ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

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December 19, 2008

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Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Financial Services Regulation Division, Consumer and Commercial Affairs Branch, Department of Government Services, Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

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Dear Sirs/Mesdames:

The Canadian Bankers Association ("CBA") works on behalf of 51 domestic chartered banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 257,000 employees to advocate for efficient and effective public policies governing banks and to promote an understanding of the banking industry and its importance to Canadians and the Canadian economy.

The CBA welcomes the opportunity to provide the Canadian Securities Administrators ("CSA") with our comments on issues relating to the implementation of Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds* that was published by the Joint Forum of Financial Market Regulators on October 24, 2008 (the "Framework") in advance of CSA's publication of the proposed changes to securities laws (the "Proposed Securities Legislation") entailed by the Framework.

RECOMMENDATION FOR A PHASED-IN APPROACH

The CBA agrees with the Joint Forum that the plain-language, two-page Fund Facts document defined in the Framework offers much to investors in terms of key information and in a simpler, more accessible and comparable format.

However, it is our belief that the CSA rulemaking processes, including consultation periods, time allocated for assessments of comments and required legislative amendments in all provinces, will take at least two or more years before Proposed Securities Legislation addressing the Framework could be fully implemented. In this regard, an investor may not see a Fund Facts document before 2011. As an alternative, we support the phased-in implementation approach proposed by The Investment Funds Institute of Canada (IFIC) to fast track benefits to investors. We recommend that their proposal be considered, as follows:

- The CSA issue a draft rule as early as possible in 2009 that deals only with the content of the Fund Facts and requires, at a minimum, that such Fund Facts be made available by mutual fund companies through a website by the end of 2009. The industry agrees to provide its comments on such a draft rule on an accelerated basis so that a final rule on the Fund Facts content can be issued and, if possible, implemented during 2009.

- The industry would work with regulators on an accelerated process to implement the delivery of the Fund Facts in place of the prospectus delivery processes now in place.

- The industry would then work with the CSA through further comment periods in relation to the Framework's delivery requirements in the final rule on point of sale disclosure, to ensure sufficient discussion with all relevant parties including the many different parts of the mutual fund industry, the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association (MFDA) (together, the "SROs") and the CSA, to fully understand and agree upon implementation issues.

The CBA believes that the above approach is a constructive suggestion that would allow industry and the regulators to work together to make the Fund Facts document available as soon as possible. The more problematic delivery issues may then be addressed in a more fulsome manner.

SPECIFIC COMMENTS ON THE FRAMEWORK

Our comments are set out in five broad sections: (A) Process of Development and Implementation; (B) Exemptions and Waivers; (C) Method of Delivery; (D) Audit and Compliance; and (E) Other Obligations Relating to Delivery.

A. Process of Development and Implementation

We previously communicated to the Joint Forum our concerns regarding the implementation process around the Framework. From what we understand, the SROs have not been fully engaged in the formulation of the Framework. SROs will be charged with overseeing, monitoring, drafting the rules for and bringing enforcement actions against the dealers who will be subject to the Framework. As a result, we believe it is prudent to consult with the SROs at the earliest possible opportunity regarding the formulation of the Proposed Securities Legislation.

We also note that stakeholders have received no assurances that the CSA and the Canadian Council of Insurance Regulators (CCIR) will be fully aligned in their implementation of the rules pertaining to mutual funds and segregated funds, respectively. Further, stakeholders have received no assurances that implementation of the Framework will be harmonized across the provinces and territories. We kindly request that the CSA make efforts to ensure that the process of implementation by the CSA, the CCIR and the provinces and territories will occur in a coordinated, harmonized and streamlined fashion. We would also appreciate knowing the CSA's expectations in this regard, so that our members can better allocate and prepare their organization's resources for implementation of the Proposed Securities Legislation.

B. Exemptions and Waivers

As drafted, the Framework would require the development of different systems to address the various exemptions and waivers, including those for investor-initiated trades versus advisor-recommended trades, initial purchases versus subsequent purchases, money market funds and execution-only accounts. These systems will be time-consuming and expensive to develop and implement, to the ultimate detriment of investors (for example, by potentially incurring increased management expense ratios). In addition, this system of selective waivers and exemptions gives rise to difficulties around compliance monitoring and audit trails on the part of the industry and potentially the SROs. Developing compliance and audit systems to accommodate the Framework will lead to unnecessarily increased costs, again to the detriment of investors. The difficulties around implementing the selective waivers and exemptions may render them meaningless if they are simply ignored in favour of delivering the Fund Facts document in every instance so as not to assume the technological costs and compliance burdens associated with relying on them. We request that the CSA work with industry and the SROs to ensure that the aspects of the Proposed Securities Legislation relating to the Framework's system of exemptions and waivers are workable for industry. Investors are the ultimate beneficiaries of solutions that are workable for industry because lack of clarity in regulatory requirements and inefficiencies in the implementation process can negatively impact the products and services available to investors as well as the cost at which they are provided.

We also note the need for increased guidance on certain aspects of the Framework. Stakeholders would benefit from receiving guidance in the Proposed Securities Legislation regarding the concepts of advisor-recommended and investor-initiated. We note that, at their June 18th stakeholders' meeting, the Joint Forum's Working Group on the Framework addressed this concern by indicating that IIROC provides some guidance in this area. However, given the significance of this distinction under the regulatory regime contemplated by the Framework, we believe that additional, formal guidance is merited in order to reduce any uncertainty and ambiguity that may lead to inadvertent lapses in compliance and request the CSA to provide such guidance in the Proposed Securities Legislation.

C. Method of Delivery

The Framework states the following regarding electronic delivery of the Fund Facts document

> "Delivery could include, for example, sending an electronic copy of the document directly to the investor as an attachment or a link, *or directing the investor to the relevant Fund Facts on the fund manager's or insurer's website.* Simply making the document available on the website or generally stating that it is available on the website without specifically directing the investor to the relevant Fund Facts will not satisfy the delivery requirement." (at p. 12, italics added)

We would appreciate it if the CSA could provide some clarification as to what is meant by "directing the investor to the relevant Fund Facts on the ... website". For example, would a verbal reference on a per transaction basis to a specific link that is embedded within the fund manager's website suffice as "directing the investor to the relevant Fund Facts..."?

D. Audit and Compliance

The Framework does not impose specific requirements on advisors and dealers regarding how they can demonstrate compliance with the delivery obligations. Nonetheless, firms will put into place audit and compliance tracking systems for liability purposes, and these systems will be reflected in the policies and procedures of the firm. In doing so, it would be useful for dealers to know whether the SROs expect to impose proof of delivery obligations on dealers so that our members can better allocate and prepare their organization's resources for implementation of the Proposed Securities Legislation.

We note that Framework states that the delivery obligation is met in the following circumstance:

> "Delivery could also include referring an investor to a particular Fund Facts *previously delivered*, as long as it is current and the investor can easily find and link the information to the particular purchase they are considering." (At p. 12, italics added)

We would appreciate clarification regarding the CSA's intent around this process. For example, where a Fund Facts document is required to be delivered to the investor due to the nature of the transaction, how would the dealer know that the investor had previously received the current Fund Facts? Presumably, the firm would have to ensure that tracking mechanisms were in place but the Framework does not impose any requirements in this respect and thus we would appreciate further guidance from the CSA in this regard. Is it the intent of this process to not require delivery where the client had recently completed other purchases of the same fund in

other accounts with the same dealer or even in a recently closed account? This would add considerable complexity and give rise to the need for an audit trail. If the dealer, or preferably the manager, was mandated to deliver Fund Facts sheets manually and received a confirmation from the investor for doing so, then this approach would be more workable as the tracking mechanism would be built into the regulatory requirements.

E. Other Obligations Relating to Delivery

We submit that the Proposed Securities Legislation should also allow mutual fund managers to deliver the Fund Facts document on behalf of dealers where appropriate and also recommend that the managers be required to give investors the option to annually receive a Fund Facts for their holdings. This option would make it operationally easier to satisfy delivery obligations because mutual fund managers already deliver to investors other documents such as management reports of fund performance and prospectuses. The Fund Facts document can be included in the package provided to the investor, thereby streamlining the delivery process for both investors and dealers.

We request the CSA to reconsider the Framework's stance on not permitting preparation of one Fund Facts that may cover all series or classes of a fund, where possible. It may often be the case that only sales charges or compensation are different, or there may only be one other series available. The requirement to provide a Fund Fact document for each class or series of a fund increases the risk that a dealer may not have all the Fund Facts documents at hand when meeting with a client or may have the incorrect Fund Facts, which would frustrate the sales transaction. The requirement to provide the Fund Facts document for each class or series of a fund also results in increased costs to the dealer, and as well as to the fund manager for preparation which in turn are likely to be passed onto investors in the form of higher management expense ratios without the investor receiving a clear benefit from the added documentation.

We would also appreciate receiving from the CSA guidance regarding the scope of Framework's application. Specifically, will the Proposed Securities Legislation extend to accredited investors and fund-of-fund structures such that delivery of the Fund Facts to those investors or funds will be required? We recommend that those investors and structures be exempt from the Proposed Securities Legislation consistent with existing regulatory treatment of those investors and structures.

In closing, we appreciate your consideration of our comments. Should you require any further information or have any questions or concerns regarding the foregoing, please do not hesitate to contact me.

Sincerely,