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October 19, 2009

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

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

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

Dear Sir/Madame:

**Re: Response To CSA Notice And Request For Comment On Implementation Of  
Point Of Sale Disclosure For Mutual Funds**

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We are writing to provide the comments of MGI Financial Inc. (“MGI Financial”) 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”).

As a member of The Investment Funds Institute of Canada (“IFIC”), MGI Financial is in agreement with the submissions of IFIC in relation to the Rule, but we wish to add some additional feedback in response to certain aspects of the Rule which we believe will be particularly prejudicial both to our business and to the needs of Canadian investors. In particular, we believe that 1) the delivery provisions of the Rule as drafted will damage the ability of mutual fund advisors to service rural clients, 2) the delivery provisions of the Rule as drafted will damage the ability of mutual fund advisors to service elderly clients, 3) that the Rule will cause regulatory arbitrage with other investment products, 4) that the requirements of the Rule will have an unfair impact on the competitiveness of independent mutual fund dealers and 5) that the delivery of point of sale disclosure has limited benefits over the current means of prospectus delivery accompanying an investor’s right to rescind his or her investment.

### **Issue 1: Damage to the Ability of Mutual Fund Advisors to Service Rural Clients**

For MGI Financial, a major concern with the delivery provisions of the Rule is that it will complicate and inhibit the delivery of mutual fund products to rural investors and have a disproportionate impact on such investors and the mutual fund advisors who service them. Approximately 60% of MGI Financial’s 140 independent mutual fund advisors are located in rural locales and for these advisors, travel to the residences of their clients is an essential component of the service that they provide. In such locales, high-speed and/or wireless internet are often either unavailable or prohibitively expensive, rendering the electronic delivery methods contemplated by the Rule impractical for many of our advisors and their clients. Similarly, the long distances travelled by such advisors to service clients complicates even the paper delivery of point of sale disclosure documents. Unlike in urban settings, an advisor who brings to a rural client meeting the incorrect point of sale disclosure document or who receives a request for a different product by the client cannot easily travel back to the office to obtain the correct document. The delivery requirement for pre-trade disclosure documents will mean that sales are impractical for this segment of the mutual fund market and we expect that if the Rule is implemented as currently drafted, that neither MGI Financial nor other providers of mutual funds to rural investors may be able to continue to service this market.

### **Issue 2: Damage to the Ability of Mutual Fund Advisors to Service Elderly Clients**

A significant proportion of MGI Financial’s clients are elderly, and in our experience such clients are poorly served by electronic information delivery means. Although an electronic means of delivery of the point of sale disclosures required by the Rule seems to be the only economically viable means of providing the point of sale disclosure mandated by the Rule, such disclosure would be unavailable for elderly clients who are not frequent computer users.

### **Issue 3: Regulatory Arbitrage with Other Investment Products**

The foregoing issues are closely connected to the second major problem with the provisions of the Rule, which is that it creates regulatory arbitrage which will discourage

the sale of mutual funds in comparison to other investment vehicles which do not require the point of sale disclosure required by the Rule. Investment products that are comparable to mutual funds and segregated funds, including exchange traded funds, principal protected notes, and wrap and managed accounts offered by investment dealers and portfolio managers are not subject to point of sale disclosure requirements and we expect that many dealers will chose alternative products and services for their clients that provide investors with diversification, professional investment management and lower administrative, facilitation and compliance costs. Indeed, even transactions in the shares of high-risk venture stock firms via brokerage, even with the benefit of significant professional advice, lack point of sale disclosure requirements, such that a sophisticated client going through an advisor to buy a balanced fund needs point of sale disclosures but the same client can be sold a high risk stock with very little disclosure, resulting in an uneven playing field for the sale of mutual funds. We believe that it is harmful to the interests of Canadian investors that the requirements of the Rule will likely push their investments out of mutual funds and into these potentially riskier, less diversified and/or more expensive vehicles for their investments, which are often available without the professional advice essential for unsophisticated investors. In addition, many investment products that are not subject to the requirements of the Rule are non-Canadian products, meaning that the Rule will also have a disproportionate impact on both the Canadian investment industry as a whole and may impair the flow of funds to Canadian industry for investment in new Canadian industrial capacity.

#### **Issue 4: Unfair Impact on the Competitiveness of Independent Mutual Fund Dealers**

An additional issue with the disclosure requirements of the Rule is that it will have an unbalanced impact upon independent mutual fund dealers. It seems that the only practical means of complying with the point of sale information delivery requirements of the Rule will involve significant use of electronic document delivery. Yet, like many information technology solutions, we expect that the electronic delivery mechanisms contemplated by the Rule will have a high fixed cost and a very low variable cost, resulting in significant economies of scale for larger mutual fund dealers that create an unfair competitive disadvantage for independent mutual fund dealers. Electronic delivery works for large organizations but the Rule also favours dealers affiliated with banks that have a branch network that can share overhead costs and facilitation costs – they can be in every small and large community in Canada and have on hand or electronically print out all the fund fact sheets they need for their clients from the branch. Independent dealers do not benefit from the same shared cost structure. Unless the delivery provisions of the Rule are tailored to limit the economic impact of such provisions on small mutual fund dealers, we expect that this could further limit the competitiveness of our business model and the services that we and our advisors provide.

**Issue 5: The Delivery of Point of Sale Disclosure is Unnecessary if Investors may Rescind their Investment Following the Delivery of a Prospectus**

Investors continue to be able to rescind their investment in a mutual fund upon receipt and review of a prospectus. Given that this right of rescission offers investors a very strong ability to act on their review of fund disclosure, even after the point of sale, the cost of the point of sale disclosure delivery method in particular has to be weighed against the limited benefit that delivering such document to an investor before a trade will provide.

In summary, we believe that the delivery provisions of the Rule need to be revised because these requirements cause a disproportionate impact on rural and elderly investors and their service providers, they encourage the sale of other investment products at the expense of mutual funds, which are often better suited to small investors, they impose a cost burden which will cause an unfair competitive disadvantage for independent mutual fund dealers and delivery of the disclosure document provides limited benefits. Overall, our clients already frequently complain about the excess of paper disclosure that is delivered and wasted in respect of investor communications—we expect that the additional point of sale disclosures as delivered in the proposed Rule will only add to this client frustration.

Thank you for providing us with an opportunity to provide comments on the Rule. If you have any questions regarding this submission, please contact me by phone at 519-886-9957 or by email at [dvelanoff@mgiwealth.com](mailto:dvelanoff@mgiwealth.com) or Adam Davis, Legal Counsel for our parent company, Jovian Capital Corporation, by phone at 416-847-3766 or by email at [adavis@joviancapital.com](mailto:adavis@joviancapital.com).

Yours very truly,



David Velanoff  
President and Chief Executive Officer  
MGI Financial Inc.