

Canadian Foundation for Advancement of Investor Rights

January 23, 2009

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

The Canadian Foundation for the Advancement of Investor Rights (“**Fair Canada**”) is commenting on the CSA Notice 81-318 Request for Comment (“**Request for Comment**”) which sets out the Joint Forum’s proposed framework for point of sale disclosure for mutual funds and segregated funds (“**Framework for Mutual Funds**”).

We strongly support the vision of the Joint Forum to provide investors with clear, meaningful and simplified information when the investors need it most, *i.e.* before or at the time they make their decision to invest their savings in a mutual fund or segregated fund. Our submission set forth our views with respect to the sale of mutual funds.

The Joint Forum initiative dates back to the 2003 Consultation Paper of the Joint Forum. The concept of simplified disclosure at point of sale for mutual funds goes back even further. In 2007, the Joint Forum articulated its vision for a proposed point of sale (“**POS**”) disclosure framework including:

1. a new fund summary document (“**Fund Facts**”);
2. delivery options for the Fund Facts;
3. investor rights; and

4. regulatory requirements for preparing, filing and delivering the document.

The Request for Comment dated October 24, 2008 sets out the details of the Joint Forum's conclusions on the foregoing four issues.

In November 2008, the US SEC announced its own simplified disclosure for mutual funds ("**SEC Initiative**").

In coming to our views on the proposed Framework for Mutual Funds we have, among other things, compared it to:

- (a) the existing Canadian framework for point of sale disclosure for mutual funds; and
- (b) the SEC Initiative.

Fund Facts

The Fund Facts document provides useful simplified information about investment objectives, performance, risk, sales charges, ongoing fund expenses and other fees and the "cooling off" right.

We understand that investor advocates have sought additional disclosure in the Fund Facts including information about after tax returns for mutual funds held in non-registered accounts, enhanced performance and risk disclosure and cautionary language on how fees may influence salespersons recommendations.

We note that the SEC Initiative provides for a simplified disclosure document which can run 3 or 4 pages. It provides greater disclosure than the proposed Fund Facts document including information about after tax returns and how fees may influence salespersons recommendations.

We understand that under the proposed Framework the Simplified Prospectus for the mutual fund will no longer be provided to investors unless the investor expressly requests. While the Fund Facts provides useful information in a brief 2 pages simplified format, the Simplified Prospectus provides additional important information.

We are of the view that the Simplified Prospectus should continue to be provided to investors either at the point of sale or with the trade confirmation.

The investors most in need of the simplified disclosure provided by Fund Facts will be those who are not financially literate and who are not particularly knowledgeable about mutual funds. They are unlikely to know that a Simplified Prospectus providing additional important information is available upon request and

are therefore least likely to request a Simplified Prospectus. It is a fairly simple exercise to provide the Simplified Prospectus either at the point of sale or with the trade confirmation. Providing a Simplified Prospectus is a current requirement so no additional burden would be placed on the mutual fund industry and no change would be required to the law.

Delivery

We support the proposed requirement to deliver the Fund Facts document to the investor before or at the point of sale. The Framework provides that financial advisers will have a wide range of delivery options including:

1. in person;
2. by mail;
3. by fax; and
4. electronically.

Electronic delivery may be made by sending the investor an email with an electronic copy of, or a link to, the Fund Facts or directing the investor to the relevant Fund Facts on the fund manager's website.

While we support the four options for delivery, we do not support sending an email that simply directs the investor to the relevant Fund Facts on the website. Permitted electronic delivery should be limited to sending an electronic copy of the Fund Facts or at the very least sending an email with a direct link to the relevant Fund Facts. Access to the Fund Facts should be as simple as possible and we do not see how this imposes any burden on the industry.

Investor Rights

The proposed Framework provides a "cooling off" right where the investor has 2 business days after receiving the trade confirmation to cancel the purchase. If the investor exercises the "cooling off" right, the investor will receive the lesser of:

1. the amount invested; or
2. the value of the fund on the day the investor exercises the cooling off right.

Under the present regulatory framework an investor who purchases a mutual fund has a 2 day right of withdrawal or "cooling off" right where the investor receives a return of the full amount invested. The investor neither benefits from an increase in value nor suffers a loss from a decrease in value of the mutual fund under the current statutory right of withdrawal.

The Joint Forum's proposed Framework represents a reduction in investor rights. Under the new "cooling off" right the investor will no longer have a true "cooling off" right. The investor no longer has the benefit of a simple cancellation of the purchase and a return of his investment. The investor is exposed to downside risk but does not have the benefit of any increase in the value of the fund on the day he exercises the "cooling off" right. If the investor is to be exposed to market risk during the 2 day "cooling off" period, the risk should be symmetrical. The investor should have the benefit of any increase in the value of the fund if he is exposed to a loss if the mutual fund falls in value.

We also note that the Request for Comment does not disclose that the proposed "cooling off" right actually represents a reduction in existing investor protection. The great majority of investors and investor advocates will not be aware that the "cooling off" right is not additional investor protection but rather a reduction in existing investor protection. We believe that the Request for Comment should have made clear disclosure of this point.

We consider the new "cooling off" right to be unfair to investors and a reduction in investor rights. We are strongly opposed to the amendment of the current "cooling off" right where the investor has a right of withdrawal and a return of his investment.

Conclusion

We support the Joint Forum's proposed Framework provided that:

1. investors continue to receive the Simplified Prospectus either at POS or with the trade confirmation; and
2. the current 2 day right of withdrawal is retained. The investor should be able to simply get a return of his investment if he exercises the "cooling off" right.

We note that neither of these would require a change in legislation since these are existing statutory rights.

As noted above, the Fund Facts document provides less disclosure than the SEC Initiative and does not provide important disclosure that investor advocates have asked to be included. We expect that any material change in the proposed Fund Facts document would result in further delay in implementation of the new Framework. Given that the POS project will be a decade in the making before it comes into effect, we support proceeding with the proposed Fund Facts so as to avoid further delay. However, the Fund Facts document should be reviewed by the Joint Forum or CSA upon implementation of the Framework with a view to amending it and improving the disclosure to investors. Consideration should be given to additional information

requested by investor advocates (such as after tax returns) and the additional information being required by the US SEC Initiative.

Yours truly,

"Ermanno Pascutto"

Ermanno Pascutto

Executive Director

CANADIAN FOUNDATION FOR ADVANCEMENT OF INVESTOR RIGHTS

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