

# **Rethinking Point of Sale Disclosure**

Joint Forum of Financial Market Regulators  
Consultation Paper 81 – 403

Comments by Lutheran Life Insurance Society of Canada  
April 30, 2003

These comments are provided as feedback to the Joint Forum and the members of the CSA and the CCIR from the small company perspective.

## Issues for comment

*01. Do you agree with our description of the disconnect between theory and practice in this part of the consultation paper? Are there any differences between segregated funds and mutual funds that we should keep in mind as we work to improve their respective disclosure regimes?*

Lutheran Life agrees that there is a disconnect between the goal of providing our customers sufficient information to make them well-informed consumers and the reality of providing them a daunting document or set of documents just before a purchase decision. Further we agree that the stale-dated nature of the documents frustrate the client and the agent. It is also worry-some that at times, both consumers and agents regard third-party summaries with a higher level of trust because of their short summaries and timely performance data. This is particularly troubling given that these same sources tend not to describe the unique product features of segregated funds.

Although Mutual Funds and Segregated Funds are sold through similar channels and are both variable investment products there are also significant differences in product design and distribution that must be considered. Segregated Funds are insurance contracts offered by insurance organizations that offer benefits beyond market participation. Maturity guarantees and Guaranteed Investment Accounts are typically included. Additionally, with Segregated Funds the Insurance organizations are liable for all features and distribution.

*02. If you are a mutual fund industry participant (either a fund manager or a sales representative), please comment on your experiences with the rights of rescission and withdrawal. Have you or your clients ever exercised them? Do they work in practice to give consumers real (as opposed to theoretical) rights? If you are a consumer, please tell us whether you knew you had these rights and whether you have ever used them.*

Not applicable.

*03. Our proposals will require operators to post the foundation document and the continuous disclosure documents for each fund they manage on their web-sites. The IVIC used by an insurance company for its segregated funds will also be available electronically and in paper (on demand). Please comment on the pros and cons of this approach.*

Posting foundation document(s), continuous disclosure documents and the IVIC used by an insurance company on its web-site would reduce costs and improve the timeliness of the materials. It would reduce the expense of destroying stale-dated materials and would minimize the use of stale-dated materials at the point of sale.

The term “on demand” used in the question is inappropriate. This implies more than what is specified in the proposal. Using phrasing similar to “timely delivery” may be more appropriate. There should be no implication that the timing of the delivery of a paper copy would leave open the possibility that there is a right of rescission after issuance of the policy.

*04. We recommend that consumers have access (either electronically or if they wish, in paper) to an individual foundation document for the fund of their choice. Would it be possible or advisable to allow a foundation document to describe more than one fund—for example, all of the funds in a fund family? Why or why not? How would such a document work?*

Lutheran Life currently offers 26 funds under management. Many of the items that are proposed for inclusion in the Foundation Document would be duplicated if a separate document was required for each fund. This would not only result in unnecessary redundancy but also a potential for error in its upkeep. We would advise that a multi-fund document be permitted with a section

relating to common or generic information and sub-sections for fund specific detail. This would stay true to the intent of the proposal and allow for multi-fund efficiency.

*05. We propose that mutual fund managers make the various documents available on their own websites, notwithstanding their availability on SEDAR. Are SEDAR postings, alone, sufficient? Is the SEDAR system structured appropriately to fulfil this function? Please comment on the usefulness of SEDAR for accessing individual disclosure documents about a mutual fund.*

We feel that a goal in this process is to develop consistent standards for both Mutual Fund and IVIC industries. Further, from a client's perspective, a company's web-site is a more intuitive location to find these documents.

*06. Please give us feedback on the practical issues we outline in the text boxes below. Please explain how marketing brochures or other sales communications are distributed and kept up-to-date today, both at the operator and sales representative levels.*

*Operators will be required to prepare a separate fund summary document for each fund. How will they ensure sales representatives receive copies of these documents? How can this aspect of our proposals be handled administratively? Will technology assist? For example, can operators make these documents available on their web-sites for sales representatives to access?*

The Insurance Industry currently provides paper based Information Folders at point of sale. Although this document is not ideal it is an example of a single document format for supplying point of sale information. It is carried by the representative, used in the sales process and left with the client. There should not be any additional administrative issues if a multi-fund fund summary document is to be used. A scenario where a single-fund-based approach is used would be voluminous (repeated information), and difficult to manage.

*How will operators update these documents? How will they ensure the updated versions of the documents are used appropriately by sales representatives?*

If a multi-fund approach is used there are current procedures in place that work well. New documents replace old documents and the old stock is destroyed. If a single fund approach is used, then the management of stock would be more difficult. To simplify the process we would probably publish new stock of every fund every time. This is not cost efficient but it would reduce the risk of misfiled versions.

*How will the proposed document work when sales are carried out by telephone or through another means that does not involve face-to-face meetings? We think there are several options. A sales representative could tell a consumer the information in the fund summary. We think that consumers who make their own investment decisions without further advice from sales representatives will already have done their homework and won't need anything further.*

Telephone sales and internet sales are the two alternatives that are most commonly used for order taking for existing policies. If we extend the concept to new sales the internet approach would not be problematic. The client would obviously have access to the internet therefore referring the client to a website would be easy. For telephone sales one would have to require sales representatives to advise the client that the summary is available and how to get it. It would not be reasonable, given the size of content of the fund(s) summary for a sales representative to recite the document over the telephone.

*What about consumers investing on a periodic basis (monthly, quarterly, annual debits for example)—what are their information needs? We do not think consumers need to receive a fund summary before each periodic purchase, for example. Won't consumers be kept informed about their fund through access to continuous disclosure?*

Currently these clients receive the equivalent to the continuous disclosure document proposed in the draft. We feel that this is sufficient.

*These documents will be filed with regulators. Should they be reviewed and receipted?*

Both the Mutual Fund and IVIC industries should be treated in a similar manner. Companies in either industry should have to comply with the appropriate guidelines. The IVIC guideline should be modified to specify disclosure requirements and to specify what would require review and what would not (e.g. performance data updates).

*07. Please tell us about your business practices now using the existing disclosure documents. Do you use them in the sales process? Do you give them to consumers before a sale is completed? If we require you to give a printed fund summary to consumers before the sale, what impact will this have on your existing business practices? What about telling consumers what the fund summary says rather than always giving them a printed copy? Can we achieve our objectives of empowering consumers to make informed investment decisions without mandating a fund summary?*

Currently clients are given the Information Folder and Financial Highlights at or prior to the sale taking place. Using a multi-fund document will not significantly change the current process, but will result in the client receiving a more useful, less expensive summary of relevant information prior to signing the application.

*08. Please give us your views on the proposed content of the fund summary document.*

As noted above, minimum content should be prescribed; with sufficient specificity that issuers can be reasonably certain what is required. The categories seem appropriate.

*09. What are the pros and cons of a fund summary document that includes information on more than one fund? Why is a consolidated document desirable, having regard to the potential for consolidated documents becoming unwieldy?*

For an IVIC, the funds available for investing are considered part of the contract. Philosophically, documentation should respect the fundamental nature of the product and, where appropriate, reflect differences with other products. In addition, 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.

Since a very large number of funds are available through the IVIC, allowing a single summary to describe all of these funds overcomes a number of practical problems associated with the volume of paperwork entailed by a single fund approach. While there are limits to the number of funds that can be presented in a multi-fund summary before it becomes unwieldy, the problem of unwieldiness will always occur sooner for a single fund approach.

10. Please provide us with feedback on the practical questions we note in the text box below.

*We need to agree on an approval mechanism whereby the regulators will approve and the industry will endorse the contents of the consumers' guide. We need to work out how this document would be periodically updated.*

We propose that the Joint Forum (or CCIR and CSA) develop the guide in consultation with the industry. The industry, through CLHIA and IFIC, could endorse the guide which would be identified as a Joint Forum publication. Since the guide is intended to provide general information for unsophisticated investors (or potential investors), the content will likely remain current over a reasonably long period. A regular review by the industry and regulators could be scheduled for every five years with all parties having the right to request revisions in the interim if changes make these appropriate.

*How will the consumers' guide be made available for use by industry participants and consumers?*

Industry associations and regulators could post the guide on their websites and individual companies may wish to do so as well. A brochure or booklet should be made available from industry associations as well.

*Who will make the decision about which consumers should be offered the document? The consumer? The dealer firm? The sales representative? What consequences will flow when a novice consumer is not offered the document?*

As with most sales situation the representative should ensure that the client understands the financial product that is being purchased. If a client does not sufficiently understand the product, then reviewing the content of the guide would educate the client. It should be clear that failure to understand the product, or not being offered the guide should not be grounds for breach of duty of care.

11. Please comment on the content of the draft consumers' guide in Appendix 1.

Comment of the draft guide is best left for the industry association.

*12. Please comment on cooling-off periods in the context of mutual fund and segregated fund sales. If you believe one should be retained (or introduced in the case of segregated fund sales) please explain why. How should a cooling-off period work given the changes in the market value of funds? How can we prevent market players from using a cooling-off period to play the markets? What would be a correct period for consumers to re-consider their investment?*

A cooling of period would create a liability to Segregated Funds that previously did not exist. More importantly, once the proposal is implemented, the mutual fund industry would also be providing sufficient point of sale disclosure that a cooling-off period would no longer be needed.

13. Although we will be preparing a formal cost-benefit analysis, we are interested in your views on the costs versus the benefits of our proposals. Please comment and explain your analysis.

The proposal has the potential for reducing point-of-sale disclosure costs while at the same time improving the disclosure to the client. The keys to the benefits being realized are:

- A multi-fund approach for the Foundation document and the Fund Summary Document
- The adoption of “access equals delivery” approach will significantly reduce the cost of paper distribution.

The potential risks are:

- Additional liability due to error in a single fund approach to documentation. This could be overcome by bundling the single funds together as reference previously.
- Losing the potential to highlight the differences in the IVIC versus mutual fund products. These highlighted differences should extend beyond simply the fund choices.