CLARINGTON™ INVESTMENTS
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September 6, 2012

**VIA EMAIL**

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

**Re: Stage 2 of Point of Sale Disclosure to NI 81-101**

This letter comments on the draft amendments to NI 81-101 and related forms and instruments that relate to implementation of Stage 2 of Point of Sale Disclosure.

I am Vice-President, Chief Legal Counsel and Chief Compliance Officer for IA Clarington Investments Inc. These comments reflect my personal views and not necessarily those of the company.

I share your belief that the Point of Sale initiative should significantly improve the relevance and utility of disclosure to investors. The Fund Facts document is much more readable and useful for a typical prospective purchaser than a prospectus. This is because it focuses on what is immediately useful for an investor and avoids things that might be, but are not necessarily, useful.

The form is also useful because it largely follows a common format for mutual funds and segregated funds. This should make it easier for an investor to understand the differences between investment products and make an informed decision.

In changing the form, I would encourage you to remain focused on the goals of maintaining a simple and readable document with relevant and useful information, which is comparable to the information available for other investments.

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## General Comments

Next year will be the third year that we have produced Fund Facts documents, and this is the third amendment to the form of Fund Facts document. The changes to the order will require our Fund Facts provider to significantly change its templates and the programming logic that it uses to produce the documents. We have discovered that even seemingly small changes can take weeks and expect that it will take many months to implement the proposed amendments, and test them to make sure that they work for all of the permutations of funds and series.

While a six month implementation period may seem like a long time, it really is not. I would ask that you please consider requiring implementation for the first renewal filing that is more than six months after the adoption of the rule.

## 1. Risk Rating

We, like many fund companies, use historical standard deviation to measure risk. What that means is that a high risk fund has historically shown higher variations in returns than a low risk fund. I agree that some plain-language disclosure of what the risk rating means may be useful to an investor, but I do not believe that the template disclosure adequately reflects our approach to measuring and disclosing risk, and it would not be at all appropriate for a fund manager that uses a different risk ranking method.

The proposed disclosure does not entirely reflect our practices. Something along the following lines might be more appropriate:

> We rank a fund's risk based on how much its past returns have changed from year to year. Low-risk funds have shown smaller fluctuations in value and high-risk funds have shown high fluctuations. High fluctuations in value can translate into higher gains or losses, although any fund can lose money.

I would suggest that the form require the manager to disclose how it assesses risk and what the risk rankings mean, but not mandate language until the CSA and industry have had time to assess various approaches to risk disclosure.

## 2. Key Risks

Although this may seem like a good idea, there are some challenges to work through.

First, we have no way to assess what the four most important risks for a fund are. Two fund managers looking at the same fund may come to completely different conclusions about the risk disclosure.

Second, different fund managers often use different words to describe the same type of risk. Would an investor looking at two Canadian common share funds appreciate that one company's

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"equity risk" is the same as another company's "market risk"?

I query how useful it will be to the average retail investor to say that a fund is subject to "Equity Risk", "Foreign Investment Risk", "Derivatives Risk" and "Tax Treatment Risk" without explanation. If the investor is unsophisticated and not getting professional advice, the words should be close to meaningless and they can get what they need from the risk rating.

I would suggest that the risk disclosure will be close to useless unless both a precise methodology for assessing risks is mandated by the CSA and common risk language is required.

## 3. Comparison to GIC

GICs are very different from mutual funds. Unlike mutual funds, which are redeemable daily, one-year GICs often require the investor to remain invested for a period of time, often until maturity of the GIC. If the CSA consider it useful to include a return comparison to a low-risk deposit product, the product otherwise be comparable to a mutual fund, in terms of liquidity, minimum investment, availability of distributions and similar relevant provisions.

## 4. Worst Three Month Return

Investors already have the year-by-year returns and risk ratings to illustrate the possible positive and negative returns. Will three-month return data really add much for the typical investor? Would weekly, monthly or semi-annual returns be more appropriate? Would it be appropriate to add balance by also showing the best three-month return?

It will also be a challenge for us to produce this data across all of our series of all of our funds on a rolling three-month basis for the relevant performance periods of the funds and to incorporate that data in what is, after all, a liability document.

It is hard for me to see how the benefit of this disclosure outweighs the cost of producing it. It also seems inconsistent with the goal of having a Fund Facts document that is short and contains only relevant and useful information.

## 5. Conflict of Interest Disclosure

To the extent that a commission creates a conflict of interest, the dealer would be required to disclose that conflict of interest to the client under section 13.4 of NI 31-103. That disclosure would necessarily need to be tailored to the real conflicts created by the commission.

Adding boilerplate conflict of interest disclosure for mutual funds and not for other investments works against comparability. Similar conflicts may arise in the sale of segregated funds (where the form is similar, but the disclosure is different), GICs and deposit products (where I am not aware of any disclosure of commissions payable to the selling agent at point of sale) or in underwritten public offerings of 'regular' public companies (where there is disclosure of the

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conflicts posed by offerings of related issuers, but not of the conflicts arising from the underwriting fees).

The nature of any conflict will vary from dealer to dealer based on the nature of the commission and its internal incentive fees. There may, in fact, not be a conflict at all (for example, if the trailing commission is the same as or lower than the commissions on equivalent products). 'One size fits all' boilerplate disclosure impairs comparability of mutual fund products to other products and can confuse clients.

I would suggest that, to the extent that the CSA are concerned about the distorting effects of commissions on investment advice, they would better deal with that through registrant regulation under NI 31-103 than looking only at the commissions paid for one type of investment product.

Thank you for considering my submissions. Please do not hesitate to contact me if you have any questions.

Yours truly,

**IA CLARINGTON INVESTMENTS INC.**

per: *(signed) "Matthew Campbell"*
Matthew Campbell
Vice-President, Chief Legal Counsel
and Chief Compliance Officer