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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

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Dear Sirs/Mesdames:

RE: Proposed Amendments to National Instrument 31-103 *Registration Rules and Exemptions*- Performance Reporting and Cost Disclosure

We are writing in respect of the request for comments issued by the Canadian Securities Administrators (CSA) on the proposed amendments (Amendments) to National

Instrument 31-103 *Registration Rules and Exemptions* (NI 31-103) regarding performance reporting and cost disclosure.

Investment Planning Counsel Inc. (IPC) is an integrated wealth management company and is very interested in the proposed Amendments since our subsidiaries include a member of the Investment Industry Regulatory Organization of Canada (IIROC) and a member of the Mutual Fund Dealers Association of Canada (MFDA). In our view the proposed Amendments would have a significant and, in a number of respects, adverse effect on the business of IPC's dealers without resulting in a corresponding benefit to our customers. This letter sets out our comments and concerns.

1. Overall Comments

We support the general principles of some of the proposed Amendments. However, we have significant concerns regarding the overall approach of these proposed Amendments and the direct impact on our dealers. We would summarize these as follows:

Role of our Dealer Self Regulatory Organizations (SROs)

We are very concerned over the apparent disregard by the CSA of the SROs consultative rule making process as it relates to the proposed Amendments. Today, the SROs have the primary oversight of dealers they regulate and the development of rules and regulations, subject to the oversight of the CSA. This SRO model has proven itself to be effective and efficient.

The proposed Amendments are inconsistent with this SRO model in that they appear to ignore and disregard the extensive work done on these issues. We are also concerned that this approach may have a negative impact on the working relationships between the SROs and the CSA. In particular, the MFDA has new rules (5.3.5) coming into force in June, 2012 dealing with account performance reporting that are being implemented following extensive dialogue with the industry and the public and were recently approved by the CSA; and IIROC published proposed rule changes on January 7, 2011 to implement the core principles of the client relationship model, including performance reporting, cost disclosure and rates of return, which also involved dialogue with the industry and others.

Except for justifiable differences, a client should receive the same reporting and disclosure regardless of whether they are a client of an MFDA member, an IIROC member or another non-SRO registrant. Many of our clients are in fact clients of our MFDA member and of our IIROC member and as such there should be uniformity in the reporting and disclosure obligations in order to avoid confusion by the client. It will be difficult to explain to clients why the reports and information they receive differ depending on the dealer. The CSA should ensure that the disclosure requirements, as

finally determined are consistent and, in regards to performance reporting, in our view the MFDA rules are the appropriate standards.

Currently the MFDA rules come into effect next year. Dealers are in the process of assessing and arranging for the required modifications to their back office systems. The proposed Amendments once implemented will require further modifications to the dealers' back office systems at the dealers expense. For clients, this will mean receiving, within a short period of time, two different types of performance reporting. This is not, in our view, in the best interests of the client. Compliance with these requirements has large information systems development costs and significant effects on business processes and requiring the industry to do this twice is inefficient and an unnecessary duplication of costs.

It is our view that the CSA should (i) withdraw these amendments (or limit their scope to non SRO firms) and ensure that the MFDA and IIROC develop consistent reporting and disclosure obligations, subject to justifiable differences, or (ii) the MFDA should withdraw Rule 5.3.5 and IIROC should halt their initiatives in this regard and defer to the CSA rules.

Potential Arbitrage - Cost and Compensation Disclosure

The requirements of the proposed Amendments with respect to disclosure of compensation paid to dealers and its advisors are unfair in that they apply to only certain participants. The result is that a client in comparing two different distribution channels may wrongly believe that a firm and its advisors in one distribution channel are not receiving compensation while the firm and its advisors in the other distribution channel are.

We are also concerned that the combination of the proposed Amendments together with the existing disclosures clients receive regarding fees and compensation paid to their dealer may tend to confuse clients as to the actual amount of fees and compensation being paid to their dealer with respect to mutual fund investments. This may lead clients away from suitable mutual fund investments to less suitable and less transparent investment options in the banking and insurance sectors where such detailed requirements are not required.

The following example illustrates the potential arbitrage and client confusion of a client purchasing a mutual fund versus a traditional GIC type investment. A client who purchases a mutual fund receives detailed information not only on what that fund has returned, but also (in the Prospectus, Fund Facts and Management Report on Fund Performance) on many of the costs relating to that investment, including management expenses. However that same client who purchases a competing product, such as a Guaranteed Investment Certificate (GIC), through the same dealer and adviser receives no such disclosure. Most financial institutions pay ongoing commissions on GIC

investments and this would not be disclosed to the client in any way at the time of purchase. As a result, the client is left with a misleading impression that mutual funds have costs associated with them where a GIC (or an insurance product) does not with the result that their investment decision is being based on incomplete or partial information.

The cost and compensation disclosure for investment funds is already comprehensive and further or additional disclosures are unnecessary.

Percentage Returns

Unlike the MFDA rules where percentage return reporting is optional, the proposed Amendments would mandate the reporting of percentage returns to clients. The MFDA approached was reached after an extensive comment process and was recently approved by the CSA.

The proposed Amendments regarding performance returns will require significant changes to dealers' back office systems in order to store, aggregate and integrate data provided by mutual fund managers and other security issuers and at a significant cost.

In our view the MFDA rules are the appropriate standard and should be the standard applicable to all SRO and non-SRO registrants.

Challenges with Benchmark Reporting

While the proposed Amendments would not obligate firms to include benchmarks in their reporting and which we support, it would require them to enter into a written agreement with each client regarding the benchmarks shown on their statements. This approach is impractical and will fail to achieve the regulatory result it seeks. Instead it should be up to the firm to determine if they will offer to provide benchmark disclosure without having to have written agreements with clients.

The biggest difficulty with benchmarks is in trying to provide one that is not misleading. The performance of a client's individual portfolio is inevitably going to be different from a particular benchmark and clients will find it difficult to understand why their performance may be so different from the benchmark. The more appropriate disclosure is the performance of the portfolio against a financial plan the clients have agreed to with their advisors.

Cost/Benefit Analysis

The proposed Amendments would involve huge costs, both in terms of money and effort, on the part of the securities industry to implement and, in particular, the dealers. The proposal includes a simple statement that "benefits are expected to exceed costs"

without any support. Given the scope of this initiative, a meaningful cost/benefit analysis must be a crucial part of the process.

Duplication of Information

The disclosure or information relating to mutual funds is fully addressed by the Fund Facts required as a result of the Point of Sale requirements and other existing disclosure documents and to do so in the proposed Amendments is not necessary or desires as it is duplicative and potentially confusing to clients.

2. Specific Concerns with CSA Proposal

In addition to the general concerns outlined above we have a number of specific issues with aspects of the proposal:

Annual Disclosure of Charges

Certain elements in the proposed Amendments for annual disclosure of charges are duplicative at best and misleading at worst. These include the following examples. The proposed Amendments will require significant changes to dealers' back office systems and at a significant cost. In order for dealers to comply with the proposed Amendments mutual fund managers and other security issuers will have to provide information in an industry accepted electronic format.

- the proposed referral fee disclosure is impractical. This information either before or at time of payment is already required under NI 31-103 and the proposed annual summary is duplicative. It is unclear what is required to be disclosed, namely whether it is what is paid to the dealer or what the advisor receives. In addition, referral arrangements may be structured on a basis where remuneration is not determined on an account by account basis but is determined on an aggregate of all accounts, tiered based on certain thresholds or on some other basis that makes it impossible to determine the referral payment on an account by account basis;

- the proposed trailing commission reporting is also problematic. Generally speaking, this information is not currently provided to dealers on a basis that would facilitate compliance with the rule (in particular it is not provided on a client or account basis but is rather provided on a rep code basis). Importantly, nothing in the proposed Amendments would obligate third parties (such as mutual fund managers or financial institutions) to provide the information to dealers on a basis that would allow this reporting. In order to provide such information on an account by account basis the account must be set up at the mutual fund manager on individual basis, not on a bulk basis which may be the case for institutional clients. This data would have to be provided in an industry accepted electronic format in order for dealers to be able to store, aggregate and integrate the data efficiently and effectively. For

dealers who hold client assets in nominee name the mutual fund manager will have to have assets associated with the dealer's account number for the client in order to produce the required information. In order to meet these requirements, mutual fund managers may require significant system changes as will the dealers. Managers of prospectus exempt investment funds or financial institutions with respect to guaranteed investment certificates which pay trailer fees will also require system upgrades to provide such data. Further, in this case it is also unclear whether disclosure would be what is paid to the dealer or what is paid to the advisor; and

- the proposed disclosure on a 12 month basis of transaction charges which includes redemption fees as well as disclosure on trade confirmations of deferred sales charges is also problematic. Many mutual fund managers provide to dealers on a daily basis in the T files (trade confirmation files) redemption charge information. Dealers will have to build systems to extract and aggregate this information in order to meet the requirements. In addition, mutual fund managers or other investment product managers who currently do not provide such information will be required to modify their systems to provide such information and, as described above, an industry accepted electronic format will be required in order for dealers to meet this requirement.

3. How Performance Reporting and Cost Disclosure Issue Should be Addressed

In our view these issues can be best addressed, in a number of efficient and cost effective ways.

Either the SROs should proceed on this issue or the CSA should, but not both. If it is the latter, the SROs should stop their process and let the CSA take the lead. If it is the former then the CSA should require the SROs to adopt consistent requirements, except where justifiable differences exist, to ensure that investors who may have an account with an MFDA member and an IIROC member are receiving information and disclosure in a consistent and uniform manner.

The requirements should treat different products consistently and fairly and should not mislead clients through selective rules on cost disclosure and compensation disclosure.

The focus should be on the enhanced disclosure that would be both meaningful to clients and can be provided within a fairly short period such as the use of Fund Facts in the Point of Sale initiative.

The key objective of performance reporting should be on providing clients with the information necessary to determine whether their account made money. As we noted above, this is the focus of the pending MFDA rule change which includes the option to provide percentage returns.

Finally, in our view the use of benchmarks should be discouraged for the reasons stated above.

We appreciate having this opportunity to share our views regarding the proposed Rules and Guidelines and would be pleased to discuss any of these concerns with you at your convenience. If you would like to do so, please contact me directly at (905) 212-9799.

Yours truly,

INVESTMENT PLANNING COUNSEL INC.

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cc Mutual Fund Dealers Association of Canada
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