



October 15, 2007

Mr. Neil Mohindra
Acting Policy Manager
Joint Forum Project Office
5160 Yonge St.
Box 85, 17th Floor
North York, Ontario M2N 6L9

Dear Mr. Mohindra,

Re: National Bank of Canada's comments on *Proposed Framework 81-406, Point of Sale Disclosure for Mutual Funds and Segregated Funds*

National Bank wishes to thank the Joint Forum of Financial Market Regulators for this opportunity to comment on the draft of *Proposed Framework 81-406, Point of Sale Disclosure for Mutual Funds and Segregated Funds* (hereafter the Proposed Framework).

As an active participant in discussions about the evolution of financial services in Canada, and because of its leading role in the industry, National Bank is well placed to measure the impacts of the Proposed Framework on current practices.

National Bank applauds the efforts of regulatory authorities to improve the quality of information given to Canadian investors, and fully supports the process that has been put forward.

However, we would like to make a few comments that are basically directed at improving certain aspects of the Proposed Framework and preventing the undesirable effects that could result from its application if it were adopted in its present form.

Comments for Improving Proposed Framework 81-406

1. Delivering the Fund Facts

1.1 Time of delivery

The Proposed Framework stipulates that the Fund Facts should be delivered to investors making initial purchases, subsequent purchases or switches involving mutual funds or segregated funds.

To better meet investor expectations, we think it would be preferable to let investors choose whether or not they want to receive the Fund Facts. Notwithstanding this privilege, the representative could be required to remind them, before completing the transaction, of the existence of the Fund Facts and their right to receive a copy if they wish.

For most seasoned investors, systematically giving them a Fund Facts would be an unnecessary administrative formality whose main effect would be to make the process of purchasing mutual funds or segregated funds more cumbersome.

National Bank therefore considers that delivering a Fund Facts for each subsequent purchase is not justified.

Guiding principle

Striving for an effective framework

National Bank considers that it is in the interest of industry players to take into account investors' ability to make responsible decisions and to respect their desire to freely choose what is suitable for them from among the measures put in place to ensure their financial security. Furthermore, it seems useful to us to emphasize the importance of moving toward greater flexibility in regulation and lightening the administrative workload whenever possible.

1.2 Methods of delivery

The Proposed Framework stipulates that a Fund Facts should be delivered to each investor by hand, by fax, by mail or electronically.

1.2.1 Sale in person

For branch representatives, delivery of the Fund Facts in person would be a major challenge from the standpoint of supply. Thousands of funds are currently offered in a variety of categories, in different series and from multiple manufacturers.

Moreover, for representatives who meet with clients in their homes, delivering Fund Facts by hand means that they would have to carry around a considerable mass of documents. As a result, in order to be more efficient or economical, a representative might possibly pre-select the funds likely to meet the client's requirements before meeting with him. Consequently, having to deliver the Fund Facts by hand would end up limiting the choices open to the client, which goes against the authorities' intentions, which are rather to provide as much information as possible so that the investor can make an informed decision.

National Bank considers that the Internet and mobile communication tools should be put to good use. For clients who come to the branch or have Internet access at home, making the information available would not present any major difficulties. For clients without Internet access at home, the representative's laptop could be used during the visit as a vehicle for the Fund Facts. That being said, the prospect of keeping all the necessary Fund Facts up to date and storing them on a laptop also strikes us as problematic.

Guiding principle

Toward a more responsible use of resources

It is in the interest of financial services industry players to take into consideration changes in society's values concerning the environment, and query the relevance of concentrating on paper as the vehicle for the Fund Facts as well as the impact of polluting products such as those contained in printer ink.

1.2.2 Sales by telephone

According to the Proposed Framework, telephone sales would require the Fund Facts to be sent to the client by fax or electronically at the point of sale.

The obligation to deliver the Fund Facts by fax or electronically could discourage clients from completing a transaction by telephone. For one thing, a portion of the population does not have a fax machine or Internet access. For another, this requirement would make it considerably more cumbersome to purchase mutual funds or segregated funds.

In addition, it would mean having to make two calls for each client in order to satisfy the regulatory requirements. The first call would be to analyze the client's needs, offer advice and inform him that he would be sent a copy of the Fund Facts. A second call would then be required to explain the Fund Facts and carry out the transaction.

These new administrative and operational constraints would have a significant impact on our call centres and a negative effect on this distribution method, which has been very popular with investors in recent years.

National Bank also considers it important to take clients' requirements into account. Many clients, when they call their representative or investment advisor, already have a specific idea of the financial product they want to buy. They expect their representative or advisor to be efficient and complete the transaction as quickly as possible. Because of the constraints we have mentioned, the proposed measures are unlikely to give them satisfaction.

Finally, the obligation to deliver the Fund Facts by fax or electronically would lead to a considerable increase in switches between financial products. The number of mutual fund and segregated fund units traded by telephone or on the Internet is constantly growing. Imposing a waiting period in the investment funds sector that does not exist for transactions involving other categories of securities would obviously create an advantage to switch to these other securities. As a result, many investors could end up purchasing financial products that are not as well suited to their investor profile.

In National Bank's opinion, when a sale is made by telephone, clients could be informed of the existence of the Fund Facts, be invited to receive a copy if they wish; be authorized to take note of its content by reading it on the Bank's website; or be authorized to take note of its content orally, through the representative. A copy of the Fund Facts could also be sent to them by mail, as applicable, when the sale takes place.

The rules in effect in the property and casualty insurance sector offer interesting possibilities in this regard, since they allow certain information to be first communicated orally.

Guiding principle

Information in action

The methods used to make helpful information accessible to all investors must be balanced with investors' desire to obtain satisfaction as quickly as possible.

1.2.3 Sale on the Internet

According to the Proposed Framework, clients could complete a transaction on the Internet if they make sure that they click the Fund Facts before submitting the purchase order.

Although this measure involves technological modifications, the scope of which is difficult to determine, for both the representatives and the institutions concerned, National Bank considers that this approach is in keeping with clients' new requirements and the general market trend.

Nonetheless, National Bank would encourage the authorities to allow sufficient time to bring technology infrastructures into line with the new regulatory requirements. It seems to us that the earliest that transactional sites could be revised and put back online would be during 2009.

2. Investor Rights

As mentioned earlier, National Bank thinks that the first right an investor should have is the right to waive receipt of a Fund Facts if he so wishes. Unfortunately, the Proposed Framework does not contain any provision giving him this right.

At present, some dealers are exempted from the suitability obligation because clients do their own research before carrying out a transaction. Waiving receipt of the Fund Facts is therefore essential for this type of client.

2.1 Amount received on exercising cooling-off right

The Proposed Framework suggests that investors would get back the lesser of the amount of their initial investment and the value of the fund the day they exercise the cooling-off right.

Exercising the cooling-off right would require substantial modifications from a logistical standpoint. It would no longer be a matter of reversing the transaction and reimbursing the client for the amount of the initial investment, but calculating a refund based on variables that are subject to dispute.

2.2 Failure to deliver the Fund Facts

According to the Proposed Framework, investors will be able to cancel their mutual fund purchase at any time if they do not receive the Fund Facts before or at the point of sale.

Unfortunately, there is a very real risk that this provision could be used against the representative, investment advisor or fund manager. For example, if after a transaction is completed, a given market experiences a sudden decline, it would be easy for a client to exercise his cooling-off right under the pretext that he did not receive the Fund Facts. This provision would therefore obligate players to put sophisticated tools in place – which do not exist at this time – in order to keep strict tabs on the distribution of Fund Facts.

This provision would also force dealers to keep a huge mass of information on hand indefinitely. Managing this information would be tedious and would not be beneficial to either party.

Guiding principle

Accompany the investor rather than overprotect him

The right to cancel a purchase “at any time” does not exist in any other financial service discipline or for any other financial product. If supervision of processes is desirable, it should not, however, lead to documenting each transaction carried out by either of the players concerned. An approach based on timely inspection of compliance with standards, rather than follow-up and systematic archiving of communications, is the best way to combine respect for industry obligations with the duties of investors.

3. Regulatory Obligations

3.1 Establishing of Fund Facts

The Proposed Framework points out that investors want to be able to easily compare funds and obtain documents that are easy to read and understand.

National Bank recognizes this need and fully supports this principle. However, we think that it is important that the information selected to help investors make a comparison be sufficiently complete.

First, we think that the fund return on the front of the Fund Facts needs to be the subject of a comparison. This would lead to a better understanding of the relative performance of the fund being considered by the investor. In this regard, the benchmark indexes should be clearly identified, as well as the category to which the fund belongs.

Next, the back of the Fund Facts appears particularly poorly suited for no-load funds. The section on sales charges should be structured differently, depending on whether or not the fund has fees.

Finally, we do not think that the section on advisor compensation is suitable in its present form in the case of salaried employees. Wording that reflects this situation should be developed.

For these reasons, we think that an industry committee should be formed to determine the optimal content for the Fund Facts. The technical aspects are numerous (just consider the investment mix on the front of the document in the case of a global asset allocation fund: should it be expressed according to asset class? Geography? Sector?).

4. Conclusion

National Bank supports implementation of a system aimed at making clear and concise information available to mutual fund and segregated fund clients.

We consider, however, that the implementation of Proposed Framework 81-406 in its entirety would have undesirable effects on professionals and institutions in the sector, as well as on investors themselves.

First, the array of mutual funds and segregated funds offered to investors at the point of sale would be reduced. The choice would be limited as a direct result of the obligation to provide all up-to-date Fund Facts to the consumer before any transaction, a tedious task in some cases, notably during a sale in person.

Second, implementation of a complex and elaborate system would cause distributors to limit their selection of products to those of a few manufacturers. Such a concentration would deal a harsh blow to small mutual fund dealers, and would deprive investors of the wide variety of offerings they currently enjoy.

Third, numerous constraints and an overly rigid environment would inevitably lead to trade-offs between financial products. We would then see a migration from mutual fund and segregated fund investments to other products that might be less suited to the investor's profile. Finally, the time periods set to implement the required systems seem difficult, if not impossible, to respect.

However, as we have discussed in this comment letter, a series of adjustments would, in our opinion, mitigate the undesirable effects of the Proposed Framework. This would be the case of using an approach based more on timely inspection than on follow-up and systematic archiving of communications; maintaining investors' freedom of choice in selecting the decision-making tools available to them; or again, increased use of the Internet or laptops as a vehicle for communication of the Fund Facts.

We trust that you will find these comments useful. Please feel free to contact us if you wish to discuss them further.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Charles Guay', with a stylized flourish at the end.

Charles Guay
Senior Vice-President – Mutual Funds
National Bank of Canada