ING DIRECT

Mutual Funds

April 12, 2013

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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
e-mail: comments@osc.gov.on.ca

Madame 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
e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: Canadian Securities Administrators Discussion Paper and Request for Comment 81-407, *Mutual Fund Fees*

On behalf of ING Direct Asset Management Limited ("ING Direct"), we appreciate the opportunity to comment on the Canadian Securities Administrators' ("CSA") Discussion Paper and Request for Comment 81-407, *Mutual Fund Fees* (the "Discussion Paper").

ING Direct is a wholly-owned subsidiary of ING Bank of Canada. We are responding in our capacity as an investment fund manager.

ING Direct manages mutual funds subject to National Instrument 81-102, *Mutual Funds* that follow an index based investment strategy. The funds are sold through direct channels, exclusively through our affiliated mutual fund dealer ING Direct Funds Limited ("ING DFL"), who is a member of the Mutual Fund Dealers Association of Canada ("MFDA").

The topic of mutual fund fees is very important to ING Direct. Mutual fund price and cost transparency are key issues at our firm, central to our culture, and influence many of the decisions that we make with respect to our product launches or redesigns.

We were disappointed that the final cost disclosure and performance reporting requirements for registered firms will require disclosure of trailing commissions received as a single dollar figure that is buried within boilerplate disclosure. Our affiliate ING DFL responded to the request for comments[1] on these proposals and argued that clear cost descriptions of the trailer fees on a fund-by-fund basis would provide beneficial disclosure to consumers on exactly how costly each mutual fund held within a client's portfolio was, both in terms of the management expense ratio and the trailing commission. While more ambitious than the CSA's original proposal, our affiliate believes, and we support their opinion that (i) the end result would have been significantly better for consumers in the long run, (ii) the result would have been more closely aligned with the CSA's goals at enhancing transparency in mutual fund fee disclosure, and (iii) it would have been worth the effort to explore the proposal and provide dealer firms with additional time to implement system enhancements to provide the key cost information about each mutual fund investment on an individual basis.

Our response is divided in five parts. We will provide our comments on four of the seven issues raised for comment in the Discussion Paper, and submit our conclusion.

I. CSA Issue for Comment: A standard class for DIY investors with no or reduced trailing commission.

We agree with the CSA that a Do It Yourself ("DIY") investor needs and generally requests less investment advice than a consumer that has approached a full service advisor. However, we would also like to articulate that the trailing commission is payable for both advice provided, as well as all other services provided to a client that are not advice related. In terms of a discount broker or other direct channel provider, the registered firm is providing and maintaining a website and/or a call centre for order execution. Such an infrastructure setup requires constant maintenance and upkeep, including systems builds and enhancements, such as when regulatory changes necessitate an amendment to current processes. A full service advisor may offer significant time and

[1] CSA Notice and Request for Comment on Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP Requirements, Exemptions and Ongoing Registrant Obligations, June 14, 2012, (2nd Publication), *Cost Disclosure, Performance Reporting and Client Statements*

effort on behalf to provide advice, but may submit trade execution requests at low cost via fax or other means.

Additionally, in contrast to a discount broker that is registered as an investment dealer, a dealer registered in the category of a mutual fund dealer is restricted as to the types of investments that can be sold to consumers. While an investment dealer may generate commission revenue on purchase and sale transactions of securities other than mutual funds, a mutual fund dealer may only act as a dealer in respect of securities listed under s. 7.1(2)(b) of National Instrument 31-103, *Registration Requirements, Exemptions, and Ongoing Registrant Obligations,* and generate revenue for the most part from these investments. Accordingly, revenue generated is principally expected to come from a sales commission or an ongoing trailer commission.

We believe that in the case of a mutual fund dealer offering services to a DIY investor, an ongoing trailer commission is appropriate, as the technology for executing trades is, in our experience, consistently invested in and improved. A direct channel provider may from time to time implement enhancements such as the electronic delivery and retention in a secure portion of the dealer's website of tax information slips, keyboard chat conversation capabilities with dealing representatives as well as video conferencing. Therefore, while we agree that the trailing commission for a DIY investor should be lower than for an investor dealing with a full service advisor, we do not support the view that "no" trailing commission should be payable by DIY investors, where registered firms provide ongoing services which are necessary for the continued existence of the account relationship.

II. CSA Issue for Comment: Trailing commission component of management fees to be unbundled and charged/disclosed as a separate asset-based fee

We support the initiative of providing cost disclosure to consumers that would break down what is payable to the investment fund manager as a management fee, and what is payable to the registered dealer firm as a trailing commission.

We support measures intended to increase customer awareness of fees and expenses involved in the investment decisions they make. We believe that if we were to ask our customers if they want to know how much their mutual fund investments cost, that they would welcome the opportunity of receiving this information. We are in business first for our customers, and as consumer advocates need to respond to the growing customer interest for mutual fund fee disclosure.

We have some concerns with the proposed requirement to require that any proposed increase in the trailing commission be subject to a securityholder vote prior to implementation.

Our firm has worked in conjunction with ING DFL to determine an appropriate amount of trailing commission to ensure that the dealer is able to maintain all services to operate as an ongoing entity, and provide continuous servicing to its clients. We note that over the past ten years, there have been significant regulatory changes affecting our affiliated dealer that have increased the cost of doing business, including amendments to the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations, as well as the introduction of the MFDA and necessary implementation of the MFDA Rules. Additionally, we expect dealers to face additional compliance costs with the upcoming implementation of FATCA, further amendments to Canada's anti-money laundering regime, and the new anti-spam legislation, to name a few.

We have concerns about the possible need to raise a trailing commission due to increased compliance costs being subject to a securityholder vote. Specifically, we are concerned as to the possible final outcome of a securityholder vote against a proposal to increase the trailing commission in such circumstances which prevents the implementation of the increase. We urge the CSA to consider exemptions to the proposal to require firms to obtain a securityholder vote in certain circumstances, such as where a dealer firm is facing additional client servicing costs due to new regulatory requirements coming into force.

III. CSA Issue for Comment: Cap commissions

In respect of the CSA initiative which seeks to cap commissions, we have the same concerns as discussed above, which are that regulatory changes may raise costs for our dealer firm, and there are circumstances where it may be necessary to raise the commission payable to the dealer to meet these rising costs.

We agree with the CSA that the term "trailing commissions" needs to be plainly labelled and do not believe that this term is an intuitive description of the ongoing sales commission paid to advisors. We do not see it as being possible to have a discussion with most clients about trailing commissions, without also needing to explain what these commissions are.

IV. CSA Issue for Comment: Discontinue the practice of advisor compensation being set by mutual fund manufacturers

We have put a great deal of thought into this option at our firm during our review of the Discussion Paper from discussions in training sessions with our dealer's dealing representatives through to our Senior Management Team. We believe that this would be the optimal long term ideal for the Canadian mutual fund marketplace. After reaching this conclusion, we have considered the practical implications of what it would mean to implement this solution should it become a mandatory requirement in Canada.

We submit that if this initiative were implemented over a short time frame, it would be extremely disruptive to mutual fund investors. As the CSA has noted, many investors are not aware that costs exist in respect of many mutual fund investments. A necessary part of implementing this initiative should include a public education campaign which would require the participation of the regulators as well as industry. An implementation period should also be staggered over time such that consumers are not abruptly transitioned from one fee model to another.

V. Conclusion

We commend the CSA for actively seeking input from market participants on the Discussion Paper. ING Direct is grateful to have had the opportunity to provide its comments. We generally support the CSA's initiative to seek to increase transparency around mutual fund fees in the Canadian marketplace. However, we believe that certain aspects of the Discussion Paper may require further consideration or refinement as discussed in our responses and comments described above, particularly with the proposed restriction against raising a trailing commission where regulatory compliance expenses could raise client servicing costs at dealer firms.

Should you have any questions, we would be pleased to provide further explanation with respect to matters described above at your convenience.

Yours truly,

Frank Blackman
Senior Legal Counsel