



Montreal, April 30, 2003

To the :

JOINT FORUM OF FINANCIAL MARKET REGULATORS  
CANADIAN SECURITIES ADMINISTRATORS  
CANADIAN COUNCIL OF INSURANCE REGULATORS

c/o Mr. Stephen Paglia  
JOINT FORUM PROJECT OFFICE  
5160 Yonge Street  
Box 85, 17<sup>th</sup> floor  
North York, ON, M2N 6L9  
*e-mail: [spaglia@fsco.gov.on.ca](mailto:spaglia@fsco.gov.on.ca)*

c/o Mme Denise Brosseau  
Secrétaire de la Commission  
Commission des valeurs mobilières du Québec  
C.P. 246, Tour de la Bourse  
800, square Victoria, 22<sup>e</sup> étage  
Montréal (Québec) H4Z 1G3  
*e-mail : [denise.brosseau@cvmq.com](mailto:denise.brosseau@cvmq.com)*

Dear Mrs Brosseau  
Dear Mr Paglia,

**Re : Consultation Paper 81- 403 – Rethinking Point of Sale Disclosure**

---

Pursuant to the publication of Consultation Paper 81-403 (the "Consultation Paper") on February 13, 2003, we are pleased to submit the comments of the Mouvement des caisses Desjardins with regard to this document.

**Introduction and General comments**

The position of the Mouvement des caisses Desjardins has been prepared by Desjardins Trust with the collaboration of Desjardins Financial Security.

Desjardins Trust Inc. is a company belonging to the Mouvement des caisses Desjardins. It is the manufacturer of the Desjardins Family of Mutual Funds (30 funds) and of the Maestral Family of Mutual Funds (12 funds). For The purpose of these presents, we will only refer to the Desjardins Funds, the largest of our two families of mutual funds.

Desjardins Financial Security Life Assurance Company (Desjardins Financial Security) is a life insurance company constituted under the Insurance Act (Quebec). It is the manufacturer of the Millennia III, Imperial Growth and Desjardins Financial Security families of individual and pooled segregated funds. For the purpose of this submission, we will only refer to the Millennia III Funds, the larges of our three families of individual segregated funds. Desjardins Financial Security controls 70% of SFL Management Inc. a holding company constituted under the Companies Act (Quebec).

Desjardins Trust and Desjardins Financial Security are members of the Investment Funds Institute of Canada (IFIC) and the Canadian Life and Health Insurance Company of Canada (CLHIA), have participated in the development of each organization's response to 81-403 and wish to note that we support the submission that each organization has made; however, we have additional comments, which we feel are warranted by the Joint Forum's proposal.

We wish to state that although we entirely subscribe to the objectives of the Joint Forum of Financial Market Regulators (the "Joint Forum") to better inform mutual and segregated funds consumers, we do not believe the proposals in the Consultation Paper will attain this goal because whatever disclosure document is proposed and however it is written and structured, whether plain and simple, short or long, it will always require in the end that the consumer makes a minimal effort of consulting it.

Merely three years ago, the Canadian Securities Administrators ("CSA") adopted National Instrument 81-101 on "Mutual Fund Prospectus Disclosure" ("NI 81-101"). The purpose of NI 81-101 was to entirely restructure the mutual fund prospectus to make it more user friendly. NI 81-101 essentially provided that the mutual fund prospectus be written in plain language and that it be divided in two distinct parts to facilitate access of the consumer to specific information on the fund or funds he was buying into, without having to read the whole document, and make data contained therein easily comparable with that of other mutual funds. These goals, in our view, are essentially the same as those described in the Consultation Paper, and have been achieved. The only ingredient missing is the willingness of the consumer to make the small effort of consulting the prospectus and the solution to that, in our opinion, lies essentially with the consumer.

Compliance with NI 81-101 has meant for the Desjardins Family of Mutual Funds (30 funds) that its prospectus be completely rewritten, going from 39 pages up to 180 pages, at a cost for the funds and ultimately the unitholders above \$120,000.00 just in legal fees (non recurrent). If you look at the prospectus of all mutual funds in Canada that have complied with NI 81-101, you can easily find, written in plain language on four to six pages, specific information on a mutual fund (investment objectives and strategies, past performance, financial highlights, etc.), without having to read the whole thing. This, incidentally, was pointed out to us just two years ago by a member of OSC staff in the course of a meeting on Proposal 81-402.

A consumer who purchases a segregated fund contract receives both an information folder at or prior to point of sale and a contract, which essentially duplicates much of the information in the information folder. Desjardins Financial Security has responded to the most recent series of changes in the CLHIA guideline concerning Individual Variable Insurance Contracts by making changes to the disclosure documentation provided to clients at the point of sale for the Millennia III Plan, so that the documentation now looks very much like a mutual fund prospectus as defined by 81-101, with the addition of the segregated fund contract. These documents have been successfully combined and we feel that this simplified approach to point of sale documentation assists the consumer to easily identify the important elements of the investment and particularly the benefits guaranteed under the contract.

We are concerned that in an effort to make disclosure documentation more accessible to consumers that manufacturers not be in a position where they are constantly repackaging information at a cost to the consumer. We believe that it is critical that consumers and sales representatives alike to have a fundamental understanding of how important this information is and why it should be reviewed before making the decision to invest.

We find that, objectively, the prospectus of mutual funds in Canada is a thorough document, plainly written as required under NI 81-101. The consumer can easily find therein the information he needs to make an investment decision. If this is not true, then the CSA have failed in implementing and enforcing NI 81-101, and this has been a very costly mistake for the industry, the funds and, ultimately, the unitholders. Lets try to avoid repeating such a mistake.

In our view the proposals contained in the Consultation Paper are essentially to the effect of exploding the actual mutual fund prospectus under NI 81-101 in three documents :

- **The Foundation Document**
- **The Fund Summary Document**
- **The Consumer's Guide**

With regard to the **Continuous Disclosure Documents**, we understand that what is proposed in the Consulting Paper is consistent with proposed NI 81-106 on "Mutual Fund Continuous Disclosure", for which Desjardins Trust has already submitted its comments to the CSA on December 19, 2002 (see file here attached for easy reference).

The question of the segregated fund contract has not been specifically addressed in 81-403 and we are concerned that duplication of information in the contract and information folder not be entrenched as a result of this omission.

As mentioned above, the prospectus of the Desjardins Family of Mutual Funds is 180 pages. It is a complete, easily manageable document in terms of consultation by the consumer and in terms of distribution to the sales representatives and the unitholders. The only thing missing is the "owner's manual" on how to efficiently make use of this document and easily find therein the information the consumer needs to make his investment decision, without having to read it from cover to cover.

The Desjardins Family of Mutual Funds is comprised of 30 mutual funds. Should the Joint Forum proposals be adopted as submitted in the Consultation Document, we would go from one easy manageable document of 180 pages to 60 documents totalling 510 pages (2 pages per fund for the Summary Document plus 15 pages per fund for the Foundation Document multiplied by 30 funds), and we haven't even taken into account the Consumer's Guide.

This being said, here are our specific comments on some of the proposals contained in the Consultation Paper.

## **1. General**

We believe that as manufacturers, we must have the flexibility to determine how we can most effectively present our products to consumers. Certain basic information must be disclosed to protect the consumer, the sales representative, the dealer, and the manufacturer. It is not in anyone's interest to withhold important information about the investment and a well informed consumer is ultimately more satisfied with the product purchased.

Our preference would be to have regulators mandate the type of information that must be disclosed to a consumer and allow manufacturers the flexibility to determine how that information will be formatted. Our only exception to this would be that we absolutely agree that the presentation of performance should be standardized throughout the investment funds industry to ensure that consumers can easily compare the products being offered to them.

## **2. The Foundation Document**

Most of the information you suggest be contained in the Foundation Document is found in Part A of the Mutual Fund Prospectus under NI 81-101, except for the investment objectives and strategies which are found in Part B entitled "Fund-Specific Information".

Therefore, we are of the opinion that the Foundation Document should address all the mutual funds of a same family and should not exceed 15 to 20 pages which seems to be the average length of Part A of a Mutual Fund Prospectus under NI 81-101, without the information pertaining to mutual funds in general which, as per your proposal, will be found in the Consumer's Guide.

In the case of the Desjardins Funds, having a Foundation Document for each fund would result in managing 30 Foundation Documents of 15 pages each, for a grand total of 450 pages should we bind or consolidate all those Foundation Documents together. This is clearly not acceptable for evident cost and management of documentation reasons.

Furthermore, as the financial objectives and strategies of the mutual fund would be described in the Summary Document, this information should not be repeated in the Foundation Document. In fact, we should avoid repeating any information from one document to another. Duplication lengthens the documents and, in the end, is expensive.

We agree that the Foundation Document and, for that matter, all the other disclosure documents, should be made available on or accessible from the mutual fund and SEDAR websites and, where the mutual fund does not operate a website, at least on or from the SEDAR website. Hard copy should naturally be provided to the consumer on request with a reasonable delay to perform delivery (5 working days would seem appropriate).

We agree with the objective that the Foundation Document be evergreen. However, in light of past experience with mutual fund simplified prospectus, this appears somewhat illusory. Changes will frequently occur, just as they have in the past, whether to the organisation of the fund, its service providers, its fee schedule, etc.

### **3. The Continuous Disclosure Documents**

As we already have mentioned above, we understand that what is proposed in the Consulting Paper is consistent with proposed NI 81-106 on "Mutual Fund Continuous Disclosure" and we have nothing to add to the comments we have already submitted to the CSA.

However we wish to reiterate that:

- we agree that the annual and interim financial statements as well as the Management Reports of Fund Performance should be made available on the mutual fund's web site and delivered in hard copy only to those unitholders that request them. A reasonable delay should be allowed to perform delivery (5 working days would seem appropriate);
- we do not agree with the production and filing of interim financial statements and Management Reports of Fund Performance on a quarterly basis. We are of the opinion that quarterly reporting is somehow contradictory with the investment horizon an investor should have with regard to its holding of mutual fund securities. Also mutual fund portfolio advisors may feel compelled to perform in a manner to show good quarterly performances and this may result in portfolio advisors taking risks that are inappropriate and may be detrimental to the funds' medium and long term performance. Finally the disclosure of portfolio holdings on a quarterly basis may impair fund performance and return to unitholders because it gives information that can readily be used by investors outside the fund who may indulge in abusive/opportunistic practices.

### **4. The Summary Document**

Most of the information you propose to be contained in the Summary Document is found in Part B "Fund-Specific Information" of the Mutual Fund Prospectus under NI 81-101.

This part of the prospectus usually varies in length from four to six pages for each fund described therein. Even if you take out the financial highlights data, we do not believe you can reasonably get a Summary Document under three pages per fund.

We agree with your proposal of preparing separate fund Summary Documents on condition that fund managers be allowed to bind or consolidate in one document, as they see fit, Summary Documents of many funds belonging to the same family of mutual funds, as this is presently the case for Part B of a Mutual Fund Prospectus covering more than one fund. In the case of the Desjardins Funds with over 6000 salespersons distributed among 850 service centres in Quebec and more than 60 in Ontario, it would be extremely hard and expensive to manage 30 separate Summary Documents. Also, you must consider that most consumers that buy into mutual fund securities invest in more than one fund, so it is useful they have handy, in one document, the information on many if not all mutual funds of a same family for timely consultation when investment needs arise.

Providing Summary Documents to sales representatives in our case will be performed the same way as we presently provide them the simplified prospectus. We most certainly will give free access to Summary Documents on our web site as we presently do for the Desjardins Funds simplified prospectus.

Your proposal that the Summary Document be handed and explained to the consumer prior to taking his investment decision would be a desirable improvement where the consumer and the sales representative are in presence of one another. But such a procedure would not be easily applicable nor would it be practical where subscription, as it is generally the case, is executed over the phone. Therefore this proposal should not be made mandatory, at least not in the case of phone subscriptions.

We agree that updating the Summary Document should be mandatory only once a year or when there has been a material change to the fund. If the performance information is removed from the Summary Document, then we believe that updating will only be necessary when there is a change to the fund.

Such updating should be filed with, reviewed and receipted by the regulator the same as a prospectus and information folder. When receipted, the new Summary Document will replace the former one and stocks will be renewed using our existing procedures.

## **5. The Consumer's Guide**

We agree with the proposal of a joint regulatory-industry Consumer's Guide. We suggest that a permanent review committee be constituted, at the Joint Forum level, of representatives of CSA and CCIR on the regulatory side and representatives of IFIC and CLHIA on the industry side.

The Consumer's Guide could be reviewed annually. Members of the industry should be allowed to address suggestions to the review committee which will take them into consideration comes revision time.

The Consumer's guide could be made available electronically on the web sites of the CSA and the CCIR, and be accessed through a "quick link" from SEDAR and industry participants' web sites.

Hard copies of the Consumer's Guide could be provided by industry participants to consumers, on request, within a reasonable delay from such request (again 5 working days would appear appropriate). Industry participants would have the responsibility of downloading the Consumer's Guide from the regulator's website and printing it. Industry participants should be informed sufficiently in advance of any review of the Consumers' Guide to avoid costly destruction of important obsolete stocks of this document.

Consumers will be informed of the existence of this document in the Summary Document and how to access it on the web or get a hard copy from the manufacturer, dealer or the sales representative.

We are of the opinion that the sales representatives should systematically offer the Consumer's Guide to every consumer on or immediately pursuant to opening his first mutual fund account or purchase of a segregated fund contract.

## 6. Consumer's Rights

We find the proposal to remove the rights of withdrawal and rescission totally appropriate in a context where, as proposed in the Consultation Document, the Summary Document would be handed and explained to the consumer prior to making his investment decision. Where the sales purchase is conducted over the telephone, or the Internet, then we feel that a consumer would need to be advised of the importance of reviewing the document prior to making a decision and would need to waive his right to receive the information before the sale could proceed.

Please note that we are not aware of any case where a subscriber to the Desjardins or Maestral Funds has actually exercised his withdrawal right. We cannot confirm nor infirm as to subscribers of our mutual funds being aware of their withdrawal right.

Finally, we see no point in replacing a two day withdrawal period by a longer (perhaps 15 days) cooling-off period.

## Conclusion

The tiered approach to disclosure documentation has a great deal of potential in terms of cost savings, provided that all regulators in all jurisdictions accept the concept of "access equals delivery" across Canada within a reasonable period of time. If this does not happen, then we would propose as cost-effective alternative the following solution:

- 1) The Mutual Fund Prospectus under NI 81-101 should be kept as is, except for the following:
  - information pertaining to past performance and financial highlights should be taken out of the prospectus as this is contemplated in proposed NI 81-106 on "Mutual Fund Continuous Disclosure", to avoid duplication of this information that will be found and updated in the Management Reports of Fund Performance (hopefully on a biannual and not a quarterly basis);
  - general information on mutual funds should also be taken out of the prospectus to be put in a better articulated and complete, standard for the industry, Consumer's Guide, this as suggested in the Consultation Paper;
  - some space should be reserved at the very beginning of the prospectus and, for that matter, of other disclosure documents (annual report, interim financial statements, annual information form, etc.) to briefly, clearly and plainly explain the best way to efficiently consult this document without having to read it from cover to cover.

This, in our opinion, should result in a somewhat leaner and less expensive prospectus, and would also preserve the costly modifications that have been brought about by the implementation of NI 81-101.
- 2) The prospectus should be handed to the consumer and its use clearly explained by the sales representative on the first subscription the consumer makes in a mutual fund or family of mutual

funds. Consumers purchasing over the telephone or Internet would have to be made aware of the location of the prospectus and given an opportunity to review it prior to proceeding with the purchase. Consumers would have to waive the right to review the prospectus if they did not wish to read the material. There would be no rescission rights for either mutual or segregated fund purchases since there is ample protection under existing securities and insurance legislation throughout the various jurisdictions in Canada.

- 3) A joint regulatory-industry Consumer's Guide should be written and reviewed annually, taking into consideration, whenever possible, suggestions from industry participants. A permanent review committee should be constituted, at the Joint Forum level, of representatives of CSA and CCIR on the regulatory side and representatives of IFIC and CLHIA on the industry side.
- 4) Mutual and segregated funds partaking of the same nature, we agree with the Joint Forum that they be put, as much as this is possible, on the same level with regard to disclosure requirements. As such, we believe that our proposed approach will work for segregated fund contracts as well as mutual funds.

As stated earlier, Desjardins Trust has prepared the comments of the Mouvement des caisses Desjardins with additional input from Desjardins Financial Security. We thank you very much for giving us the opportunity to express our view on the Consultation Paper and the proposals therein. Should you wish to do so, we will be happy to discuss any of the preceding with you.

Yours very truly

Yves Morency  
Vice President Government Affairs  
Fédération des caisses Desjardins du Québec  
100, avenue des Commandeurs  
Lévis (Québec) G6V 7N5