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December 23, 2008

VIA E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
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, Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

Attention: Mr. John Stevenson, Secretary, Ontario Securities Commission
M^{e} Anne-Marie Beadouin, Corporate Secretary, Autorité des marchers financiers

Dear Sirs/Mesdames:

Re: Framework 81-406 Point of sale disclosure for mutual funds and segregated funds (the "POS Proposal")

We are writing in respect of the Request for Comments dated October 24, 2008 with respect to the POS Proposal. We appreciate the opportunity to comment on the POS Proposal.

Invesco Trimark Ltd. is a wholly-owned subsidiary of Invesco, Ltd. Invesco is a leading independent global investment management company, dedicated to helping people

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worldwide build their financial security. As of November 30, 2008, Invesco and its operating subsidiaries had assets under management of US$348 billion. Invesco operates in 20 countries in North America, Europe and Asia.

CSA Notice 81-318 requests comments on implementation of the POS Proposal as well as its general principles. Our comments are focused on six specific issues relating to the POS Proposal. We conclude with general comments about our concerns with unintended consequences of the POS Proposal.

Delivery at the Point of Sale or with Trade Confirmations

The POS Proposal requires that all investors be provided with a Fund Facts document relating to the funds and series of the funds that they intend to purchase and that, subject to certain enumerated exceptions, the Fund Facts be provided at or prior to the point of sale. In the exception situations, the Fund Facts may be provided with the trade confirmation. The effect of these provisions is that the only time that Fund Facts must be provided at or prior to the point of sale is where an investor subscribes for securities of a mutual fund that is not a money market fund on the recommendation of his or her financial advisor.

We do not understand how the Canadian Securities Administrators have concluded that the only class of investors that needs Fund Facts at or prior to the point of sale is the class of investors that is likely already receiving the most information about their investments. At numerous industry briefings, the CSA have acknowledged that the Fund Facts is very similar to the documents already prepared by mutual fund managers for distribution to potential investors, and by independent information providers such as Globeinvestor and Morningstar, to name a few. The clear conclusion from this has to be that investors who work with an advisor get this information already and review it with their advisor. These are not the investors who need the Fund Facts in advance.

We note that the CSA has also stated, in previous publications on this topic, that investors receive all the information they require in the simplified prospectus but that there is a behavioral bias to reading the material after the transaction has occurred. Two statements from *Proposed Framework 81-406 - Point of Sale Disclosure for Mutual Funds and Segregated Funds* (the "July 2007 Proposal") are particularly noteworthy:

> "Investors have certain behavioral biases that decrease the likelihood that they will: read disclosure if they receive it after they have made their purchase decision; exercise their right to cancel their purchase even after receiving information that tells them their original purchase decision was unwise."

> "We concluded that investors currently receive all the information they say they want in the simplified prospectus and information folder, but we know that many of them do not read these documents. Information overload and dense, complex language are two of the reasons why investors do not read the disclosure documents."

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Taking the second quote in isolation, the conclusion that Fund Facts need to be delivered at or before the point of sale does not follow. In fact, we believe the Fund Facts itself, aside from delivery issues, is intended to and will successfully address these concerns. Therefore, the "at or prior" delivery requirement must be grounded in the conclusions contained in the first quote.

We do not agree that the research referred to in the July 2007 Proposal is sufficient to justify the delivery requirements that are at the heart of the POS Proposal because it is impossible to separate the effects of behavioral biases from the effects of information overload and dense, complex language. As such, we fully support industry proposals to proceed with permitting Fund Facts to be delivered in lieu of a prospectus but to delay consideration of changes to prospectus delivery requirements.

We submit that delivery must be delayed because, as explained later in these comments, the POS Proposal threatens the survival of both independent mutual fund managers and small dealers. We do not believe regulators should implement such changes absent the strongest possible evidence of both a problem and that their proposed solution best addresses that problem. By delaying consideration of changes to delivery rules for a period of two years, it will be possible to ascertain with much greater certainty whether the behavioral biases discussed in the first quote above from the July 2007 Proposal are, in fact, independent of the effects of information overload and dense, complex language.

Lastly, from an implementation perspective, while we welcome the exceptions that permit delivery of Fund Facts with trade confirmations, we are unclear how a dealer is supposed to establish that a trade was client-initiated when that client works with a full service advisor. As such, we believe that this exception, while well-intentioned, will prove to be completely ineffective.

Issues Relating to Delivery and Non-Delivery of Fund Facts by Dealers

Under the *Securities Act* (Ontario), subsection 71(5), and similar provisions in other provinces and territories, mutual fund managers are deemed in many circumstances to have satisfied prospectus delivery requirements by delivering prospectuses to dealers at the time of a trade or prior thereto ("inventory protection"). The effect of this provision is to protect mutual fund managers from liabilities arising out of prospectus non-delivery and to ensure that investor rights tied to prospectus delivery do not exist for an indeterminate period of time (such as withdrawal rights). This makes sense because dealers are responsible for delivering prospectuses to investors and mutual fund managers, who are required to pay delivery costs, have no control over this process.

As a practical matter, mutual fund managers group numerous funds in the same prospectus. As there are a limited number of fund companies in Canada, the number of different prospectuses is manageable for dealers to maintain adequate inventory so that they can ensure prompt delivery. This limited number also ensures that mutual fund managers can take advantage of inventory protection provisions. Presumably, as the number of fund companies grows, manageability of this inventory for dealers diminishes due to the extra physical space required for storage and the additional expense required by

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dealers for more robust inventory retrieval systems (to ensure the proper prospectus is delivered to the right investor in a timely manner). At a certain point, the dealer may refuse to store prospectuses with the result that the benefits to mutual fund managers of inventory protection provisions are significantly reduced. To maintain the benefit, managers would have to deliver prospectuses to dealers on a much more frequent basis, i.e. each time a sale is made. This would be very expensive. We believe that the fact that the Canadian mutual fund industry has not reached this point is of significant benefit to investors.

These issues become exacerbated under the POS Proposal. We will address each issue in turn.

Invesco Trimark's main prospectus includes 65 funds offering 263 series of units or shares. Under the POS Proposal, we would have to prepare 263 Fund Facts and hope that the dealers would agree to maintain copies of all 263 documents, whereas previously they only had to maintain copies of one document. Applying these ratios across the industry, a large dealer may offer 10,000 or 20,000 different fund series combinations. It is simply not possible for dealers to maintain an inventory of that number of documents without an advanced (expensive) retrieval system. Further, dealers may lack the physical space to maintain that number of documents.

Two possible outcomes arise from the foregoing. First, dealers will require compensation from mutual fund managers for the additional costs they incur. These costs will be fully transferred to investors as fund operating expenses (both under cost recovery methods and fixed rate administration fees due to the exceptions under the latter). Second, mutual fund managers will inevitably have to compete with each other for dealer shelf space and, as we have seen in the United States, this has many negative consequences. As discussed in other sections of this comment letter, we believe these issues can only be adequately addressed by ensuring the viability of electronic delivery.

The second issue referred to earlier in this section is the inventory protection provisions available to mutual fund managers. Clearly, the solution to the storage and retrieval issues is electronic delivery, but the legislative inventory protection provisions do not apply to electronic delivery. Accordingly, we recommend that statutory inventory protection provisions be amended so that inventory protection applies to all mutual fund purchase options and in cases of electronic delivery as long as the mutual fund manager has made electronic versions of the Fund Facts available. Alternatively, legislative amendments should be introduced to simply require mutual fund managers to prepare and ensure availability of prospectuses (including Fund Facts) but to disconnect this from investor rights as against the mutual fund or its manager for non-delivery.

Electronic Delivery

The POS Proposal contemplates changes to securities legislation to expand the definition of "prospectus" to include Fund Facts. Thereby, delivery of Fund Facts, either at or prior to the point of sale or with the trade confirmation, will satisfy legislative requirements pertaining to prospectus delivery. We agree that this legislative change is necessary.

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We are concerned, however, when the legislative change is considered in conjunction with the potential under the POS Proposal for electronic delivery, the requirements of *National Policy 11-201 – Delivery of Documents by Electronic Means* ("NP 11-201"), and the historical reluctance of many dealers (especially those regulated by IIROC) to take advantage of NP 11-201. We believe that the interrelation of these factors will effectively eliminate any benefits that the Canadian Securities Administrators hope to achieve by offering electronic delivery of Fund Facts as an alternative to physical delivery (whether in person or by mail).

While we are not entirely familiar with the reasons why dealers have not embraced electronic delivery under NP 11-201, we suspect that a key factor is the technological inability to prove that a document or notice delivered electronically to a client was received by the client. As discussed elsewhere in this comment letter, we believe that the POS Proposal will have extremely negative and harmful consequences if viable electronic delivery is not an option. As such, we would propose the following legislative and rule changes be adopted:

1. Subject to compliance with applicable securities laws, including NP 11-201 as the same may be modified, dealers should not have the option of denying electronic delivery of the documents contemplated by NP 11-201 to their clients.

2. Dealers should be under no obligation to establish receipt by their clients of electronically delivered documents. We note that dealers are not required to establish receipt by their clients of documents sent by ordinary mail, a delivery system that is far from perfect. Rather, in the case of electronic delivery dealers should simply have to be able to demonstrate that, in the same manner as they demonstrate for documents sent by ordinary mail, the documents have been sent.

3. Delivery of documents by electronic means should be deemed to have occurred following a set period of time after they have been sent by the dealer. We propose that the deeming period be instantaneous; however, in no circumstance should the deeming period be longer than 12 hours. We note that this is similar to rules deeming delivery by mail to have occurred (see, for example, s.71(4) of the *Securities Act* (Ontario)).

In substance, the foregoing suggestions seek to put electronic delivery on similar footing as delivery by ordinary mail. We have seen no evidence to suggest that there is any substantial difference in reliability between the two methods of delivery.

In connection with the foregoing, we believe the POS Proposal itself has to make clear that it is not intended to substantially modify the sales process. Therefore, we believe the final proposed rule should expressly permit the following sequence of events to occur:

(a) the advisor recommends a particular fund to a client, using the sales tools that the advisor would ordinarily use (which may include the Fund Facts),

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(b) the client agrees to place a specific order for the fund,

(c) the advisor arranges for the Fund Facts for that fund to be delivered electronically to the client and,

(d) after delivery has been deemed to occur, if the client has not otherwise informed the advisor, the trade is processed.

For example, the advisor and client might discuss a fund investment at 3 p.m. on the first day, and, immediately following that discussion, the advisor emails the Fund Facts to the client. By the next morning, the client is deemed to have received the Fund Facts. As mutual fund orders are processed as at 4 p.m. on a trading day, if the advisor has not heard from the client by, for example, noon, then the advisor is obligated to place the trade for processing that day. In this scenario, the client is losing at most 1 days' worth of exposure, but, more importantly, from the client's perspective, the process to buy a mutual fund has not been significantly altered or delayed. As mutual fund managers, we view mutual fund investments as long-term investments and, therefore, we are not terribly concerned with the loss of 1 days' worth of investments. However, we are extremely concerned with modification of the process to purchase mutual fund securities. The foregoing suggestions clearly and fairly address these concerns.

Investor Acknowledgement of Receipt of Fund Facts

The POS Proposal states that investor acknowledgement of receipt of Fund Facts will not be required. However, the POS Proposal acknowledges that dealers may want to impose their own policies and procedures that would include, among other things, an acknowledgement that the investor has received the Fund Facts. We believe that delivery of Fund Facts should be analogous to delivery of prospectuses, which do not require an investor acknowledgement, directly or indirectly. Rather, investors are deemed to have received documents sent by mail after a certain period of time. Earlier in this comment letter, we suggested a similar regime for electronic delivery. We do not believe further investor acknowledgement is necessary or warranted and, therefore, we do not believe that this topic should even be addressed in any legislative amendments, national instruments or rules or regulations, or in any companion policies or staff notices.

Annual Delivery of Fund Facts

We disagree with any annual delivery requirements for Fund Facts. Investors receive information similar to that found in the Fund Facts in the Management Report of Fund Performance, which is already prepared by mutual funds at great expense. Annual delivery of Fund Facts is inconsistent with the notion that Fund Facts need not be delivered for subsequent purchases and with the prospectus analogy that is the foundation of the legislative changes required to implement the POS Proposal.

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Separate Fund Facts for Different Series

We believe that it makes senses to distinguish among types of investors in providing the Fund Facts so that irrelevant information is not provided and, thereby, the document can be kept at 2 pages. However, we do not believe that an investor's best interests are served through this particular aspect of the POS Proposal. Once an investor has decided to purchase units of a particular fund, there may be multiple series of units of the same fund for which that investor is eligible. It would be extremely helpful, therefore, for the investor to compare the differences among the series which generally consist of differences in distributions (i.e. Series T4, T6, T8) or differences in method of manager and advisor compensation (i.e. Series A vs. F). While one might consider that the advisor will inform the investor of the different series for which they are eligible, implicit in the POS Proposal is the idea that advisors are not providing their clients with the information they require (otherwise, there would be no regulatory need for the POS Proposal and the most onerous aspects of the delivery requirement would not apply only to advisor-initiated trades). Accordingly, we recommend that the rules implementing the POS Proposal permit that all series aimed at a particular type of investor (e.g. non-high net worth retail investors) be grouped in one document.

Related to the foregoing, we question the utility of requiring Fund Facts for series of securities the purchase of which is restricted to institutional investors. We would respectfully request that these investors and, hence, those series, specifically be excluded from the scope of the POS Proposal.

Unintended Consequences

While we are generally supportive of the POS Proposal, we are extremely concerned with the unintended consequences that the POS Proposal, once implemented, may have on our industry. We believe that it is possible that implementation of the POS Proposal will threaten the survival of independent mutual fund companies and smaller dealers.

We believe that an objective assessment of the POS Proposal leaves little doubt that it favours a distribution model where the client and advisor or salesperson have face to face contact as that permits the advisor/salesperson to provide the Fund Facts to the client during the meeting and the client can make their trade decision immediately. We do not believe that most sales of mutual funds offered by independent mutual fund managers occur in this manner.

Most sales of mutual funds offered by independent mutual fund managers occur over the telephone. Under the POS Proposal, where the advisor makes the recommendation – which is what occurs in the vast majority of cases – the conversation, effectively, has to be interrupted so that the advisor can send the client the Fund Facts. A second interaction is then required for the client to authorize the trade. We know from our experiences selling fund of funds, wrap products and model portfolios that investors are biased toward the simplest methodology. We believe similar considerations apply to the sales process.

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We also believe that an objective assessment of the POS Proposal leaves little doubt that it favours a proprietary sales force in that such a sales force is required to keep a much smaller inventory of Fund Facts, i.e. it would only house the Fund Facts offered by its affiliated mutual fund company. We do not believe that this description applies to any small mutual fund or investment dealers. As a firm without a proprietary distribution arm, our concerns are obvious.

In our view, the POS Proposal clearly favours distribution of bank-sponsored mutual funds through bank branches. It is a simple matter for branches to maintain inventory of their affiliated mutual funds' Fund Facts and there is adequate physical space for them to do so. As it becomes more difficult for investors to transact in the manner to which they have become accustomed, we fear that they will migrate to the simplest way to buy mutual funds or seek alternative investments.

Ultimately, if investors stop buying mutual funds from small dealers, MFDA-regulated dealers will disappear. Investors will be left with the choice of buying mutual funds from proprietary distribution channels or from IIROC-regulated dealers. The latter group sells products other than mutual funds and, as a result of implementation of the POS Proposal, we would expect it to be easier to invest in those other products as compared to investing in mutual funds. This includes separately managed accounts (which are effectively identically to mutual funds other than their structure), exchange-traded funds, structured products or other investment vehicles, including stock and bond portfolios. Given the regulations and investment restrictions under which mutual funds operate in Canada, investors are well protected. We do not believe that these new rules were intended to effectively make other less-regulated products relatively more attractive than mutual funds. How can that be in the best interests of investors?"

If the alternative is for investors to buy mutual funds only through proprietary distribution channels, then investors will have less choice. Again, we do not believe this is in the best interests of investors. The irony would be that the surviving mutual fund managers may not be the best mutual fund managers.

We believe the foregoing consequences are not intended by the regulatory community in devising the POS Proposal, but we are concerned that these concerns are being ignored. For this reason, we believe that it is premature to change delivery rules at this time. We also believe that the regulatory goals and our legitimate concerns can only be reconciled with a robust electronic delivery option that is mandatory for all capital markets participants.

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Thank you for providing us with the opportunity to comment on this most important regulatory initiative. We would be pleased to discuss our comments with you should you so desire.

Yours very truly,

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Eric J. Adelson
Senior Vice President, Legal

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