



**December 23, 2008**

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

**Attention:** **c/o John Stevenson, Secretary**  
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**c/o Anne-Marie Beaudoin, Directrice du secrétariat**  
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Dear Sirs/Mesdames:

**RE: RESPONSE TO CSA 81-318 REQUEST FOR COMMENTS ON FRAMEWORK  
81-406 POINT OF SALE DISCLOSURE FOR MUTUAL FUNDS AND  
SEGREGATED FUNDS**

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This letter is submitted on behalf of the Canadian Imperial Bank of Commerce and its affiliates (collectively, “CIBC”), in response to the Canadian Securities Administrators’ (the “CSA”) Release 81-318 dated October 24, 2008 requesting implementation related comments on Framework 81-406 *Point of Sale Disclosure for Mutual Funds and Segregated Funds* (the “**Framework**”).

We would like to thank the CSA for the opportunity to provide our comments with respect to the implementation of the Framework. We would also like to thank the Joint Forum of Financial Market Regulators (the “**Joint Forum**”) for all of its work on the Framework prior to handing it off to the CSA. In particular, we appreciate all of the Joint Forum’s improvements to the Framework from the initial draft Framework released in June 2007 (the “**Initial Framework**”).

### **OVERVIEW OF MUTUAL FUNDS SALES AT CIBC:**

At CIBC, mutual fund transactions are carried out through the following dealers:

- CIBC Investor Services Inc. (both an advice division (CIBC Imperial Investor Services) and non-advice division (CIBC Investor’s Edge));
- CIBC Wood Gundy (full service brokerage division of CIBC World Markets Inc.); and
- CIBC Securities Inc. (mutual funds dealer channel).

CIBC Investor Services Inc. and CIBC World Markets Inc. are members of the Investment Industry Regulatory Organization of Canada (the “**IIROC**”) and CIBC Securities Inc. is a member of the Mutual Funds Dealers Association (the “**MFDA**”). In calendar year 2007, the approximate number of mutual funds sales transactions conducted by our dealers through the various distribution channels was as follows:

- 834,592 through CIBC Investor Services Inc., 75% of these transactions were in an advice channel and 25% was in a non-advice channel. In the advice channel, 30% of the transactions were placed online (by the client or the advisor) and the balance via a phone conversation with the advisor or the call centre. In the non-advice channel, 70% of the transactions were placed online by the client, with 30% via a phone conversation between the client and the call centre.
- 1,365,000 through CIBC Wood Gundy, 90% of which took place over the telephone.
- 652,824 through CIBC Securities Inc., 95% of which took place either in person at the branch, telephone calls received at the bank branch or via call centre, or through offsite visits by branch representatives to clients.

### **OVERVIEW:**

This submission is divided into three parts. In the first part of the submission, we lend our support to the proposal submitted by the Investment Funds Institute of Canada (“**IFIC**”) to the CSA on November 24, 2008 (the “**IFIC Proposal**”). In the second part of the submission, we set out what we believe are implementation challenges arising out of the Framework and our suggested solutions to those challenges. In the third part of the submission, we provide specific comments on the content of the Fund Facts in an effort to ensure that the Fund Facts is as investor-friendly as possible.

## **I. SUPPORT OF IFIC PROPOSAL:**

We are in support of the objective of the Framework to provide investors with meaningful disclosure with respect to the sale of mutual funds and segregated funds. However, we are concerned that the complicated delivery requirements provided for in the Framework have delayed and will continue to delay the timely release of the Framework. In order to comply with the delivery obligations proposed in the Framework, dealers will need to build new systems to read current solicited and unsolicited notations and take action depending on the notation. In addition, dealers would then need to develop systems to deal with the money market funds, subsequent purchases, and execution-only exceptions provided for in the Framework. Building these types of systems is a complicated, time-consuming and expensive process. Consequently, we suggest that the CSA adopt the IFIC Proposal. We believe the IFIC Proposal will allow investors to take immediate advantage of the benefits of the Fund Facts while allowing investors, the industry and the CSA an opportunity to work on a delivery approach that is suitable for investors and that can be more easily implemented by the industry.

Should the CSA decide not to implement the IFIC Proposal, then, it is CIBC's recommendation that the CSA consider the implementation challenges of the Framework and our suggested solutions set out below.

## **II. IMPLEMENTATION CHALLENGES AND SUGGESTED SOLUTIONS:**

### **Consultation with the SROs**

#### *Implementation Challenge-Lack of Consultation with SROs*

It is our understanding that IIROC and the MFDA (collectively, the "SROs") will be responsible for implementing, monitoring and overseeing the Framework for dealers. To that end, we would have expected that the SROs would have been involved at the inception of the development of the Framework. However, to our knowledge, neither the Joint Forum nor the CSA has to date formally engaged the SROs in the consultation process of the Framework.

#### *Suggested Solution-Need to Consult with SROs*

We urge the CSA to immediately engage the SROs in the formulation process to ensure that the Framework is appropriately developed. We believe that the SROs can add much value to the development of the Framework and will be able to assist in developing a rule that will be feasible from an implementation, compliance, monitoring and oversight perspective. In addition, it is crucial for the SROs to become involved at this stage to provide guidance to the industry as to how dealers will be expected to comply with the Framework.

## Delivery Requirements

### *Implementation Challenge-Interruption of Transactions in Telephone Sales Channel*

We are thankful to the Joint Forum for recognizing the inflexibility of the one-size fits all delivery approach suggested in the Initial Framework. To address investor and industry concerns with the inflexibility of the delivery requirements, the Framework now requires a dealer's delivery obligations to be dependant on a determination of whether a trade is a money market trade or a non-money market trade, an investor-initiated trade or an advisor- recommended trade, and an initial trade or a subsequent trade (the "**Parceled Approach**"). While an improvement, the Parceled Approach does not adequately address sales of mutual funds through the telephone sales channel, which, as indicated in the introduction of this letter, comprises a significant portion of mutual funds sales at CIBC.

Implementing the Parceled Approach set out in the Framework in the telephone sales channel will mean that an investor will have their mutual fund transaction interrupted and delayed in certain instances. While we believe in the merit of delivering the Fund Facts and we understand that some investors may wish to receive the Fund Facts before or at the point of sale, we have concerns that investors may react negatively to having their telephone transaction interrupted and delayed as a direct consequence of having to receive the Fund Facts.

We understand that e-mail as a delivery option was provided in the Framework to potentially address the delivery complications that will arise in the telephone sales channel. However, e-mail delivery may not be the most viable delivery option for dealers. E-mail delivery brings with it a host of operational concerns such as wrong e-mail addresses, e-mails being blocked by firewalls, and uncertainty about receipt of e-mails by investors. As a result, dealers would likely use e-mail as a last resort for delivering the Fund Facts in the telephone sales channel.

### *Suggested Solution- "Directing investor to Fund Facts on fund manager's website"*

We understand that the delivery requirements in the Framework are intended to be flexible and are meant to accommodate the various distribution channels. For example, the Framework provides the following with respect to electronic delivery: "Delivery could include...directing the investor to the relevant Fund Facts on the fund manager's or insurer's website." Among other things, we take this statement to mean that in the telephone sales channel, a dealer will meet its delivery obligations by doing the following:

- The dealer representative verbally advising the client of the particular website address where a specific Fund Facts can be located; and
- Where the client has access to an internet while on the telephone with the dealer representative, the dealer representative will provide the client with an opportunity to locate the Fund Facts on the website, read it and ask any questions, then proceed with the transaction; or

- Where the client has no access to an internet while on the telephone with the dealer representative, the dealer representative will advise the client of the particular website address where a specific Fund Facts can be located, and will further advise the client that, unless the client notifies the dealer otherwise, the transaction will take place at a designated time on the next trading day to give the client the opportunity to locate an internet, access and read the Fund Facts.

We believe that the above interpretation is fair to the investor in that the investor can access or can obtain the Fund Facts prior to the point of sale. Furthermore, we believe that this interpretation is fair for the industry as it would allow the industry to more easily implement the Framework in all distribution channels and in particular in the telephone sales channel. Assuming our interpretation of the electronic delivery requirements is accurate, then it is our recommendation that this interpretation be specifically provided for in the Framework.

## **Proof of Delivery**

### *Implementation Challenge-How to Prove Delivery?*

The Framework states that although dealers may choose to adopt a policy that includes written acknowledgement from investors confirming their receipt of Fund Facts, there is no expectation that dealers will be required to do so. We agree that dealers should be given the flexibility of determining how to prove delivery. However, we are unsure as to whether the SROs, who will be charged with overseeing the compliance aspects of the Framework, will be imposing proof of delivery requirements on dealers. Until this issue is clarified, it will be difficult for dealers to understand what the implications of proving the delivery of Fund Facts will be on their operational systems and compliance procedures. Furthermore, we are concerned with the possibility of the IIROC and the MFDA imposing different and inconsistent proof of delivery requirements on dealers.

### *Suggested Solution-Specific Guidance from SROs and CSA as to how Delivery should be Proved*

We suggest that the IIROC and the MFDA work together to determine if guidelines on proof of delivery will be imposed by them on dealers. If so, we suggest that those guidelines be subject to industry comment as part of the Framework rule making process. In addition, we recommend that any guidance provided by IIROC and the MFDA in terms of proving delivery be consistent.

## **Type of Trade**

### *Implementation Challenge-Ambiguity of Investor-Initiated & Advisor-Recommended Terms*

The timing for delivering a Fund Facts or whether a Fund Facts should be delivered at all under the Framework depends on the type of trade (i.e. investor-initiated or advisor-recommended). While dealers currently distinguish between solicited and unsolicited trades on trade confirms, those distinctions do not trigger any delivery requirements and as such the notations have been made out of an abundance of caution.

As a result, we submit that the delivery requirements under the Framework may lead to ambiguity and confusion in classifying the type of trade. For example, would a trade be considered investor-initiated or advisor-recommended if an advisor recommended the trade 6 months ago to an investor but the trade did not take place at the time and 6 months later the investor called their advisor to initiate a trade for the same mutual fund that was recommended by the advisor 6 months ago?

In the absence of clear definitions and guidance as to the meaning and interpretation of investor-initiated or advisor-recommended trades, dealers will find it difficult to classify a trade as one or the other and may suffer regulatory consequences for a misclassification. We are aware of the IIROC guidance with respect to the meaning of solicited and unsolicited trades and what constitutes a recommendation; however, we do not believe that such guidance is detailed enough in the context of the Framework.

*Suggested Solution- Clarity from CSA on Investor-Initiated & Advisor-Recommended Terms*

The Framework should provide clear definitions of “investor-initiated” and “advisor-recommended” or detailed guidance with respect to how such terms should be interpreted. It would be useful for the CSA to collaborate with the SROs in this regard to ensure consistency in the industry.

**Application of Framework**

*Implementation Challenge-Scope of Framework too Broad*

The Framework requires the Fund Facts to be delivered to all investors. While we support the delivery of the Fund Facts to most retail investors, we are of the view that there are some investors, such as accredited investors, who are fairly sophisticated and quite knowledgeable about mutual funds such that delivery of the Fund Facts at or prior to the point of sale to those investors seems unnecessary burdensome to them. Furthermore, given the institutional nature of fund-of-funds transactions conducted by fund managers in relation to the underlying funds, we would not assume that the protections afforded by the principles of the Framework need to be applied to those underlying funds in such fund-of funds structures.

*Suggested Solution-Exemptions for Accredited Investors and Fund-of-Funds Structures*

We suggest that the Framework specifically exempt accredited investors and fund-of-fund transactions conducted by fund managers with respect to the underlying funds on the basis that those investors are fairly sophisticated and knowledgeable and as such do not need the same level of protection as other investors. Granting these exemptions would be consistent with the existing regulatory exemptions available to those types of investors and structures.

## **Annual Waivers**

### *Implementation Challenge-Onerous to Inquire Annually*

The Framework requires dealers to give investors the option to receive annually the Fund Facts for all funds held. This requirement imposes an obligation on dealers to take a positive step on an annual basis which we think is too onerous and complicated. We do not believe that the requirement for annual delivery is necessary given that the Framework will require the continuous availability of the Fund Facts on a fund manager's website and upon request in print and free of charge. The annual delivery or waiver requirement will be very difficult for dealers to implement and track, particularly given the potentially large volume of Fund Facts that will be available.

### *Suggested Solution-Annual Delivery Option to be Linked to Initial Purchase Inquiry*

We suggest that the requirement to dealers to give investors the option to receive annually the Fund Facts for all funds held be eliminated. In the alternative, we suggest that dealers be able to give investors that option to receive the Fund Facts annually at the same time as the initial purchase is being made. Assuming the fund is still held at the time of the annual mailings, and the investor has not waived annual receipt, then the dealer can proceed with the annual mailing. Dealers can also provide investors annual notice regarding the availability of Fund Facts similar to what fund managers currently do for Management Reports of Fund Performance and financial statements.

## **III. CONTENT OF FUND FACTS:**

We support the objective of the Framework to develop a document that is intended to be clear, meaningful and easy to understand for investors. We are generally in agreement with the content of the Fund Facts as proposed but believe some improvements and clarifications are required. Below are our general and more specific comments on the Fund Facts.

### **General Comments on Fund Facts**

#### *Content and format*

We are in support of the recommendation that items in the Fund Facts and their order be prescribed while at the same time providing fund managers with the necessary flexibility to accommodate different kinds of funds. We, however, recommend that the flexibility of extending the Fund Facts to three pages not be limited to those circumstances in which there are multiple sales charge options available. We believe that other reasons, such as additional disclosure relating to management expense ratio (MER) (e.g., capped or waived MERs), additional disclosure with respect to other expenses, etc., could warrant extending the Fund Facts to three pages. We believe that the current template does not address all funds' particular situations and accordingly may not address the potential that additional space may be required. We are also of the view that flexibility should be provided to fund managers to include items from page 1 on page 2 and vice-versa as long as they follow the prescribed order of each item.

### ***Funds Facts for Institutional Class/Series***

We do not believe that the Fund Facts content is geared towards institutional investors such as discretionary investment managers but is designed for retail investors to help them make an informed investment decision. We therefore recommend that exemptions be provided from the filing requirements for institutional class/series or class/series only offered through discretionary investment managers. For example, we at CIBC have a group of funds called the Imperial Pools, which are offered exclusively through discretionary investment managers that are affiliated entities of CIBC. In those instances, we recommend that the Framework provide fund managers with the flexibility of deciding whether to prepare a Fund Facts or not.

### ***Fund Facts for each series or class of a Fund***

We do not support the requirement that Fund Facts be prepared for each series or class of a fund. We reiterate again our position that this approach will be time consuming, costly and confusing for investors. For example a dealer wishing to recommend the purchase of a fund offering various T class options, such as T4, T6 and T8, will need to provide the investor with 3 different Fund Facts. There is also a chance that an investor would not be provided with all the various options available. We are of the view that the preferred route would be to increase the number of pages of the Fund Facts to allow for a description of the different series instead of requiring separate Fund Facts for each series.

### ***Filing requirements***

The Framework requires that Fund Facts be filed annually along with the simplified prospectus of the fund and upon the occurrence of a material change. We require clarification with respect to the filing date. Is it expected that Fund Facts will have to be filed initially with the preliminary and/or pro forma prospectus? In such circumstances, should we expect that Fund Facts will be reviewed and commented on by the regulators?

### **Specific Comments on Fund Facts Content**

The following are specific comments on the content of the Fund Facts:

#### **1. “Quick Facts” section**

We note that this section does not address situations in which a fund would have multiple portfolio managers or sub-advisors. We recommend that space be reserved to address such situations. Given that the goal of the Fund Facts is to generally be a two page document, we are of the view that any repetition of information is unnecessary. Accordingly, we believe that the MER could be removed from that section given that the MER is provided and more fully explained under the “Ongoing fund expenses” section.



We would like to reiterate our comment with respect to the “Distributions” information. We believe that the suggested disclosure could be misleading as is since the distributions are not guaranteed. Also, certain funds may have the flexibility under their constating documents to distribute additional amounts at other times during a year. As such, we suggest that additional wording such as “aim or intend to distribute annually, monthly or quarterly...” be added or alternatively that specific disclosure about the fact that distributions and their frequency are not guaranteed be added. We also request clarification on the meaning of “Date fund created”. Is this intended to be the date the fund was created, the date the fund was first offered under a simplified prospectus, or the date a series or class of a fund was created?

## **2. “What does the fund invest in?” section**

We recommend that this section disclose the investment objectives of a fund instead of providing a description of the investment objectives. We believe that a concise description is insufficient and may lead to liabilities for incomplete information. An investor could be expecting this section to provide detailed information on the investments made by a fund given the suggested heading. We believe that the investment objective is the most important information an investor should be provided with before making an informed investment decision.

We also recommend that any guidance or instructions with respect to the “Top 10 investments” and “Investment mix” in this section be in line with those instructions set out in item 5- *Summary of investment portfolios* of Form 81-106F1. In addition, we request the ability to use the most recent quarterly portfolio breakdown prepared in accordance with section 6.2 of NI 81-106 for the purpose of the Fund Facts content. This would eliminate the need for fund managers to have to prepare and provide this information at any given date in addition to what is already prepared. We note that if the Fund Facts is dated as of the annual prospectus filing date neither the pie charts information nor the top 10 investments could be provided as of that same date. The Fund Facts template currently suggests that top ten investments information and pie chart information is dated as of the date of the Fund Facts. Such information would need to be prepared by fund managers and included in the Fund Facts prior to the filing date. This would also address the content requirements in case of amendments to the Fund Facts.

## **3. “How has the fund performed?” section**

We would like to obtain clarification on this section for classes and series which would not have been issued to the public at all.

We would also like to obtain clarification as to when this information is as of. Is it intended to be presented annually based on a calendar year-end or on the fund’s year-end?

#### **4. “Are there any guarantees?” section**

We recommend that the suggested disclosure under this section be replaced with standard disclosure currently set out under item 4(3) of Form 81-101F1 Part A, and which could substantially read as follows: “Your investment in a mutual fund is not guaranteed. The value of your investments will vary from day to day and may be more or less when you redeem it than when you purchased it.” We believe that the reference to guarantees should relate to an investor’s investments in a fund rather than to the fund itself. We are also concerned with the negative perception this may have on investors.

#### **5. “For more information” section**

We suggest that disclosure be added to that section to reflect that an investor may obtain a copy of the simplified prospectus from its dealer or by visiting the SEDAR website. We believe that the first sentence, which reads as follows: “This summary may not contain all the information you need”, should be replaced with the disclosure we suggested in our first comment letter as follows:

*“This Fund Facts contains key features, risk and cost information about the investment fund but does not contain complete information about the [investment objectives and strategies, risks and fees associated with the] investment fund, which can be found in the prospectus of the fund.”*

We are of the view that the sentence as it currently reads is contradictory with the sole purpose of this document, which is to provide investors with key information to make an informed investment decision. In other words, to say that this document does not contain the complete information is fine, but to say that such document does not contain all the information an investor may need to make an informed investment decision is different.

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We wish to reiterate our support of the Framework and its objectives of providing investors with key information about a fund, providing the information in a simple, accessible and comparable format and providing the information before investors make their decision to buy. However, we are concerned that the Framework in its current formulation still presents implementation challenges for investors and dealers. We believe that the suggested solutions we set out in this submission will allow dealers to more easily implement the Framework to the ultimate benefit of investors.

Thank you in advance for your consideration of this submission. Please do not hesitate to contact Carole Dagher at 416-980-6096 if you have any questions or wish to discuss these comments further.

Yours truly,

/s/ Stephen J. Geist

Stephen J. Geist  
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/s/ Thomas S. Monahan

Thomas S. Monahan  
Chairman, CIBC Wood Gundy Inc.  
Chairman and Chief Executive Officer, CIBC Investor Services Inc.

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Wayne S. Ralph  
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