April 02 - 2013

PETER & YVONNE WHITEHOUSE COMMENT LETTER FOR MUTUAL FUND FEES CONSULTATION

CANADIAN SECURITIES ADMINISTRATORS
DISCUSSION PAPER AND REQUEST FOR COMMENT 81-407
MUTUAL FUND FEES
Issued Dec. 13, 2012

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario M5H 3S8
Fax: (416) 593-8145
E-mail: jstevenson@osc.gov.on.ca

Anne-Marie Beaudoin, Secrétaire
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec H4Z 1G3
Fax: (514) 864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

We appreciate the opportunity to make our views and experiences with mutual fund fees and commissions publically known through this submission.

Although this Request for Comment only relates to mutual fund fees, we would like to suggest to CSA that they extend their inquiries also into the treatment received by investors from the Investment Dealers and their Representatives and the Bank Ombudsmen, after dissatisfaction complaints are filed with these parties. We would be happy to provide the CSA with written evidence we received from an Investment Dealer V-P and particularly a Bank Assistant Ombudsman, that use false and misleading statements in order to deflate a complaint and dissuade the complaining investor that there are no grounds for the complaint.

We are small investors who were badly mislead by the lack of full disclosure of commissions and fees by the Investment Dealer's Advisor before investing in mutual funds. We are also the victims of the lack of promised service from the Advisor after purchasing the mutual funds. We very much appreciate the opportunity to define why the present Trailer Commission system and the pre-investment non-disclosure of these costs are nothing less than an egregious opportunity for the Investment Dealers and their Investment Advisor Representatives to enhance their incomes, at the expense of unsuspecting and uninformed investors.

Our submission will concentrate on drawing a line in the investor relationship with the Investment Advisor before the investments are made and then after the investment are made. We will express our views that we have developed after spending the past 2-years trying to find a penetration point through the defenses of an Investment Dealer and the second line of defense, the supposedly independent arbitrator Bank Ombudsman.

Our complaints have a direct connection with the self-serving motives that Trailer Commissions have encouraged, when Investment Advisors are really supposed to be making recommendations for the investor's best interests.
It is understandable that the Investment Dealers are fighting tooth and nail to retain the status quo. The present lack of specific regulatory disciplines allows the Dealers and their Representatives to convince the trusting investors to make their investments in a way that maximizes the commissions and fees for the Advisor at the expense of higher costs for the investor. This is both unconscionable and immoral.

Continued / 2

The reason that this disparity continues is that Advisors are now given the freedom to withhold information on investment and payment alternatives that should be made available to the investor before they invest.

The present problems BEFORE the investments are made

1. Currently, there is no regulatory requirement that the Investment Dealer or its Representative must spell out in writing all the terms and conditions, including Selling Commissions and Trailer Commissions paid to the Advisor, that are associated with a particular mutual fund purchase. Therefore, with the absence of disclosure, the investment influencing information is wrongfully denied the trusting investor.

The Observation - The conflict between the Investment Advisor's incentives and the investor's trust
If forthrightness was the philosophy of the day, the Investment Advisor should have no problem explaining to the investor how they can purchase the most suitable investments at the lowest cost. Unfortunately for the trusting uninformed investor, the Investment Advisor can claim that he has no professional obligation to educate the investor about the alternatives of front-end or back-end Sales Commissions or the consequential impact of purchasing on a DSC basis.

With this same lack of ethical standards, the Investment Advisors can impress the investor by offering 0% front-end sales Commission because the Advisor knows that he/she will be receiving 1 1/4% Trailer Commissions for the many years of the life of a mutual fund investment. (We have an offer from a TD Waterhouse PIA Investment Advisor willing to invest $20,000. for us in mutual funds with 0% buy or sell commissions)

The cynical part is that the investor does not have the option to choose between either a one-time front end Sales Commission or the never-ending Trailer Commissions. The Investment Advisor can do even better by convincing the investor to purchase on a DSC basis. The Advisor then makes a 5% upfront Commission plus the Trailer Commissions.

The Solution - A set of statutory requirements that the Investment Dealer must administer
Those requirements are that the Investment Advisor must provide a mutual fund prospectus to the investor at the time the investment recommendation is made by the Advisor. Also, the Advisor must direct the investor to the full terms and conditions and fees and commissions in writing, that can influence the investment decision that are included in the prospectus.

The problems with Sales Commissions and Trailer Commissions AFTER the investments are made

2. The present arrangement that Trailer Commissions are being paid to the Investment Advisor for as long as the investor holds a mutual fund, is tantamount to a royalty. It also defies the commercial principle of paying for services after the services have been performed. In essence, by allowing the present system to continue, the Advisor gets a guaranteed remuneration on a monthly, quarterly or annual basis, with no comparable guarantee that the services have been or will be delivered.

Another way of describing the situation is that even though the services are being pre-paid, there is no guarantee that the Advisor will deliver services of equivalent value.

3. What may not be obvious to many observers of the Trailer Commissions dispute with the Investment Dealers, is that there is a grossly distasteful fact that when Advisors convince the investors to purchase a mutual fund, in addition to the receiving an immediate Sales Commission, the Advisors also acquire an asset of value without putting up any money. The Advisors also gain this asset without having to give a CONTRACTUAL guarantee that they will deliver a service in return for the asset. This is not a question of building goodwill through service to clients, this is just another additional ongoing sales commission which also has an asset resale value for the Investment Advisor.

The Trailer Commissions become real fixed assets in the hands of the Investment Advisors for two reasons.

The first reason is that no matter how badly the mutual fund performs and no matter how much capital is lost, the Advisors still get the Trailer Commissions based on the original investment. This makes Trailer Commissions fixed assets in the hands of the Investment Advisor.

Continued / 3

There is another way of looking at the cynical benefit attached to the Advisors receiving Trailer Commissions. At the same time as the Advisors are supposed to be executing their recommendations to build and protect an investor's retirement plans, the Advisors are also building their own retirement plan with guaranteed contributions from their investor-client as long as the investor retains the investments and the Advisor.

The second reason is an even more insidious alliance with Trailer Commissions and Investment Dealers. The day after the Advisors convince the investors to purchase mutual funds, they collect their Sales Commissions. As the Trailer Commissions are an asset in the hands of the Advisors, the Advisor is then in a position to immediately sell the investor's mutual fund portfolio for cash, for the value that the Trailer Commissions will earn, to the next Advisor. **The investor is helpless. The Investment Advisor can make this sale without any compunction for the investor's best interests.**

This means that Advisors can pocket a Sales Commission and then immediately pocket a second Commission profit when selling the future value of his Trailer Commission asset. Whether this sale of the value of the Trailer Commissions takes place one day or 18-months after the investor purchases the mutual funds, the additional profit from the sale **is still an unearned Commission in the hands of the Investment Advisor.**

We experienced this scenario when our investment advisor convinced us to make certain mutual fund investments on a DSC basis. Then, 18-months later he sold our portfolio accounts to another Investment Advisor, without any prior discussion with us. The next Investment Advisor then immediately told us that the type of mutual fund investments we held were too risky and we should sell 25.8% of them ($63,000.) and purchase other less risky investments. Had we have gone along with this new recommendation, we would have had to absorb over $3,500. in DSC penalties plus new Sales Commissions on the new investments, for a total capital loss of about $5,000. (There were no options to switch funds to fixed income investments from the same mutual fund company) **We would have been getting nailed these penalties while at the same time our first Investment Advisor walked off with the immediate 5% DSC Sales Commission and the profit from selling our portfolio accounts. We understand that our first Investment Advisor had close to 100 accounts in his portfolio "book" of accounts. One has to wonder how many of these accounts were influenced to purchase the same mutual funds as we were on a DSC basis, and then received the recommendation to sell after the second Investment Advisor acquired the accounts.**

4. There is no recourse with the present direct payment of Trailer Commissions to the Investment Dealer/Advisor. There are three reasons why it is unjust that the mutual fund companies are permitted to camouflage the assumption that the investor should be happy with Trailer Commissions being paid arbitrarily to the Investment Dealer/Advisor. These Trailer Commissions are nothing more than disguised additional sales commissions on the pretense that the Advisor will provide a continuing service of like value. The fact that mutual fund companies do not have the power to withdraw the Trailer Commissions against a complaint of lack of service, clearly defines that the Trailer Commissions are nothing less than a deceptive continuous sales commission bonus for the Investment Advisor. The purpose being for the Advisor to convince the investor to stay with the mutual funds, regardless of how badly they are performing.

Reason #1 When an investor makes a $200,000. mutual fund investment, the Investment Dealer/Advisor makes about $2,500 to $3,000. per year Trailer Commissions. No matter whatever arguments the Investment Dealer can come up with, the Trailer Commissions are not gifts from the mutual fund company's treasury. The Trailer Commissions are assets that belong to the investor and it is an arbitrary transfer of wealth from the investor to the Investment Dealer/Advisor when Trailer Commissions are paid. If the Advisors are not doing their jobs, the investors have no recourse to recover the $2,500. to $3,000.assets per year that were transferred to the Investment Dealer/Advisor.

The deception is even more aggravated when the investor is unaware that there is such a thing as Trailer Commissions because the Investment Advisor withheld written information regarding this subject.

Continued / 4

Reason #2 If the investor terminates the Investment Advisor for any reason, the investor has no recourse to recover any of the future Trailer Commissions. Where do those Trailer Commissions go ? Do they continue to go into the Investment Dealers Kitty ? When we invested through the particular Investment Dealer, the Dealer never **disclosed in writing** that under all conditions they would receive the future Trailer Commissions !

Reason #3 What happens to the Trailer Commissions when the Investment Dealer decides that they cannot tolerate the investor's complaints about the unsatisfactory advice and misleading investment recommendations ? All the Investment Dealers have to do is resign the account because it is easier to abdicate their responsibility than it is to rectify the problems that the investor brought to their attention. **As this account resignation is initiated by the Investment Dealer, why is there no recourse to repay the Trailer Commissions to the investor ?** Also, if the investor is no longer a client with the Investment Dealer, where do the future Trailer Commissions go ? What happens if the investor decides he wants to do take care of his own mutual fund portfolio and not do business through any other Investment Dealer, where do the Trailer Commissions go ?

5. Regarding the question of equity mutual fund investment sales and Trailer Commissions for RRIFs. Because the suitability of the type of investments for RRIFs is to some extent a subjective question, which depends on the investor's investment needs profile, there should be distinct Investment Advisor rules defined by statutory regulation. Here are the reasons -

Reason #1 When converting RRSPs and investing in RRIFs, the investor is then moving immediately from the accumulation phase into the immediate distribution phase. The investor does then not have the time to tolerate unpredictable capital value declines. Therefore, the present discretionary opportunity for the Investment Advisor to recommend that the 70+ year-old RRIF investor purchase long term equity mutual funds should not be permitted, with one exception. That exception would be that the investor signs a release stipulating that contrary to the Investment Advisor's best recommendation, the investor singularly decides to make a particular investment.

Reason #2 The facility for the Investment Advisor to recommend the investor purchase on a DSC basis, not only for RRIF mutual fund purchases, but for all mutual fund purchases, should be discontinued. As a RRIF investor is then 70 years or older, the unpredictability of the need for funds is greater than it is for a younger person investing in RRSPs. Therefore, the possibility of the older investor being faced with the untimely need to cash-in mutual fund investments would trigger DSC early redemption penalties. These early redemption penalties would be greater for the first five years when compared to paying a front-end sales commission, if any. This would also be the case if the investor passes away and the estate needs the cash to pay taxes and distribute the assets.

The present opportunity for Investment Advisors to recommend that the investor purchase mutual funds on a DSC basis in order to save paying sales commissions can be a gross deceit by omission. This deception takes place when the Investment Advisor omits providing the investor with the written details of all the consequences of purchasing mutual funds on a DSC basis. Also, why would an informed investor take on the consequential liabilities of purchasing on a DSC basis to save the Sales Commission when Sales Commissions are negotiable from 0% to 5% ? As we mentioned earlier, we had an offer of 0% Sales Commission from a TD Waterhouse PIA Investment Advisor when we were interested in purchasing $20,000. worth of mutual funds.

How is it possible for an Investment Advisor to deceptively masquerade as an Advisor without fully informing the investor in writing of all the alternative costs and other implications of making a particular investment decision ? We believe this is possible because there is no published list of standard instructions that each Investment Advisor must abide by. Even when it can be demonstrated that the Investment Advisor has violated the CFP or CIM Code of Ethics, there is no coordinated enforcement taking care of the investor's interests.

Please feel free to contact us for clarification of any information we have put forward.

Regards

Peter & Yvonne Whitehouse
905-607-5654