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**Re: IMPLEMENTATION OF STAGE 2 OF
POINT OF SALE DISCLOSURE FOR MUTUAL FUNDS
PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 MUTUAL FUND PROSPECTUS
DISCLOSURE, FORM 81-101F3 AND COMPANION POLICY 81-101CP
MUTUAL FUND PROSPECTUS DISCLOSURE
AND CONSEQUENTIAL AMENDMENTS**

Dear Sirs / Mesdames,

We are writing in response to the Canadian Securities Administrators' (CSA's) Request for Comment concerning the implementation by the CSA of Framework 81-406, regarding point of sale disclosure for mutual funds.

Advocis welcomes a number of the amendments at this stage in the implementation process, and the opportunity to provide commentary on them.

These Proposed Amendments to National Instrument (NI) 81-101 will implement Stage Two of the Point of Sale Initiative, and allow mutual fund companies to satisfy the prospectus delivery requirement by delivering to the purchaser of a mutual fund—within two days of purchase—the Fund Facts document, in lieu of the simplified prospectus. The simplified prospectus will remain available to investors, upon request.

Executive Summary

Advocis recognizes that it is beneficial for Canadians to have more flexibility and choice when making mutual fund investment decisions. However, we believe regulators are overestimating the efficacy and importance of point of sale delivery of information about a particular fund, in the context of the consumer's decision-making when choosing a fund. The Fund Facts will help the consumer to understand the attributes of particular funds, and to compare funds.

However, the Fund Facts document in isolation is of limited value, and is not likely to lead to a significant increase in better consumer choices.

Indeed, the excessively narrow focus placed solely on the Fund Facts document ignores and therefore devalues the important role of the registered financial advisor in the decision-making process. The advisor's input and advice is far more important than a disclosure document about a particular fund in terms of helping the consumer to make decisions about funds. Advocis wishes to note that the over-emphasis placed on the role of the Fund Facts document, combined with the lack of formal recognition in the Proposed Amendments of the beneficial role of the registered financial advisor, demonstrate a lack of understanding and appreciation for the registered financial advisor's participation in the investment process. This omission by the CSA is to the ultimate detriment of the investor. In short, Advocis takes the position that many consumers buy funds not on the basis of the information in the Fund Facts or the simplified prospectus, but on the basis of the value to be found and the recommendations made in the advice they receive from their registered financial advisors.

Accordingly, Advocis feels that there is the need for the CSA to formally incorporate in the Proposed Amendments recognition of the practical value offered by the registered financial advisor by way of his or her role during the investment selection process – a role which is crucial in imbuing the Fund Facts document with its value. Ultimately, that document, like the registered financial advisor, is just one element or tool that is of use to the investor in the overall process. It is, to be sure, a helpful tool—once the role of registered financial advisor is clarified. This clarification is nothing other than acknowledgment of the current and historical practice-based reality that for many Canadians it is the registered financial advisor who infuses notes, fact sheets and other documentation with value and situates them in their proper context when discussing investment options with the client. The Fund Facts is a summary document that for many consumers will be only one of several documents upon which they will rely during a consultation with a registered financial advisor. Therefore, Advocis' position is that the considered advice of the registered financial advisor is far more important than any individual disclosure document in assisting the consumer in choosing on an informed basis a suitable mutual fund. Therefore, Advocis recommends that express acknowledgment be made within the

Fund Facts document of the prudence of an investor consulting with a registered financial advisor when considering the Fund Facts document.

Until the CSA formally recognizes within the Fund Facts document the reality of the central role registered financial advisors play in the average Canadian's mutual fund investment decision-making process, Canadians are destined to face a fundamental obstacle in moving forward with a variety of reforms which will be in the best interest of the consumer and provide the added layer of investor protection that is the final object of so much regulation.

Background

In July 2011, the Canadian Securities Administrators (CSA) released for comment Proposed Amendments to NI 81-101 *Mutual Fund Prospectus Disclosure*. These amendments represent Stage 2 of the CSA's implementation of the point of sale disclosure initiative for mutual funds, the goal of which is to provide investors with more meaningful and effective disclosure. The amendments will allow for delivery of the Fund Facts document to satisfy the current prospectus delivery requirements. Under current securities legislation, a prospectus must be delivered to an investor within two days of buying a mutual fund.

The centrepiece of the proposals is the Fund Facts document—a concise, easy-to-read document meant to enable investors to better understand the mutual fund they have purchased. It is written in plain language and is of no more than two pages double-sided. It is to be provided to investors in a timely fashion and should highlight for them key information about the mutual fund.

Since July 8, 2011, a Fund Facts document for each class or series of a mutual fund must be filed with the CSA, be accessible on the mutual fund's or mutual fund manager's website, and also be made available to the investor upon request.

Advocis: who we are

With more than 11,500 members organized in 41 chapters across Canada, Advocis is the largest and oldest voluntary professional membership association of financial advisors in Canada. Our members are independent owners and operators of small businesses and financial advisors and financial planners who are sales representatives of medium- and large-sized financial services companies, who provide comprehensive financial planning and investment advice, retirement and estate planning, and wealth and risk management expertise. Our members offer clients a prudent long-term perspective on managing a wide array of financial risks and meeting long-term financial goals. Our members are typically dual-licensed to provide life and health insurance as well as mutual funds and securities.

We strongly support consumer protection measures, including regulatory initiatives that benefit investors by helping them make more informed decisions, and that allow financial advisors to continue to conduct their businesses in a professional and efficient manner without undue regulatory burdens.

Part I. General comments on the propose amendments

Advocis supports the goal of timely, understandable and accessible fund information

We endorse the objective of providing to consumers in a timely fashion, and in an accessible form, information about mutual funds which is concise, intelligible to the average investor, and allows for ease of comparison between funds. In particular, we welcome disclosure that provides investors with relevant, meaningful and simplified information about a fund – especially in a manner more easily assimilated than that which is offered in the typical mutual fund prospectus.

Advocis agrees that the information in the Fund Facts will be clear, and is much more likely to be read and understood by the consumer, than that contained in a mutual fund prospectus. Indeed, the Fund Facts document will make it easier for consumers to understand the essential facts about a fund, and to compare funds.

Accordingly, Advocis is of the position that that delivery of the Fund Facts document post-sale is acceptable. Further, as will be shown below, the financial advisor is the important part of the investment decision process, and the Fund Facts document is an informational tool only. Simply replacing the delivery of the simplified prospectus with the post-sale delivery of the Fund Facts should not in itself be problematic for the investor.

However, Advocis does think that the CSA needs to articulate a more nuanced and balanced vision of the role of the Fund Facts document and the value of advice provided by a registered financial advisor.

Concerns about the role of Fund Facts in the consumer's decision-making process

Advocis is of the position that the value of a Fund Facts document in the hands of a consumer at the point of sale should not be exaggerated. More particularly, Advocis believes that the informational value to the consumer of Fund Facts is more limited than the CSA believes. Advocis feels that the Proposed Amendments place an undue emphasis on the utility of the delivery of a Fund Facts document at the point of sale. The amendments seem to be based on the premise that the provision of the Fund Facts document is a critical or even decisive factor in the consumer's decision-making process.

The CSA's misconception of the role of the registered financial advisor

In its section entitled Anticipated Costs and Benefits, the CSA states its position on the role of the advisor:

We think that allowing delivery of the Fund Facts instead of the simplified prospectus to satisfy the current prospectus delivery requirements under securities legislation would benefit both investors and the capital markets by

helping to begin to address the “information asymmetry” that exists between participants in the mutual fund industry and investors.¹

Unfortunately, this passage belies a misunderstanding of the role played by the registered financial advisor. That role is the provision of timely, relevant and actionable advice, and entails the analysis of increasingly complex products, and the subsequent communication of that analysis to potential investors, who run the gamut of investor knowledge, from unsophisticated investors and neophytes to knowledgeable professionals who want an informed second opinion. By doing so, the registered financial advisor makes the investment decision easier for the consumer.

Consider the presentation of information in an easy-to-understand format by a financial advisor to the potential investor: in the day-to-day life of the vast majority of Canadians, this is the most common, prudent and easiest mode of addressing the existing “information asymmetries” contained in the mutual fund investing process than that envisaged by the CSA with the Fund Facts document. Moreover, it is a mode of resolving asymmetries of information that is effective, efficient, already in place and has withstood the test of time. Advocis submits that this passage simply reveals the CSA not properly apprehending and recognizing in the Proposed Amendments the important and often decisive role of the registered financial advisor.

Similarly, in the section entitled “Substance and Purpose of The Proposed Amendments,” the CSA states that:

The Proposed Amendments and consequential amendments are not intended to detract from a dealer’s existing obligations to ‘know your client’ and to determine suitability of all purchases of mutual funds. We expect dealers and their representatives will continue to conduct due diligence reviews, including reviews of the simplified prospectus to properly discharge their ‘know your product’ obligations. We anticipate that dealers will use the Fund Facts as a tool in making investment recommendations. (emphasis added)²

Again, this statement demonstrates a focus by the CSA on rules and form over substance. It is the registered financial advisor who interfaces with the client, not the dealer. Indeed, it is the advisor who plays the single largest role in the decision-making process of investing in a mutual fund. In the majority of cases, it will be the advisor who will use the Fund Facts document as a tool. The blunt fact is that millions of Canadians rely on financial advisors for decisive guidance in selecting mutual funds and this should be reflected in the language of the CSA. However, the omission of this reality in the otherwise precise language of industry rules and national instruments is highly problematic. The failure to take notice of the central role of the registered financial advisor for the mutual fund investor and the value of his or her advice will result in the further marginalization of registered financial advisors in this area and by extension will ill-serve, if not outright harm, many members of the Canadian public who may forego professional advice and rely solely on the Fund Facts document, to the detriment of their investment selection.

¹ Ontario Securities Commission, *OSC Bulletin*, Volume 34, Issue 32 (2011), page 8564. Online at <http://www.oscbulletin.carswell.com>.

² *OSC Bulletin*, page 8563.

The Proposed Amendments continue to place too much value on the contents of the Fund Facts document—a document the consumer is likely to consider in isolation—and devalues—or even ignores—the crucial role of registered financial advice in that decision-making process. That advisor is charged with the task of understanding his or her client’s needs and, further, of ensuring the investment suitability of the mutual fund at issue.

In the “Introduction” to the CSA Notice and Request For Comment, the CSA states:

This is an important step in the implementation of this investor-focused initiative. We think delivery of the Fund Facts would provide investors with access to key information about a mutual fund, in language they can easily understand, at a time that is relevant to their investment decision.³

Advocis submits that it is in fact the registered financial advisor who has historically provided and will continue to provide the expertise necessary for consumers to reach a satisfactory investment decision by explaining the suitability of the fund in “plain everyday language.” While a “plain language approach” to the drafting of the Fund Facts is certainly laudable, Advocis is concerned with the process apparently envisioned by the CSA. Indeed, the entirety of the Fund Facts scenario as envisaged by the CSA makes no mention of the critical role played by the registered financial advisor in providing well-informed investment recommendations to the client.

Further, in the section entitled “Substance and Purpose Of The Proposed Amendments,” the CSA notes that the Funds Facts “provide investors with basic information about mutual funds” and that “more detailed information about the mutual fund is available in its simplified prospectus.”⁴

Advocis’ position is that for many Canadians, the Fund Facts document will operate more as a summary document. It will not function as the focal point of the decision-making process. Instead, registered financial advisors will continue to provide the needed combination of documentation, opinion and advice to help their clients reach suitable mutual fund investment decisions. In short, Advocis’ perspective is a “realist” one, based on the pragmatic analysis of past practices. From this point of view, the Fund Facts document is seen for what it is: a tool that can be used by the advisor to illustrate important elements for a consumer to take into consideration when making an investment decision.

Also, it is worth considering this passage in the CSA’s Request For Comments:

The Proposed Amendments and consequential amendments should enhance investor protection by providing investors with the opportunity to make more informed investment decisions. Investors will be able to review key information about the potential benefits, risks and costs of investing in a mutual fund in an accessible format at a time that is relevant to their investment decision. We also think familiarity with the Fund Facts may assist investors in their decision-making process and in discussions with advisers, and highlight for investors who may

³ *OSC Bulletin*, page 8561

⁴ *OSC Bulletin*, page 8563.

want more detail where they can find further information about the mutual fund.
(emphasis added)⁵

Advocis wishes to clarify the argument in this passage. Based on the experience of thousands of registered financial advisors in providing advice over several decades of mutual fund investing in Canada, Advocis can say with confidence that in terms of what generates “enhance[d] protection” for investors and offers assistance in investors’ “discussions with advisers,” that a prospectus, simplified prospectus or Fund Facts document has definite but circumscribed utility. To be clear as possible: at this stage of the investment process, investors are not protected by a piece of paper; rather, they are protected by the expertise and insights brought by the registered financial advisor to the interpretation of and reliance placed on that piece of paper. The Fund Facts is after all merely a summary document that highlights some of the key points that the registered financial advisor has already identified for the client. The Fund Facts document may well prove helpful in an investor-advisor discussion, but the position of the CSA that the document in and of itself will provide enhanced protection is excessively optimistic and an overstatement of the document’s beneficial effects. Again, Advocis submits that the role the registered financial advisor plays in essentially infusing that document with its enhanced protective properties needs to be emphasized in the text of the Fund Facts document itself.

The simplicity of the Fund Facts document may pose a risk to certain investors

In the “Background” section of the CSA Notice and Request For Comment, the CSA states that:

As the CSA’s implementation of the point of sale disclosure framework continues to progress, we should achieve the Joint Forum’s vision for the point of sale disclosure regime described in the framework. This vision focuses on three principles:

- providing investors with key information about a fund;
- providing the information in a simple, accessible and comparable format; and
- providing the information before investors make their decisions to buy.⁶

This passage reveals the limitations of the Fund Facts document and especially the excessive reliance placed on it by the CSA and the Joint Forum of Financial Market Regulators. The peril of emphasizing form over function is tangible here: the CSA fails to address the limitations of the document. It can, for the reasons shown above, only work effectively as a summary document. That is why Advocis emphasizes that the Fund Facts document itself has to identify the role of the registered financial advisor. Failure to do so will have the unfortunate and unintended consequence of certain investors relying solely on the Fund Facts document in lieu of the comment and input of a registered financial advisor. For example, some investors, when

⁵ *OSC Bulletin*, page 8563.

⁶ *OSC Bulletin*, page 8562.

considering mutual fund investments, will focus too heavily on MERs rather than on the totality of the factors that should be driving an informed decision-making process.

Advocis recognizes that it is beneficial for Canadians to have more flexibility and choice when making mutual fund investment decisions. In terms of enhanced Point Of Sale disclosure, we see improved value in the Fund Facts document, as opposed to the fund prospectus, when it comes to accommodating the preferences and needs of “self-investors.” We acknowledge the positive role of the Fund Facts document in being a helpful tool for self-directed investors, particularly those who utilize the services of discount brokers or who buy directly from fund companies. In short, Advocis recognizes that some Canadians choose not to utilize the advice or services of a registered financial advisor, and that the streamlined Fund Facts document will help produce informational efficiencies in the distribution channels relied on by self-directed mutual fund investors.

Ultimately, Advocis’ position is that the considered advice of the registered financial advisor is far more important than any individual disclosure document in assisting the consumer in choosing on an informed basis a suitable mutual fund. After all, consumers have ample access to information about mutual funds, and ensuring receipt of the Fund Facts document at the point of sale is unlikely to make a material difference to the quality of consumer decision-making.

The Fund Facts document: What Advocis recommends

Advocis submits that the Fund Facts document would better serve the consumer if it noted the limitations of the document as an informational tool and expressly acknowledged the value for the consumer in consulting with a registered financial advisor in arriving at a decision about investing in the mutual fund at issue.

Accordingly, and in light of the exhaustive analysis provided above, Advocis submits that the following language be inserted into the Fund Facts document:

The information in this Fund Fact represents a summary of some key elements of this fund. It may be advisable for you to seek guidance with a registered advisor, who is required to consider your personal investing profile in helping you make informed decisions.

The inclusion of such a statement will help remedy the current absence in the Proposed Amendments of any consideration of the role the registered financial advisor plays in the finalization of investment decisions. The statement acknowledges the reality that many Canadians should and do rely on informed professional-level advice provided by their advisor who is quite properly bound by Know Your Client and suitability requirements.

PART II. Comments on specific amendment provisions

While Part I of this document contains the essentials of Advocis’ position on the Proposed Amendments, several specific amendments are worthy of review and comment.

Delivery of Fund Facts instead of the simplified prospectus

Currently, under NI 81-101, the requirement under securities legislation to deliver a prospectus of a mutual fund may be satisfied by delivery of the simplified prospectus. The Proposed Amendments will require delivery of the Fund Facts in all instances where the prospectus would otherwise be required to be delivered. The most recently filed Fund Facts for the applicable class or series of securities of the mutual fund will be required to be delivered and will satisfy the current prospectus delivery requirements under securities legislation.

The Proposed Amendments will restrict the documents that may be attached to, or bound with, the Fund Facts on delivery.

The mutual fund's obligation to file its simplified prospectus and annual information form with the CSA remains unchanged. Both documents will continue to be available to investors on a website, as well as and upon request, at no cost.

The delivery provisions in the Proposed Amendments are drafted to reflect current differences in the legislative authority of members of the CSA.

The Proposed Amendments are expected to be adopted in each Canadian jurisdiction. Some jurisdictions require legislative amendments in order to implement the proposals.

Accordingly, Advocis recognizes that while legislative wording may differ among the members of the CSA, each jurisdiction should seek to achieve the same outcome of requiring delivery of the Fund Facts document in order to satisfy the legislative requirement of delivery of the prospectus. Therefore, prior to implementing the Proposed Amendments, Advocis supports the idea that legislative amendments must be sought and enacted in the necessary jurisdictions to ensure the attainment of a harmonized provision. Advocis further strongly supports the immediate need to clarify what will be the harmonized definition of "delivery."

Effect on Investor rights

Advocis supports all of these preservations of the legal rights of consumers but, as above, urges that the multi-jurisdictional harmonization of legislation-based remedies be done in a timely and synchronized fashion.

a. Right for failure to deliver the Fund Facts

If the Fund Facts is to be delivered instead of the simplified prospectus, as noted previously some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or to rescind the purchase if the investor does not receive the Fund Facts.

b. Right for withdrawal of purchase

If the Fund Facts is to be delivered instead of the simplified prospectus, some jurisdictions may require legislative amendments in order to preserve an investor's right to withdraw from the purchase within two business days after receiving the Fund Facts.

c. Right for misrepresentation

The right for misrepresentation related to the Fund Facts has not changed. The Fund Facts is incorporated by reference into the simplified prospectus. This means that the existing statutory rights of investors who apply for misrepresentations in a prospectus will apply to misrepresentations in the Fund Facts.

Amendments to Fund Facts

Advocis also supports the CSA's proposed minor edits and clarifications to Form 81-101F3 - Contents of Fund Facts Document at this time. In particular, all fees and expenses payable directly by the investor when buying, holding, selling or switching units or shares of the mutual fund must now be disclosed in the Fund Facts. The option of the mutual fund to include the fund code for the class or series has now also been introduced.

No change to filing requirements

No changes have been made to a mutual fund's obligation to file its prospectus with the CSA, to make it available to investors on a website, or to deliver the prospectus free of charge to investors upon request. Advocis is in agreement with this continuance of current requirements.

Further, the filing requirements related to the Fund Facts have not changed. The Fund Facts must continue to be filed concurrently with the mutual fund's simplified prospectus and annual information form. The certificate for the mutual fund, which verifies the disclosure in the simplified prospectus and annual information form, applies to the Fund Facts just as it applies to all documents incorporated by reference into the simplified prospectus. Again, Advocis is in agreement with this continuance of current requirements.

Advocis is also in agreement with the CSA's position that if a material change to the mutual fund relates to a matter that requires a change to the disclosure in the Fund Facts, an amendment to the Fund Facts must be filed. If managers want to provide more current information in the Fund Facts, they may choose to amend the Fund Facts at any time. In all instances, an amendment to a mutual fund's Fund Facts must be accompanied by an amendment to the mutual fund's annual information form.

Any Fund Facts filed after the date of the simplified prospectus is intended to supersede the Fund Facts previously filed. Once filed, the Fund Facts must be posted to the mutual fund's or the mutual fund manager's website. Advocis is concerned about the possibility of investors relying on an outdated Fund Facts document and suggests that the Fund Facts document clearly state that the document may be updated without notice to the investor and that the investor should consult with his or her registered financial advisor to be sure that he or she is in possession of the most up-to-date version of the particular Fund Facts document.

Conclusion

Advocis welcomes the regulatory reality that we have entered an era of consumer protection—and in some cases, consumer participation—in the policy process. However, the failure to

recognize the role of the registered financial advisor is harmful to long-term, meaningful progress in consumer protection.

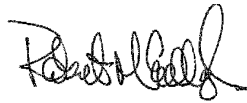
Advocis recognizes that it is beneficial for Canadians to have more flexibility and choice when making mutual fund investment decisions. In terms of enhanced Point Of Sale disclosure, we see a valuable degree of utility is added by the Fund Facts document (in distinction to the fund prospectus) with regard to addressing the needs of self-directed investors. Moreover, the Fund Facts document is helpful explanatory tool for any financial advisor. But, on its own, the introduction of the Fund Facts document still leaves a gap in responding to the needs of the average Canadian mutual funds investor. Advocis' position is that the considered advice of the registered financial advisor is far more important than any individual disclosure document in assisting the consumer in choosing on an informed basis a suitable mutual fund. Accordingly, Advocis seeks express acknowledgement of the reality of valuable role the financial advisor plays for many Canadians in the process of mutual fund investing. Despite the reservations and caveats noted above, Advocis is pleased with many other aspects of the Proposed Amendments at this stage of the review process and is grateful for the opportunity to offer comment on them.

We would be pleased to meet with you to further discuss our issues and concerns. Should you have any comments or questions you wish answered before any such meeting, please do not hesitate to contact the undersigned, or email Ed Skwarek at eskwarek@advocis.ca.

Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO



Robert McCullagh, CFP, CLU, CH.F.C., RHU
Chair, National Board of Directors

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Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Superintendent 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