VIA E-MAIL:

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June 9, 2017

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

The Secretary
Ontario Securities Commission
20 Queen Street West
Suite 1900, Box 55
Toronto, Ontario
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Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
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Montréal, Québec
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Re: Canadian Securities Administrators (CSA) Consultation Paper 81-408 - Consultation on the Option of Discontinuing Embedded Commissions

We are writing on behalf of ATB Investor Services with respect to the CSA consultation paper published on January 10, 2017 seeking input on potential impacts of discontinuing embedded commissions.

Background on ATB Investor Services

ATB Investor Services (ATBIS) is a trade name under which three legal entities wholly-owned by ATB Financial operate: ATB Investment Management Inc.(ATBIM), ATB Securities Inc.(ATBS) and ATB Insurance Advisors Inc. ATB Financial is a Crown corporation owned by the Province of Alberta.

ATBIS had approximately $16.7 billion in assets under administration as of March 31, 2017. ATBIM is registered as a portfolio manager and investment fund manager; in addition to its private counsel business, ATBIM acts as portfolio advisor and manager of ten mutual funds. Those funds are primarily distributed through ATBS, an IIROC Dealer Member.

General Comments

We believe that investors deserve access to advice regardless of invested dollars and investment fund managers and advisors deserve to charge a fair price for the advice provided. Investors should also receive – from investment fund managers and dealers – sufficient information to understand what they are paying for advice so that they may assess the value of it.

Recent regulatory changes, like implementation of new fee and compensation reporting under CRM2, has improved the information available to investors. It is, however, too early to tell whether better information – and potentially more questioning of fees – will result in investors really challenging their advisors to demonstrate that they are getting value for fees paid.

While we understand the CSA's desire to treat the past CRM work, best interest / targeted reforms and this consultation as somewhat separate initiatives, we believe they share a common goal of accelerating the evolution of investment firms to a less conflict of interest-ridden, more client-focused model. We have some concerns that treating these initiatives separately may have unintended consequences for investors, so would find it highly desirable for the CSA to consider and implement any future initiatives as part of a coordinated roadmap.

Key Investor Protection and Market Efficiency Issues Raised by Mutual Fund Fees and Related Evidence

We agree that the issues identified in the consultation do exist, although perhaps not universally across all investment fund managers and dealers. Of acute concern are fee or compensation practices that influence advisor or investor behaviour in selecting or retaining an investment product for reasons other than the investment thesis. We also agree that embedded fees, and particularly the proliferation of complicated fee structures, contribute to the uncertainty investors may have regarding what they pay for investment advice and ultimately the value of that advice.

However, we question whether the issues identified arise not because of the inherent nature of embedded fees, but because investment industry participants are choosing to implement embedded fees in a manner contrary to the interests of investors.

An embedded trailer fee, for example, should be (but is not always) conceptually easy for an investor to understand if the disclosure practices of a dealer exceed the regulatory minimums. Use

of an investment product with an embedded trailer fee is operationally efficient, requires less paperwork to initiate and maintain, and allows a wide-variety of securities to be held in a single account. If embedded trailer fees were the same across all investment funds, many of the issues highlighted in the consultation would not be nearly as significant particularly since growth in assets means a growth in the trailer fee collected (on a dollar basis) thus creating some alignment in interests between investor and advisor.

We note that one of the issues identified is misalignment between fees paid and value received. The CSA has presented evidence in this consultation and previously to suggest that the value of advice may exceed the benefit to investors, much of this predicated on the inability of advisors to consistently "beat the market". The consultation briefly notes that there may be other benefits of advice that, being chiefly behavioural, are intangible in nature.

We would argue that the consultation does not give the behavioural impact of good advice its full due. Good advice helps investors understand their goals and marry those objectives to an investment strategy that is expected to deliver the risk-adjusted returns that enable meeting of those goals. Good advice helps manage investor expectations, exhilaration, and fear under all market conditions. Good advice is not just selecting a security that returns more than the market over the short-term.

Most importantly, good advice is not tied to executing a transaction. Fee-based arrangements – whether direct-pay or embedded trailer fees – differ from commission-based compensation arrangements in their ability to remind investors that advice is being paid for and available even if an investor is not contemplating a trade.

Overview of the Proposed Option to Discontinue Embedded Compensation

We believe that it is in the best interest of investors to have access to good advice and have a clear understanding of the cost of that advice so they can assess whether there is alignment with the value received. We also have observed that the industry has only begun to evolve, with regulatory prodding, towards achieving this so we understand why the CSA would propose something as far-reaching as prohibiting embedded fees to accelerate this evolution. If the CSA lacks faith in the investment industry that it will make the necessary improvements on its own, we accept – grudgingly – that prohibiting trailer fees may be a necessary step to effect change even though we feel there is a less-radical approach that would still enable the CSA to meet its regulatory goals.

We are of the view that any prohibition against embedded fees should have as wide an application as possible. Coordination in respect of insurance products is particularly important so as to avoid regulatory arbitrage. We would be very concerned if dually-licensed individuals are permitted to offer segregated funds with and embedded fee component while at the same time maintaining a full securities registration. We feel this is particularly important given recent industry anecdotes suggesting that dual-licensed individuals elected to sell insurance products to avoid CRM and POS disclosure requirements.

We do not believe that investment fund managers should be able to facilitate payment of dealer compensation if embedded fees are discontinued. The complexity of this activity (assigning a

particular fee rate to each client account in the investment fund manager book of record) favours organizations which are able to manage this activity internally (or with a related-party). Accordingly, investment fund managers who rely upon a third-party service provider currently to collect embedded fees may not be able to offer a similar service to dealers. This may provide an incentive to dealers to offer funds from certain investment fund managers, which we believe creates a new conflict of interest to consider.

Depending on the exact mechanism in which fees would be collected, we would note that allowing an investment fund manager to collect fees on behalf of a dealer may result in an investor experience not materially different from existing embedded trailer fee arrangements because fee transactions may still be "hidden" from dealer account statements. That may result in an unfortunate circumstance where significant work is done to make this process operationally effective, but the actual benefit to investors is no greater than keeping the existing trailer fee approach.

Regulatory Impact & Mitigation Measures

We would agree that discontinuing embedded fees will address many of the key investor protection and market efficiency issues identified in the consultation, at least to some extent. Embedded fees are most likely to be replaced by fee-based accounts, commission-based (front load), or fee-for-service arrangements. Each of those arrangements addresses the issues somewhat differently are discussed below.

Fee-based Account Arrangements

Fee-based accounts holding investment funds closely parallel the existing embedded trailer fee regime with two notable exceptions: visibility of fee transactions in dealer account statements and (potentially) the ability to influence the level of fees.

With respect to the latter, larger clients will have access to tiered fee structures and possibly the ability to negotiate even lower fees. We believe, however, that the CSA may be overestimating the ability to extend this power to investors with fewer investable assets. Smaller investors are unlikely to obtain a level of control over fees similar to that afforded to larger investors, and may end up with fees equivalent to existing trailer fees. As a result, the only gain for smaller investors might be greater clarity on fees.

We would note that many investors, particularly smaller investors, have expressed a reluctance to enter into fee-based arrangements in order to avoid the periodic redemption of investment fund units to raise cash for fees. Fee-based accounts can also be problematic if an investor wants to hold securities other than investment funds. In that instance, unless a firm has the technological capability to assign a fee code to an asset or asset type instead of at an account level, a client could end up with two accounts (fee-based and transactional) or all assets subject to fees. This means that clients may have a choice between accepting a change in performance reporting (especially since the new performance reports are mandated at an account level) and paying more fees. We are concerned that this added complexity may make it much more difficult for an investor to understand his or her progress towards investment goals.

Commission-based Account Arrangements

Employing front-end load funds in a commission-based account will avoid problems described above with fee-based accounts. However, we feel that a turn to commission-based accounts simply migrates the nature of the conflict of interest to the potential for more frequent trading (or outright churning) for revenue purposes with no real benefit to the investor other than the simplicity and visibility of the fee structure. Perhaps more importantly, commission-based accounts (perhaps unconsciously) promote the idea that advice is needed and given only when a transaction is necessary. We do not see this as a positive development in the client-advisor relationship, nor is it setting the conditions for the provision of "good advice".

Fee-for-service Arrangements

Fee-for-service on an hourly basis is certainly well-entrenched in the legal and accounting professions but rarely seen in the investment industry, at least with retail investors. As a true "pay for what you use" model, fee-for-service arrangements would result in very good alignment with the amount of advice given and the fees paid; as the quality of advice given cannot be known as quickly as legal and accounting advice might be, there may be less of an immediate connection made to fees paid. However, dealers implementing this model would need to develop an entirely new technological and operational infrastructure to bill clients, so we would expect very little adoption of this approach except perhaps in the high net worth area.

We would also note that under a fee-for-service model an investor is most likely to obtain advice when he or she is unsure of a course of action (much like legal and accounting services). That may lead to the unfortunate consequence of investors avoiding getting advice about investment actions they have a high degree of conviction about, even if not in their best interest i.e., not when coaching and counselling not to take a potential action would be most helpful.

"Advice Gap" Issue & Transitional Matters

The consultation asks whether it is likely that an "advice gap" could arise if embedded fees are discontinued. Some have been expressed the view that elimination of embedded fees (or the potentially more impactful targeted reforms as initially presented) could result in a vast campaign of client de-marketing from firms as it is effectively business model-destroying. We believe, however, that impact will be more subtle. If there is fee compression (as anticipated), we believe that dealers may be forced to further rationalize their service models and this will likely impact the structure of the market available to service investors over the long term.

Lower advisory fees will impact smaller dealers the most as they lack the scale to absorb reduced revenues. We see the large, integrated bank-owned firms benefiting the most from discontinuing embedded fees as they have the operational and technological scale to adapt and, most importantly, employ a large number of registrants whose role may be to offer banking products in addition to investment products. Should smaller firms need to adjust their service focus, the integrated bank-owned firms have an existing cost effective platform to receive clients who can no longer be serviced by smaller dealers. We do not see this as a win for most investors, as the quality of advice may drop in parallel to the reduction in fees, further exacerbating the gap in advice available to smaller investors versus larger investors.

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It is important to remember that while much of the discussion around fees centres on percentages and basis points, each dealer can ascribe a cost on a dollar basis to a client account that is not contingent on account size. In that regard, advisory fee compression is most likely to favour larger investors, particularly if cross-subsidization (to the extent it exists) is reduced or eliminated and fees for larger investors drop. Fees for smaller investors may rise as pressure from potentially reduced advisory fees in the middle to upper client tiers causes dealers to consider ways to recover higher fees – on a dollar basis – from smaller investors.

One circumstance in which we can envision this occurring would be if firms instituted a minimum fee amount for all clients for fee-based accounts. It is highly likely that the minimum amount will be above that which would typically be collected through an embedded trailer fee arrangement. While a smaller investor would not be de-marketed in that instance, we are concerned that small investors may elect to opt-out of firms that offer advice and choose to maintain accounts at discount brokerages in order to minimize costs

Most of the comments in the foregoing come from the dealer perspective. As an investment fund manager, we welcome any action which inhibits fund managers from motivating dealers and advisors through means other than their investment philosophy and investment track record. We also support initiatives that simplify and rationalize fee structures. There may be an operational impact on investment fund managers in addressing increased transaction levels as unitholders redeem units to raise cash for fees, but this is likely to lead to increased costs without additional operational complexity.

However, we reiterate our general opposition to allowing investment fund managers to collect advisory fees on behalf of dealers, however. Yes, this mitigates some operational challenges that could be faced by dealers (especially smaller ones) but it potentially puts the operational burden and increased liability onto investment fund managers.

While the CSA appears to have pre-emptively dismissed this idea, we believe there is an argument for allowing investment fund managers and dealers to continue to make use of an embedded trailer, on the condition that investors can determine whether the trailer fee could influence advisor behaviour. We believe this could be accomplished through disclosure by the investment fund manager of not just the quantum of the trailer fee, but how that trailer fee compares to industry averages. Alternatively, there may be an opportunity to use regulation to standardize the trailer fee that may be charged to eliminate the ability of an investment fund manager to use the magnitude of the fee as a differentiator.

With improved disclosure to investors, we feel that an embedded trailer fee that is conflict-mitigated offers an efficient and effective mechanism for smaller dealers without the risk transfer envisioned in the proposal to allow investment fund managers to collect fees on behalf of dealers.

We agree that the 36 month timeframe post the Effective Date should be enough time to complete the transition. However, we would look for guidance to be issued by the CSA and/or the self-regulatory organizations on how to address any instance where, despite best efforts, a client does not complete the requisite documentation to set up an account to support a new fee structure. In those instances, we would expect to be able to complete the transition steps without client consent.

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Related Regulatory Initiatives and Existing Tools

We believe that regulatory initiatives to date (CRM and POS) and prudent further changes planned (target reforms) would address most of the investor protection and market efficiency issues...if firms would go beyond meeting only the minimum compliance requirements and put their clients' interests ahead of that of the firm. As noted above, we believe that regulation addressing certain fee structures to mitigate the likelihood of investment fund managers influencing advisor recommendations through compensation, when combined with other regulatory initiatives, would address the issues without an outright prohibition of embedded fees.

The consultation points out that certain issues – particularly lack of investor control over fees and misalignment of fees paid to perceived value – would not be well addressed by other regulatory initiatives underway, necessitating discontinuation of embedded fees. We do not disagree with this assertion, but we also suggest that these two issues are also the least likely to be fixed through prohibition of embedded fees. Removal of embedded fees may be very effective in mitigating potential conflicts of interest and result in an incremental gain in understanding of fees, but we believe that these two issues (that most closely align with smaller investors) will only be fully addressed by firms actively engaging with clients to explain the nature of the client-advisor relationship and its relationship to fees paid.

Summary

To conclude our comments, we would like to consider the debate regarding embedded commissions by drawing a loose parallel with the healthcare industry.

As Canadians, we pay income tax to fund the medical system in each province. Rarely do we pay for specific services; what our taxes really give us is access to medical services. Some pay more in income tax than the actual value of medical services received, and some pay far less. Either way, cost is rarely an issue in Canada when an individual decides to make use of medical services.

However, when it comes to dental services we – for the most part – only pay for what we receive. As a result, many only go to a dentist when absolutely necessary in order to minimize expense, even if ongoing expenses associated with preventative care would save money in the long run.

If the securities industry did a better than (the admittedly poor) job it does today in explaining to investors that the existence of embedded trailer fees should equate to ongoing access to advice, more investors might elect to reach out for that advice on a more regular basis. Much like many Canadians visit a doctor for check-ups instead of when medical intervention is critically needed.

We are concerned that eliminating embedded fees in their entirety could prey on the price sensitivity of investors and cause them to avoid obtaining advice even more than they do now. In particular, we anticipate that investors faced with only a direct pay model could react by moving to no-advice platforms, or fee structures that perpetuate the belief that advice matters only when there is a transaction imminent i.e., when there is a "toothache".

Through recent regulatory initiatives and internal industry pressures, there has been a steady but slow evolution towards better practices regarding fees. We can appreciate the CSA's desire to

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accelerate this through regulatory change, but we would encourage the CSA to consider whether there is a regulatory step before blanket prohibition of embedded fees that may mitigate the issue of conflicts of interest between investment fund managers, dealers and investors without further reducing the likelihood that investors seek out good investment advice.

We appreciate the opportunity to provide you with our comments on the CSA Notice and Request for Comment. We look forward to our continued participation in any further consultation on this topic and would be pleased to discuss our input in greater detail with you. Should you have any questions or wish to discuss these comments, please contact me directly by telephone at (780) 977-8812 or by email at bkimak@atb.com.

Yours very truly,

ATB Investor Services

(signed) “Brett Kimak”

Brett Kimak
Chief Risk Officer & Head of Compliance