October 15, 2007

Ontario Securities Commission
20 Queen St. W.
19th Floor
Toronto, Ont.
M5H 3S8

Comments on Proposed Framework 81-406

Thank you for allowing me (and others) to comment on the CSA Proposal for 81-406. In essence, my view is that, while the proposed reforms regarding point of sale disclosure are worthwhile, they rather miss a number of opportunities to make transparency more genuinely transparent. Also, I would like to add that I would like to have single national regulator for issues like these. Specifically, I believe that a single regulator should govern securities, mutual funds, insurance and all other financial instruments. As it now stands, whenever one regulator "raises the bar", those who are regulated differently are able to (and likely to) simply recommend those product solutions that are governed by lower standards of competency, ethics and disclosure. *This arrangement does not protect consumer interests- to say nothing of efficiency or international confidence.*

I was a member of one of the working groups that offered input on the OSC's Fair Dealing Model. The primary objectives were: improving cost, conflict and compensation transparency, achieving clarity when opening accounts and standardizing meaningful performance reporting. The discussion paper for 81-406 aims to deal strictly with disclosure and to my mind, does not go nearly far enough. Specifically, I believe it is ridiculous to equate access with delivery or to equate notice to either access or delivery. I believe clients need to receive a physical document with pertinent, timely and easy-to-understand information at the point of sale.

I have coined an acronym for what I believe needs to be done to truly "professionalize" the financial services industry. That acronym is STANDUP- Scientific Testing And *Necessary* Disclosure Underpin Professionalism. My view is that it is not enough for disclosures to be undertaken as a 'good idea' or 'best practice'. Neither is access via the presumption or possibility of delivery to be equated with actual delivery. Rather, comprehensive disclosure ought to be mandatory- irrespective of the delivery channel. It ought to apply to mutual funds and segregated funds equally and, where possible, ought to apply to other products as well and include client sign-off at the point of sale.

It has long seemed to me that there are double standards regarding disclosure as they pertain to different stakeholders and that the industry clearly paints advisors as being the "bad apples" when often, it is the member firms and product manufacturers that are far more culpable. These double-standards are condoned by SROs. I believe there are additional steps that can be taken to improve disclosure regarding consistency and fairness as they pertain to:

a) executives and advisors at the same firm; and
b) differing advisor approaches within the same firm.

Obviously, 81-406 deals strictly with disclosures made by advisors to consumers, but there are also disclaimers that can (and should) be made by member firms on related topics.

I have submitted my concerns to Richard Corner of the IDA in a letter dated February 2, 2007, but he has merely deflected them back to me and requested that I take these matters up with my employer. This is a massive cop-out. I believe the problems identified in that letter are systemic (i.e. that they pertain to the entire industry).

This type of (non) response is why people have become cynical about SROs- they "protect their own" and regulators like the OSC do nothing to enforce real justice. Disputes between advisors and member firms go to the IDA for resolution, but the IDA is a de facto kangaroo court, invariably protecting the interests of member firms if there is a dispute between a firm and an advisor within it. No one ever got just at a kangaroo court and there is no real court of appeal because the OSC (and other regulators) simply refuse to get meaningfully involved. I have requested meetings with Paul Bourque of the IDA on these and other matters, only to be turned away on repeated occasions. My sense is that the IDA will not respond and the OSC will not make them. Again, I believe the problem is systemic and that treating it like a 'one-off' does a grave disservice to what is a pervasive and willfully misleading industry mindset.

Specifically, re: a) above- if an advisor is *required* to disclose that opinions expressed are not necessarily shared by the firm, why are CEOs not *required* to make a reciprocal disclaimer? When at Assante, my CEO, Joe Canavan made comments that I strongly opposed. I have no quarrel with his expression of opinion, but I find it offensive that he would not abide by the same rules that he imposes on his representatives.

Similarly, re: b) above- I have been required to use a specific disclaimer by my current CEO, Mario Frankovich in relation to public presentations I give. I note, however, that no other advisor at my firm (all other advisors seem to favour active management) has been required to make this disclosure. Why, given that the wording chosen *by my firm* clearly acknowledges that neither side of the debate can score an "unchallenged victory", do firms require that proponents of one side of the debate have to make disclosures that proponents of the other side do not have to make? It clearly ought to be both or neither. Given my stated preference for more disclosure, I recommend that *all* advisors be required to make disclosures using language similar to the following that I was required to make when discussing capital market behaviour:

> The views expressed are those of (Advisor Name) and are not necessarily shared by (Firm Name). Debate regarding market efficiency, the usefulness of fundamental and technical analysis, active vs. passive management and the efficiency of fee payments is ongoing. To date, neither side of these debates has been able to claim unchallenged victory.

The past few paragraphs might be deemed to be beyond the purview of the proposed framework. I disagree. Purposeful disclosure has many facets and ought not be approached narrowly. Member firms and product manufacturers have obligations, too. Some of these involve disclosures that should be made in ongoing communications (e.g. newsletters) where it is not obvious to consumers whether the substantive contents are matters of fact or matters of opinion.

I'd like to return to disclosure as it pertains to consumer protection at the point of sale. Respecting that there are a number of stakeholders that also have legitimate interests that need to be reflected in the final document, I would like to stress my desire for clear, consistent rules that apply consistently to everyone in the industry. As indicated above, my view is that disclosure obligations ought to shift more to macro-level product manufacturers and distributors wherever possible. There are two basic reasons for this, and I'd like to draw on a few examples to illustrate those reasons:

1. As with cigarettes, it is the product manufacturer, not the advice-giving intermediary that bears primary responsibility for the risks and limitations associated with the product. Similarly, if there were disclosures like those on cigarette packages (white lettering on a black background covering half the surface area of the title page), the concepts disclosed therein would be *impossible* to miss. The precedents (and class action lawsuits) show that macro-level manufacturers and distributors have a greater liability than individual "professional" intermediaries in this case.

2. In professions like law and accounting, consumers are entitled (rightly or wrongly) to "opt out" of the use of an advice-giving intermediary. Similarly, for those people who choose to work through a discount brokerage (i.e. without advice), there should still be disclaimers and disclosures. Many of the risks being borne are directly attributable to the *product*, not the *advice*. Indeed, people choosing to invest on their own are expressly choosing to forego advice altogether. To the extent that some risks and limitations pertain to the product and not the advice, it is clearly the product packaging and not the advice provider that should be making the disclosure.

There are myriad disclosures that one could make more plainly at the point of sale. A single, simple "Fund Facts" document at point of sale is a start, but more direct messaging provided on packaging should further augment this. Examples include:

- Micro vs. macro level considerations

The micro vs. macro consideration could disclose that there are actively-managed and passively-managed products available for the same asset class, that cost correlates negatively to performance and that outperformers cannot be reliably identified in advance.

- Embedded compensation and the possibility of bias

That embedded compensation is not homogeneous and has been shown (See the study done by Ron Sandler for the FSA in the UK in 2001) that about 75% of all advisors admit that compensation considerations impact product recommendations.

- The specific risks that are normally itemized within the prospectus

That the things normally found in fine print re: risks and limitations could be in bold and on the front cover. This could involve the usual risks associated with sectors, managers, currencies and market cycles, among others.

The primary concern I have is one of reasonable perspective. Many relatively unsophisticated investors can't "tell the forest from the trees", meaning they have no way on sifting through information in order to come to a truly informed decision. Consider what the government has done to help consumers make informed decisions regarding energy consumption (something most consumers are similarly unfamiliar with).

New appliances (dishwashers, microwaves, etc.) that use energy have stickers on them that show not only how much energy they use as discreet appliances, but also *how that consumption level compares to other appliances on the market.* It is this kind of information that provides meaningful context that allows for more informed decision-making at the point of sale. Similarly, if mutual funds and segregated funds had their MERs posted boldly on their front package along with a continuum showing how much comparable funds charge (i.e. where they rate within that continuum), consumers would be able to choose more effectively based on price.

I recently came across this quote, and I believe it is appropriate: “Canada’s governing parties almost never undertake real reform, reform that is likely to upset their private enterprise financial backers, until and unless they believe that they will be hurt more for not doing the right thing than for doing it”. That’s from Walter Stewart in ‘The Life and Political Times of Tommy Douglas’, p. 212. I believe the words “securities regulators” could be used interchangeably with “governing parties” quite neatly in this instance. It reminds of the old phrase: “when all is said and done, more will be said than done”. In my opinion, far less has been done than could be- and even if the most radical of proposals contained in 81-406 were to be entirely enacted, it would likely not be enough to truly entrench disclosure into the culture of the mutual fund industry.

I might also add that there are a number of things that could be posted that could drive consumers to look more deeply if they are so inclined. For instance, documentation could direct consumers to the OSC’s Investor Education web site www.investorED.ca to learn more. For those who complain that this kind of information is too detailed at the point of sale, I say that over time, a significant percentage of people will indeed visit the site (or sites) to learn more if they are so inclined. One thing is nearly certain- a lot more people will ultimately go to the site if it was more prominent on product packaging than would go to the site if it were not.

I sincerely hope that the suggestions I’ve shared with you are given serious consideration. It is my hope that tangible steps will be taken to effect meaningful disclosures going forward. To date, in spite of a number of consultations, papers, focus groups and the like, there has been precious little done by way of real disclosure and consumer protection. Should anything in this correspondence prove to be unclear or incomplete, please do not hesitate to contact me, as I would be delighted to explain my positions further or expand upon them if need be. I’d like to wish you success in bringing together what must surely be an enormous and challenging task.

Sincerely,

John J. De Goey, CFP
Senior Financial Advisor

c.c. Tom Hamza, Investor Education Fund