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October 15, 2007

Mr. Neil Mohindra
Acting Policy Manager
Joint Forum Project Office
5160 Yonge Street
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Dear Sir:

Re: Joint Forum's Proposed Point of Sale Disclosure for Mutual Funds and Segregated Funds – Proposed Framework 81- 406

Thank you for the opportunity to comment on the Joint Forum of Financial Market Regulators' ("Joint Forum's") Proposed Point of Sale Disclosure for Mutual Funds and Segregated Funds, released for comment on June 15, 2007.

Advocis, the Financial Advisors Association of Canada, is Canada's oldest and largest voluntary professional membership association of financial advisors. Advocis represents life and health insurance licensees, and mutual fund and securities registrants across the country.

Advocis has been involved in providing input on this initiative during the policy development process and very much appreciates the opportunity to provide written comments on this proposed framework.

Advocis strongly supports consumer protection, 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.

We applaud the Joint Forum for having the vision to develop a new standard for disclosure that provides investors with more readable, meaningful and simplified information than currently exists in a typical mutual fund prospectus or segregated fund information folder. The new standard, in the form of “Fund Facts” (combined with Key Facts for segregated funds), is well designed, contains key information, and will make it easier for consumers to understand and compare their fund investments.

While we believe that the proposed framework currently poses potential implementation challenges, particularly with respect to delivery, and creates unintended consequences for industry and consumers, we are confident, based on the Joint Forum’s extensive consultative approach on this important matter to date, that it will effectively address industry and consumer issues in its final version of the framework.

We attach our comments and recommendations with respect to the proposed framework and we would be pleased to meet with Joint Forum representatives to discuss the initiative in more detail.

Yours truly,

Steve Howard, CA
President and CEO
Advocis

Teresa Black Hughes CFP, CLU, RFP, FMA, CIM
Chair,
National Board of Directors, Advocis

1.0 Introduction

Advocis commends the Joint Forum on its consultative process, and in particular its requests for industry input from the onset of this important initiative beginning in 2003. Advocis has been actively engaged throughout the entire policy development process, including reviewing and commenting on draft proposals for segregated fund point of sale disclosure, and participating in dialogues between advisors and regulators.

In addition, Advocis applauds the Joint Forum's initiative that originally set out to simplify and reduce the amount of information currently contained in typical mutual fund prospectuses and segregated fund information folders. The proposed two-page Fund Facts is well designed, contains key information, reflects industry input, and will no doubt make it easier for consumers to understand and compare their fund investments.

While Advocis strongly supports consumer protection, including the Joint Forum's vision for simple, meaningful and timely disclosure to clients, we have some concerns with respect to the proposed framework's implementation, particularly with respect to delivery. There are still many unanswered questions that need to be addressed to ensure effective implementation.

In addition, we are concerned that the framework could create unintended consequences, particularly for consumers whose purchase decisions may be disrupted depending on the delivery channel(s) available to them. We have organized our comments accordingly under the following general headings:

1) Need to Integrate Vision with Implementation
2) Unintended Consequences

We believe that the Joint Forum could effectively achieve its objectives by addressing industry issues and concerns, particularly with respect to the time and method of delivery.

If these issues cannot be effectively resolved, consumers may ultimately be frustrated by the disruptions to their purchasing decisions caused by imposed inefficiencies in various delivery channels, and potentially be pushed to consider alternative "non-fund" investment products.

Our comments and recommendations with respect to the proposed framework, including responses to your questions, are provided below.

2.0 Need to Integrate the Vision with Implementation

We believe that the Joint Forum's proposed framework needs to be more fully developed and integrated in order for its objectives to be achieved. There are still many unanswered questions pertaining to implementation, particularly with respect to delivery.

Proposing a vision for improved disclosure and imposing strict requirements around its timing and mode of delivery without due consideration to potential impacts, creates challenges for investors and industry. These considerations are particularly important to our members who, as financial advisors, will ultimately be charged with the responsibility of delivering the point of sale documents to the client.

While delivery responsibilities have not been fully outlined in the proposed framework but will eventually be provided in more detail, we note that the implementation (i.e., delivery) component of this regulatory framework is a contentious issue for many market participants, and may need to be addressed sooner rather than later.

We understand that the purpose of the current comment period is for regulators to obtain more information and feedback from market participants in order to refine the proposal to ensure that it works effectively. As such, it is our hope that our comments and recommendations, as well as those from other industry associations and market participants, will encourage the Joint Forum to revise its proposed framework accordingly to ensure fair, consistent and seamless delivery of the Fund Facts to the consumer for all modes of delivery.

We note that we have participated in roundtable discussions on this issue with other industry stakeholders, including the main associations representing all aspects of the fund industry, and that we share many of the same concerns with respect to the proposed framework's delivery requirements.

In our view, the proposed rigid delivery requirement disrupts a familiar, efficient and consistent purchase and delivery process that market participants have traditionally relied upon for all of their investment purchases. Moreover, with respect to questions 4 and 5 regarding delivery, the delivery requirement will pose challenges for industry and consumers depending on the mode of delivery available to them to execute a purchase order. In our view, the delivery methods do not provide consumers or investors with sufficient time in all cases to make and execute investment decisions in a timely manner.

We are concerned that the improvements made to disclosure may be offset by the potential inconveniences, frustrations and delays experienced by industry and consumers in delivery, and that this could lead them to alter their current business practices and purchase decisions, respectively.

2.1 Fund Facts Should Not to be Construed as Investment Advice

Financial advisors provide professional financial advice to millions of Canadians -- individuals, families and businesses -- in order to assist them in achieving their financial objectives. More specifically, financial advisors play an important role in determining a client's risk tolerance, providing them with a long-term financial plan, and recommending suitable products. Given this role, a financial advisor's profession is built on reputation and trust. Not surprisingly, according to a recent industry survey, 85% of Canadian investors consult their financial advisor when making a mutual fund investment.

While Fund Facts provides investors with a simplified summary of a fund, it is not intended as investment advice. It is the role of financial advisors to provide investment advice for investors, and in our view this should be made clear to consumers on the Fund Facts. We believe that there may be a risk that the Fund Facts could be misconstrued by an investor as investment advice or be used to supplant the professional role of an advisor. Moreover, for many advisors, the financial plan, including a client's needs, risk tolerance and suitability, is as critical an aspect of the investment advice process as the product or fund selection.

In our view, Fund Facts should be used to confirm what an investor has purchased. It is our understanding based on early discussions with the Joint Forum on the development of Funds Facts that this was also its original intent -- to inform consumers of the funds they had purchased in a more simplified, plain-language manner.

While we support the Joint Forum's objective that investors be provided with meaningful information about a fund, we believe that the information provided in the Fund Facts is not sufficient on its own for the client to make a fully informed investment decision. In our view, Fund Facts could potentially give the consumer a false sense that he/she has *all* the information necessary to make a fully informed decision on a fund investment. Important information that Fund Facts does not include is comparisons of fund performance and valuations, and how the fund fits into an investor's overall plan and helps them achieve their long-term goals.

We believe that investors should make informed decisions based on the professional advice of a financial advisor, not on the basis of Fund Facts alone. To protect the consumer from interpreting the disclosure document as the sole decision-making tool, we believe the Joint Forum should consider including a disclaimer to that effect on the Fund Facts.

Moreover, as the Fund Facts do not recognize or express the need for a financial advisor to conduct a suitability assessment so that a consumer receives meaningful financial advice, the disclosure document may inadvertently establish a "minimum standard" for consumers to make their own assessment of suitability, which, depending on one's level of investment knowledge, may not be appropriate for all investors.

2.2 Waiving the Requirement for Delivery

While there is no provision in the proposed framework for investors to waive receipt of the Fund Facts for initial purchases, we believe that consumers should be given the option to waive the requirement altogether, or at least the timing requirement, provided that a) they are deemed to be sophisticated investors as defined by current industry standards and as the term is applied to users of other types of securities such a derivatives, and b) they are provided with a copy of the fund's simplified prospectus post-purchase. By providing such a waiver, the potential number of disruptions caused by the rigid delivery requirement would be considerably reduced.

In addition, and in response to questions 1-3 on subsequent purchases in the proposed framework, we also believe that the waiver should be extended to all subsequent purchases of a fund that an investor owns regardless of the time that has elapsed since the last purchase. We do not see the distinction between subsequent purchases and pre-authorized payment plan purchases that are currently exempt under the proposed framework. In both cases the same fund is being purchased by the investor. As noted in the proposed framework, "there are already many excellent sources of general educational material in the marketplace about both mutual funds and segregated funds", including comparative performance updates of specific funds. These are all readily available to all market participants, including consumers.

2.3 Potential Exclusions from Point of Sale Disclosure

The following is a list of transactions that we believe will require a Fund Facts when it may not be necessary, potentially disrupting the delivery process and frustrating the consumer. Consequently, the Joint Forum may want to consider adding these types of transaction to its list of exceptions.

- A client makes regular lump-sum investments whenever he/she has available funds. Each time he/she adds to existing assets, the point of sale document would be required. These transactions are usually done by some combination of mail/email/telephone.

- Many advisors arrange every year for their clients to switch the 10% free units in deferred sales charge (DSC) funds to the front-end (FE) version. This is in fact a trade. It's exactly the same fund, but the fee to the client is reduced if the client redeems the units.

- A client has a large investment and does not want to make the total investment in equity funds on a single date. A plan is put in place to invest 10% of the funds each month until all the assets are in the equity funds. While this process is going forward, the remaining assets are held in money market funds. The switch from the money market funds to the existing funds is a trade and would appear to be caught by this proposal.

- A client has a Registered Retirement Income Fund (RRIF) and arranges for the annual payment to be made in December. Throughout the year, in discussions with the client, assets are moved from equity funds to a money market fund in order to have the funds available in December.

3.0 Unintended Consequences

In our view, the Joint Forum's proposed framework could potentially create some unintended consequences, including i) delivery delays that push investors away from fund products and towards alternative investments; ii) delivery disruptions to consumers that require more than one delivery channel to conclude a transaction; and iii) expansion of advisor liability for insurance claims pertaining to segregated funds.

3.1 Fund Facts Delivery Delays May Push Investors Away From Funds

With respect to questions 6 and 7 pertaining to delivery in the proposed framework, given the Joint Forum's rigid requirement that the Fund Facts be delivered to investors before or at the point of sale, the purchasing process for mutual funds and segregated funds could be more administratively burdensome for investors and industry. In addition, the purchasing process could be potentially slower than that which currently exists for alternative investment products such as stocks or bonds, creating unintended biases against fund investments.

Consequently, some investors may not appreciate the delays caused by the delivery of a point of sale disclosure document (either through the mail, fax, by hand or electronically) and decide to purchase alternative investment products that can be purchased on a more time-sensitive basis. In effect, the proposed framework could divert investors away from funds and towards individual stocks or bonds. Such a consequence would run counter to the original purpose of funds, namely to provide small investors with the opportunity to participate in the stock market through a diversified, lower-risk vehicle. In addition, as the cost of doing business may increase for some advisors, the consumers that need the advice the most may in fact have less access to advisors, putting some consumers at a disadvantage.

3.2 Delivery Disruptions for Consumers Depend on Distribution Channel

Given the Joint Forum's rigid requirement that Fund Facts be "delivered" as opposed to electronically "accessible" on the Internet, the impact on industry and consumers could be different depending on the mode of delivery available to, or chosen by, a consumer.

Based on the design of the Fund Facts, it is evident that the Joint Forum is targeting a certain segment of the market, albeit large, but it does not represent the entire market. As a consequence, the Joint Forum's "one-size-fits-all approach" may not work for all consumers. If possible, the framework should be revised to ensure that all consumers can effectively participate in the fund market.

For some consumers, point of sale delivery will be seamless while for others it could be disruptive and require more than one delivery method to conclude a transaction. In our view, the proposed framework should ensure that neither the consumer nor the financial advisor is disadvantaged due to the selection of one delivery option versus another.

The following are examples of point of sale transactions that might be potentially disruptive to consumers, forcing them to resume the purchase process using an alternative mode of delivery (i.e., electronic, fax, mail, hand). Moreover, such transactions could be particularly problematic for consumers with time-sensitive purchase orders.

- Consumers who make fund purchases during face-to-face in-home discussions with their investment advisor, and who want to purchase funds for which the advisor does not have a Fund Facts on-hand. The consumer will have to delay the purchase until the advisor provides the client with the Fund Facts.

- Consumers who want to make a fund purchase by telephone but do not have access to a home computer or fax and cannot readily receive delivery of Fund Facts to make an immediate purchase. The consumer will have to delay the purchase decision until a Fund Facts is mailed to him/her, and then contact the advisor to make the purchase.

- Consumers who wait until the last day to make an RRSP contribution and instruct their advisor to buy a mutual fund, and learn the next day that the trade could not be completed as a Fund Facts was not delivered prior to purchase.

- Consumers who want to make price-sensitive fund purchases in volatile markets on a same-day basis, but cannot access their e-mail to review Fund Facts. Consequently, the consumer cannot make the purchase.

Given that many of our members provide financial advice to Canadians in remote locations and underserved markets, advisors often have to “reach out” to consumers. In addition, many of our members conduct a significant portion of their business via telephone and in-home sales, and often rely on the slower modes of delivery, such as hand, mail or fax. For many of these members and their clients, the point of sale disclosure requirement would be disruptive in many instances. Consumers may be forced to make alternative, time-consuming arrangements to obtain a Fund Facts and as a consequence may develop a negative perception of the fund industry.

3.3 Broadening the Scope of Liability Potentially and Increasing E&O Premiums

We understand that the Fund Facts and Key Facts will form part of the insurance contract, and we note that consumers may rely on these mandated disclosure documents when they make their investment decisions. As such, a financial advisor’s liability could potentially expand to include these documents even though the advisor has no control or input as to their content. Moreover, the potential increase in consumer complaints filed with financial advisor insurers could lead to an increase in a financial advisor’s Errors and Omissions (E&O) insurance premiums.

As a result of a potential increase in consumer complaints and E&O insurance claims, the higher premiums paid by financial advisors would ultimately be passed down to consumers in the form of higher costs. According to Advocis Protective Association (APA) statistics, the number of complaints pertaining to segregated funds today is negligible. However, any significant increase in the number of complaints for these products due to the reliance on Fund Facts would be recorded and likely result in higher insurance premiums for advisors to cover the increased risk to the insurance companies.

3.4. Fund Facts Application for Discretionary Account Not Addressed

While the Joint Forum does not address discretionary accounts that are under the management of banks, investment counselors or portfolio managers, we hope that the proposed framework does not provide these entities with any unintended competitive advantage in the form of an exemption from the proposed framework.

4.0 Conclusion

While we applaud the Joint Forum for establishing a new standard for disclosure that provides investors with simplified key information about a fund, we believe that the proposed framework currently poses potential implementation challenges, particularly with respect to the time and method of delivery, and creates unintended consequences for industry and consumers.

Specifically, we are concerned that the improvements made to disclosure may be offset by the potential inconveniences, frustrations and delays in delivery, and that this could lead industry and consumers to alter their current business practices and purchase decisions, respectively.

Given the Joint Forum's rigid requirement that Fund Facts be "delivered" as opposed to electronically "accessible" on the Internet, the impact on industry and consumers could be different depending on the mode of delivery available to, or chosen by, a consumer. For some consumers, point of sale delivery will be seamless, while for others it could be disruptive and require more than one delivery channel to conclude a transaction. We are concerned that consumers experiencing disruptions and delays may be pushed away from funds and towards alternative investment products, such as higher-risk individual securities that can be purchased on a more time-sensitive basis.

In our view, the proposed framework should be revised to ensure that all consumers can effectively participate in the fund market, and that neither the consumer nor the financial advisor is disadvantaged due to the selection of one delivery option versus another. Consequently, we are pleased that the Joint Forum recognizes that there are still some outstanding questions pertaining to the framework, and continues to seek specific feedback on issues. Moreover, we are confident, based on the Joint Forum's extensive consultative approach on this important matter to date, that it will effectively address industry and consumer concerns before the framework is finalized.

A summary of our proposed recommendations is attached for your consideration.

Summary of Recommendations

Advocis recommends that:

- The proposed framework be revised to ensure fair, consistent and seamless delivery of the Fund Facts to the consumer for all modes of delivery.

- The Joint Forum move away from its rigid requirement that Fund Facts be "delivered" (given the different impact on industry and consumers depending on the mode of delivery available to, or chosen by, a consumer), and allow Fund Facts to be electronically accessed on a centralized database via the internet, giving consumers the option to provide confirmation to financial advisors that they have read it, making point of sale delivery unnecessary.

- The Joint Forum consider including a disclaimer on the Fund Facts that it is not intended as investment advice and should not be used as the sole decision-making tool when making an informed investment decision.

- Consumers be given the option to waive the requirement altogether, or at least the timing requirement, provided that a) they are deemed to be sophisticated investors as defined by current industry standards and as the term is applied to users of other types of securities such a derivatives, and b) they are provided with a copy of the fund's simplified prospectus post-purchase.

- In response to questions 1-3 regarding subsequent purchases, the waiver be extended to all subsequent purchases of a fund that an investor owns regardless of the time that has elapsed since the last purchase -- we do not see the distinction between subsequent purchases and pre-authorized payment plan purchases that are currently exempt under the proposed framework.

- The Joint Forum clarify whether the following list of transactions should be exempt from the proposed framework:

    - A client makes regular lump-sum investments whenever he/she has available funds. Each time he/she adds to existing assets, the point of sale document would be required. These transactions are usually done by some combination of mail/email/telephone.

    - Many advisors arrange every year for their clients to switch the 10% free units in deferred sales charge (DSC) funds to the front-end (FE) version. This is in fact a trade. It's exactly the same fund, but the fee to the client is reduced if the client redeems the units.

- A client has a large investment and does not want to make the total investment in equity funds on a single date. A plan is put in place to invest 10% of the funds each month until all the assets are in the equity funds. While this process is going forward, the remaining assets are held in money market funds. The switch from the money market funds to the existing funds is a trade and would appear to be caught by this proposal.

- A client has a Registered Retirement Income Fund (RRIF) and arranges for the annual payment to be made in December. Throughout the year, in discussions with the client, assets are moved from equity funds to a money market fund in order to have the funds available in December.

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