BRANDES
INVESTMENT PARTNERS

BRANDES INVESTMENT PARTNERS & CO.
20 Bay Street | Suite 400 | P.O. Box 62 | Toronto, ON | M5J 2N8
416·306·5700 or 888·861·9998 | www.brandesinvestments.ca

September 6, 2012

Delivered by E-Mail

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
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

Attention:
The Secretary
Ontario Securities Commission
20 Queen Street West,
19th Floor, Box 55
Toronto, ON M5H 3S8
E-mail: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, (QC) H4Z 1G3
E-mail: consultation-en-cours@lautorite.gc.ca

Dear Sirs/Mesdames:

Re: Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, Form 81-101F3, Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* and Consequential amendments ("POS Stage 2")

Brandes Investment Partners & Co. ("Brandes") is registered as an investment fund manager in Ontario and in all jurisdictions across Canada, is registered as an exempt market dealer, a mutual fund dealer exempt from the requirement to join the MFDA (except in Quebec), and a portfolio manager. Our primary role is that of a mutual fund manager, and it is from this point of view that we offer our comments on POS Stage 2.

Brandes supports appropriate measures to provide more useful forms of disclosure to investors. We firmly supported the development of the Fund Facts document. However, as we have commented continuously throughout the development and implementation of the Point of Sale Framework, we continue to have serious concerns about the impact that the Framework will have on consumer choice and the unlevel playing field that the Framework continues to create.

We have reviewed the proposed changes to be made to the content of the Fund Facts documents and it is our view that these content changes could have a detrimental impact on investor behaviour. The requirement to compare investment performance to guaranteed investment certificates (GIC), we believe, puts too much focus on short term results. Depending on the type of fund, a comparison to a GIC is at best an "apples to oranges" comparison and at worst misleading. While a standard, easy to read and easy to compare Fund Facts document is absolutely desirable, there is a real danger that in striving to simplify it, we go too far. Comparing an equity fund to a GIC is a great example of going too far. A prudent portfolio of equities is generally a long-term investment. Comparing investment returns to a short term fixed income type instrument may have unintended consequences to investor behaviour and could cause investors to focus short-term and not longer term

Specific Feedback Sought:

1. <u>Volatility and Risk</u>

We ask that the CSA pause to consider the intention of the risk disclosure. The CSA Notice indicates that "*the proposed explanatory text to be included above the risk scale is based on the assumption that fund managers use risk classification methodologies based on measures of market volatility*".

The IFIC Fund Risk Classification Task Force was established to make recommendations to fund managers regarding the classification and comparisons of the investment volatility risk associated with different types of mutual fund categories[1]. Since a common definition of *risk* has not been defined in regulation, the industry worked together to establish a set of standards that could be used in order to assist investors in *comparing* one or more mutual funds. However, the proposed mandated wording regarding investment risk focuses the investor solely on volatility and the risk of loss. The risk of loss is inherent in all investment vehicles. The proposed wording seems to be moving away from providing the investor with a means to compare and differentiate between mutual funds to highlighting the general risks of investments.

The requirement to include a list of no more than four main risks without providing a summary of these specific risks, we believe will not achieve the objective of providing meaningful disclosure to investors. Without standardized definitions of the different types of risks, such disclosure has the potential to misleading where different funds use the same way to describe different risks.

Lastly, there is ample academic debate on the definition of risk. Indeed there are many experts who do not consider volatility as risk. In fact, some managers like Brandes embrace volatility since it's volatility that creates mispricing opportunities for value investors to exploit. Therefore, an informed investor purchasing units in the Brandes equity funds would welcome volatility and not consider it a risk.

[1] IFIC Recommendations for Fund Managers Regarding Fund Volatility and Risk Classification updated to March 31, 2009.

2. Performance Comparison to a one-year Guaranteed Investment Certificate (GIC)

The CSA Notice indicates that the comparison of fund performance to a benchmark of a one-year GIC is to *"assist investors in assessing the performance of the fund relative to its associated risk"*. Notwithstanding the potential negative impact on investor behaviour that we believe will be extremely detrimental to the long-term financial security of Canadian families, such a drastic change is inconsistent with existing securities regulation. Securities legislation has required investment performance to be compared to a *relative* and *comparable* benchmark; that any comparison provides sufficient information in order to make the information not misleading; and that a mutual fund's continuous disclosure documents report consistent information.

Specifically, National Instrument 81-106 – *Investment Fund Continuous Disclosure* requires the Management Report on Fund Performance (MRFP) to show the annual performance of an investment fund compared to *"one or more appropriate broad-based securities market indices; and at the option of the investment fund, [to] one or more non-securities indices or narrowly-based market indices that reflect the market sectors in which the investment fund invests"*. The instructions clarify that the comparison to a narrowly-based securities or other financial index should reflect the market sectors in which the investment fund invests or other similar comparative factors such that the comparison in not misleading.

National Instrument 81-102 – *Mutual Funds* does not permit the comparison of the investment performance of a mutual fund to a benchmark return *"unless it explains clearly any factors necessary to make the comparisons fair and not misleading"*. The Companion Policy of NI 81-102 further explains that *"such factors would include an explanation of any relevant differences between the mutual fund and the investment or benchmark to which it is compared."* Yet, the proposal to compare the performance of the investment fund to the one-year GIC contains no information or explanation of the differences between a mutual fund, generally intended to be a long-term investment, and a one-year GIC, which is a deposit note shown on a short-term basis (365 days or less).

As a final example, the OSC Staff Notice 81-701 – *Report on Staff's Continuous Disclosure Review of Portfolio Holdings by Investment Funds*, Staff noted that in some cases, inconsistencies were identified between the disclosure in the financial statements and the funds' other documents and that generally, the statement of investment portfolio should provide the same level of insight in financial statements as is available in the MRFP, especially since investors may not review or receive both documents and that each of the Fund Facts, MRFP and financial statements of the fund should be considered independent of each other and provide investors with meaningful information to assess how closely the investment objectives of the fund are being implemented over time.

In conclusion, we believe this requirement provides no meaningful insight to investors. If the CSA continues with this requirement, we suggest that comparison to the standard benchmark be required as well.

3. Worst 3-month return

The proposal suggests that reporting the worst 3-month return is intended to better inform investors about the possible loss of investing in the fund. We believe this type of disclosure is too short-term focused and does not provide sufficient context in order to assist the investor with making the decision to buy a fund. We contend that this is the exact reason why investment funds are prohibited from showing investment performance of the fund in sales communications to potential investors before having distributed its securities under a simplified prospectus for 12 consecutive months.

4. Trailing Commission disclosure

We agree that requiring the disclosure of the costs and of the potential for conflicts of interest associated with any investment is meaningful information for investors. However, we view the proposal to include additional disclosure regarding the potential for conflicts of interest as being unduly prejudicial to funds. Securities registrants are already required to identify and respond to conflicts of interest, including the obligation to disclose such matters on a timely basis under National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

As a final comment, we are concerned that the additional information to be included in the Fund Facts documents may create difficulties in keeping the document to its limit of 4 pages. The sample document provided in the Proposal is representative of a simplistic mutual fund structure. As an example, the description of the investment objective shown in the sample document is 2 short sentences, includes only one chart and has only 2 sales options. In order to provide meaningful disclosure to investors, Brandes has included 2 tables in the investment mix section for most of the Brandes Funds, and has a more complex but client friendly fee structure offering.

In closing, we would like to thank you for the opportunity to provide our comments on Stage 2 of the Point of Sale initiative.

Yours truly,

Oliver Murray
CEO