

April 28, 2003

Joint Forum of Financial Market Regulators  
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**Re: *Consultation Paper 81-403 Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds***  
**Manulife Financial comments**

Thank you for the opportunity to provide comments on the Consultation Paper 81-403. This response encompasses Manulife Financial's comments and viewpoints from both a segregated fund and mutual fund perspective.

Manulife Financial is very pleased with the concept of the Consultation Paper 81-403 and applaud the Joint Forum for initiating the discussions and making these proposals. We strongly support the concept of "access equals delivery", knowing that customers have an increasing level of comfort with the internet and electronic delivery. We agree with the proposal's disconnect between theory and practice. Current point of sale disclosure documents are too lengthy and are not useful for the clients, who are not likely to read or understand the legalistic material. Simple, plain language disclosure would be more likely to be read, and therefore more likely to be effective during the sales process.

In the proposal, we were asked if there are differences between segregated funds and mutual funds that need to be considered when developing a harmonized disclosure regime. It is important to distinguish the unique characteristics of segregated funds and mutual funds, especially from a legal entity perspective. For segregated fund investments, the consumer owns and holds legal title to a contract of insurance (IVIC), which permits the consumer to participate in the investment growth of selected investment options. The investments are not limited to segregated funds but may also include guaranteed investment certificates and pooled funds. In the case of mutual funds, the consumer purchases and owns units of the mutual fund. The responsibility of distribution of a mutual fund lies with the distributor. However, for segregated funds, the responsibility of distribution lies with the insurance company.

We have the following specific comments on various topics within the proposal.

#### **Rights of withdrawal and rescission**

Although it is used infrequently, it does not seem to serve the purpose for which it was originally intended. It should not be used as a put option to protect the consumer from short-term market declines. It is generally used by experienced investors and advisors who may be trying to time the market. With the proposal to provide fund disclosure

prior to sale, there would seem to be no reason to keep this requirement. We agree with the recommendation to remove the rights of withdrawal and rescission requirement.

### **The foundation document**

We believe that fund manufacturers for both mutual funds and segregated funds should be permitted to produce a single foundation document versus the proposal of individual documents. Disclosure items such as risks of investing, how a fund is valued, purchased, redeemed and the sales charges that apply are generally consistent for families of mutual funds and segregated funds and would avoid duplication if contained within one document. It is not practical to provide the features of a segregated fund product by fund, since all features (such as guarantees) apply at the contract level. In addition, multiple foundation documents would require significant maintenance, again resulting in an increase in costs chargeable to the unitholders of the fund. A single foundation document will be simpler for the consumer to understand and will be all-inclusive of the product purchased. The use of hyperlinks will make navigation easier and keep contractual rights separate from descriptions of the investment options (for insurance contracts).

Manulife Investments has products that have up to 65 funds as investment options. Any amendment or material change to the foundation document would require the same change be made to each fund, and therefore would require separate refiling and approvals individually. This would be prevalent in the case of segregated funds, where any contractual provision affects all consumers and investment options, and must be effective at the same time.

The proposal indicates that the insurance contract for segregated funds will be incorporated by reference within the foundation document. Insurers should not be restricted from having the foundation document be the IVIC (or contain the IVIC), otherwise we would have duplication of the contractual features as we do now between the folder and contract.

Although we agree that timely delivery of the foundation document is important following a consumer request to receive it, we don't agree that it should be required to be delivered within a specified number of days. This would seem to indicate that the client would have some sort of recourse with the insurer and/or fund company who fails to meet this deadline. The paper justly proposes to eliminate the rights of withdrawal and rescission, so it would not seem practical to implement a new liability requirement based on non-delivery.

### **The continuous disclosure document**

We agree with the concept of continuous disclosure but have concerns about how the quarterly fund manager commentary may be used by some consumers. A large factor influencing a consumer's decision is the nature of the fund, including its objective and strategy, management style, and the portfolio manager's approach. These components

are largely static and certainly do not change substantially from quarter-to-quarter. In most instances, consumers and advisors rely on the stability and consistency of these components. Consumers and advisors are much more concerned with the portfolio manager's strategic approach, as opposed to short-term adjustments they make to their portfolios. In the case of segregated fund investments, consumers may be tempted to sell based on a 3 month fund outlook and may not realize the benefit of the guarantees which typically apply after 10 years. These concerns were raised by IFIC and the CLHIA in their comments to NI 81-106.

### **The fund summary document**

We support the concept of using a summary document at point of sale if the content is presented in a simple, clear and concise manner. However, we do not agree that an individual fund summary should be mandated. Flexibility should be given to manufacturers to develop a fund summary for a family of funds. The consumer will consider more than one fund at purchase, which would suggest an advisor would need to have most, if not all, of the individual fund summaries with them during the sales process. In addition, the paper does not address the need for the consumer to receive a fund summary for subsequent fund switches to another fund within the same fund family. For segregated funds, the consumer is also buying the IVIC for the product features, such as guarantees, resets, switches, death benefits. For an IVIC, the funds available for investing are considered part of the contract. Insurers may be subject to additional liability if the fund summary document is per fund and the advisor does not disclose all the funds available.

Alternatively, a single fund summary document could be accommodated by providing a summary of relevant fund information on all the funds available within the contract, plus general contractual information. This should be a snapshot of the fund and could include IFSC fund category, volatility measure, investment style, MERs and description of fund. We also recommend that performance history not be a requirement of the fund summary document. Performance history should not be the driver behind an investor's decision to invest in a fund. We believe the continuous disclosure requirements would satisfy the disclosure of performance, if a client requests this information.

### **The consumer's guide**

The proposal requires that the advisor offer a novice investor with the consumer's guide. The content of the consumer's guide is such that it would be valuable educational material for any investor. A sophisticated investor of mutual funds may be a novice investor in regards to segregated funds, or vice-versa. We do not see practically how we could determine who is considered novice for both investment products.

As indicated above, the consumer's guide will provide any investor with valuable education material, so it should be made available to all investors – although it is written in plain language for the benefit of the novice investor. We suggest that the consumer's guide follow the same requirement as the foundation document and be available upon

request. Within the content of the fund summary document, the consumer would be notified how they can request to receive the consumer's guide and/or retrieve it from the web.

We believe that part of the advisor's duty of care is to ensure that the consumer has a good understanding of the product they are purchasing. If they don't, the advisor may review the content of the consumer's guide or provide a copy for the consumer to review on their own.

We suggest that the content of the consumer's guide will be useful to all potential investors, and should be offered to all investors. However, there should not be a mandatory delivery requirement during the sales process.

### **Cooling off period**

We believe that the point of sale requirements and new disclosure proposals will be sufficient to ensure that the consumer has made the right decision. As is the case with the current rights of withdrawal and rescission, a cooling off period will be used by market timers, and the cost will be borne by the other unitholders of the fund. We suggest that there not be a cooling off period for mutual funds or segregated funds.

Thank you for allowing us to comment on this proposal. If you would like to discuss any aspects of the submission, I would please to talk to you or meet with you at your convenience.

Yours truly,

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