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

11 King Street West, Suite 1600, Toronto ON M5H 4C7
T 416.364.2754 | F 416.364.4861

www.iiac.ca

Adrian Walrath
Policy Counsel

May 26, 2014

VIA EMAIL

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, QC H4Z 1G3
consultation-en-cours@lautortie.qc.ca

Dear Sir/Madam:

Re: Implementation of Stage 3 of Point of Sale Disclosure for Mutual Funds: Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Companion Policy 81-10CP (the "Proposed Amendments")

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to comment on the above noted Proposed Amendments. The IIAC had previously commented on the Canadian Securities Administrators' 2009 Proposal.

The IIAC continues its support of the Canadian Securities Administrators' ("CSA") goal to provide investors with comparable, simplified, meaningful disclosure that will enable them to make informed investment decisions. The IIAC acknowledges the revisions made to the Proposed Amendments to simplify the requirements for firms in order to ease compliance concerns. In particular, the removal of the previously proposed requirement to bring the Fund Facts to "the attention" of the purchaser is commended. It was an unclear requirement that could have potentially added unnecessary costs and confusion for advisors and investors.

Nevertheless, IIAC members do have several concerns with aspects of the Proposed Amendments. Set out below are our responses to the questions posed by the CSA in regards to the Proposed Amendments.

Exceptions from Pre-Sale Delivery of Fund Facts

1.a. The IIAC agrees that in order to achieve the stated goals of Fund Facts, exceptions from pre-sale delivery should be limited. However, there are additional circumstances in which post-sale delivery is appropriate or that should be exempted from Fund Facts delivery entirely.

There are certain products that have an auto re-balancing and/or a re-allocation feature that make it impossible for the advisor to provide the Fund Facts pre-sale. In these circumstances, an investor purchases a managed product solution that automatically optimizes the investment within and across multiple mutual funds. The allocation and potential re-balancing is performed in order to maintain the required asset mix or to achieve the optimal tax strategy for the investor. In each case, the requirement to allocate or re-balance is not known until after the process is completed, making pre-sale delivery of a Fund Facts impossible. Furthermore, the investor would be aware of how the product works and would understand that they will not know the exact allocation of funds prior to the purchase of the managed product solution. We do not believe there are any investor protection concerns related to providing an exemption for these managed product solutions.

The Proposed Amendments do not address managed accounts. The IIAC does not believe it is appropriate to require the pre-sale delivery of Fund Facts to the client for managed accounts. In general, the client has chosen a managed account to enable the advisor to have control over the decision making for the account. The parties have a contractual arrangement. The advisor is selecting the mutual funds for the client, and the client will not necessarily know of trades in advance. It would be confusing for the client to receive unsolicited Fund Facts in connection with trades the client is not overseeing. We request that managed accounts be exempted from the Fund Facts requirements.

In the 2009 Proposal, an exemption was proposed for subsequent purchases of a mutual fund currently held in the investor's account. Firms would have been required to provide investors the option to receive annually the Fund Facts for each mutual fund in their account. The most recently filed Fund Facts document would have also been posted to the website of the mutual fund, mutual fund family or manager. We recommend that this exemption be included in the Proposed Amendments. If a client makes additional purchases of mutual funds once a year, there may be a more recently filed Fund Facts. However, we believe that it is unnecessary to require pre-sale delivery of the Fund Facts, but rather, an option to receive the Fund Facts annually, and access to the Fund Facts is sufficient.

1.b. The IIAC agrees that it is appropriate to provide verbal disclosure pre-sale where the client will receive the Fund Facts post-sale in order to ensure the client has the pertinent information. CRM 2 and account opening procedures will also provide the client with important information regarding costs. We believe that the advisor should only be required to tell the investor to "see withdrawal and rescission rights for their province or territory, or to consult a lawyer". As there are different rights in different provinces, we are concerned that verbal disclosure summarizing the potential withdrawal and rescission rights may lead to questions that advisors will not be qualified to answer.

1.c. Currently exemption orders and blanket orders (the "relief") are in place to permit the delivery of a simplified prospectus on the initial purchase of a mutual fund pursuant to a pre-authorized purchase plan ("PAC plan"). Moreover, a simplified prospectus is not required for any subsequent purchase under the PAC plan unless the client requests it. We understand that exemption applications have been filed to extend this relief to the delivery of Fund Facts documents.

Accordingly, to be consistent with current practice, we suggest that Fund Facts should only be required to be sent or delivered to a participant in connection with the first purchase, provided that certain notice requirements are met. We do not believe that it is necessary or desirable to send Fund Facts to clients with a PAC plan each time it is amended or on an annual basis. In addition, we disagree with the CSA proposal that would require the delivery of a Fund Facts before the first trade after the proposals come into force, notwithstanding that the PAC plan arrangement may have been in place for years. It would be very onerous for firms to send Fund Facts to all existing clients with a PAC Plan. An annual investor notice to the client regarding how to access Fund Facts should be sufficient.

Compliance

2. The IIAC believes that the CSA should consult with the self-regulatory organizations, such as the Investment Industry Regulatory Organization of Canada (IIROC) with respect to compliance requirements. There are IIROC rules that may impact or conflict with certain aspects of the requirements in the Proposed Amendments.

There are several aspects of the Proposed Amendments that require additional guidance or clarification regarding how members can comply with the requirements.

Delivery

The acceptable methods for electronic delivery of Fund Facts are not clear. The proposed Companion Policy statement that "simply referring an investor to a general website where the fund facts document can be found" is not sufficient. IIAC members agree with that statement. However, we would suggest that in addition to electronically sending PDF Fund Facts, advisors should be able to provide a client with an email link directly to the Fund Facts. Different email providers can have restrictions on file sizes, which may be problematic for sending PDFs. Consequently, we recommend that the Companion Policy be revised to provide clarification that an email link directly to the Fund Facts should also be able to satisfy the delivery requirement.

Translation of Fund Facts

Certain investors may require disclosure documents to be translated into languages other than English or French in order to understand their content. The Proposed Amendments, as currently drafted, penalize advisors and firms with onerous compliance requirements if they translate Fund Facts into a language other than French or English. The Companion Policy, Part 7.6, states that Fund Facts in other languages would be considered sales communications. IIROC has numerous compliance requirements regarding the use of sales communications, including with respect to supervision, approval and record retention. The intent of Fund Facts is to provide the client with meaningful information to investors. We

request that the CSA consult with IIROC to ensure that the Proposed Amendments do not conflict with IIROC rules or impose undue compliance burdens on firms.

Anticipated Costs and Benefits of Pre-Sale Delivery of Fund Facts

3. The IIAC agrees with the CSA's goal of providing investors with concise, meaningful disclosure that is understandable to investors. We believe that this goal can be achieved in an efficient manner that minimizes costs and disruptions.

While the IIAC is supportive of the objectives of the Proposed Amendments, we disagree with the CSA's assessment that the costs related to the pre-sale delivery of Fund Facts are merely "incremental" to CRM 2. The Proposed Amendments' costs should be understood as in addition to the substantial costs currently being undertaken to implement CRM 2.

There will be significant costs in making changes to IT systems and processes when implementing the Proposed Amendments. Even with technology advances by service providers, firms will have to integrate the programs into their IT structures, and conduct testing. Advisors will need training, and supervisory compliance procedures will need to be developed.

A further cost is the potential for clients to receive fewer recommendations for various mutual funds. If an advisor can only bundle ten Fund Facts, and if they have to coordinate and document delivery, they will work with the funds they know and can easily access. Similarly, if an advisor is meeting a client outside of their office, they can only bring a finite number of Fund Facts with them to the meeting. In both cases, investor choice is potentially limited because of the pre-sale delivery obligation.

Transition Period

4. The greatest challenge associated with the Proposed Amendments is implementation. We believe that 18 months to two years from the date the Proposed Amendments are finalized is appropriate. There are substantive differences between the circumstances in which Fund Facts were to be delivered and the type of information that firms and advisors would have been required to track in the original proposal compared to the Proposed Amendments. Consequently, it cannot be assumed that firms have or will be able to preemptively implement technology solutions prior to rule finalization. Most firms will need to use external vendor solutions and there could be significant changes to current sales practices. On average, 18 months to two years would be required to go through the following steps: select a vendor, negotiate a contract, build a system, integrate the system, test the system and implement the new process. Irrespective of the technological improvements that can facilitate the implementation of Fund Facts, there will need to be extensive training of advisors. Firms are in the midst of providing extensive CRM 2 training. There needs to be a sufficient implementation period to enable fulsome training of advisors.

5. We recommend a switch-over date that avoids the months November to April. The year-end and RRSP season are extremely busy for firms and advisors.

We would be more than pleased to meet with the CSA to discuss this response to your Fund Facts Delivery Consultation request.

Sincerely,

Adrian Walrath