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CANADIAN BANKERS ASSOCIATION

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

Attention:

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Me Anne-Marie Beaudoin
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Dear Sirs/Madams:

Re: Canadian Securities Administrators' Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 *Registration Requirements and Exemptions* etc. Regarding Cost Disclosure and Performance Reporting

The Canadian Bankers Association ("**CBA**") works on behalf of 52 domestic banks, foreign bank subsidiaries and foreign bank branches operating in Canada and their 267,000 employees. The CBA advocates for effective public policies that contribute to a sound, successful banking system that benefits Canadians and Canada's economy. The CBA also promotes financial literacy to help Canadians make informed financial decisions and works with banks and law enforcement to help protect customers against financial crime and promote fraud awareness.

We appreciate the opportunity to participate in stakeholder consultations regarding the proposal by the Canadian Securities Administrators ("**CSA**") to amend National Instrument 31-103 *Registration Requirements and Exemptions* ("**NI 31-103**") and Companion Policy 31-103CP *Registration Requirements and Exemptions* with respect to cost disclosure and performa nce reporting (together, the "**Proposed Amendments**").

We wish to express our general support for the positions advocated by the Investment Funds Institute of Canada and the Investment Industry Association of Canada in their respective comment letters on the Proposed Amendments. We highlight below for your consideration several select areas of particular concern.

I. General

A. Transition Period

It is anticipated that registrants will have to undertake significant systems and information technology changes to implement the Proposed Amendments as currently drafted. We are concerned that aggressive implementation deadlines may result in delays and unsatisfactory compliance, and recommend a transition period of at least three years for the implementation of the final rules. We also ask the CSA to consider allowing for a phased-in implementation of the final rules, with milestones which could be agreed upon through further consultation with the industry.

B. Harmonization of Implementation Timelines

Generally speaking, we support the goals of enhanced cost disclosure and performance reporting. We believe it is important to ensure that investors are provided with clear and meaningful information to help them evaluate how well their accounts are performing, and make well-informed decisions about reaching their investment goals. However, we also believe it is important to ensure that these goals are appropriately balanced against the goal of market efficiency, such that they do not result in unnecessary regulatory burden on the industry, or client confusion and concern.

In this regard, we note that performance reporting requirements were recently introduced by the Mutual Fund Dealers Association of Canada ("**MFDA**") for compliance by June 3, 2012. We also note a subsequent publication of the proposal by the Investment Industry Regulatory Association of Canada ("**IIROC**", and together with MFDA, "**SROs**") regarding the core principles of the Client Relationship Model, including rules and amendments relating to cost disclosure and performance reporting. We are concerned about the inefficiencies and possible client confusion and concern that would result from these overlapping regulatory initiatives, and recommend that the CSA work with the SROs to agree on a timeline in order to ensure that required changes are implemented simultaneously.

C. SRO Rules

We believe that SROs are best positioned to regulate their members, including in the areas of cost disclosure and performance reporting. MFDA has regulated its members in this area, and IIROC is in the process of doing so. In that light, we believe that SRO members should be exempted from the Proposed Amendments. In the alternative, if the CSA believes it necessary to have overarching rules on cost disclosure and performance reporting applicable to all registered dealers and advisers, we ask the CSA to work with SROs to harmonize the rules to the extent possible, and as appropriate, to reduce inefficiencies, compliance costs and client confusion.

II. Proposed Amendments

A. Scope of the Proposed Amendments

We believe that the Proposed Amendments should be revised to fully take into account their impact on all types of registrants that offer a wide range of products and services. Clients of different registrants may have a variety of expectations and needs that would not be served by uniform application of the rules. In that light, please find below for your consideration our recommendations with respect to the application of some of the Proposed Amendments.

Exemption from Cost Disclosure for Institutional/COD Accounts

We understand that the research conducted by the CSA in connection with the development of the Proposed Amendments, including the proposal for cost reporting requirements, targeted retail investors. Accordingly, we question whether these research findings should be taken to equally apply to, or be relevant to the circumstances of, sophisticated institutional investors, or whether the Proposed Amendments should be limited in applicability to retail investors. We also note in this regard that institutional accounts are generally cash on delivery ("**COD**") accounts. Registrants generally do not have custody of, or cost information for, the securities in such accounts. Since cost information is crucial to the cost disclosure and performance reporting, we ask the CSA to consider exempting institutional/COD accounts from the cost disclosure requirements contained in the proposed sections 14.14(5.1) and (5.2), 14.15 and 14.16 of NI 31-103.

Exemption from Performance Reporting for Execution Only Accounts

We believe that performance reporting is meaningful when it allows clients to evaluate the investment advice or investment management services received from registrants. Clients of order execution only accounts do not receive investment advice or investment management services. We therefore question the rationale behind the Proposed Amendments to require performance reporting for order execution only accounts, and ask the CSA to consider exempting order execution only accounts from the performance requirements contained in the proposed sections 14.15 and 14.16 of NI 31-103.

Exemption from Operating and Transaction Charges Disclosure for Managed Accounts

Through written documentation and conversations with registrants, clients of managed accounts and other accounts that are charged investment management fees provide informed consent to the variety of fees and charges that apply to their accounts. The fees and charges related to managed accounts are bundled together and known by clients as investment management fees. We assume that the CSA would not expect registrants to unbundle these fees such that they can provide itemized fees and charges disclosures to their clients. This artificial exercise would not only provide little value-added service to clients of managed accounts, but it would also result in unnecessary inefficiencies for registrants. Accordingly, we ask the CSA to confirm that managed accounts that charge an all-inclusive investment management fee are not subject to the requirement to disclose itemized fees and charges as proposed in section 14.2(4.1)(b) and (c) of NI 31-103.

B. Point of Sale Disclosure of Charges

The CSA is proposing to require non-managed accounts to disclose charges relating to all investment products at point of trade. This requirement appears to be duplicative as such information is (or will be) available to clients via documents including relationship disclosure documents, prospectus and/or Fund Facts for mutual funds. Matters related to the disclosure of charges for mutual funds are expected to be considered and implemented through the CSA's

Point of Sale Framework (the "**Framework**"). Stage 3 of the Framework, which sets out the requirements relating to the delivery of mutual fund information at point of sale, is yet to be published for public input. We believe that the disclosure of mutual fund information should not be mandated through the Proposed Amendments, and in advance of the publication of the proposal for amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. We strongly believe that CSA should initiate another industry consultation to discuss the imposition of point of sale disclosure for investment products other than mutual funds.

Also, with respect to clients of order execution only accounts, since such clients rely on their own strategies rather than recommendations of registrants, registrants are not made aware of their trades before they are entered. This lack of interaction between registrants and clients of order execution only accounts prior to, or at the point of trade, pose challenges for registrants in terms of their ability to meet the requirement to provide point of trade disclosure of charges to such clients. In that light, we request that the CSA consider providing an exemption to order execution only accounts from the point of sale disclosure of charges requirements contained in the proposed section 14.2(3.1) of NI 31-103.

In addition, we are concerned about the proposed point of sale disclosure of deferred sales charges ("**DSCs**") and trailing commissions, as these charges are variable and unknown at the client level. If such disclosure is required, we suggest requiring disclosure that there may be a DSC or trailing commission, as applicable.

C. Tax Cost vs. Original Cost Disclosure

The CSA proposes to require registrants to include in the account statement the original cost information of each security position. We believe that registrants should be given the flexibility to disclose either tax cost or original cost of the security in question, along with adequate disclosure on how cost base is determined and reported. This would allow firms to provide disclosure to clients based on the clients' particular needs and the relevant circumstances, including the technology and business models of the reporting firm. Where the Proposed Amendments must mandate one method, we recommend that the registrants be required to disclose tax cost rather than original cost. Tax cost is the historical cost that has been provided to clients by many firms, so lead time to prepare for reporting would be minimized. Also, given the proposed requirement to report on capital gains/losses, tax cost will need to be calculated in any event. The requirement to also report original cost would require firms to track and report two costs and this could result in client confusion. Further, we note that not all firms consistently provide cost information on non-registered accounts, which would make it difficult for firms to report original cost on all accounts unless such information is provided by clients.

D. No Reporting of Third Party Charges

We believe that the Proposed Amendments requiring that registrants should report fees and charges levied and billed by third parties should be re-considered by the CSA. While we recognize the objective of providing complete cost disclosure in one account statement, we are concerned about the requirement for registrants to report information that they do not control, especially when such information is provided to clients by third parties directly in any event. We are equally concerned about the possibility of client confusion resulting from such duplicative reporting. We therefore recommend that the CSA amend the definitions of "charges", "operating charges" and "transaction charges" to exclude fees and charges that are charged and billed by anyone other than the registrant.

E. Clarity Regarding "Charges" and "Transaction Charges"

We request the CSA to provide more clarity around the meaning of the terms "charges" and "transaction charges". In particular, it would be useful to know if withholding tax would be considered to constitute "charges" and/or "transaction charges". Also, we would appreciate confirmation that items such as foreign exchange spreads are not intended to be captured in the definition of charges or fees.

F. Reporting by Account or Client Portfolio

We ask the CSA to consider providing registrants with the flexibility to report the requested information either by account or by client portfolio and not just on an account basis. We believe that flexibility in this regard would provide registrants with an opportunity to provide more suitable, value-added service to clients, taking into account their particular circumstances. Also, it would address the significant practical challenge of tracking fees paid out of the specific account, such as the RRSP fees.

We appreciate the opportunity to participate in the consultations regarding the Proposed Amendments relating to new cost disclosure and performance reporting requirements. If you have any questions or wish to discuss our comments in further detail, please do not hesitate to contact me.

Yours truly,