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September 14, 2012

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

The Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, Ontario
M5H 3S8

and

Me. Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec)
H4Z 1G3

Dear Sir/Madam:

RE: Proposed Amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*- Cost Disclosure, Performance Reporting and Client Statements

We are writing in respect of the request for comments issued by the Canadian Securities Administrators (CSA) on the second publication of proposed amendments (Amendments) to National Instrument 31-103 *Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) regarding cost disclosure, performance reporting and client statements, which were published on June 14, 2012.

With more than $59 billion in assets under management (as at August 31, 2012), Mackenzie Financial Corporation (Mackenzie Investments) is one of Canada's largest independent investment managers. We distribute our investment services through multiple distribution channels to both retail and institutional investors. Mackenzie Investments is a wholly owned subsidiary of IGM Financial Inc., which is a member of the Power Financial Corporation group of companies.

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Mackenzie supports and is fully aligned with the comments made by the Investment Funds Institute of Canada (IFIC) regarding the aforementioned Amendments.

A. General Comments

While we continue to support the overall goal of the Amendments – providing clearer and more meaningful information to investors on the cost and performance of their investments – we strongly believe that many elements of the proposal do not further this objective. While the Amendments primarily impact the dealer firms, who for the majority of clients invested in mutual funds, provide client reporting, the Amendments also indirectly impact the investment product manufacturers, thus creating our interest in providing comments. We are curious as to why we have not seen any effort by the CSA to determine, provide, or request a cost/benefit analysis on this proposal. We are also concerned that the proposal only addresses reporting issues for a portion of the investment types currently held in many investor accounts.

1. Proposed Cost and Compensation Disclosure Treat Similar Capital Market Participants and Products Differently and Unfairly

One of the most significant elements of the proposed Amendments relates to disclosure of the compensation paid to dealers and their advisors, with the rationale being that mutual funds "*... have complex compensation structures that are potentially difficult to understand*". However, other financial services providers, including banks and insurance companies, are not within the scope of NI 31-103, meaning the compensation disclosure requirements would not apply to them or the investment products they offer. If adopted, the Amendments would require detailed disclosure of trailer fees and other compensation paid on mutual funds but no such disclosure would be required on competing investment vehicles. It is unclear to us how we would implement the Amendments for a mutual fund with multiple series and pricing structures. The result would be both misleading to investors, confusing with some mutual funds reporting compensation costs and others not, and unfair to industry participants who offer mutual funds in competition with other investment products with embedded compensation. We understand that an increasing number of investors have multiple investment products in the same account. In many cases, the compensation method is the same for different investment types and in other cases, the compensation method varies by investment type. We also understand that compensation methods vary by the dealer and/or the advisor on each specific investor account. We are concerned that the proposal has not taken these structural variances into consideration in assessing the appropriateness of the recommendations to meet investor needs in reporting.

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(i) Competing Financial Products Treated Differently

Mutual funds are not the only financial products with embedded compensation arrangements. Many other financial products which compete with mutual funds have distribution costs built into their product structure.

Other competing financial products have embedded fees or payment arrangements to the dealers and advisors that, in some cases, are more complicated than mutual fund compensation and certainly subject to less disclosure even at this time than mutual fund fees. Segregated funds (an insurance product generally sold as an equivalent vehicle to mutual funds), bonds, principal protected notes, structured products, ETFs and guaranteed investment certificates (GICs) are examples. GICs and bonds have (undisclosed) spreads built into their pricing while segregated funds, PPNs and structured products have commission arrangements virtually identical to mutual funds.

Compensation practices vary amongst dealer firms and their advisors. The disclosure provided to investors and the performance reporting methods also are not the same for all investment products. A client who purchases a mutual fund receives detailed information not only on what that fund has returned net of fees, but also on all of the specific detailed costs relating to that investment, including management expenses, trail fees, trading fee charges and GST/HST (in the Simplified Prospectus, Fund Facts and Management Report on Fund Performance). The Amendments would go further and require actual disclosure of the dollar amount of compensation paid by the mutual fund to the dealer be provided as well. However, a client who, through the same advisor and dealer, invests in a GIC or bond does not receive any disclosure of the spread earned by the financial institution on the GIC, which often provides for various forms of administrative distribution compensation. This means investors may reach the incorrect conclusion that mutual funds have costs associated with them where a GIC (or an insurance product) does not.

The inevitable result is that investors would be left with the impression that mutual funds are more costly than other insurance, banking or investment products or that compensation is paid in the former case but not the latter, when clearly this is not the case. This may cause investors to believe they are being charged fees for mutual fund products relative to other vehicles, and lead them away from suitable mutual fund investments where costs are similar if properly presented and disclosed.

We fear that investors may start aggregating the proposed trailing fee charges that are to be split out with the already published management expense ratios and with the net return of the investment which includes all the costs already. This will give investors the impression that they are paying twice for amounts that have already been reported elsewhere (in Fund Facts or Management Reports on Fund Performance), creating additional confusion.

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This problem is aggravated by the fact that competing products – bonds, PPNs, structured products, stocks, GICs and segregated funds – often all appear on the same account statements issued by securities dealers since many advisors are dually licensed to sell insurance products, including segregated funds, mutual funds and stocks, bonds and other securities. This means an investor who holds mutual funds and one or more of these other investment vehicles will see compensation disclosure only regarding their mutual fund positions and no compensation for the other products. Consequently the total cost to the investor will not be visible and this form of disclosure will be misleading to investors.

In the response to the comments on the previous version of the amendments to NI 31-103, the CSA stated that while it was not their intention to unduly single out mutual funds, they can only make rules in their jurisdiction. Unfortunately this ignores the reality that investors may not appreciate the subtleties of the regulatory regime governing similar investment products, particularly when they appear on the same account statement, with detailed compensation disclosure for one but not for the other investments. Although the CSA can only make rules in their jurisdiction, the impact of such rules on the industry and the investing public as a whole must nevertheless be taken into consideration. Full, true and plain disclosure is the cornerstone principle of securities law in Canada. This proposed requirement in the Amendments does not meet that standard and in fact creates an unfair bias against mutual funds for the benefit of competing investment products. It also seems to ignore the reality today of an integrated distribution model. The CSA, specifically British Columbia and Ontario, oversee the MFDA and IIROC, the self regulatory organizations, respectively and should consider through the CSA, the reporting requirements on all products reported in the respective SRO member firm's client account statements.

(ii) Competing Distribution Channels Treated Differently

If the Amendments contain a flaw in the way they apply to only a subset of investment products, as we believe they do, they are equally unfair in that they only apply to certain distribution models. For example, the Amendments would require that the dollar amount of the trailer fees or compensation paid to the dealer of an advisor at an independent MFDA or IIROC member be disclosed. However, no such disclosure would be required for an individual with the same securities registration located in a branch of a financial institution, as they are generally paid on the basis of a salary and bonus determined by a number of factors, including incentives to sell mutual funds and other products. Given that the rationale for disclosing trailer fee payments on a dollar basis is that the CSA believes this information is relevant to ensure that clients are aware of all of the incentives advisors have to recommend products to them, requiring it in one case and not the other – which is what the Amendments would do – leads to an inconsistent regulatory reporting result based on structure rather than the desired disclosure outcome.

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As noted, with the relatively recent adoption of the Fund Facts document as part of the Point of Sale initiative and the new Relationship Disclosure requirements, the compensation disclosure provided to clients for investment funds and securities dealers is already robust. Going further and mandating, as the proposed Amendments would do, the itemization of trailer fees, referral fees and other forms of compensation in dollar terms will be confusing and misleading to investors, since it would provide for an incomplete picture of the costs related to the servicing of an investor account and lead to unwarranted conclusions about competing vehicles. In turn, it may potentially steer investors towards investment products that may be unsuitable or structured with a compensation model that is consistent with a mutual fund, net the fees, which under this proposal will not be identified in the statement.

2. Amendments Do Not Consider Implementation Challenges and Costs

The scope of the Amendments is extremely broad. They go far beyond the rules adopted by the MFDA and IIROC regarding cost, compensation and performance disclosure, which were developed and refined over the course of several years after extensive and comprehensive consultation with the industry and the public. The Amendments now require investment fund managers to supply trailing commission payments to dealers on an account basis. However, the CSA does not seem to appreciate the implementation challenges that the changes contemplated by the Amendments would involve, both in terms of expense and effort, beyond acknowledging *"... that there will be a potentially significant cost to the industry..."*. The proposals would require extensive systems development and changes to the reporting regime, creation of new or modified data feeds and extensive changes to business processes. The following are some, but by no means all, of the elements of this:

- Current systems of manufacturers are not designed to provide trailer fee information at the account, product or services level and would have to be completely rebuilt. The changes apply to the mutual fund and are reflected in the net return reporting done each day. As each investor will have a different cash flow profile and holding period, the only acceptable method to report fees would be to calculate the cost for each individual investor, which our systems are not equipped to do.

- Manufacturers and dealers will have to continuously confirm and verify that information provided by a manufacturer for an account on the manufacturer's books and records has associated with it the correct account number at the dealer so when the dealer aggregates all of the information for an account on its books and records, there is a complete matching.

- Current systems of many dealers are not designed to accept information at the account level from manufacturers and would have to be completely rebuilt.

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- The manufacturers and the dealers will have to work with FundSERV to design and create an industry standard for the electronic communication of such data. There are many examples in history of the time and complexity associated with similar industry initiatives.

- Alternative solutions would have to be designed and created by those manufacturers who are not participants on FundSERV.

- We are unclear how to calculate the dollar cost of fees at the investor account level when the fee is charged to the mutual fund directly and paid to the dealer firm, who in turn pays the advisor on multiple basis.

The Amendments contemplate client statements having three distinct sections: one for transactions, one for client name accounts and one for nominee accounts. We do not see the purpose or benefit of requiring this. We are also not aware of any dealer operating in a client name and nominee environment (not a carrying dealer relationship) who would have the same client account for both nominee and client name purposes. As such, we question the basis for and the benefit of this requirement. We suggest that the Companion Policy clearly specify for nominee accounts carried by a carrying dealer that it is only the carrying dealer who has to issue the account statement and annual performance reporting.

No attempt has been made in the publication of the proposed Amendments to quantify what these costs are, even in the most general terms. Further, no assessment has been conducted to determine whether the benefits the CSA believes will result from the Amendments exceed those costs. Instead, it comments that proposed requirements "...represent the addition of fundamental information that investors need in order to make informed investment decisions." This is an opinion, and appears not to be based on any study or research. Further, stating as the CSA does that these concerns have been addressed by extending the transition period from two years to three, misses the point. In our view there is no evidence that the benefits of this initiative exceed its costs, regardless of the time period over which they are spread.

3. Performance Reporting

We note that in the most recent publication of the Amendments the CSA has moved from its previous position that would permit either dollar-weighted or time-weighted methodologies to mandating the former. While we support the adoption of a dollar-weighted performance reporting process, there are a number of different methods for making those calculations and we believe it is important to make it clear that any of those would be acceptable. For example, internal rate of return methodologies and a modified Deitz approach are both recognized dollar-weighted calculations and should be permitted under the rule.

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It should be noted that on client statements, some manufacturers currently provide performance reporting information voluntarily as a customer service. To the extent that a manufacturer wishes to continue to provide this information on a basis consistent with the mandated performance reporting methodology, system changes will be required.

4. Original Cost vs. Book Cost

In the most recent publication of the Amendments the CSA is proposing a requirement to disclose the book cost of securities, which is defined as "...the total amount paid for a security, including any transaction charges related to its purchase, adjusted for reinvested distributions, returns of capital and corporate reorganizations." While we support the concept of a unified definition of cost to be presented on client statements, there are both systems and logistical limitations that hinder a dealer's ability to accurately present book cost. The most significant of these issues is the fact that a dealer has no means of determining what a client's book cost is upon a client transferring their account from another dealer. The receiving dealer can only determine and report the original cost of the client's investment at the time of the transfer and is unable to determine the client's book cost as recorded by the previous dealer. As a result, we believe dealers should continue to be allowed to report the original cost of the investments at the time they are transferred to the dealer, unless the dealer has the means and capabilities of properly tracking the client's actual book cost.

5. Inappropriate Switches

The section on inappropriate switches should be deleted from the Companion Policy. This is another example of duplication of existing regulation as this issue has already been dealt with in the SRO rules where, in our view, the item belongs.

B. The Better Approach to Performance Reporting and Cost and Compensation Disclosure

Our view is that some of the key objectives underlying this initiative can – and should – be addressed in an effective and cost efficient way, based on the following:

- The approach should be incremental. Certain items, such as providing clear disclosure to clients as to whether their accounts have made money, which was a key element of the now suspended MFDA rule changes, could be introduced fairly quickly. In our view, this is the most important information investors would like to have but do not receive. Other elements could follow, even if more time was required to assess what is both meaningful and possible based on a true cost benefit analysis. A staged approach of this kind proved effective in the case of the Point of Sale initiative and is equally well suited to this situation.

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- Different distribution channels and investment products must be treated fairly and consistently. Rules that result in selective disclosure on costs and compensation can only mislead clients and provide different and confusing information on a client statement.

- While dollar-weighted performance reporting is appropriate, flexibility should be provided to firms to choose an appropriate methodology including suitable approximation techniques.

Once again, thank you for the invitation to provide feedback and taking the time to review our suggestions. Should you have any questions about our comments, do not hesitate to ask.

Sincerely,

Charles R. Sims, FCA
President and Chief Executive Officer
Mackenzie Financial Corporation