



PUBLIC INTEREST ADVOCACY CENTRE

LE CENTRE POUR LA DEFENSE DE L'INTERET PUBLIC

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BY EMAIL ONLY

Dear Mr. Paglia:

**Comments on Joint Forum Proposals re: Disclosure System
for Segregated Funds and Mutual Funds**

We have recently been made aware of the Joint Forum's proposals for changes to the way information is communicated to consumers of segregated funds and mutual funds about their investment choices. The following are comments submitted by the Public Interest Advocacy Centre (PIAC) on certain aspects of the above-noted proposals.

The Public Interest Advocacy Centre is a national non-profit organization devoted to the representation of consumer interests in matters involving public utilities, essential services, and public interest issues of broad application to Canadians. PIAC has developed a strong record of consumer advocacy since its inception in 1976, and is widely recognized as an important and influential voice for ordinary consumers in a variety of marketplace issues, including financial services and electronic commerce. PIAC is governed by a distinguished volunteer Board of Directors from across the country, and is supported by member groups and donors representing hundreds of thousands of Canadians.

Given resource constraints and our focus on the protection of lower income and vulnerable consumers, we have restricted our comments to a few key consumer protection issues.

As a preliminary matter, we commend you on the process you are following: the plain language consultation paper and background document, the allowance of several weeks for comments, and the posting of all submissions on an OSC webpage for this purpose. However, we are concerned about the apparent lack of consumer involvement in the development of these proposals. In some respects (e.g, the “access equals delivery” approach), it appears that the interests of industry have taken precedence over those of consumers.

Disclosure needs of investing consumers

We agree that the current disclosures made to consumers by segregated funds and mutual funds are sub-optimal, primarily due to their complexity. There is no question that they can and should be improved from the perspective of plain language, focus on key issues for consumers, and timeliness. We therefore support the Joint Forum’s proposal for replacement of current disclosure requirements with new documents that are more geared toward the needs of the investing consumer. We are particularly supportive of the proposed new “Consumers’ Guide” that would be made available to all participants, especially novice investors. We also support the proposed requirement for a short “Fund Summary” document, as well as the separation of “static” Fund information from ongoing performance information about each Fund.

However, we have serious concerns about proposals regarding *mode* of disclosure and cooling-off periods.

“Access equals delivery”

As we understand it, the proposal calls for actual delivery of only the Fund Summary document to all new investors. The Consumers’ Guide would be provided only where deemed appropriate by the sales representative (i.e., to novice investors). The other two documents – the Foundation document and the Continuous disclosure record – would only be provided to investors upon request; otherwise, availability online, together with notice thereof in the Fund Summary document, would be considered adequate disclosure.

While sympathetic to the desire to reduce paper waste and to minimize mailings that are not appreciated by the recipient, we strongly disagree with the “access equals delivery” approach advocated in this consultation paper. We are also concerned that the recommended approach to disclosure of the Consumers’ Guide might leave many consumers without the benefit of this information.

Quite simply, online access does not equal delivery. Many investors do not use computers. Many others do not wish to use computers for this purpose. If disclosure is to be meaningful, it must be made in a manner that accounts for the range of individual circumstances and that does not put an undue burden on the intended recipient.

The problem with the proposed “access equals delivery” approach to two of the four documents is not that it allows for online access instead of paper delivery, with its associated cost and waste. Indeed, we agree that consumers should have the option of refusing paper documents and instead relying on electronic disclosures. Rather, **the problem is that, by following a “negative option” approach to electronic disclosure, this proposal puts the onus on the wrong party, and thus effectively ensures that the disclosure will not reach many investors who might otherwise have benefited from it.**

It is important not to confuse two distinct issues: that of the *content* of the disclosure and that of the *mode* of disclosure. With improved content and presentation of the information in question, it can be expected that more consumers will be interested in reviewing the documents. Thus, even if current evidence suggests that few consumers are reading prospectuses, that could well change with the move to more consumer-friendly information.

In any case, instead of putting the onus on consumers to “opt-out” of electronic disclosure, the default rule should require a mode of disclosure which works for everyone. It should also allow for alternative modes of disclosure, upon clear direction from the consumer. These alternatives need not be limited to website postings and full information mailings. Electronic mail delivery, or at least notices of new postings, can be offered, for example. Consumers can and should be encouraged to opt-in to electronic disclosures, whether by e-mail or website postings; but their ability and willingness to do so should not be taken for granted.

Distribution of the Consumers’ Guide

We are also concerned that the Consumers’ Guide, a valuable primer on segregated funds and mutual funds, may not be provided to investors who would benefit from it. Just because a consumer has been investing in mutual funds for many years (and is thus not a “novice” investor) does not mean that they understand the basics of this industry. Indeed, we suspect that many long time investors are lacking in basic information, and would appreciate receiving this proposed new guide.

We therefore submit that industry participants should *always* offer this document to clients, unless they are sure that the client already has the document and is aware of its contents. Efforts should be made to ensure that *all* individual investors have this document and are aware of its contents. For example, it should be referred to in the Fund Summary document, along with references to other fund-specific documents.

Consumer rights of withdrawal and rescission

The Consultation Paper further proposes that withdrawal and rescission rights (other than for misrepresentations) attached to mutual fund purchases be eliminated. We oppose this proposal.

The fact that information on a mutual fund will now “be made widely available [online] before the point of sale” does not obviate the need for a cooling-off period so as to protect consumers from pressure sales in this industry. First, many consumers will not in fact have ready access to this information online. Those who continue to rely on paper disclosures will not be able to access this information until it is delivered to them.

Second, just because the information is available online before the point of sale does not in any way guarantee that the consumer has not been subject to the kind of pressure sale that cooling off periods are meant to mitigate. Individual investors will definitely be prejudiced from removal of these rights, even if they have not taken advantage of such rights in large numbers in the past. Once again, the improved content of information disclosure proposed by the Joint Forum could well lead to greater investor awareness, and thus more exercise of investor rights.

If possible, measures should be implemented to prevent investors from using the cooling-off period to play the markets. For example, an investor exercising this right could be limited to recovery of his or her initial investment.

Yours truly,

original signed

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