

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

June 2, 2013

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

Attention:	The Secretary	M ^e Anne-Marie Beaudoin
	Ontario Securities Commission	Corporate Secretary
	20 Queen Street West,	Autorité des marchés financiers
	22 nd Floor	800, square Victoria, 22e étage
	Toronto, ON	C.P. 246, tour de la Bourse
	M5H 3S8	Montréal (Québec) H4Z 1G3

Dear Sirs / Mesdames:

Re: Canadian Securities Administrators (the CSA) Proposed Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101) and Companion Policy 81-101CP, dated March 26, 2014 (the Proposed Amendments)

BMO Investments Inc., BMO Nesbitt Burns Inc., BMO InvestorLine Inc., BMO Harris Investment Management Inc., and BMO Asset Management Inc. (together, the **BMO Registrants**, or **we**) welcome the opportunity to provide comments on the Proposed Amendments. We have been involved with the Investment Industry Association of Canada (**IIAC**) and Investment Funds Institute of Canada (**IFIC**) comment letters. We are in substantial agreement with the comments made by these industry organizations.

Summary

BMO Registrants service a diverse spectrum of mutual fund investors

We are in a unique position to consider the effect of the Proposed Amendments from the perspective of an investment fund manager, portfolio manager, mutual fund dealer, full service dealer and execution-only (self-directed) broker. BMO Registrants distribute mutual funds through discretionary managed accounts, full service branches, call centres, and online.

We are focussed on defining a great customer experience by delivering services with the quality, speed and cost effectiveness that our clients need and expect. We have spent a lot of time and resources building a deep understanding of how our clients want to interact with us and we have concluded that one approach does not work for all of our clients. The CSA's Proposed Amendments to NI 81-101 and NI 81-101CP dated June 19, 2009 (the **2009 Proposal**)¹ contained exemptions for unsolicited and subsequent purchases that reflected the reality

¹ Ontario, Ontario Securities Commission, CSA Notice and Request for Comment: Implementation of Point of Sale Disclosure for Mutual Funds (Toronto: Carswell, June 19 2009)

that one regulatory solution could not address all of the ways Canadians purchase mutual funds. These exemptions were removed from the Proposed Amendments.

The BMO Registrants support the objectives sought in implementing pre-trade delivery of a fund facts document (**Fund Facts**) for clients who receive advice from their advisers. We recommend the re-introduction of post-trade delivery of Fund Facts for unsolicited, self-directed and subsequent purchases.

Detailed Commentary

Re-introduce the 2009 Proposal's exemptions for unsolicited, self-directed, and subsequent purchases

We believe that the CSA's reasoning in the 2009 Proposal continues to be correct and support maintaining post-trade delivery of Fund Facts for unsolicited, self-directed, and subsequent purchases. Investor protection can be achieved by maintaining withdrawal and rescission rights for unsolicited and self-directed purchasers who receive Fund Facts after their purchase. The 2009 Proposal recognized that a full service dealer's recommended trades are different than self-directed and unsolicited trades² and that a "distinction between investors who rely on a dealer's recommendation and those who rely on their own research and judgement"³ should be made.

Unsolicited and self-directed purchases

Investment representatives of order-execution only brokers cannot make investment recommendations and cannot advise clients whether an investment decision is unsuitable. While a full service dealer must advise its clients whether their unsolicited trades are unsuitable, when a client makes an unsolicited purchase through a full service dealer, the dealer is not proposing or recommending a trade. Pre-trade delivery of Fund Facts will only delay an investor from executing a decision they have already made. Post-trade delivery gives investors the speed and efficiency they seek and post-trade withdrawal and rescission rights gives investors the ability to reconsider their decision.

Comment: We recommend exempting unsolicited and self-directed purchases from the pre-trade delivery requirement provided the client receives Fund Facts with the client's trade confirmation and the client can exercise withdrawal and rescission rights within a reasonable time.

Subsequent purchases

A securityholder of a mutual fund is in a fundamentally different position than a prospective investor. Unlike a first time purchaser, securityholders are entitled to receive continuous disclosure including Management Reports of Fund Performance, financial statements and securityholder meeting materials (the **Continuous Disclosure Documents**). Each Securityholder received a copy of the Fund Facts or simplified prospectus (the **Offering Document**) with their first purchase. It follows that existing securityholders have more information prior to making a subsequent purchase than prospective purchasers have for their initial purchase.

By exempting subsequent purchases, the 2009 Proposal reflected the difference between the information securityholders and prospective investors have. By removing this exemption, the Proposed Amendments will require the pre-trade delivery of Fund Facts to securityholders who already have the fund's Continuous Disclosure Documents and Offering Document. It is unclear how securityholders benefit from having their subsequent purchases delayed so they can add the Fund Facts to the Continuous Disclosure Documents they have.

² *Ibid.* at 4.

³ *Ibid.* at 19.

Comment: We recommend exempting subsequent purchases from the pre-trade delivery requirement.

Broader application of the oral presentation option

We are committed to maintaining contact with our clients in the method that best suits their needs. BMO Investments Inc. has set up the BMO Investment Centre (**BMOIC**) to accommodate clients without internet access or who prefer to speak directly with a representative. BMOIC receives calls and requests from existing clients and does not conduct any client outreach functions. Typically, clients telephone BMOIC to request a change to their account, e.g., to purchase or redeem mutual funds. In some cases, clients request input from BMOIC's representatives, all of whom are licensed to provide investment advice. Under the Proposed Amendments, the only circumstance in which a client can proceed with a fund purchase over the phone without first receiving a Fund Facts is where the pre-sale delivery of the Fund Facts is impracticable. This implies that clients and sales representatives are unable to have a meaningful discussion about the purchase of a mutual fund without the aid of a written document, and unduly delays transactions for those clients who want to purchase mutual funds without paper or the internet.

Comment: Clients should be permitted to purchase a mutual fund over the phone without first receiving Fund Facts whenever they: (a) express a clear desire to proceed with the transaction, (b) receive the Fund Facts with the trade confirmation; and (c) can exercise withdrawal and rescission rights within a reasonable time.

Exemptions for pre-authorized purchase plans

Pre-authorized purchase plans (**PACs**) are standing instructions to purchase a set amount of mutual fund securities on predetermined dates. As securityholders, PAC investors receive Continuous Disclosure Documents. Pursuant to existing exemptions, subsequent purchases by PAC investors are exempt from the trade confirmation delivery requirements. In accordance with exemptive relief, securityholders: (a) receive a copy of the Offering Document on their initial purchase; (b) may request a copy of the Fund Facts at any time; and (c) are reminded of these rights annually. After the effective date of the Proposed Amendments, dealers will be required to send a new Fund Facts to PAC investors before the next periodic purchase. This delivery requirement is onerous, duplicative and inconsistent with the policy reason for the existing PAC exemptions.

Comment: We recommend removing this requirement to deliver Fund Facts to PAC investors because sending PAC investors annual notice regarding how to receive Fund Facts is sufficient and is consistent with the current exemptions.

Post-trade delivery of Fund Facts to portfolio managers of discretionary accounts

Section 14.12 of National Instrument 31-103 permits the delivery of trade confirmations to the portfolio manager of a discretionary managed account. Where the client relationship is between the portfolio manager and the client, it is unclear how a dealer would confirm delivery of Fund Facts to the client prior to executing the trade.

Comment: The Proposed Amendments should include an exemption from the pre-trade delivery requirement if the dealer delivers the Fund Facts to the portfolio manager with, or prior to, the trade confirmation.

Withdrawal and rescission rights

Subsection 71(2) of the Ontario Securities Act (the **OSA**) grants purchasers the right to withdraw from a mutual fund purchase within 2 days of the receipt of the mutual fund's simplified prospectus or, after June 13, 2014, Fund Facts. In the existing post-trade delivery system, clients could cancel a transaction after the purchase. Under the Proposed Amendments, if the client receives Fund Facts four days prior to the purchase, the client's right to withdraw the transaction will expire two days before the client's purchase.

Comment: We recommend that withdrawal rights be clarified.

It should be noted that withdrawal and rescission rights vary from province to province. In order to execute a purchase immediately without first delivering a Fund Facts to the client, section 3.2.1.1(3)(e)(v) of the Proposed Amendments requires verbal disclosure of a summary of any applicable withdrawal and rescission rights. We are concerned that this kind of legal information should be provided by a legal professional who is qualified to give that advice in the province or territory the client resides.

Comment: We recommend that oral disclosure of these rights, if any, be limited to referring the client to item 2 of Part II of the Fund Facts.

The impact of CRM on the Proposed Amendment's timelines

Phases 1, 2 and 3 of the Client Relationship Model (**CRM**) are scheduled to be implemented on July 15, 2014, July 15, 2015, and July 15, 2016, respectively. Each phase of CRM represents a significant change to the way mutual fund and securities dealers interact with their clients and requires the dedication of a significant amount mutual fund managers' as well as their vendors' and distributors' personnel and resources to implement. In addition, implementation of compliance and delivery systems for point of sale will require the same personnel, systems and resources as implementation of CRM.

Comment: The CSA should avoid creating implementation deadlines for point of sale delivery that fall on or near those for CRM and we recommend that the implementation of the Proposed Amendments occurs after full implementation of CRM is complete.

Conclusion

We appreciate the opportunity to provide our comments on the Proposed Amendments and, as always, look forward to providing any assistance to the CSA in its continued efforts to ensure that investors are protected and markets function efficiently.

Yours very truly,

BMO FINANCIAL GROUP

(signed) "Bill Haldane"

Bill Haldane
Chief Compliance Officer
Wealth Management, Legal, Corporate & Compliance Group