regulatory authorities on various initiatives in this regard. From our perspective, the Council's existing principles-based Bylaws are sufficient in their current form and expanding them into a Guideline will only add another layer of regulation that is unnecessary. In our view, consumer protection for segregated funds in Saskatchewan is working successfully for investors and financial advisors in the Province.

To increase the amount of regulation and oversight of segregated funds on the basis that mutual funds are subject to more regulation is not only inappropriate, it does not serve the public interest. Segregated funds and mutual funds are different products. In fact, the two products have different features, expose investors to different risks, and are purchased to achieve different financial objectives. Consequently, many market participants, including consumers, may believe that it is appropriate that the two products are regulated differently and fall under different regulatory regimes. In our view, there is no regulatory gap that needs to be closed between the two products.

As we note in our response, we have been actively participating as a stakeholder in the work done by the Joint Forum of Financial Market Regulators on harmonizing certain aspects of regulations pertaining to segregated funds and mutual funds, and recommend that Council await the outcome of the Joint Forum's consultations. Should Council opt to proceed with the Guideline, we recommend that it only be used by Council as a reference document to assist its members in interpreting and applying its principles-based Bylaws on a case-by-case basis.

We would be pleased to meet with you to discuss alternative approaches for attaining your policy objectives, so that they can be achieved seamlessly with industry support under a principles-based regulatory approach without undue regulatory intervention.