BMO Financial Group

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September 23, 2011

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

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

Re: Proposed Amendments to National Instrument 31-103 ("NI 31-103"): Cost Disclosure and Performance Reporting

BMO Nesbitt Burns Inc., BMO InvestorLine Inc. and BMO Harris Investment Management Inc. (collectively "BMO" or "We") welcome the opportunity to provide our comments to the Canadian Securities Administrators' ("CSA") regarding the proposed amendments to *National Instrument 31-103 Registration Requirements and Exemptions: Cost Disclosure and Performance Reporting* (the "Proposals"). While we support many of the core principles of the Client Relationship Model ("CRM")

underlying the Proposals, we believe that it is important to ensure that these objectives are appropriately balanced against the goal of market efficiency. Additionally, we believe that the cost disclosure and performance reporting need to be carefully implemented in such a way that they have the intended effect and do not create further client confusion or concern. There are many material weaknesses in the Proposals that raise significant concerns among registrants, and more importantly, which will prevent CRM from achieving its intended results.

Disclosure of Charges

The Proposals include enhancements to the requirements for the disclosure of charges at account opening for all accounts, as well as new requirements for on-going disclosure of charges. While we agree that transparency with respect to charges is an important objective, we believe that the cost disclosures found in the Proposals will confuse investors and may lead them to draw misleading cost comparisons. Furthermore, there are significant implementation issues and costs associated with requiring the disclosure set out in the Proposals.

Relationship disclosure

In order to avoid confusing the charges associated with the operation of an account or executing transactions with the actual purchase cost of a security the Proposals include replacing the term 'costs' with the term 'charges'. Unfortunately, this change, as currently drafted, brings with it further confusion.

We believe that the definition of 'charges' should be limited to charges made directly to an account by a registrant. The proposed requirement for registered firms to disclose fees and charges that may be charged by third parties outside the registrant is challenging. For example, custodian fees may be charged and invoiced by a third party custodian. In such a case, while the fee may be debited from a client's account with the registrant, we do not believe it is appropriate to require the registrant to disclose this operating charge on their cost disclosure statement to the client. The client will already have received an invoice from the third party and is likely to be confused by receiving further disclosure on the same cost. We also feel it is inappropriate to require the registrant to report on an operating charge that it neither levies nor bills for.

Furthermore, from the definitions, it is not clear whether items such as foreign exchange spreads and withholding taxes are not considered 'charges.' Revenue generating items such as spreads should not be considered fees and we ask that the CSA provide affirmative confirmation to that effect. Similarly, we ask that the CSA provide confirmation that withholding taxes are not considered 'charges.' Including withholding taxes in the proposed annual charges document is likely to be confusing to clients and this type of charge should instead be presented to the client in the form of an annual tax summary.

Pre-trade transaction charge disclosure

The Proposals include a requirement for firms to provide specific disclosure of the charges a client with a non-managed account would have to pay when purchasing or selling a security, prior to the registrant accepting the client's order.

We note that this requirement overlaps significantly with the Point of Sale (POS) disclosure requirements. Disclosure of mutual fund costs, charges and commissions is made in the Fund Facts document. Issues of mutual fund disclosure are being addressed through the Point of Sale project and

the implementation of changes to National Instrument 81-102 – *Mutual Funds* ("NI 81-102"). The Point of Sale initiative is proceeding with the implementation of Phase 2. This will ensure the Fund Facts document is delivered within 2 days of sale. The delivery of this information at Point of Sale was the subject of industry comment and is intended to be part of Phase 3 of the Point of Sale initiative. It is our view that disclosure of mutual fund information should be mandated through the changes to NI 81-102 and, also should not be mandated in advance of Phase 3 of POS through changes to NI 31-103 changes. In any event, since there is uncertainty at point of sale of the dollar amount of possible future sales charges that a client may be required to pay, we do not believe it is practical to require disclosure beyond that which is already in the Fund Facts document.

Furthermore, clients of order execution only accounts trade in reliance on their own strategies, not pursuant to recommendations of registered firms. They do not consult or inform registered firms prior to entering the trade, especially when related information is available in product materials, including the prospectus. We therefore request that an exemption from this section be provided to order execution only accounts.

With respect to the special attention that DSC charges are given, it should be noted that it is particularly difficult to disclose what the actual DSC charges will be before a mutual fund is sold to the client and that there is no automated method of determining the DSC. These are variable and may not even be paid if the client only makes redemptions which would not attract a DSC. Given the strong existing disclosure framework for DSC charges in prospectuses and in Fund Facts, we question this additional proposed requirement to disclose DSC charges a third time.

There is also a requirement to disclose the trailing commissions, which are equally variable and unknown at the client level. Fund companies only generate trailing commission reports based on a representative code. This provision would require costly systems builds for fund managers, FundSERV and dealers, costs which would ultimately be borne by investors. As with DSC charges, disclosure of trailing commissions is available through Fund Facts which is sent with the confirmation slip, and accordingly, there are no issues with respect to the information being received by the client. For other products, a notation on the confirmation slip that a trailing commission is payable by the fund company should suffice.

Annual disclosure of charges

In addition to the pre-trade transaction charge disclosure requirement, the Proposals include a requirement for registered firms to provide each client with an annual summary of all charges incurred by the client and all of the compensation received by the registered firm that relates to the client's account.

The cost of developing a report which includes such disclosure will be significant and there is no evidence that the benefit will justify the cost. Charges at the trade level are already reported on the trade confirmation, charges at the account level are reported on account statements and trailing commissions are disclosed in the Fund Facts document and Prospectus. Moreover, the new emphasis on aggregating charges and disclosing fees such as trailer fees may cause investors to double count charges that have already been charged to their investments and are disclosed elsewhere.

One of the requirements in the annual disclosure is a break down of operating costs. Some firms may charge one fee for "all services rendered", which would include, among other things trading fees and administration fees. For those firms, we would assume that it would not be necessary to undertake an

artificial exercise to break down the charges related to each service. Registrants are still required to report the type of charges that relate to accounts under s. 14(2)2 in NI 31-103 and they would also report the total amount under the Proposals. We are concerned that breaking down fees artificially to meet the requirement will not provide value added service and will result in unnecessary inefficiency. We recommend that all inclusive charges should not require a breakdown into component parts and ask for confirmation of the same.

Performance Reporting

Performance reporting should not be mandated. Rather, it should be left to the individual registrant to decide the level of reporting that will best meet the needs of their clients. A one size fits all approach to performance reporting does not work. Each firm should be provided with the flexibility to offer the reporting that works best for its clients given its business model. The manner in which such reporting is provided will distinguish one firm from another, providing firms that offer the level of disclosure and reporting that investors demand with a competitive advantage. While we believe that performance reporting should not be mandated and encourage the CSA to reconsider our point of view, should the CSA decide to proceed with the Proposals, we believe that they cannot be accepted as they stand.

The Brandesbury Group's paper *"Report: Performance Report and Cost Disclosure"* prepared for the CSA shows that a majority of investors (52%) would not like more detailed performance reporting than they receive currently, and most of the investors surveyed (45%) would not want to pay anything for it. Account performance reporting is problematic on many levels. Not only can performance reporting be costly and potentially misleading to clients, but it opens registrants up to potential liability regarding the accuracy of the information, where such information is used for tax reporting.

Cost Information

In its current form, the Proposals require that firms use original cost information in their annual performance report. We do not believe that the CSA should mandate which form of cost is to be used in producing the report. Each firm should have the ability to decide the most appropriate form given their individual circumstances. Every client and every firm is different and as such, each client relationship is unique. Treating them all the same by imposing prescriptive rules is tantamount to trying to square the circle. Some registrants might feel that using book cost information is most valuable to their clients, while others, for example, those that deal primarily in mutual funds, might instead believe that a net invested measurement is more appropriate.

We suggest that the Proposals for performance reporting be revised in order to allow for the optimum flexibility in what registrants provide to their clients and how they provide such information. Using inappropriate methodology may result in misleading account performance disclosure. The reporting of accurate gains and losses is wholly dependant upon the quality of information relied upon to calculate these reports. Where we start with bad information, we will end up providing clients with bad and misleading information.

If on the other hand, the CSA is unwilling to adopt a flexible approach to reporting, we believe that a time-weighted average cost is a more appropriate measure. Original cost does not provide meaningful information to the investor as it does not take into account any distributions paid out on the investment and many investments are bought specifically for their income. Time weighted-average cost provides a clearer picture of performance.

As drafted, the Proposals contemplate providing clients with the original cost of the position for each security position in the account, unless the security position was transferred from an account of another registered firm and the original cost of the security is not available. However, even the security position was not transferred from an account of another registered firm; there are instances where original cost cannot be determined because the security is not priced on a monthly basis or because the security has subtleties that could not be accurately reflected in the value (e.g. corporate actions where the fair market value has not been disclosed before the account statement is generated). If the CSA is unwilling to adopt a flexible approach to reporting or a time-weighted average cost in lieu of original cost, registered firms should be given an option to suppress the value of the security on the account statement so that clients would not be mislead in terms of gain/loss. Furthermore, where the original cost of the transferred security position is not available or is known to be inaccurate, registered firms should be given an option to use blank or null values with disclosure on why the value of the position was suppressed on the account statement. Many firms will mark positions that are transferred in without a cost basis until the value is provided by the client. This clearly identifies positions that are not accurately costed. Not only will displaying market value reduce a client's incentive to provide us with such information, it will not provide the client with a clear understanding of how their asset is performing.

Performance Reports

We service a wide array of client segments, each with different needs and expectations. The CSA proposal, however, mandates performance reporting for nearly all client accounts, regardless of whether or not clients want, need or are willing to pay for the information.

The costs required for firms to implement the performance reporting proposals will be material. Ultimately, it is our clients that bear these costs. For many clients, these additional costs will outweigh any of the perceived benefits from mandated performance reporting. For example, some clients have no need for mandated performance reporting from us because they already have in their possession the necessary information for them to perform their own evaluation on the performance of the account. Other clients may simply have little or no interest in performance reporting, placing a greater priority instead on the level of service they receive from their advisor and the level of trust built over the course of years or decades in maintaining a relationship with the advisor.

The Proposals require delivery of annual performance reporting at the account level. We ask the CSA to consider providing registrants with the flexibility to report the requested information either by account or by client portfolio. In many cases, client accounts represent discrete, but complimentary strategies. 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. It would also address the significant practical challenge of tracking fees period out of the specific account, such as RRSP fees.

Transition

As currently drafted, registrants will have to undertake significant systems and information technology changes to implement the Proposals. We are concerned that the aggressive implementation deadlines may result in delays and unsatisfactory compliance. As such, we recommend a transition period of at least 3 years to accommodate system changes required at both the fund manager and dealer levels.

Conclusions:

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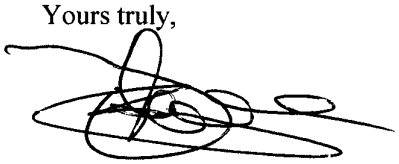
While we support the principles behind cost disclosure and performance reporting, we believe that there can be improvements to the Proposals.

Yours truly,



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