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November 1, 2007

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Re: Comments on Proposed Framework 81-406: Point of sale disclosure for mutual funds and segregated funds

We are pleased to have the opportunity to provide the following comments on Proposed Framework 81-106 (the "Proposal") dated June 15, 2007 prepared by the Canadian Securities Administrators and the Canadian Council of Insurance Regulators. We thank you for your forbearance in accepting these comments after October 15, 2007.

We are generally supportive of the Proposal. In particular, we agree that for a large proportion of investors the Fund Facts is likely to be a more useful and relevant source of investment information than the current simplified prospectus and information statement.

A message that we regularly hear from many clients is that they do not want to receive the large number of documents and disclosures that securities regulations currently force upon them. Substituting the Fund Facts for delivery of the simplified prospectus and information statement is a positive move in reducing unwanted document delivery. We submit that the ability of an investor to request and receive a simplified prospectus or information statement if they so desire strikes an appropriate balance between disclosure and investor preferences.

The overall focus of our submission is on delivery obligations. However, we have appended what we believe are thoughtful and well-informed comments in relation to the Fund Facts document. These were prepared by an individual within our organization whom we view as being very knowledgeable and experienced in this regard. We strongly encourage those involved in the future assessment and formulation of Fund Facts document standards to consider the comments set out in the Appendix.

While we are in general agreement with the overall Proposal, we strongly believe that the requirement to deliver the Fund Facts before or no later than the time of purchase should be reassessed. This is a key issue and the remainder of our submission deals exclusively with the timing of delivery of the Fund Facts.

We submit that the practical need to evidence delivery of the Fund Facts will lead to significant investor inconvenience and higher industry costs when selling mutual funds and segregated funds. We believe that the proposed requirement to deliver the Funds Fact document prior to or no later than at the point of sale should not be adopted.

In the interest of achieving neutral, consistent and harmonized securities regulation for all investment products, we are of the view that the delivery requirement for the Fund Facts should correspond to the existing general delivery requirement for prospectuses. Specifically, such documents are to be delivered to a purchaser no later than two business days after the purchase (e.g. see section 71(1) of the *Ontario Securities Act*).

While the Proposal provides that dealers "will not be required to have investors acknowledge receipt of the Fund Facts", we believe that from a practical perspective many firms will in fact require such evidence of delivery. In the absence of retrievable evidence of delivery to each investor, firms may find it very difficult to defend against opportunistic investors seeking to assert their right to cancel the purchase:

> "Investors will be able to cancel their purchase at any time if they do not receive the Fund Facts before or at the point of sale. They will receive the amount of their original investment, plus any fees they have paid."

This remedy does not seem to be limited in time. We also note that there does not appear to be any "curing" provision; for example, through subsequent delivery of the Funds Facts.

The issue of evidencing delivery seems to have been contemplated in the Proposal where it states that dealers "may impose their own requirements as part of their compliance policies and procedures for delivery obligations". However, we believe that this statement significantly understates the relevant considerations. In other words, even if the Proposal does not mandate obtaining confirmation of receipt from each investor, the practical effect of the proposed right of cancellation is likely to be just that.

We also expect that securities regulatory authorities will expect that firms be able to produce evidence of delivery, whether during the course of investigating a specific investor allegation of non-delivery or as part of regular compliance reviews of dealer procedures.

In many cases, current Industry operational processes and systems are configured around the existing two-day delivery obligation. In practice, this permits delivery from a centralized operational unit in conjunction with the relevant trade confirmation. The fact that the firm has recorded an investment purchase transaction gives rise to a discrete event which permits systems to trigger initiation of the delivery.

While we expect that the Fund Facts will be regularly used in the advisory process leading up to a purchase decision, in many cases that advisory process occurs in a

decentralized environment utilizing a variety of mediums to communicate with clients (e.g. in-person, telephone, e-mail). This fundamentally compounds the difficulties associated with the operational processes and record-keeping needed to provide systematic assurance of delivery prior to or at the point of sale.

Further, the need to evidence delivery is likely to result in significant inconvenience to investors as firms seek to obtain confirmation of receipt of the Fund Facts prior to permitting purchases to be entered. This may encompass delays in processing purchase transactions and the inconvenience associated with the completion and return of acknowledgements of receipt.

We do not believe that there is any compelling policy reason to establish a new disclosure document delivery regime for mutual funds and segregated funds that will be fundamentally different than what exists for other securities. To do so gives rise to the risk that the Proposal may inadvertently create unintended structural biases and incentives to the distribution of one type of product over another. Further, we would argue that existing rights of withdrawal and rescission serve to provide investors with long-standing, effective and well-understood remedies subsequent to a purchase.

The above comments also apply to the additional delivery obligation contained in the Proposal:

> "Once delivered, the dealer or insurer will have to bring the Fund Facts to the attention of the investor."

For the reasons set out above, we do not believe that this is a practical, desirable or needed regulatory initiative.

As an alternative, we suggest that consideration be given to mandating that distributors advise clients of the availability of Fund Facts documents generally and provide direction on how to obtain such materials. For instance, this communication could be incorporated into general information packages which distributors normally provide to clients upon account opening.

Thanks you in advance for your consideration of this comment letter. Please do not hesitate to contact the undersigned if you have any questions, require additional information or would like to discuss this matter.

Yours truly,
SCOTIA CAPITAL INC.

John R. Morton
Managing Director, Retail Compliance
Attach.

Appendix 1: Comments of Draft Fund Facts Template

The information on Page 1 is quite helpful, and not much different that the one or two page fund summaries that are already widely available to the public from Morningstar, Fundlibrary, Globefund or each of the individual fund companies. How it can omit the standard 1, 3, 5 and 10 years average returns seems curious.

It does also seem to move into the area of giving advice. Specifically, we note the "! Don't buy this fund if you need a steady source of income from your investment" language. We presume that this strong warning would apply to most Canadian and Global equity funds. These are specifically the kinds of funds (in the example XYZ Canadian Equity provided a typical 10 % average annual return over the last decade) that would seem to be appropriate for a client wishing to set up a Systematic Withdrawal Plan. An equity fund with a fixed .5% monthly (6% annual) SWP withdrawal would allow for a steady income with little tax and the client's capital has historically continued to increase over the decades. Presumably the Fund Facts for a money market fund would not have this disclaimer, and would lead a client to invest in a fund that returns 4% taxable income with no growth in capital. Is it the regulatory desire to provide specific advice on which fund is appropriate for which client and for which purpose, and in this case would lead clients to significantly lower (and also taxable) income?

On Page 2, the document assumes that each single fund has multiple sales options, and that one short document can provide helpful information to the client in choosing options. This is becoming less common. Many funds now have several classes, say class A with DSC and a higher MER, class B front load with a lower MER, class F, no load with no trailer (for fee based accounts), class I only for orders over $100,000 or online traders, founders series etc. The format of the document would seem to require a different Fund Facts for each class or series of fund based on the MER, and each would only show the one sales charge option for that class.

If the purpose of the document is to have clients be able to compare their choices, then they would need to receive approximately 4 Fund Facts for the various options above. This adds significantly to the complexity of distributor dissemination and client receipt of the Fund Facts. Rather than being able to have clients assess one document, multiple Fund Facts may be required. The document thus fails at providing investors with simplified additional information about fee choices in these cases. Several fund companies offer management fee rebates at different levels of investment, how would this fit on the page?

In some cases, a single fund with one MER can have upwards of 6 different sales options on that single fund. There are ISC and DSC options, and now many firms have a Low Sales Charge option with 2 or 3 year schedules, or even two LSC options. We believe at least one firm offers or is planning on offering a 6 year DSC option, a 5 year DSC option, a 4 year DSC option, 3 year, 2, year and 1 year all on the same fund. And

even more combinations are possible. Providing each of these schedules in the Fund Facts would push the document past 2 pages.

As a last note on the "How much does it cost to buy", the document presumes that the advisor has complete control over the fee. This is rarely the case. Many firms set minimums, formats, or preferred pricing levels based on amounts invested. Not all advisors get paid a commission, even if it is charged to the client. Depending on the amount there may not be a payout to the advisor, or the advisor may simply be on salary. The Fund Facts therefore has the potential to be misleading in the specific circumstances.

The statement "The deferred sales charge is deducted from the amount you sell" is correct, but does not provide appropriate detail. Some deferred sales charges are calculated as a % of the initial amount invested, some (which could more accurately be called rear end loads) are charged as a percent of the value when the fund is redeemed. This is a very important distinction, depending on whether the investment is up or down when it is sold.

Similarly, the document does not provide any of the very important information about how to redeem a fund, at what dollar amounts signatures may be required, or that fund redemptions could be delayed due to market events.

Nowhere does the document note that the fund may have an option to sell 10% in any year on DSC funds which is an important feature, or that there is an option to move to another fund in the family without a DSC fee, save for a 0-2% fee based on the advisor or firm policies.

Also there is no mention of the 2% short term trading fee. Most funds have introduced a 2% short term trading fee (to prevent market timing trading by clients). The document does not seem to mention this. Further, the right to get funds back during the "cooling off period" would perhaps re-open the opportunity for market timing if the right to cancel the purchase in 2 days supersedes the right of the fund to charge 2% for short term trades?

Not all advisors get paid a trailing commission, it can be withheld by a fund company due to the dealer relationship, or by the dealer based on the amount received, or the advisor can be on salary. Bullet 5 does note this fact, contradicting bullet 1 and 2.

The last bullet statement under "how my advisor gets paid" is factually incorrect. The commission referred to in the first bullet seems to refer to the front or rear end commission. But the commission referred to in the last bullet seems to be the trailer fee. The trailer fee is arguably directly correlated to the fund's annual expenses. But a front-end load commission is paid by the client directly and does not have an effect on the fund's annual expenses.

Group Plan Specific Issues:

Many group plans offer different MERs on funds (or IMFs in the case of insurance company products) based on the overall group plan size and the client's account. Would there be a different Fund Facts required for each MER pricing on each group and by the size of each client's account? On a group plan where a fund is held in omnibus form to achieve economies of scale for the members through a management fee rebate, would the plan sponsor, the fund manager, or the plan administrator, be responsible for creating a unique new fund Fact Sheet for this plan? In any case, the result may be that the cost of this additional document forces the group plan to discontinue the bulk arrangement, resulting in higher costs for the members.

In many group plan environments, plan members may be subject to default investment decisions in cases where specific instructions from the investor have not been provided. This can apply to contributions made by the plan member, or the employer on behalf of the plan member. For example, employees who have not provided specific investment directions may be enrolled in a money market fund so that their account earns some nominal interest. Would a Fund Facts have to be delivered to the employee before the employer can begin funding an employee's retirement account or the funds invested? This is an issue that has the potential to affect tens of thousands of fund investors.