



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Ian C.W. Russell FCSI
President & Chief Executive Officer

October 16, 2009

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

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8

And

Anne-Marie Beaudoin
Directrice du secretariat
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs/Mesdames:

Re: Implementation of Point of Sale Disclosure for Mutual Funds

The Investment Industry Association of Canada (IIAC) commends the Canadian Securities Administrators in its efforts to develop proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and the accompanying Forms and Companion Policy that were published for comment on June 19, 2009 (collectively, the Proposed Instrument) in order to provide investors with a more meaningful and simplified form of disclosure for mutual funds.

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Our members represent a major distribution channel for the mutual fund industry. In 2008, the securities industry generated \$1.9 billion in revenue from mutual fund sales. This represents 33% of industry commissions and 13% of total brokerage industry revenues.¹ Furthermore, of the over \$700 billion in assets our members manage on behalf of retail clients, over \$175 billion is invested in mutual funds. It is therefore apparent that our members have a strong interest in the Proposed Instrument.

As a result, the IIAC struck a Point of Sale Working Group to review the Proposed Instrument and provide our responses to the questions raised by the CSA as they impact our dealer members, which are discussed below.²

In addition, the IIAC's Working Group has outlined some additional concerns with the Proposed Instrument, which we hope the CSA will consider in the next stages of development of this important initiative.

D) 1&2 – Benefits and Costs

The CSA are seeking feedback on whether there is agreement with the stated benefits of the Proposed Instrument as well as with the cost burden that may result.

The IIAC is generally supportive of the CSA's Proposed Instrument in terms of creating a more meaningful and simplified form of disclosure for investors.

However, the IIAC has concerns regarding the costs that will result from implementation of this Proposed Instrument. The CSA have identified a number of costs from the Proposed Instrument including initial and ongoing costs associated with the production of the fund facts document as well as those associated with maintaining the new regime including oversight, compliance and tracking mechanisms. The IIAC Working Group concludes that such costs will be substantial. The CSA indicated that it is not their intention that the Proposed Instrument impose new compliance procedures not already in place at dealer members. However, numerous changes will be required as the Proposed Instrument changes how the business will be run from a compliance and supervisory perspective ultimately leading to increased costs.

Many elements that are currently not reviewed by firms will need to be checked and monitored under the new regime. For instance, the Proposed Instrument will require our members to query and track the following:

- Was the trade advisor recommended or client initiated?
- Was the trade an initial or subsequent purchase?
- Is the purchase a money market fund?
- Was the fund facts delivered at or before the point of sale?
- Was delivery waived?
- Was the fund facts brought to the attention of the investor?

¹ IIAC, Securities Industry Performance Report Q4 2008.

² Please note that the IIAC Point of Sale Working Group has not provided responses to the questions in section III as those questions relate to the manufacturers of the fund facts.

In addition to the above, firms will need to undertake a variety of operational and technology changes including revisions to current audit trails, automation of the process to send out fund facts, adding new trailers to confirmations, new training to ensure proper notations are made by advisors in their client management systems, etc.

All of these new checks will require updated systems and monitoring functions and will be extremely costly especially for those dealers with large sales forces. These additional steps only complicate the process and will no doubt increase costs which will ultimately be borne by the investor.

Some members have indicated that because many issues are uncertain (such as whether the trade was unsolicited or whether the client received the fund facts when they were required to, etc.), they are considering sending the fund facts document with all trade confirmations regardless of whether or not it was provided to clients at the point of sale. Dealers have indicated that this approach may help mitigate any potential civil liability from a client claiming after the fact that they did not receive the fund facts document. This duplication of fund facts delivery would be a huge cost for dealers to undertake and may not be in the best interests of the client as it may lead to client confusion.

The CSA have indicated that as a second phase of implementation they intend to review the overall disclosure regime for mutual funds to reduce unnecessary duplication. While this may reduce the cost burden at a later date and be of benefit to investors, the IIAC Working Group suggests that the Proposed Instrument not be implemented until such time as the overall disclosure regime can be reviewed in its entirety. By reviewing all existing and proposed disclosure requirements for mutual funds at once, the CSA can ensure that an effective and efficient regime is introduced.

II) 1 – Updating of Fund Facts Document

The CSA are considering allowing fund managers to provide more current information to investors by not restricting how frequently a fund manager files an updated fund facts document. The IIAC applauds the CSA for this flexible approach, but we do not see this option as being in the best interests of the client and may have a negative impact on compliance. For instance, confusion may occur on the part of advisors as to whether they have given the client the most recently updated fund facts document if newer versions are continuously produced. It will also be more difficult for supervisors to supervise the distribution of these fund facts documents and could lead to liability on the part of the dealer if the client does not receive the most recent fund facts document.

The IIAC is also concerned that if different fund managers adopt different policies on updating and filing fund facts, investors will be more confused and may lead to more difficulty for investors to compare various fund facts documents, which is one of the key purposes of the Proposed Instrument. There is also a great deal of concern that this option could create a competitive disadvantage for fund managers that choose not to update the fund facts documents at regular intervals. It would take just one major fund company to start preparing and filing fund fact documents on a quarterly basis for

example, and then all of their competitors would be required to fall in line due to demand from advisors. This would be an enormous increase to fund managers' regulatory burden and compound what will already be a significant increase in costs associated with this Proposed Instrument. Since there does not appear to be any substantial benefit to this option, the IIAC proposes that the fund facts document be required to be updated and filed annually and when a material change occurs.

II) 2 – Bringing the Fund Facts to the Attention of the Purchaser

The Proposed Instrument requires that when a fund facts document is delivered to an investor it must be brought to their attention. The CSA have asked whether the guidance provided in subsection 7.3(3) of the Companion Policy regarding this requirement is sufficient. The IIAC Working Group has concerns with this provision and with the fact that dealers must maintain adequate records to evidence that disclosure about the fund facts document has been brought to the attention of the investor.

At the present, securities legislation does not require that specific documents (i.e. prospectus) be brought to the attention of a client. Instead, it requires that document be provided to the client. The proposed provision essentially creates a whole new compliance process that adds unnecessarily to costs and is an unprecedented approach to the disclosure regime. Compliance and supervision would be quite onerous given the number of transactions that some dealers process, especially during certain times such as RRSP season.

Currently, there are extensive know-your-client and suitability obligations for advisors that help ensure clients understand what they are purchasing and that the products are suitable for their portfolios. Advisors look at risk tolerance, investment objectives and a variety of key issues in discussing the right options for their clients. Included in the suitability obligation is the requirement that advisors understand the products they are recommending and selling to clients. Consequently, the proposed additional obligation is superfluous as bringing the fund facts to the investor's attention is duplicative of know-your-client and suitability obligations. Moreover, the proposed requirements of "drawing disclosure documents to the attention of the investor" differs from existing regulatory practices for all other investment disclosure documents.

The IIAC is of the opinion that when a client waives delivery of the fund facts document and chooses to receive it with the trade confirmation, the advisor should provide information on the existence of the fund facts document. However, in all other circumstances, once delivered to the client, advisors should not be required to complete the extra step of bringing the document to the attention of the client.

II) 3 - Delivery of Fund Facts for Subsequent Purchases

The CSA have indicated that they are considering requiring delivery of the fund facts document for subsequent purchases either in instances where the investor does not have the most recently filed fund facts or in all instances with the trade confirmation.

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The IIAC's Working Group submits that the current requirement not to provide a fund facts document for subsequent purchases should remain. Since clients will have already received the fund facts document with the initial purchase and therefore already have such information, and are pleased with the performance of the fund as to make an additional purchase, there is no logic to provide the document for each subsequent purchase or with each trade confirmation. In addition, there is a robust continuous disclosure regime which would provide investors with ample access to the fund facts document should they wish to review it subsequent to the initial purchase. The IIAC's Working Group prefers the requirement of having the annual option to receive the fund facts document in situations where the client wishes to see it again. However, the IIAC's Working Group does have some concerns with the parameters around the annual option which are outlined on page nine.

II) 4 – Waiver

The CSA have indicated that they are considering allowing delivery of the fund facts document with the confirmation of trade where the investor expressly communicates that they wish the purchase to be completed immediately, and it is not reasonably practicable for the dealer to deliver or send the fund facts document prior to the purchase. The CSA have also asked for suggestions on the specific information the investor should receive before the purchase if this change is made, including some thoughts around the type of oral communication that may be necessary.

The IIAC is pleased that the CSA are considering this modification to the Proposed Instrument. As the IIAC had indicated in our previous submission to the CSA, a waiver is a useful tool for investors who may wish to conduct a trade from a remote location, such as a cottage without internet or fax access. We would expect that in such situations, clients would verbally consent to a waiver and an advisor would be expected to document such waiver in the client's file.

The IIAC, however, suggests that the draft language of the waiver provision be carefully considered. If the CSA propose similar language to that set out in question II) 4, it will result in a two-pronged waiver test. The test would only be satisfied where (1) it is established that the investor wanted the trade be completed immediately; and (2) the dealer can demonstrate to regulators that it was not reasonably practicable to deliver the fund facts document to the client in a timely fashion.

The "practicability" test for the dealer should not be included in the test, particularly since hindsight tends to be 20/20. It would be challenging for dealers, on a pre-trade basis, to determine whether or not delivery is "reasonably practicable." Provided that the client wishes to use the waiver, it should be the client's right to waive. Consequently, the test for the waiver should simply be based upon the first part of the test, that the client wants to complete the transaction immediately.

With respect to the information that should be conveyed to clients in such situations, the IIAC recommends that it be similar to the waiver provisions with respect to money market funds and client-initiated purchases. These requirements include orally setting

out sufficient information about the funds facts document and subsequently delivering the fund facts document with the trade confirmation. We believe that this information, in addition to the rights of rescission and cancellation, are appropriate measures to apply in these circumstances.

II) 5 – Bundling of Fund Facts Documents

The CSA are contemplating some limited bundling of fund facts documents and provides some guidance in the Companion Policy.

The IIAC's members have expressed some concern surrounding subsection 5.4(2) of the National Instrument and related subsection 4.1.5(4) of the Companion Policy.

The relevant provision of the Proposed Instrument would prohibit the binding or attaching of different fund facts documents when the delivery is by electronic means. The Companion Policy outlines that the CSA believe that an electronic link or directing the investor to a file containing multiple fund facts documents could constrain an investor's ability to download the file, find and print the specific fund facts document.

The IIAC's Working Group respectfully disagrees with this assessment. We believe that if an advisor is recommending 10 funds to a client, the advisor should be permitted to include the e-mail links to these fund facts in one e-mail that directs the client to one file, such as one pdf document that has all 10 fund facts in it. Instead, if the advisor must send 10 separate e-mails with one link or one document in each e-mail, the client could very well believe that the nine subsequent e-mails were sent in error and simply delete them. Alternatively, many e-mail systems will flag these repetitive e-mails as spam, resulting in the client not receiving them at all. Most importantly, we believe that receiving 10 different e-mails will result in frustration and confusion for the client who will be required to open 10 separate e-mails as opposed to opening one e-mail with one link or document attached.

If one of the purposes of the Proposed Instrument, as stated in the Notice, is to assist investors to more easily compare information about different funds and provide the information in a simple, accessible and comparable format, then this objective will not be achieved if electronic bundling is prohibited. Receiving numerous e-mail links will be confusing for clients and not assist in a ready comparison of fund facts documents.

Further, as the fund facts information must be contained on 3 pages, then it would not be difficult to download a document of 30 pages total, representing 10 fund facts documents. Not only will clients prefer receiving one e-mail, it will be more efficient for dealers and prevent the chance of error than if they are sending 10 different e-mails with 10 different links to one client. It is also important to remember that pdf documents are easily searchable and easily compared and as such we do not believe the principles of the Proposed Instrument are undermined by our proposed solution.

We suggest that subsection 5.4(2) of the National Instrument and related subsection 4.1.5(4) of the Companion Policy be amended to permit the electronic binding of fund facts documents.

II) 6 – Transitional Period

The CSA have asked for input as to whether the transitional period for delivery of the fund facts document is appropriate.

The IIAC believes that the two-year transition period for delivery of the fund facts document following the effective date of the Proposed Instrument provides adequate time to address some of the challenges with respect to the methods of delivery and the effects on our members' compliance, supervision and technological systems that we highlighted in our previous submission. However, we also request that at the outset, an additional one year transition period be provided for the requirements relating to the production and filing of the fund facts document.

We would also recommend that the CSA should, as soon as possible, outline its strategy and approach with respect to its stated intention to review the overall disclosure regime for mutual funds to reduce unnecessary duplication. We would be interested to learn what changes would result and, as outlined earlier in this submission, encourage the CSA to make these changes in conjunction with the current amendments to reduce duplication prior to the requirement to deliver the fund facts document.

We also believe that a detailed assessment must occur immediately as to the necessary amendments to provincial and territorial securities legislation to ensure they are passed, coordinated and harmonized. There are numerous legislative amendments that appear essential to preserve investor rights for delivery of the fund facts document and substituting the delivery of the prospectus with the fund facts document. Prior to the effective date of the Proposed Instrument, the relevant securities regulatory authorities must ensure that the appropriate modifications to their legislation are in place. Failing which, we believe that the Proposed Instrument will lead to complication and additional costs resulting. For example, there may be a need to deliver both the prospectus and the fund facts document until legislative amendments are made. This is not in the best interests of the industry nor of the investor.

Furthermore, with respect to our proposal for a centralized database for fund facts documents managed by FundSERV, which is discussed below, we request that the CSA ensure that it is operational prior to the implementation of requirements related to delivery.

II) 7 – Staged Implementation

The CSA have indicated that they might proceed with finalizing some parts of the Proposed Instrument while continuing to consult on other parts and perhaps move sooner with the requirement to prepare and file a fund facts document and have it posted to a website.

The IIAC supports an approach whereby the Proposed Instrument is adopted in part in order to allow for a longer consultative process on implementation issues related to delivery.

If this approach were to be adopted, the IIAC would suggest the production and filing of the fund facts document be rolled out first with a one year transition period. Following that, the IIAC believes that a two-year transition period for delivery of the fund facts document requirement would still be appropriate and should not be reduced.

During that two-year transition period, the IIAC would be pleased to continue to work with IFIC and the CSA on its Point of Sale Consultations Task Force to examine issues surrounding delivery of the fund facts document and resolve these issues prior to the expiration of the final two-year transition period.

Additional Issues

While the CSA have not requested comments on the following items, the IIAC Point of Sale Working Group has some additional issues to raise. We have refrained from providing comments on the delivery requirements as the CSA is contemplating further consultation in this area.

Storage of Fund Facts Documents

The IIAC Working Group requests that the CSA provide more detail as to how and where dealers will be able to access the necessary fund facts documents. The CSA has indicated that fund facts should be filed on each manager's website. However, this requirement may not be feasible from an efficiency perspective as it would require dealers to visit multiple websites to download fund facts and keep track of the most recent documents. Given that there will be thousands of fund facts and fund manager websites, it would be very helpful to ensure that all fund facts documents are housed in one centralized database to assist dealers and their advisors.

This process could be managed by FundSERV, which is currently working on creating a central repository for fund fact documents. Our understanding is that FundSERV is proposing that manufacturers would be responsible for preparing and uploading the fund facts documents to a FundSERV repository. In addition, the manufacturers would be responsible to tag or identify their fund facts documents for ease of reference. Once uploaded on the system, dealers would simply search the centralized repository and print the fund facts documents to give to clients or e-mail a link directly to clients.

The IIAC and our Working Group applaud FundSERV in their attempt to create such a database and suggest that this facility be established and fully functional before the Proposed Instrument is implemented. The IIAC and our Working Group would be pleased to work with FundSERV and the CSA in determining the parameters around such a facility.

Websites

Section 2.3.2 of the National Instrument requires the posting of the fund facts document to the mutual fund or manager's website no later than the date that the document is filed. However, after this date, it is possible that the applicable securities regulatory authorities may request changes to the fund facts document prior to issuing their receipt. In the interim, advisors may have accessed the posted fund facts document and delivered it to a client. As a consequence, dealers may be exposed to liability due to providing clients with the originally filed version of the fund facts document. This posting requirement is inconsistent with requirements for the simplified prospectus and annual information form and as a result, the IIAC requests clarification.

Annual Option to Deliver and Client Instructions

Section 3.A.5 of the National Instrument requires that a dealer obtain instructions from a client as to whether the client wishes to receive a copy of the most recently filed fund facts document. Section 7.8 of the Companion Policy discusses how dealers solicit delivery instructions from clients.

The IIAC is of the view that the policies and procedures that would be required for dealers to demonstrate that they have satisfied these requirements would be impractical and costly.

For example, additional monitoring would have to occur so that even where a client indicated that he or she wished to receive an updated fund facts annually, if the client subsequently sold a mutual fund during the year, the dealer would have to ensure that the client did not receive the corresponding fund facts document.

Furthermore, under current securities legislation, there is no requirement to send clients a simplified prospectus annually when there has been no material change. Clearly, when there has been a material change to a mutual fund that requires a change to the disclosure in the fund facts document, the client will receive that updated fund facts document. However, when no change has occurred, we do not see the benefits of an annual fund facts document delivery and there is no such precedent in securities legislation.

The systems and supervisory processes necessary to manage this proposal would be extremely expensive and cumbersome. Instead, the IIAC believes that the client could be made aware via the bottom of the fund facts document (where the address of the fund address is located) which would direct clients to the fund manager should they wish to receive an annual fund facts.

Given that dealers do not have systems in place to support the annual option, the IIAC Working Group suggests that a flexible approach be introduced as to whether the annual option is undertaken. The annual option would be used in situations where the fund manager sends out the fund facts document. Fund managers currently do annual mailings for Management Reports of Fund Performance, and as such this obligation would not be unduly onerous for them in terms of soliciting delivery instructions from clients and

delivering the fund facts document annually on behalf of the dealers. However, where a fund manager refused to undertake this obligation, dealers should have the option of providing clients with the fund facts document for subsequent purchases, given that it would be very difficult for dealers to comply with the annual option as outlined above.

Initial Delivery of Fund Facts Document

Section 7.4 of the National Instrument states that a fund facts document must be sent with the confirmation of trade to a client for the first purchase of a mutual fund following the date that the Instrument comes into force.

This language and the language in subsection 11.1(6) of the Companion Policy suggests that a subsequent purchase made after the Proposed Instrument comes into force would trigger the inclusion of the fund facts document with the confirmation. This would be the effect regardless of whether a fund facts document was delivered during the two-year transitional period.

If our interpretation is correct, we find the language in the relevant sections of the National Instrument and Companion Policy to be quite confusing and difficult to interpret. Read another way, it could be interpreted to require that the fund facts document be delivered for all first purchases of a fund by a client after the amendments of the Proposed Instrument are effective, regardless of the exceptions that exist for client-initiated purchases, purchases of money market funds, or purchases through discount brokers. This interpretation is based on the language, “[d]espite Part 3A, a dealer must deliver or send the most recently filed fund facts document to a purchaser” (emphasis added). To add to the confusion, subsection 11.1(6) of the Companion Policy states, in part, that a dealer must “deliver or send the most recently filed fund fact document in accordance with Part 3A” (emphasis added.)

The provisions would seem to impose a delivery requirement effective as soon as the Proposed Instrument is adopted despite the plan for a transition period for delivery requirements. If this is not the intention, then the language should be clarified, especially the drafting in the Companion Policy. The reference in subsection 11.1(6) to “the date the Instrument comes into force” should be amended to state “the date the prospectus delivery requirements under the Instrument come into force”.

Consistency with the Canadian Council of Insurance Regulators (CCIR)

Many IIAC members have separate affiliates offering insurance and estate services to clients, including the distribution of segregated fund products.

These members have indicated that, to the extent possible, they will implement the same compliance and supervisory systems for segregated funds as for mutual funds. As a result, we would urge the CSA and CCIR to ensure that there is consistency in their respective point of sale rules and their application where possible. Harmonization will not only assist members in the development of their compliance and supervisory systems, but also provide better delivery and service to clients.

In closing, we welcome the opportunity for an ongoing dialogue with the CSA on this important initiative and would be pleased to discuss this submission should you have any questions.

Yours sincerely,

“Ian Russell”