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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
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

Attention:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903
Box 55
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin, Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage, C.P. 246,
tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs/Mesdames:

Re: Response to CSA Notice and Request for Comment on Implementation of Point of Sale Disclosure for Mutual Funds

Scotia Securities Inc. ("**SSI**") is pleased to provide our comments with respect to the *Canadian Securities Administrators* ("**CSA**"*) Notice And Request For Comment On Implementation Of Point Of Sale Disclosure For Mutual Funds* (the "**Rule**").

SSI is a subsidiary of The Bank of Nova Scotia and is a member of the Mutual Fund Dealers Association of Canada. SSI is also the manager of the ScotiaFunds family of mutual funds which are offered in all jurisdictions of Canada.

In this submission we have responded to certain of the specific questions posed by the CSA. Each paragraph heading references the corresponding issue for comment set out in Appendix B of the Rule.

I. Comments on the Notice and Request for Comment

Issues 1 & **2.**

The CSA has requested feedback on whether there is agreement with their perspective on the benefits of the Instrument, as well as feedback on whether there is agreement with their perspective on the cost burden of the Proposed Instrument.

We believe that there are many benefits to investors in providing them with a concise, high-level and plain-language fund facts document that describes the key elements of the mutual fund under consideration. We also support the recognition in the Rule that some investors will want their mutual fund purchases completed immediately and that the Rule now has provisions that will allow for this, although there are practical difficulties with these provisions.

To us the question remains whether there are other measures that the CSA can take at this time to improve the mutual fund disclosure regime while reducing the cost burden. The operational and compliance systems required to deliver the fund facts document in compliance with the Rule will be far more complex than any disclosure system that currently exists in the Canadian securities industry. The processes required for tracking and managing the delivery of the funds facts document whether at point of sale, with the trade confirmation, or annually, will be complex and costly.

In addition, many of the largest existing costs associated with mutual fund continuous disclosure documents, particularly the simplified prospectus and annual information form, relate to their perennial preparation and filing (i.e. legal, French translation and regulatory fees). These types of costs will also increase under the Rule and will not be mitigated as a result of replacing the prospectus delivery requirement with a fund facts delivery requirement.

The trend in mutual fund regulation over the past decade with the introduction of NI 81-106 and NI 81-107 has been to increase the number of documents and reports that unitholders receive, or are entitled to receive, while there is an increasing consensus that there is already too much information. One option that has been recently raised[1] and which would go far in both reducing costs and simplifying the disclosure that investors receive is rationalizing the MRFPs. The take-up rate for the MRFPs is less than 5% at most fund complexes. Preparation of the narrative discussion in the MRFPs is time consuming. For many fund managers, it is a real challenge to have the MRFPs completed within the permitted time periods. We submit that substantial portions of the MRFP, including financial highlights, could be migrated into the simplified prospectus. Other required content in the MRFP could be placed into the fund facts document, since both documents will have a description of the fund's objectives, strategies, risks, holdings and performance. The only substantive remaining item would be the narrative commentary which is related to each fund's performance over a 6 month or 12 month period. We submit that this could also be eliminated so that the narrative discussions are prepared only annually. The annual commentary could be placed into the fund facts document. We recommend that the CSA consider such a change in the context of this Rule.

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[1] *Too Much Information? Considerations for Reforming the Disclosure Regime for Mutual Funds*. Susan Han, September 21, 2009

II. Comments on the Instrument

Issue 1.

The CSA has indicated that it is considering allowing fund managers greater flexibility to provide more current information to investors by not restricting how frequently a fund manager may file an updated fund facts document.

We believe that there is little, if any, value in providing an amended fund facts document to investors in the absence of a material change. Moreover, without a restriction on the frequency of updates for different mutual funds, there could develop inconsistent practices among fund managers and increased confusion for dealers in determining when each of the funds they sell has filed an updated fund facts. We therefore believe that the requirement to file an updated fund facts document on an annual basis, or if there is a material change, should be retained with no flexibility provided for more frequent filings.

Issue 2.

The CSA has asked whether the guidance in subsection 7.3(3) of the Companion Policy to the Proposed Instrument regarding the requirement to bring the fund facts document to the attention of the purchaser is sufficient. Subsection 7.3(3) of the Companion Policy states that "dealers should maintain adequate records to evidence that disclosure about the fund facts document has been brought to the attention of investors in compliance with paragraph 3A.2(1)(b) of the Instrument".

The guidance provided in subsection 7.3(3) of the Companion Policy does not adequately describe what is meant by "evidence that disclosure about the fund facts document has been brought to the attention of investors". The requirement of "bringing the fund facts document to the attention of the client" has no precedent in the current disclosure regime. It is not clear to us how bringing the existence of a document to the attention of an investor can be documented and verified.

Issue 3.

The CSA has indicated that they are considering requiring delivery of the fund facts document for subsequent purchases, either in instances where the investor does not have the most recently filed fund facts document, or in all instances with the trade confirmation.

We are of the view that delivery of the fund facts document for subsequent purchases would be excessive and largely duplicative disclosure. Periodic delivery and update concerns would be satisfied if the current version of the fund facts document were available to investors upon request and available on the website of the fund manager. In addition, updated material information respecting a fund will continue to be available under the existing continuous disclosure regime.

Should delivery of the fund facts document for subsequent purchases be required, there should be suitable exemptions for pre-authorized purchase plans, money market fund purchases, switches under an asset allocation plan and for fund mergers and reorganizations.

Issue 4.

The CSA is considering allowing delivery of the fund facts document with the trade confirmation in instances where the investor expressly communicates that they want the purchase to be completed immediately and it is not reasonably practicable for the dealer to deliver or send the fund facts document before the purchase is completed. The CSA has further requested comments on what information the investor should receive before the purchase if this change is made in order to satisfy this aspect of delivery.

We are pleased that the CSA is considering modifying the Rule to provide additional flexibility as it will allow dealers to better accommodate the investing public who want to deal over the telephone, on-line or from remote geographic locations.

As a practical matter, we believe that it will be difficult for an advisor to establish and record that (i) it was not reasonably practicable for the dealer to deliver the fund facts prior to taking the trade; (ii) the investor "expressly communicated" that they wanted the purchase to be completed immediately; and (iii) that the investor then received "some type of oral communication" about the fund facts document. For this reason, we believe that satisfaction of either of the two conditions, not both, is appropriate. Further, in lieu of this requirement we suggest that there be an obligation to include in the account agreements disclosure that delivery of the funds facts document in these circumstances will always be with the trade confirmation, thereby eliminating the need to ask the client that question for each and every trade.

Issue 5.

The CSA is proposing some limited binding of the fund facts document and provides related guidance in section 4.1.5 of the Companion Policy to the Rule.

We do not agree with the reasoning provided in subsection 4.1.5(4) of the Companion Policy that electronic delivery of multiple fund facts documents could constrain an investor's ability to download the PDF file, find and print the specific fund facts document. The CSA indicates in subsection 4.1.5(1) that they believe a document with more than 10 fund facts documents bound together may discourage an investor from reading a fund facts document and obscure key information which is inconsistent with the principles of simplicity, accessibility and comparability. Given that the length of the fund facts document is limited to a maximum of three pages, the maximum length of fund facts documents bound together would be approximately 20 to 30 pages. We do not believe that it would be unduly onerous for an investor to download and review a document that is 20-30 pages in length in order to locate and print a 2 or 3 page portion. The alternative of emailing the client several fund facts documents in one email would be inconvenient for the client and, indeed, might reduce comparability. We submit that limited binding of the fund facts document should be permitted in the electronic context.

Issue 6 & 7

The CSA has requested views on whether the transitional period for delivery of the fund facts document is appropriate.

The CSA has indicated that they might decide to proceed with finalizing some parts of the Proposed Instrument while continuing to consult on other parts. For example, the CSA may

move forward sooner with the requirement to prepare and file a fund facts document and have it posted to the website. If this were to occur, the CSA would provide a reasonable transition period before anyone has to comply with the fund facts document requirements and would consider a shorter transitional period for delivery.

The Rule does not specify the exact amount of advance notice fund managers can expect to have in all circumstances prior to the requirement to prepare and file the fund facts documents. There are many funds in continuous distribution today, and the planning out the prospectus renewal process is often conducted a year or more in advance. Several funds or funds groups under common management have different renewal dates. Accordingly, it would be very helpful if the transition were broken out more clearly into:

(i) effective date of the Rule which could provide that any fund not in distribution on the effective date is required to file a fund facts document along with its preliminary disclosure documents;

(ii) first date by which any renewal filings of the prospectus for funds already in distribution would have to be accompanied by the corresponding fund facts documents (one year from effective date); and

(iii) the date on which the current withdrawal and recission rights are replaced with the harmonized cancellation right for funds already in distribution.

We generally support the two-year transition period for delivery of the fund facts although we believe that it may be too short given the significant costs and technological issues that are associated with implementation of the delivery requirements and related oversight, compliance and tracking mechanisms. We would support staged finalization of the Rule provided that implementation of the delivery requirements are deferred until there are clear, practical and workable solutions developed to the operational and compliance concerns.

III. Comments on the Content of the Fund Facts Disclosure

Issue 1.

The CSA has indicated that they have not yet seen a sample fund facts document that contains multiple class or series disclosure that meets the principle of providing investors with information in a simple, accessible and comparable format and has requested sample fund facts documents that adhere to this principle.

We believe that fund managers should have the flexibility to choose whether or not to combine any classes or series of a fund into the same fund facts document, particularly where the only differences are minor, i.e. minimum investment amounts, distribution rates, etc.

Issue 6.

The CSA is considering allowing the disclosure in the risk section of the fund facts document to be supplemented with a brief description of the key risks associated with an investment in the mutual fund.

We do not believe such disclosure in the fund facts document is appropriate. The disclosure would be duplicative of identical prospectus disclosure. It would also lengthen the fund facts document, which is supposed to be a simple and concise source of information for investors. Further, it is difficult to know how to prioritize which risks should be disclosed in that limited space and the exercise of selectively choosing some risks and excluding others could result in incomplete or misleading disclosure. Finally, the introduction of a narrative description of risks would undermine the purpose behind providing the risk scale on the fund facts document.

Issue 8.

The CSA is considering whether to require disclosure in the fund facts document of the trading expense ratio (TER).

The Rule requires that the reading level of the fund facts document be at a grade level of 6 or less. Readers at a grade 6 level will likely have difficulty grasping the make-up of the MER. They are unlikely to understand the TER any better and it provides less pertinent information. In addition, we note that the TER is already disclosed in the MRFP.

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Thank-you for providing us with the opportunity to provide comments on the Rule. If you have any questions regarding this submission, please contact the undersigned at 416-933-7459.

Yours truly,

SCOTIA SECURITIES INC.

William Chinkiwsky
Director, Compliance Legal Counsel