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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comments on proposed amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103) and Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Companion Policy) concerning cost disclosure, performance reporting and client statements published for comment on June 14, 2012

We are pleased to provide the members of the Canadian Securities Administrators (CSA) with comments on the second publication of the above-noted proposed amendments to NI 31-103 and the Companion Policy.

Our comments are those of individual lawyers in Borden Ladner Gervais LLP's Investment Management practice group and do not necessarily represent the views of BLG, other BLG

lawyers or our clients. In preparing our comment letter, we reviewed the comments provided to the CSA by The Investment Funds Institute of Canada and by the Portfolio Management Association of Canada. We were pleased to participate in the working groups established by those organizations to develop their comments. Our letter echoes many of the concerns raised by those organizations on behalf of their members.

We were also pleased to work with the members of the RESP Dealers Association of Canada in developing their comment letter and accordingly support the comments made by that organization in its comments on the portions of the proposed amendments that relate to RESPs (scholarship plans). We have not repeated those comments in this letter.

General Comments on the Proposed Amendments

We completely support the CSA's investor protection *policy objectives* behind the proposed amendments; that is, to ensure that clients of dealers and advisers receive on-going fundamental information that they can use to assess their investment program, including the abilities of their chosen dealer or portfolio management firm.

We acknowledge that the CSA have addressed certain of our comments that we provided on the June 2011 publication of proposed amendments. However, as we detail below, we believe that further amendments to the proposed amendments are required in order to fully achieve the CSA's objectives, and to avoid unnecessary regulatory burden and costs on industry participants.

As we did with the June 2011 publication, we will begin with outlining more substantive high-level comments and then provide some comments on specific provisions that we consider the most problematic.

1. **The proposed amendments are too specific and too prescriptive**

While we have no concerns with the *concept* behind the CSA proposals -- namely that investors receive information about their accounts at various stages in the life-cycle of their relationship with a registrant – we consider that many of our comments, as well as those of other commentators, derive from the fact that the CSA's proposals are overly complex and prescriptive in mandating exactly what information must be provided, to whom and when. We strongly recommend that the CSA review all comments in this light – and consider where excessively detailed and prescriptive requirements could be pared back to the essential principles. We do not see the need for such detailed rules on disclosure, particularly if the CSA is clear on the *principles* behind the requirement to provide the information they want registrants to provide investors, as well as ***why*** it should be given to investors, as important and useful information.

2. **Investor confusion caused by overlap with existing regulatory disclosure**

We continue to consider that many of the proposed amendments, particularly as they relate to information about mutual funds, overlap with existing disclosure requirements under current securities laws.

The on-going focus of the CSA on mandating very specific disclosure for mutual funds in Fund Facts, as well as simplified prospectuses, annual information forms and continuous

disclosure documents, means, for example that there is very clear disclosure about the costs, charges and commissions associated with mutual fund investing, available to any investor. We support the clear and simple disclosure of costs and commissions that is required to be set out in the Fund Facts document.

We find it very troublesome that the CSA's proposed amendments do not acknowledge the tremendous effort that the mutual fund industry has put in, to change disclosure practices to accommodate the CSA's policy decision to require the Fund Facts documents. Except in relation to the "pre-trade" disclosure of costs (where the CSA acknowledge that registrants that recommend investments in mutual funds, can point to the disclosure in the Fund Facts), and in the "costs report" there is no other reference in any of the other sections, or in the Companion Policy to reinforce the importance of these disclosure documents for mutual funds. In light of the extensive work done by the CSA in developing the Fund Facts and its continuing work toward the implementation of the pre-trade delivery of Fund Facts documents, the CSA should be encouraging, supporting and acknowledging the use of Fund Facts by registrants whenever possible.

In our view, the proposals for registrants to disclose information that relates to many of the same topics as are contained in the Fund Facts and other prospectus and continuous disclosure documents, may result in information over-load, lack of uniformity, inaccuracies, double-counting of costs and continued confusion as to the costs of investment funds, particularly since many costs are not charges levied by the registrants in question, but are charges levied by the investment fund managers of the funds for services provided to those funds by the investment fund managers and other service providers or are payments made by the fund manager to the registrants in question.

As we will highlight when we discuss the various provisions of the proposed amendments, we consider that investors will be better served with more generic statements that provide more *context* for the information and refer investors back to the "official" disclosure document for mutual funds rather than the very specific, dollar figures expected by the proposed amendments.

3. ***Disclosure requirements continue to focus on mutual funds***

We acknowledge IFIC's comment about the quite apparent focus on disclosure of the costs and charges associated with mutual funds. Rather than singling out one type of security (albeit one that is important to Canadian investors), we consider it would be more useful for the CSA to consider how to ensure appropriate disclosure of charges associated with ***any*** type of investment. In our view, the focus is particularly inappropriate given the level of current disclosure about the costs and charges associated with mutual fund investing – it is simply unfair to suggest (as the proposed rules will to a more casual reader) that these costs and charges are somehow buried by industry participants and not disclosed publicly and clearly. The proposed amendments contain several examples of mandatory disclosure that both overstates the situation and is unduly negative about investing in mutual funds.

4. ***Proposed Amendments will necessitate costly systems changes***

Compliance with the proposed amendments can be expected to necessitate costly technological and compliance system changes for industry participants (e.g. changes will be required to calculate and provide trailing commissions at the account level and new systems will be needed to extract and process the data and create the information necessary to produce the annual reports as much of the information is not currently tracked in the same way) without, in our view, a corresponding increase in comprehension by, and meaningful disclosure to, investors.

The additional transition periods provided in the proposed amendments, while certainly helpful to industry from a timing perspective, do not address the issue of the significant cost that will be incurred by registrants to comply with the proposed requirements. The CSA has acknowledged that there will be potentially significant costs to the industry to produce the proposed new documents and to provide the new, very specific information, but to our knowledge has not undertaken a rigorous cost-benefit analysis in respect of the proposed amendments. We encourage the CSA to undertake such a cost-benefit analysis in order to ensure that the costs to be incurred by industry in respect of the proposed amendments are in fact outweighed by the benefits to investors.

Specific comments on the Proposed Amendments

1. Amended definitions

(a) While we have no objections to the revised definitions of "operating charge" and "transaction charge", particularly the clarification that these are charges "charged to a client" *by* "a registered firm", we find curious the discussion in section 14.2 of the Companion Policy – particularly about the expectation of the CSA that registrants will disclose costs and charges inherent in mutual funds. These are not charges "charged to a client" *by* "a registered firm", so where is the requirement to provide this disclosure in RDI (for example)? The specific paragraphs setting out the CSA's expectation about the costs of mutual funds are inconsistent with the wording of the actual rule. We consider that there will be additional confusion to clients of registrants, when reading different RDI and trying to reconcile that information with the information provided about the specific mutual funds in the disclosure documents.

Our reading of the proposed revised definitions (in the rule) is consistent with the CSA's usage of these terms in (for example) proposed section 14.2(7).

(b) The definition of "trailing commission" is technically imprecise. Trailing commissions are paid by fund managers out of their revenues generally. They are not paid "out of management fees or other charges to the investment fund", although we acknowledge that mutual funds pay management fees at levels that assume the manager will pay over a certain portion of those revenues to registrants. We urge the CSA to review section 3.2 of NI 81-105 and NI 81-101 to ensure usage of consistent terminology amongst the CSA's rules.

2. New section 14.1(2)

Fund managers must be given the same transition for compliance with this section in the same way, and for the same period, as other registrants. We do not see where a transition period has been granted in the proposed amendments.

This section is drafted in a very open ended, imprecise way, which raises difficulties for an enforceable rule. What does the CSA expect of a fund manager? Is this information to be provided on every trade, once a year, once a quarter or only on request of the other registrant?

3. New section 14.2.1 – Pre-trade disclosure of charges

This section uses undefined terms "charges" and "deferred charges" making it unclear what "charges" must be disclosed? We strongly recommend that the better requirement would be for registrants to refer clients to the prospectus of the applicable security (if the client will be acquiring newly issued securities) – and direct them to consider the charges, deferred sales charges and dealer compensation (if any) that will come to the firm in respect of the trade. Of course if an investor will be paying the firm a specific charge in respect of the trade, this should be discussed with the client.

We find it curious that this section does not require a dealer firm to tell an investor about any other commissions it may receive in respect of a trade in a mutual fund, for example, the fact that it will receive an up front sales commission if the client is investing in a DSC security. It is important for an investor to obtain a complete picture of compensation, and not to be told only about the potential for trailing commissions.

4. Comments on section 14.14 – Client statements and securityholder statements – "book cost"

We urge the CSA to allow registrants flexibility in determining the value of securities holdings, allowing registrants to make the determination in a way they consider useful and expected by their clients. We acknowledge the detailed comments made by IFIC and PMAC in this regard and consider that the controversy of these requirements really highlight the fact that the proposed amendments (e.g. the use of "book cost" vs "original cost" are too prescriptive and that mandating a single requirement may not work for all registrants and their clients. We urge the CSA to consider that clients of portfolio management firms may have different needs than clients of dealer firms (IIROC and MFDA firms).

We recommend that the CSA provide registrants with the option of choosing between original cost and book cost and require the registrant to provide clear disclosure to clients about the reporting method used and what that method represents. It is reasonable to expect that by providing flexibility for registrants this may be able to reduce some of the regulatory burden and costs for registrants who are already using a particular valuation methodology in their reports to clients.

5. Additional comments on section 14.14 – Client statements and securityholder statements

We have the following additional comments on section 14.14

(a) We were unable to find a transition period for new subsection (8) and recommend one be provided that is consistent with the other transition periods

(b) We consider the detailed proposals about client name vs. nominee name to be quite confusing and another example of unnecessarily prescriptive and detailed requirements. Our reading of this section is that, client statements must maintain distinct sections for transactions, client name accounts, and nominee held accounts. The practical implication of these requirements may be that a client receives transaction information that is separated from the related account information, which may lead to client confusion. Why will a client "care" about how their securities are held and what will they do with this information? We foresee that many clients will be wholly confused by these reports.

Many registrants will have to undertake statement reprogramming which adds to the implementation cost without any significant, or even apparent benefit to clients. We recommend that subsection 14.14(7.1) be deleted in light of the guidance from the CSA to registrants about their obligation to communicate with clients in a manner that is clear and understandable.

6. Comments on section 14.15 – Report on charges and other compensation

We consider that the requirement to provide detailed dollar information about "trailing commissions" paid to the registrant in respect of an account to be at a level that is overly detailed and prescriptive. We consider the statement about how trailing commissions will affect the investor to be overly inflammatory. What will an investor be expected to do with the information that in (say) 2011 their firm received $120 in trailing commissions? And when they receive a statement a year later that said their firm received $220 in trailing commissions (which may be due to the fact that they had more investments in mutual funds)? We recommend further consultation be had with the industry to come up with a way to meet the CSA's objectives, while providing investors with *neutral, useful* information that can be provided by registrants without undue cost and regulatory burden.

7. Section 14.16 – Investment performance report - time-weighted vs dollar-weighted performance reporting

The CSA has proposed one method for performance reporting to promote consistency across registrants. This requirement for consistency does not benefit investors in any meaningful way as it is unlikely investors will have multiple accounts with multiple registrants. We note that the SROs did not propose one method of calculation and acknowledged the need for flexibility in recognition of different investor needs. In a competitive marketplace, registrants will choose the method of performance reporting which best meets the needs of their clients. Implementing one method will also further introduce client confusion as other industries and other segments of the securities industry will continue to report performance using other methodologies.

The CSA has proposed the dollar weighted methodology as it is believed to most accurately reflect the actual return of the client's investments. However this choice does not take into account the wide range of investor needs. Some investors may be more concerned with the actual performance of the underlying investments so they can decide how to allocate future investments. There is also a concern by some industry participants that a client who sees performance of an account based only on dollar weighted methodology may make misinformed investment decisions given that a client is not seeing the performance of the funds in which he/she has invested, but rather seeing a limited view of what has occurred in his/her account. Other investors may be more interested in annual gain/loss information.

Offering the option for registrants to provide both performance measures is not a viable option due to operational challenges. Registrants will have to duplicate their statement production processes which will impact the timeliness of information, increase costs that will ultimately be borne by investors and increase opportunities for errors and confusion. Also, mandating a single performance measure will have the same operational challenges and cost implications for registrants not currently using that method, without necessarily providing a corresponding benefit to investors.

We recommend that the CSA provide registrants with the option of choosing a recognized performance reporting methodology and require registrants to clearly disclose to the client the reporting method and what the reporting method represents. As commented above, flexibility for registrants on which methodology is used may result in reduced regulatory burden and costs for registrants who are already producing reports based on one or other of the methodologies.

We wish to reinforce our earlier comments – we find the commentary of both IFIC and PMAC on this point to be particularly insightful and helpful.

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We thank you for allowing us the opportunity to comment on the proposed amendments. Please contact any of us at the contact details provided below if the CSA members would like further elaboration of our comments. We, together with other BLG lawyers who have considered the proposed amendments, would be pleased to meet with you at your convenience.

Yours truly,

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