



BY ELECTRONIC MAIL: jointforum@fsco.gov.on.ca

October 15, 2007

Mr. Neil Mohindra
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Dear Sir:

Re: Joint Forum Proposed Framework 81-406, Canfin Magellan Investments Inc. Comments

Canfin Magellan Investments Inc. (“Canfin”) is writing to provide comments on the Joint Forum of Financial Market Regulators (“Joint Forum”) *Proposed framework 81-406, Point of sale disclosure for mutual funds and segregated funds* (“Proposed Framework” or “Proposal”) released for comment on June 15, 2007.

1. Overview

Canfin concerns with the objectives of the Proposed Framework to develop more meaningful disclosure documents for the sale of mutual funds and segregated funds. We commend the Joint Forum on their inclusive and consultative approach that is being undertaken with this initiative and the opportunity to provide comments.

As a general point, it is important that when developing the Proposal, full consideration be given to the highly regulated framework that presently exists for the sale of mutual funds. Mutual fund sales are subject to Know Your Client (“KYC”) and suitability requirements; advisors and dealers are under a duty to sell a suitable product to the consumer; and dealers are required to review all trades for suitability.

2. Accuracy & Timeliness

The availability of accurate information at the appropriate time in the decision process is key to allowing prospective and existing investors making sound decisions on what investment products to buy.

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● CANFIN MORTGAGE AND EQUITY INC. ● CANFIN WORLDWIDE FINANCIAL SERVICES INC.

a) Fund Family Information

Information we provide to investors should be clear and accurate on how much it will cost to buy and/or own a fund within a fund family, which might be defined as the group of funds currently issued under the same Simplified Prospectus. The pricing and compensation structure of a fund offered by a Manager are set at a fund family level, and not at an individual fund level. The information, therefore, is only accurate when explained at the fund family level. The possible solution that merits further discussion is taking the sales and compensation information that is presented fund-by-fund on page two of the Proposed Framework and putting it into a summary document that is provided to the investor before any investments are made.

The best time for presenting this information is at Account Opening when the investor is making some critical decisions including: assessing whether to enter into a relationship with an advisor, what kind of portfolio structure will best help him meet his investment objectives, etc. This creates a discussion between the Investor and advisor about the right products and it is at this point that clarity on what these products will cost is critical. A summary document that lays out the pricing of funds within a family would be very helpful. As an example, if the deferred sales charge option is agreed upon, the advisor would explain the various features of such an option, namely that switching between funds within the same fund family will not trigger any redemption charges, and the way in which a 10% free withdrawal process applies to a family of funds.

b) Account Opening

A summary document at Account Opening could then be supplemented by an abbreviated Fund Facts, that contains the other information contemplated by the Proposed Framework, including: disclosure of the fund management fee which already appears very prominently on the top of the front page of the proposal, classification of the fund, risk level, etc. This could be provided multiple times and at many stages in the process. For example, it can accompany the fund summary document at Account Opening, it can be available on a continuous basis on an industry web site which the consumer would be made aware of and encouraged to visit to get the latest update, and it could always be provided with a trade confirmation.

Account Opening for client name accounts would occur at the time a consumer intended to transact for the first time with a particular fund family.

3. Subsequent Sales and Switches

Once an account has been opened, the investor and the advisor keep in touch and conduct transactions in various ways – they meet at the advisor’s office, or in a client’s home or they may transact by phone if a Limited Trading Authorization is implemented (“LTA”)

In the case of the Limited Trading Authorizations the investor's expectation is that a discussion will lead to a transaction being done, often immediately or by the end of that day.

In the disclosure model we propose the investor will have already received full information on pricing and compensation structure offered by a manager, and has received the abbreviated fund facts at or after account opening. The desired transactions for a subsequent sale or a switch can be agreed to and processed by the advisor immediately without any interruption.

4. Assessment of Challenges Presented by the Proposed Framework

Canfin feels that the suggestions provided above would improve the design of a POS disclosure program. This will meet your objectives to provide consumers with more meaningful information on mutual funds prior to purchase.

In this section our comments are focused on the negative impact your Proposed Framework will have on investors as well as the industry, if it is enacted in precisely the manner in which it has been presented.

a. Delivery Issues

The major challenge with the proposal arises from the inflexibility of the requirement to deliver the Fund Facts at or before the point of sale ("POS") for all transaction types and all clients without exception, and the disruption and inefficiencies this implies for certain transactions.

i. Interruption of Subsequent Sales and Switches

Sales and switches that occur in a client's account following the initial account opening stage ("Subsequent Sales") are sales for which there is an established client-advisor relationship and for which there is the greatest risk of trade interruptions caused by the overly specific delivery requirements of the Proposed Framework. Any disruption to the presently efficient processes for conducting these trades, which are most often conducted over the telephone or in the client's home, will lead to dissatisfied customers who will ask for, or be open to, investments with fewer pre-sale disclosure requirements. The risk is that this would result in less suitable investment solutions, which would not be in the best interests of consumers. What follows is a more detailed description of the issues raised for telephone and in-home sales.

1) Telephone Initiated Transactions Via LTA

The inflexibility of the delivery requirements under the Proposed Framework will cause significant disruption to these sales. The clients that elect business in this manner do so as not to be hindered by having to physically meet with their advisors and they have an expectation that the trades would be

executed immediately upon their oral instructions. These clients would be severely impacted by the delivery obligation for pre-sale delivery limited only to paper-based, faxed or e-mailed disclosure documents.

To illustrate the difficulty for the telephone channel, consider a typical transaction whereby a client calls into his advisor. The advisor reviews the client's account while on the line, and is expected by the client to transact immediately according to instructions given, provided that they are consistent with the client's KYC.

Instead of transacting immediately in the chosen fund, as the client is accustomed to doing, he/she would be told that an up-to-date Fund Facts would be mailed/faxed/e-mailed (as currently provided for in the Proposed Framework), and requested to call back on receipt of the document to place the order. An e-mail response would not be acceptable for trade instructions because of potential delays, miscommunication or safety reasons. The undue delays created by the delivery requirement raise problems for any client wishing to conduct a time-sensitive transaction, such as an RRSP contribution on the last day of the RRSP season, or a transaction in a volatile market.

2) In Home Sales

The majority of mutual fund transactions conducted by our dealer occur in person at the client's residence or place of business. We believe that the Proposed Framework will limit the investment choice available to clients serviced by in-home sales. Typically, the sales representative will travel to the client, sometimes over long distances and often for small or mid-sized accounts, to conduct an in-person interview and transact for the client's account. In most cases the account opening process may require more than one meeting with the client, and in the case where the initial sales recommendation occurs during the initial meeting, the advisor is likely to recommend from a limited set of funds known in advance using a variety of marketing materials or informational tools on the funds being recommended.

Accordingly, for initial sales at account opening, delivering the Fund Facts at POS will create some logistic concerns. However for subsequent sales, particularly where there is a long-standing relationship with the client, there is a greater likelihood that the face-to-face, in-home interview will produce a recommended solution for which the advisor is not carrying the required documents. This could come, for example, as a result of a change in the consumer's profile or financial situation, or from the consumer himself who might request to purchase units of a fund that he has heard about or researched separately.

An investor working with an advisor who conducts extensive in-person, in-client-location business may be able to choose, for example, from as many as 1800 funds from 30 - 40 different companies. Under the Proposed Framework, and given the additional costs of fulfillment that the management of these multiple disclosure documents would imply, the advisor may be forced to restrict the number of

investment options offered to clients, offer more single than multi-fund solutions, or focus more on pre-determined solutions than on needs-oriented discussions. Alternatively, other products not covered by the proposed POS rules will become much more attractive to buy or sell.

b. Content Issues

We agree that standardization of Fund Facts is desirable for ease of reading and fund comparisons, and support prescribing certain elements and their order, and some of the section headings and language. We are concerned, however, that some of the prescribed language of Fund Facts is misplaced or misleading, and in some cases misses important relevant information. We have concerns with respect to i) Cost and Compensation sections of Page 2 of Fund Facts, ii) Deferred Service Charges (“DSC”), iii) the Prescribed Content of Page 1 of Fund Facts, and iv) other missing information that we believe is relevant to a consumer making an investment decision. It is our view that the proposed disclosure on these items should be corrected, enhanced and, where indicated, directed to occur at a time when it would have most relevance to the consumer – at account opening. Please refer to our constructive proposals to improve this disclosure in section 2 of this submission.

Costs and Compensation

Under the “How much does it cost?” section of Page 2 of Fund Facts, it is proposed that the consumer be informed of a number of options regarding the payment of sales charges. The client is informed that they would have the option of choosing from among a list of possible sales charge models, and, if initial sales charges are chosen, the option of a negotiated rate. This proposed language is very misleading in several ways. The sales charge options operate at the fund family level and not at the fund level. Different sales charge options available to be sold by an advisor are determined by us the dealer based on our business model, therefore the best time to disclose this to the client is at account opening. These are not options that can be decided on or negotiated on a transaction-by-transaction basis. While we agree with a disclosure document that clarifies the many ways that a fund can be purchased in the market, we do not support a document that misleads by suggesting to the consumer that choices exist when the method of fees and compensation was already agreed up on at account opening.

Under the “How does my advisor get paid?” section of Page 2 of Fund Facts, a number of features relating to commissions and commission rates are listed. This is by no means a complete listing of all compensation arrangements that are available in the industry. Some advisors work under a fee-based arrangement.

We support enhanced disclosure on pricing and compensation arrangements but believe this is best discussed in a thorough way at account opening, the point in time when that information is most useful to the consumer, and for this reason we recommend to the Joint Forum that the present POS initiative be considered in the context of, and aligned with, the Client Relationship Model of the

Registration Reform Project. In our view, continuing to consider the two initiatives separately risks introducing serious duplication, administrative complexity and consumer confusion.

i. Deferred Sales Charges

An additional problem in the prescribed language is in regard to Deferred Sales Charge (DSC) units. DSC redemption fees, for example, almost always apply at the fund family level. For a switch between funds within the same fund family the DSC fee schedule is not re-set for the purchased fund, it is carried forward unchanged from the original purchase. In addition, clients of DSC funds are often allowed up to 10% redemptions within any year without incurring a deferred charge on such redemptions. These benefits are absent from the descriptions provided in the proposed document. Comparing two DSC funds in different fund families by only looking at their respective Fund Facts sheets would not tell the complete story. A single fund focus in this case understates the benefits available to one fund over another for cost-effective rebalancing down the road.

ii. Prescribed Content

Prescribed content that would apply to all funds in all cases may not yield the most relevant information for the consumer. For example, the industry mix pie chart on Page 1 may be useful in the context of an equity fund but less relevant in the case of a global sector fund, such as telecom or financial services, where a geographic breakdown of the underlying issuers would be more useful. This is one illustration where a “one-size-fits-all” prescribed approach does not provide the most useful and relevant information to a consumer.

5. Impact of Proposal

In addition to the impact of the rigid delivery requirements and potentially misleading content, the Proposal will have severe implications with regard to arbitrage of product, compliance and audit issues, and fairness in the marketplace.

a. Reduced Access to Mutual Funds by Canadians

The very prescriptive approach to the delivery of the Fund Facts to the consumer at or immediately before point of sale does not accommodate the many ways that consumers prefer to inform themselves about the investments they buy, and will disadvantage the sales processes by which the vast majority of mutual fund sales are done. This we believe will have long term negative implications for consumer choice if firms shorten their product shelves due to logistical and fulfillment costs associated with the Proposal or if clients seek out other products as the ease of transacting shifts in favour of these other less regulated products.

Disclosure requirements and sales practice rules applicable to Canadian mutual funds and segregated funds would, under the Proposed Framework, become more onerous than for virtually all other retail financial products in Canada. This is of concern to us because more than half of all mutual funds sold in Canada today are sold outside of the MFDA channel, where the sales representatives are licensed to sell, in addition to mutual funds, other retail financial products which may have much greater risks but little or no point of sales disclosure requirements.

For example, Exchange Traded Funds (“ETFs”) and their distributors are not required to provide a disclosure document to consumers who purchase ETF shares or units in the secondary market. Similarly, Canadian producers of separately managed accounts and wrap accounts are not required to produce or provide to clients any disclosure with respect to the operation of the account or service. For Principal Protected Notes there are no specific disclosure requirements currently.

The unlevel playing field that currently exists in Canada will be further tilted against mutual funds if the Proposed Framework is implemented.

b. Operational Issues

The Proposed Framework would require dealers to manage large additional volumes of paper related to mutual funds carried. It would not be unusual, for example, for a large independent dealer to carry mutual funds from 20 different fund companies. Currently there would be a single Simplified Prospectus to deliver for each fund family – 20 documents in this case. If each fund family had 50 funds, each with 3 series or more, the number of regulatory documents required to be kept on hand at the dealership, or managed by a fund company fulfillment service, would rise from 20 to at least 3,000. Many large fund companies would have more than 50 funds with more than 3 series for each. While the example is illustrative only, the implication is that there would be significant added burden on dealer back offices and fund company fulfillment groups due to the additional volumes of separate disclosure documents. This reality will not only lead to higher costs which the consumer will ultimately bear but restricted access to funds as dealers and advisors will tend to narrow the number of fund families and specific funds offered to handle the sheer logistic complexity of paperwork involved.

It has been suggested that the delivery obligation for phone transactions could be met by e-mailing the Fund Facts to the client while on the line, or by e-mailing the document and having the client call back. Canfin is reluctant for security reasons to use ‘push’ e-mail for delivering transaction-related material to clients. An e-mail containing a copy of Fund Facts from a dealer to a client, for example, would be an open communication receivable by other parties indicating that the client has an investment account at the respective dealer and is considering an investment in the fund in question. This information could be used in fraudulent e-mail communications with the client in the future, thus exposing the client and dealer to financial risk.

One practical and secure way of sending the information by e-mail would be through a proprietary secure website whereby the client would log on to his/her account and download the relevant information. Most firms do not have this technology at present and building it would require a major systems build, which would be economically feasible only for the largest of firms. This would alter the competitive landscape of the industry and likely result in higher costs for consumers. But, even if such a facility were available it would be viewed as very cumbersome by most investors.

c. Compliance Issues

The difficulty of tracking compliance for delivery of required disclosure at or before point of sales would be significant, and would present a major issue of non-compliance for our firm and our advisors.

With this much additional paper disclosure documents in the system, thus raising the risk of non-delivery due to the wrong document being provided, and no existing processes available for tracking compliance with delivery “at or before sale”, the difficulties of providing an accurate trail for audit purposes will be enormous. Added to this is the significant risk for our firm of not establishing proof of delivery, as the withdrawal right provided to the client in the case of non-delivery is unlimited.

Ultimately, the inability to track compliance would result in ineffective enforcement, thus undermining the securities regulatory framework as a whole.

d. Fairness in the Marketplace with respect to the Non-Delivery Right

In the Proposed Framework it is proposed that, on non-delivery of the Fund Facts, consumers have a right to withdraw from the purchase by receiving the amount of their original investment, plus any fees. This gives consumers a free valuable put option on their mutual fund purchases, which is exercisable at any time after purchase if they are successful in claiming non-delivery of Fund Facts. If the market value of the fund goes down, whether it is five days from the time of purchase or five years from the time of purchase, a consumer can get his/her original investment back plus fees. When the market turns down and consumers lose money, dealers will be subject to many frivolous claims by consumers claiming that they did not get the most recent Fund Facts at or before the purchase. In order to meet such claims, Canfin will have to install robust, costly compliance tracking systems, raising the issues described above. Alternatively, such claims would not be refuted, creating an unlimited right of withdrawal for the consumer, and significant additional costs to dealers in fighting frivolous claims. We believe that with the provision of disclosure documents at or before sale, and a right of rescission tied to delivery of Fund Facts or receipt of the confirm the additional proposed withdrawal right is redundant, unfair and should be eliminated from the proposal.



7. Summary

We have commented and proposed solutions on a number of challenges with the Proposed Framework. Canfin's suggestions and proposals are based on the business model we have adopted as a medium sized independent mutual fund dealer, that operates in a client named environment either directly with the mutual fund companies or through intermediaries for self directed registered accounts. We have also provided a suggested approach that will ensure consumers are in possession of accurate and timely information to assist with the decision of purchasing a fund. We wish to thank you for the opportunity for allowing our firm to comment on this matter and we look forward to moving this project forward.

We would be pleased to address any questions or comments that you may have relating to our submission. Please do not hesitate to contact the undersigned.

Yours truly,

Canfin Magellan Investments Inc.

Manuel G. DaSilva
President & Chief Compliance Officer

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