NATIONAL
BANK

BY ELECTRONIC MAIL: comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

May 26, 2014

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumers Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Attention:
The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22nd floor
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3

Dear Sirs and Mesdames:

RE: CSA Notice and Request for Comment – Implementation of Stage 3 of Point of Sale Disclosure for Mutual Funds (Second Publication)

National Bank Financial ("NBF"), National Bank Direct Brokerage ("NBDB") and National Bank Investments ("NBI") (collectively, "we") appreciate the opportunity to provide our comments with respect to the proposed amendments published on March 26, 2014 for the Implementation of Stage 3 of Point of Sale Disclosure for Mutual Funds: Proposed Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure and Companion Policy 81-

101CP to National Instrument 81-101 Mutual Fund Prospectus Disclosure (collectively, the "Proposed Amendments").

We are one of Canada's leading integrated financial groups: (i) NBI manufactures mutual funds, owns a proprietary distribution channel and supplies services to third party distributers; (ii) NBDB operates an order execution-only firm; and (iii) NBF is an IIROC-regulated investment dealer throughout Canada. We distribute over 82 mutual funds managed by NBI as well as over 2800 mutual funds from other firms (the number increases to 15,000 when we include all the different series).

We support regulatory initiatives, such as CRM (phase 2) and Point of Sale (Phase 2) which provide better transparency to investors and also informational tools which will permit investors to make informed investment decisions. However, it is important to keep in mind that implementing the Proposed Amendments will require significant time and financial resources to modify our systems and operations.

Please see below our comments on the questions in the Proposed Amendments:

Exceptions from Pre-Sale Delivery of the Fund Facts

1. While the Proposed Amendments generally require pre-sale delivery of the Fund Facts, they also set out specific circumstances that would permit post-sale delivery.

a) Do you agree that we should allow post-sale delivery of the Fund Facts in certain limited circumstances? In particular, are there circumstances where post-sale delivery of the Fund Facts should be permitted but are not captured in the Proposed Amendments?

We agree that post-sale delivery of the fund facts should be permitted in certain circumstances. The CSA should also include an exception where clients can expressly waive the pre-sale delivery of the Funds Facts requirement, as there may be situations where clients may not want to receive the Fund Facts before their purchase.

b) When pre-sale delivery is impracticable, one of the conditions for post-sale delivery of the Fund Facts is that the dealer provides verbal disclosure to the purchaser of certain elements contained in the Fund Facts. Please comment on whether the proposed disclosure elements are appropriate. If not, what additional disclosure should be included? Alternatively, are there any disclosure elements that should be excluded?

The verbal disclosure of certain sections of the Fund Facts as stated in Section 3.2.1.1 (3)(e) will be burdensome and impractical in certain cases. The verbal disclosure under Section 3.2.1.1 (3)(e) will take approximately six (6) minutes, which does not include the time to answer any questions the client may have during the disclosure. For example, a client who may wish to purchase four (4) mutual funds at the same time would mean that the client would be spending over 24 minutes on the telephone before being able to purchase his mutual funds; most clients would find this unacceptable. This will have a significant impact on all our entities and also in the manner in which we offer our services, our resources, as well as our capacity to answer and support our clients in a timely manner. In order to provide our clients with the best service possible, we would need to hire additional resources to respond to a higher volume of calls. We want to keep our ability to offer the best service to our clients and in the most timely manner possible, however this requirement will most likely create a lot of client dissatisfaction and frustration. An unintended consequence may be that clients will decide to choose another investment product which is not regulated in the same manner.

POS (Phase 3) and CRM-2 have similar objectives which are transparency and information, however, there seems to be an overlap in the information to be provided under Section 3.2.1.1 (3)(e) and disclosure requirements under CRM-2 regarding costs. We recommend that the verbal disclosure be in a summary form or alternatively, the CSA should include an exception where clients can expressly waive the verbal disclosure requirement as set out in Section 3.2.1.1 (3)(e), as there may be situations where clients may not want to hear such verbal disclosure.

c) In the case of pre-authorized purchase plans, a Fund Facts would only be required to be sent or delivered to a participant in connection with the first purchase provided that certain notice requirements are met. Please comment on whether the Fund Facts should also be sent or delivered to a participant if the Fund Facts is subsequently amended and/or every year upon renewal of the fund facts. If so, what parameters should be put in place for such delivery? For example, should it be delivered in advance of the next purchase that is scheduled to take place after the Fund Facts has been amended or renewed? Or would post-sale delivery be more appropriate?

We believe that most of the notice requirements under Section 3.2.1.1 (5) (b) are adequate and no additional delivery requirements are necessary where the Fund Facts are subsequently amended or renewed. We do have a concern regarding Section 3.2.1.1 (5)(b)(ii) which requires a dealer to include a reply form with their notice, as this requirement represents significant costs to our operations.

<u>Compliance</u>

2. The CSA expect that dealers will follow current practices to maintain evidence sufficient to demonstrate effective delivery of the Fund Facts. Are there any aspects to the requirements in the Proposed Amendments that require further guidance or clarification? If so, please identify the areas where additional guidance would be useful.

The CSA's expectation that dealers follow their current practices to maintain evidence sufficient to demonstrate effective delivery of the Fund Facts is manageable, however we need to keep in mind that additional costs will be required for any IT development, supervision and training.

<u>Anticipated Costs and Benefits of Pre-Sale Delivery of the Fund Facts</u>

3. We seek feedback on whether you agree or disagree with our perspective on the benefits and costs of implementing pre-sale delivery of the Fund Facts. Specifically, do you agree with

our view that the costs will be incremental in nature and/or one-time cost? We request specific data from the mutual fund industry and service providers on any anticipated costs.

The Proposed Amendments will have a significant impact on our activities.

NBF, an IIROC dealer, has a full-service advisory unit. One of our goals is to provide our clients with the best service possible in a timely manner. We offer many different investment solutions, including mutual funds, to our clients. Our advisors call their clients on a regular basis and the pre-sale delivery of the Fund Facts or the verbal disclosure requirement will create a lot of client frustration as they will not be able to purchase one or more mutual funds when they want and within a reasonable timeframe. We are very concerned that POS (Phase 3) will create regulatory and product arbitrage, which will have a negative impact for clients as well as for the mutual fund industry as a whole. Statistics show that the vast majority of Canadians hold mutual funds in their portfolios. Frustrated and dissatisfied clients may decide to invest in unsuitable investment products with less regulatory burden. There should be a level playing field for investment products, whether they are ETFs, segregated funds or mutual funds.

As an order execution-only dealer, NBDB offers a variety of investment tools for clients who are seeking to manage their assets themselves. Our clients do their own research regarding the investment products which may be the most suitable for them and do not contact our representatives regarding investment recommendations. At NBDB more than 80% of mutual fund transactions are done online without the client contacting our representatives. If a client is required to call us before each mutual fund transaction because the Fund Facts is unavailable automatically, the unintended consequence may be that in the future he may decide to purchase another investment product to avoid the verbal disclosure burden. The client's choice as to the distribution channel for the purchase of mutual funds should be respected and additional regulatory burden should not be required. According to an Investor Economic report, as at December 2013, mutual funds represent approximately 9.5 % of the asset under administration of discount brokers in Canada or $28 billion.

Being able to provide our various distribution channels with a technological solution which would allow them to quickly and effectively have access to the most updated Fund Facts would be very useful and advantageous. However, such technological solution will result in a significant cost to us. The costs would include implementation costs as well as recurring costs to have access to a reliable repository of Fund Facts. We also have a concern regarding the number of service providers which may provide such services. We have conducted a research regarding potential service providers and to our knowledge, only two (2) of them can currently fulfill the POS (Phase 3) requirements. This situation is putting members of our industry at financial risk as they'll need to negotiate contracts with a "virtual monopoly". This limited access to service-providers may result in a situation where there's a "concentration risk in outsourcing". Finally, we cannot give an accurate estimate regarding the implementation costs as well as recurring costs for service providers, as we would need to have the Proposed Amendments finalized in order to determine the modifications that will need to be done to our systems. However, from our experiences with other regulatory initiatives that required system changes, we can estimate that the anticipated costs will be in the order of millions of dollars.

<u>**Transition Period**</u>

4. We seek feedback from the mutual fund industry and service providers on the appropriate transition period for full implementation of the Proposed Amendments. For example, assuming that publication of final rules takes place in early 2015, please comment on the feasibility of implementing the Proposed Amendments within 3 months of publication. Would a longer transition period of 6 months or 1 year be more appropriate? If so, why? In responding please comment on the impact these different transition periods might have in terms of cost, systems implications, and potential changes to current sales practices.

A one (1) year transition period is insufficient to implement the requirements under the Proposed Amendments. We would need a two (2) year transition period. The greatest challenge for our organization is that there are multiple regulatory initiatives, such as CRM-2 and FATCA, which have similar implementation dates, require modifications to the same systems and are competing for the same resources. All these major projects, including POS (Phase 3), require resources which are currently being stretched to their limits. We request that the CSA provide the industry with guidance with respect to the regulatory initiative(s) which should be prioritized and minimize overlapping the implementation periods for multiple regulatory initiatives.

For any technological solutions, we require that the Proposed Amendments be finalized before our IT department can provide us with an estimate as to the timeframe for the implementation of the requirements. The evaluation, approvals, planning the architecture of the solution and the implementation period can be lengthy depending on the requirements. Should the Proposed Amendments be adopted unchanged, we would need to modify our web platforms as well as implementing a vendor solution for all our call centers. We must also take into account (i) extra personnel costs, as call centers capacity must be increased to accommodate an increased customer service time with each client, in order to provide the required information for each mutual fund transaction, (ii) time for additional training and (ii) time to update our policies and procedures.

Finally, as there are a limited number of service providers, we have concerns about their capacity to handle and deliver the necessary technological solutions on time.

5. We are currently contemplating a single switch-over date for implementing pre-sale delivery of the Fund Facts. From a business planning and business cycle perspective, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.

We would appreciate no regulatory changes be introduced during the RRSP season and in the middle of the month.

Conclusion

We would like to thank you for providing us with an opportunity to comment on this important issue. We look forward to our continued participation in any further public consultation on this topic and would be pleased to discuss our input in greater detail with you. We have expressed our main concerns and our objective is to find solutions that are relevant for, and serve the needs of the Canadian market. We are willing to take a leadership role in this issue by participating in consultations with investors, industry participants and the CSA.

Yours truly,

Michel Falk
President and CEO of National Bank Investments and National Bank Trust,
Senior Vice-President, Investment Solutions and Trust Services

Martin Lavigne
President, National Bank Financial – Wealth Management

Nancy Paquet
President, National Bank Direct Brokerage

Nathalie Lauzier
Executive Vice-President and Head of Distribution of National Bank Investments