

Oliver Murray
President & CEO

December 23rd, 2008

John Stevenson, Secretary
Ontario Securities Commission
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Mme Anne-Marie Beaudoin
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Dear Sir/Madame:

Re: CSA Notice 81-318 Request for Comment: Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds (The Framework)

Brandes Investment Partners & Co.ⁱ appreciates the opportunity to comment on the Framework.

We recognize that there has been much debate and much has been written about the Point of Sale initiative undertaken by the Joint Forum that is now under the auspices of the Canadian Securities Administrators (CSA). The objectives of providing plain disclosure to Canadian investors in advance of purchasing a mutual fund or a segregated fund are noble and reasonable. We do not quarrel with the overall objectives. However, we continue to have serious concerns regarding the unintended consequences of this noble endeavour.

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The unintended consequences have been well documented by us in previous submissions and by the vast majority of industry participants. The list of unintended consequences is considerable and include concerns over product arbitrage (less regulated products will be sold to investors); unlevel playing field (treating mutual funds and segregated funds differently than other investment products is fundamentally unfair and is contrary to what regulations normally strive hard to achieve); regulation casting doubt on the role of advisor (an investor dealing “direct” is not required to receive the document whereas, a client using a trusted advisor must receive the document suggesting that using an advisor requires additional regulatory oversight above and beyond what is already in place today); no detailed cost benefit analysis (the refusal of the members of the Joint Forum to consider an access equals delivery approach is a missed opportunity and could further burden the cost structure for offering mutual funds and segregated funds thus perpetuating our concerns on product arbitrage, etc.), etc.

The concerns that we and others have expressed about the unintended consequences of pre-delivery are real and are significant, especially when mutual funds and segregated funds are the only retail financial products being subject to such requirements. It is not in the best interests of the Canadian investing public if the consequence of this noble regulatory initiative, albeit unintended, is that the mutual fund or the segregated fund becomes a less viable product. The members of the CSA should be very concerned about this.

The Investment Funds Institute of Canada (IFIC) has made a sensible and pragmatic proposal to the CSA urging you to separate the Point of Sale objectives into two distinct rules. The first rule would fast track the production of the fund fact sheets and see that these are available to all Canadian investors within the next 12 months. The second rule would deal with the more difficult issue of delivery requirements and would allow for more detailed consultation among regulators, consumers and industry. The IFIC proposal substantially advances the Point of Sale objectives within a short timeframe and we urge the members of the CSA to immediately adopt this proposal.


In closing, we want to reflect on Section 1.1 of the Securities Act (Ontario). We recognize that other securities commissions across the country have slightly different

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mandates but use the mandate in Ontario for illustrative purposes only. Section 1.1 Purposes states “The purposes of this Act are, (a) to provide protection to investors from unfair, improper or fraudulent practices; and (b) to foster fair and efficient capital markets and confidence in capital markets.” It is not clear to us how investor protection can be advanced if other less regulated retail products are not subjected to the same disclosure requirements as is being contemplated for mutual funds and segregated funds. Our concerns outlined above on product arbitrage and an unlevel playing field suggests that part (b) of Section 1.1 has not received the appropriate consideration that it should.

Thank you again for the opportunity to provide commentary on this important regulatory initiative.

Yours truly,



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ⁱ Brandes Investment Partners & Co. (“Brandes”) is a mutual fund manager in all jurisdictions in Canada and is registered as a limited market dealer, a mutual fund dealer exempt from the requirement to join the MFDA, and an investment counsel & portfolio manager in Ontario and many other Canadian jurisdictions. Our primary role is that of a mutual fund manager, and it is from this point of view that we offer our comments on the Point of Sale Framework as we understand it.