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Canadian Securities Administrators
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**CSA NOTICE 81-318 - Request for Comment
Regarding Framework 81-406 Point of sale disclosure for
mutual funds**

We are writing in response to the Canadian Securities Administrators' (CSA's) Request for Comment concerning the implementation by the CSA of Framework 81-406, regarding point-of-sale disclosure for mutual funds.

EXECUTIVE SUMMARY
<ul style="list-style-type: none">○ The Fund Facts will help the consumer to understand the attributes of particular funds, and to compare funds. However, the Fund Facts document in isolation is of limited value, and is not likely to lead to better consumer choices.
<ul style="list-style-type: none">○ The emphasis on the Fund Facts document devalues the role of the professional financial advisor, whose advice is far more important than a disclosure document about a particular fund, in helping the consumer to make decisions about funds.
<ul style="list-style-type: none">○ The requirement to deliver Fund Facts before a consumer may choose a mutual fund may cause significant harm to the mutual fund industry and individual advisors, and is likely to reduce the number of funds that are offered to consumers and will divert consumers to other delivery channels and products.
<ul style="list-style-type: none">○ The point-of-sale delivery requirement is based on assumptions that are not supported by credible research or analysis about the consumer's decision process in choosing a mutual fund and the role of the Fund Facts information in the consumer's decision process.

Who we are

Advocis is the largest and oldest voluntary professional membership association of financial advisors in Canada. Our members are owners and operators of small businesses and financial advisors and financial planners who are sales representatives of medium and large-size financial services companies, who provide comprehensive financial planning and investment advice, retirement and estate planning, and employee benefit plans. Our members offer clients a prudent long-term perspective on managing a wide array of financial risks and meeting long-term financial goals. Our members are typically dual-licensed to provide life and health insurance as well as mutual funds and securities.

Advocis strongly supports consumer protection including regulatory initiatives that benefit investors by helping them make more informed decisions, and that allow financial advisors to continue to conduct their businesses in a professional and efficient manner without undue regulatory burdens.

Clear accessible investment information

Advocis supports the goal of providing to consumers information about investment funds in a form that is clear, concise, accessible and allows easy comparison between funds. We welcome disclosure that provides investors with more readable, meaningful and simplified information about a fund than currently exists in a typical mutual fund prospectus. The “Fund Facts” will make it easier for consumers to understand the essential facts about a fund, and to compare funds.

While the information in the Fund Facts will be clear, and definitely is much more likely to be read and understood by the consumer than a mutual fund prospectus would be, the value of a Fund Facts document in the hands of a consumer at the point-of-sale should not be exaggerated. In particular, we believe the value is limited, and the emphasis on the delivery of the Fund Facts document at the point-of-sale as a linchpin of the consumer’s decision devalues the role of the professional financial advisor. We submit that the advice of the professional financial advisor, who is charged with understanding the client’s needs and ensuring suitability, is far more important than any individual disclosure document, which the consumer is likely to consider in isolation, in helping the consumer to choose a suitable fund. Consumers have ample access to information about mutual funds, and ensuring receipt of the Fund Facts document at the point-of-sale is unlikely to make a material difference to the quality of consumer decision-making.

Impact on mutual fund industry

In comments submitted to the Joint Forum of Financial Market Regulators (the Joint Forum) and to the Canadian Securities Administrators (the CSA), we have expressed serious reservations about the possible impact on the distribution of mutual funds of the delivery requirements prescribed in the framework.

As we explained in our earlier comment letters, we believe the requirement to deliver the Fund Facts at or prior to the point-of-sale will change the way that many funds are bought and sold and could result in significant harm to the mutual fund industry. It will make it more difficult for many advisors and dealers to distribute a wide selection of mutual funds. The “product shelf” will be shortened, and the challenge of ensuring that one has the right Fund Facts will lead financial advisors to pre-select a reduced selection of funds. In circumstances where the delivery requirement prevents immediate consummation of the purchase of a particular fund, or any fund, consumers may choose to move from mutual funds to other investment products, in other distribution channels. Thus, due to time constraints or the perceived inconvenience of having to wait for the Fund Facts to be delivered, the consumer may instead purchase a different product that may be less suited to their needs.

Failure to analyze consumers' decision process

We believe mutual fund regulators are placing undue confidence in the efficacy and importance of point-of-sale delivery of information about a particular fund, in the context of the consumer's decision-making when choosing a fund.

The regulators' convictions about the crucial importance of point-of-sale delivery of Fund Facts disclosure do not appear to be supported by robust research or by a thorough analysis of what is important to consumers in choosing funds and how consumers actually decide on a fund.

At no point in the policy development process that has been followed by the Joint Forum and the CSA has there been an articulation of precisely what factors the consumer who is about to buy a mutual fund should actually consider, weigh and compare in order to arrive at the decision that must – according to the regulators – be informed by the Fund Facts. We are not aware of any substantial research having been undertaken by the regulators, in order to establish either how consumers should choose a fund, how they actually go about choosing a fund, or how the particular information that consumers will take in from the Fund Facts document at the point-of-sale is likely to materially improve the decision process.

Need for research into consumer decision process when choosing a fund

It would have been helpful if the regulators had commissioned research and had undertaken thorough and thoughtful analysis concerning the *effectiveness* of consumer decision-making in bringing about better investment outcomes. It would be useful, prior to mandating delivery of the Fund Facts before a *purchase* can be made, if the regulators had conducted research that also considered the impact of professional advice as well as fund summaries, on the quality of consumer decision-making and investment outcomes.

While it may seem obvious that the Fund Facts document will make the consumer *better informed*, there is no evidence that consumers will actually make choices that are materially better than they would have been without the benefit of the Fund Facts document.

A recent paper, titled “How Does Simplified Disclosure Affect Individuals' Mutual Fund Choices?” by researchers John Beshears, James Choi, David Laibson and Brigitte C. Madrian (available online at <http://web.hks.harvard.edu/publications/getFile.aspx?Id=367>) considered whether using a summary disclosure document helped investors make better decisions. The researchers found no evidence that the Summary Prospectus affects portfolio choices. They concluded that the main benefit from use of the Summary Prospectus was that it allowed investors “to spend less time and effort to arrive at the same portfolio decision they would have come to after reading only the statutory prospectuses.”

Thus it appears from the available evidence that requiring delivery of the Fund Facts before the consumer is permitted to make a decision will not likely provide any substantial benefit to consumers. More research is needed on investor decision-making and how disclosure affects and could improve investor decision-making.

As we have pointed out above, we believe that requiring the Fund Facts to be delivered before the consumer may make their decision, is likely to have undesirable consequences. We submit that the better course would be to require that the Fund Facts be produced and delivered to consumers, but to permit it to be delivered with the trade confirmation in circumstances where it is not convenient to affect delivery prior to the point-of-sale.

Fund choice is about investment management

There are many mutual funds, and most consumers need the advice offered by a professional financial advisor to help them decide on the characteristics that a fund should have, in order to meet their investment objectives. Once a consumer has identified the *type* of fund that will serve their needs, the consumer is faced with the task of choosing among a large number of seemingly similar funds, and assessing the relative merits of different funds. This decision should ideally be based on an informed evaluation of investment management. We believe that the advice of a professional financial advisor is invaluable in this regard.

The consumer in choosing a fund is purchasing portfolio management. The facts that are critical to choosing a fund are arguably very different from the facts that are critical to assessing a stock, and relate primarily to assessing the investment management behind the fund, rather than the securities that the fund invests in.

If the Fund Facts disclosure is to assist the consumer in evaluating a mutual fund, either on their own or in consultation with their financial advisor, the Fund Facts must provide critical information about the investment management function.

If the consumer should be informed before they make a decision, what should they be informed about, and for what purpose? We would presume that, apart from answering basic questions about what the fund invests in, the most significant information that the consumer needs should help them assess the investment management function. After all, the purchase of a fund is a purchase of professional investment management. Accordingly, a critical question, in determining what information about a fund will ensure that a consumer is appropriately informed, will be whether the information will help them assess the core element of what they are buying – the investment management function.

Will the Fund Facts help the consumer to assess the funds' investment management, and make an informed choice? We understand that past performance of the fund or the managers are not to be relied on. What information in the Fund Facts *will* help the consumer to make a crucial assessment of the fund's investment management, whether it is adequate or even of a high quality, and whether the fund offers a good value proposition? Should the consumer be provided comparative information about other, similar funds, or other managers? If the Fund Facts will not contain information that the consumer is actually likely to be able to use to make an informed assessment of the investment management function, and to actually assess the value proposition of the fund in comparison to other funds, we believe it is inappropriate to require delivery of the Fund Facts before the consumer may choose the fund.

Responses to Specific Questions

Issues for Comment on the Instrument

- **3. ... 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 confirmation of trade.**

We would favour a requirement to deliver the Fund Facts document for subsequent purchases with the confirmation of trade. It is unlikely that the investor who has previously purchased the

fund, but who has not received the latest iteration of the Fund Facts document, would be materially prejudiced because they only received the latest version with the confirmation.

- **4. When the investor expressly communicates that they want the purchase to be completed immediately.**

We strongly support the concept of allowing delivery of the Fund Facts document with the confirmation of trade in instances where the investor expressly communicates they want the purchase to be completed immediately.

In such an instance, we believe it would be appropriate to require that the dealer take reasonable steps to inform the investor: (i) that they will receive the Fund Facts document with the trade confirmation; (ii) that the Fund Facts is a two-page document that sets out important information about the fund; (iii) that they should review the Fund Facts document when they receive it; and (iv) that they will have the right to rescind the purchase within two days following receipt of the Fund Facts.

We note that in circumstances where the investor is not in contemporaneous two-way communication with their advisor (as they would be if the communication were in person or over the telephone) it may not be possible for the dealer, prior to acting on the purchaser's urgent request, to convey to the consumer the information about the Fund Facts that is noted in the preceding paragraph.

In the circumstances, if it is accepted that a consumer's request to have a purchase completed immediately should be accommodated, we submit that it should be sufficient for the dealer to communicate the information about the Fund Facts on a "best efforts" basis. Thus, in the case of a request that is conveyed by e-mail, it should be acceptable for the dealer to communicate the information about the Fund Facts in an e-mail reply.

Issues for Comment on Form 81-101F3 Contents of Fund Facts Document

- **2. ...whether it is more appropriate to require disclosure of the MER without any waivers or absorptions, since there is no guarantee such waivers or absorptions will continue.**

The standard for disclosure of the MER should be consistent, so that funds can be compared. We presume that the rationale for the original proposal, to indicate the MER net of "waivers or absorptions" is that the amount that is actually charged is the net amount. We believe that is the appropriate approach. Disclosing only the "gross" MER would not inform the investor of the actual net amount, and disclosing both net and gross MER numbers might confuse the investor and would complicate the Fund Facts document.

- **Questions 3 through 6, concerning risk disclosure.**

We note with regard to the questions about risk disclosure, that there are limitations to the usefulness of risk-rating of particular funds in isolation, separately from the individual investor's overall portfolio, circumstances, risk profile and investment objectives.

- **Question 8 ... whether to require disclosure in the fund facts document of the trading expense ratio (TER), to provide investors with a more complete picture of the costs associated with an investment in a mutual fund.**

We believe to require the inclusion of the trading expense ratio (TER) would burden the summary Fund Facts document with “too much information.” The addition of the TER would add complexity to the document. It would be necessary to explain what the TER is within the document. It might also be necessary to explain how the TER can change depending on market conditions and manager strategy, and perhaps also to caution the investor concerning the pitfalls of comparing the TER of one fund to other funds.

Additional Comment

We refer to the prohibition of attaching or binding fund facts documents that are sent electronically that is set out in section 5.4(2). It has been suggested that this provision would prohibit including in the body of a single e-mail, multiple links to different fund facts documents. If that is correct, it would be incumbent on a dealer whose client is considering a dozen different mutual funds and who wishes to receive delivery of the fund facts documents by e-mail, to send a dozen separate e-mails to the client. The body of each e-mail would in all likelihood be virtually identical, apart from the link to the specific URL for the specific fund facts document.

Having to send multiple e-mails will be a burden on advisors, and having to open multiple e-mails when a single e-mail would have sufficed, will be annoying to consumers.

We believe there is a significant risk that many clients would consider such an inundation with nearly identical e-mails, to be nothing more than spam, and that they would accordingly be likely to delete such e-mails. We suggest that it would be preferable to permit multiple links to be set out in one e-mail, perhaps under separate headings that each set out the name of the fund.

We would be pleased to meet with you to further discuss our issues and concerns.

Sincerely,



Greg Pollock
President and CEO



Kristan K. Birchard
Chair, National Board of Directors