



September 6, 2012

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

The Secretary
Ontario Securities Commission
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19th Floor, Box 55
Toronto, Ontario M5H 3S8
e-mail: comments@osc.gov.on.ca

Madame Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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e-mail: consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

Re: CSA Notice and Request for Comment – 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 (2nd Publication)

On behalf of ING Direct Asset Management Limited (“ING Direct”), we appreciate the opportunity to comment on the Canadian Securities Administrators’ (“CSA”) proposal to amend National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (“NI 81-101”), Form 81-101F3, and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure*

(“NI 81-101CP”), and consequential amendments (collectively, the “Proposed Amendments”).

ING Direct supports many of the proposals, but we have some concerns regarding the possible direction that these amendments and future amendments may have on the Fund Facts document, which should at all times remain a financial literacy document that is easy for investors to read and understand. We believe that introducing more technical requirements to the Fund Facts may put this document at risk of facing the same problems experienced by the simplified prospectus – a document that is delivered to investors, but is seldom read by them. It is imperative that the Fund Facts remain a plain language document that is easy to read, and for an investor to be able to quickly identify the key features of each mutual fund investment when presented with a Fund Facts document. The Fund Facts should never appear at first glance to be a daunting document that could be difficult to understand, as this could lead the investor to discard it instead of wanting to read it.

Investors should inherently want to read their Fund Facts documents when delivered to them by their dealer. We would not support proposed amendments to the Fund Facts that would make the document more difficult for the investor to read and understand. We strongly believe in this principle, and we submit that this should be a driving force behind these and any future amendments to the Fund Facts.

We are a wholly-owned subsidiary of ING Bank of Canada, a Schedule II Canadian bank. As of July 31, 2012, we managed over \$730 million for NI 81-101 mutual funds, focusing on index based investment strategies.

Our response is separated into three parts. In the first part, we provide our responses to questions posed by the CSA in the CSA Notice. In the second part, we include our specific comments on additional items contained in the Proposed Amendments. The final section summarizes our conclusion.

We are responding in our capacity as an investment fund manager.

I. Responses to Questions in the CSA Notice

1. The proposed explanatory text included above the risk scale is based on the assumption that fund managers use risk classification methodologies based on measures of market volatility, such as standard deviation.

We seek feedback on whether the proposed text will assist investors in understanding how to interpret the risk scale in the Fund Facts, and whether the explanation is compatible with the risk classification methodologies used by fund managers.

ING Direct believes the proposed text will assist investors in understanding how to interpret the risk scale in the Fund Facts. We believe however, that the CSA should attempt to simplify the proposed language and eliminate areas of duplication so as to prevent the Fund Facts from being overwhelmed with additional disclosure that does not add significant value to the document.

The CSA should consider deleting the entire second paragraph of the proposed text as it essentially explains the differences between higher and lower risk, and identifies the fund manager as the person that selects the risk rating for the fund. We believe that the explanation of risks has already been captured within the chart itself, the text underneath the chart with the explanatory arrows, as well as the bolded font further beneath the chart, and it does not need to be restated.

We further do not believe there is significant added value in identifying the fund manager as the person that selects the risk rating of the fund in this section of the Fund Facts. In creating an easy to read, plain language document, blank unoccupied space which helps to improve readability is at a premium. Our suggested solution is as follows. Under the proposed section describing the fund's (up to) top 4 risks, there is a reference indicating that investors can learn more about the fund's risk factors by referring to the fund's simplified prospectus. We submit that this should be edited to incorporate both the description of the risk scale, as well as the fund's risks, as both items are described in detail within the simplified prospectus. This will allow the risk scale discussion to be more concise, and will lead the investor to a document containing a discussion indicating that the fund manager selected the risk rating of the fund.

2. The intent of the proposed requirement to list the fund's main risks under the heading "What are the risks of this fund?" is to highlight for investors some of the specific risk factors that may impact the fund's returns. In an effort to avoid lengthy boilerplate disclosure, we are proposing to limit the list to no more than four risk factors, as identified by the fund manager, and to not allow any narrative description of those risks.

We seek feedback on whether the proposed inclusion of the fund's main risks will assist investors in better understanding the risks associated with investing in the fund. If we were to allow narrative descriptions of each risk factor, we invite feedback on how we could ensure that such descriptions convey meaningful information to investors while remaining short, simple and in plain language.

We agree with the CSA's approach for this initiative. We are concerned that to properly explain just one of a fund's risks could take anywhere from 1/4 to 1/2 of a page of lengthy boilerplate text. We do not believe that fund risks can be easily explained in one

or two sentences. Accordingly, we support a prohibition on the inclusion of narrative text accompanying the fund risks.

3. We are proposing to compare the fund's performance to a benchmark of a one-year GIC, to assist investors in assessing the performance of the fund relative to its associated risk. This comparison is intended to highlight the risk of investing in a fund by illustrating how a fund may have a higher return than a GIC in some years, but its return will generally vary from year to year and may sometimes lose money.

We seek feedback as to whether there are other appropriate benchmarks to illustrate this comparison.

We do not agree with the requirement to include a one year GIC as a benchmark comparison under the heading "How has the fund performed?" within Form 81-101F3. We reviewed the industry comments to the 2011 Proposal¹, and note that while three commentators requested the use of a benchmark comparison, none of the commentators suggested that the CSA should mandate the use of only one specific benchmark for comparison. One commentator suggested options including GICs or Canadian Government Bonds, and also agreed in its letter with a statement issued by the Ontario Securities Commission's Investor Advisory Panel which indicated that "[f]und returns compared to returns of sub-groups and of a larger industry benchmark such as the main market index are the most meaningful and impactful performance measures for investors".

We believe that the CSA should provide a range of benchmarks that fund managers could use to compare against the fund's performance. We would support the use of benchmarks that are listed in s. 15.7 of National Instrument 81-102, *Mutual Funds*, as well as a high interest savings account as appropriate performance benchmarks.

The use of a GIC as a benchmark is problematic because of inherent suitability issues relating to the GIC, and the varying performance that investors can experience with this investment which is not captured in the Bank of Canada's data.

First, a one year GIC is not a suitable investment for an investor who may need access to their funds in a period that is shorter than one year. The invested funds are locked in, and depending on the contract agreed to by the investor, may result in fees, reduced interest, or an absolute inability to access the funds should the investor wish to break the GIC contract prior to maturity. We believe that since most NI 81-101 mutual funds do not have such locked in restrictions with respect to an investor redemption request within the

¹ CSA Notice and Request for Comment: 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 (August 12, 2011).

first 12 months of purchase, this comparison would necessitate disclosure to explain this locked in feature of a GIC in plain language within Form 81-101F3.

Second, should an investor attempt to obtain access to the invested funds prior to maturity, it is likely that an interest penalty and / or fees will need to be paid by the investor. For a one year GIC, it is likely that the interest rate payable for funds withdrawn early is 0%. These figures are not captured in the Bank of Canada's data, and investors do experience such investment returns with one year GICs when accessing invested funds prior to maturity.

In order to ensure the comparison with a GIC not misleading, these fundamental features of a one year GIC should be disclosed within the Fund Facts, in addition to the content proposed by the CSA in Item 5(3) of Part I of Form 81-101F3. By inserting such disclosure however, the Fund Facts would become more difficult to read and understand, and less investor friendly.

For these reasons, we believe the range of benchmarks should be expanded. A high interest savings account would not have the suitability issues referred to above. Additionally, any fees that would affect investor return that should be disclosed, such as a fee for making withdrawals from the account² could be explained more concisely in plain language, as compared with the disclosure needed for a GIC.

We also believe that a mutual fund, as well as market indices are suitable alternative comparison benchmarks. If the CSA believe it is important to contrast a fund's performance against an investment of lower risk, the CSA could require that a compared fund have a lower risk rating, such that a Medium-High fund could only compare its performance to a fund rated at a Medium risk level or lower for example.

4. To implement Stage 2 in a reasonable time period, we are considering a six month transition period to allow for the implementation of systems to facilitate the delivery of the Fund Facts. This will also allow for necessary changes to be made to the Fund Facts template. It is the CSA's expectation that systems development to contemplate the delivery of Fund Facts will begin now.

We also are considering whether to require the Fund Facts be amended to include the proposed changes to the Fund Facts prior to the expiry of the transition period. Alternatively, we could allow existing mutual funds to amend the Fund Facts at the earlier of an amendment to the mutual fund or the filing of its pro forma prospectus.

We seek feedback on our proposed approach to implementation.

² If an affiliate's high interest savings account was used in the comparison that had withdrawal fees, or other costs that would affect the investor's total investment return.

We agree with the six month period for implementation of delivery of the Fund Facts. We believe that a lengthier period should be considered by the CSA for template changes. Ideally, the implementation date should require any preliminary or pro forma Fund Facts filed after such a date to adapt to the new template. Investment fund managers that have filed a preliminary or pro forma Fund Facts prior to the implementation date should be permitted to file a final Fund Facts in accordance with the current Fund Facts requirements, and adapt to the new template on their next prospectus renewal, or prospectus amendment.

II. Other Comments

Support for Stage 2

We support the CSA's initiatives to require delivery of the Fund Facts instead of the simplified prospectus at the point of sale. We believe that the simplified prospectus is a difficult document for some investors to read and understand, and we agree that investors will become more knowledgeable about their investments if they receive disclosure documents that they will want to review in their spare time. It is important for the Fund Facts to become a document that encourages the financial literacy for investors, otherwise there is a risk that the Fund Facts will become as difficult to read and understand as the simplified prospectus has become for the average Canadian investor, and another round of point of sale projects will be necessary to ultimately achieve the CSA's goals. We encourage the CSA to continue looking at this further, including revisiting the requirement for a minimum grade level scale for disclosure to be contained within the Fund Facts.

Codes other than Fund Codes

We support the CSA's inclusion of Fund Codes within the Fund Facts. We also believe that the CSA should permit a fund manager to include marketing stock codes or other non-obtrusive identifiers to the documents on the final page of the Fund Facts. Such identifiers provide in-house efficiencies and an additional version control safeguard. A stock code is however, not permitted under General instruction (8) in Form 81-101F3, as it is not specifically permitted or mandated by the Form. We note that the sample Fund Facts in NI 81-101CP contains registered trademark language in the area we propose for including a marketing stock code. Therefore, we submit that the CSA should amend Form 81-101F3 to explicitly permit the inclusion of non-obtrusive marketing stock codes and trademark references on the final page of the Fund Facts at the bottom of the page.

The Quick Facts should remain quick and simple

As referred to above, we would not support proposals that could make the Fund Facts less investor friendly. We are concerned that the Quick Facts were introduced as a mandatory table with 6 data items, to be expanded to 8 data items as part of the Proposed

Amendments, and that this could expand to a greater figure in future years. Such a possibility has a risk of making the Quick Facts a complicated introduction to the Fund Facts.

As such, we believe the Quick Facts should never extend beyond 6 data items. Should the CSA propose to add an item to the Quick Facts, this should result in the deletion of a current item, preserving the 6 item table. We also believe that the CSA should seek to avoid including an item where many responders will be expected to respond “N/A” within such data field. Additionally, the Quick Facts should be consistent across all mutual funds, such that an investor could compare two Fund Facts documents and see identical Quick Facts tables for both documents. Items in the table should not be optional, such that one Fund Facts will have an 8 item Quick Facts, and another one will have a 7 item Quick Facts.

The CSA has proposed to make two amendments to the Quick Facts, by adding a field for the “Date [class/series] started”, and a field for the “Fund Manager”. We will discuss our comments on these below:

Date [Class / Series] Started

We recognize that many mutual funds have multiple series and classes, and may need to communicate the specific date that a particular series or class started on. However, there also exist single series mutual funds, such that no difference will exist between the date a fund started and the date that a separate series or class started, as they are one and the same. We find that inserting a new required data field in the Quick Facts for these types of funds may confuse investors, and will only contain duplicative data in this field and in the “Date Fund Started” field. We believe the CSA should only maintain the “Date Fund Started” data field in the Quick Facts, and a fund manager that needs to disclose a particular series or class start date could use language such as “Series A – January 1, 2000” for those cases. The CSA should amend the instruction under this section to permit the fund manager to include the most relevant date for investors under this field, whether it is the date the fund started, or the date the series or class started. Where a fund manager refers to a series or class start date, the instruction should require the use of precise language in the data field, as we have provided above.

Fund Manager

The fund manager is disclosed at the top of page 1 of the Fund Facts. Many fund managers have also used logos and other identifiers to clearly identify themselves. Accordingly, we believe this addition to the Quick Facts is redundant. Additionally, if the CSA have received investor feedback from Canadian investors indicating that they have experienced difficulty in determining who the fund manager of the Fund Facts is, the CSA could amend Item 1(e) of Part I of Form 81-101F3 to include a sentence stating “XYZ Funds is the Fund Manager of this fund”. We prefer this solution over interfering with the integrity of the 6 item Quick Facts table.

Trailing Commissions

ING Direct supports the disclosure of trailing commissions, including the amount of trailing commissions received by dealers within the client statements prepared by dealers. However, we believe that the proposed amendment of Item 1.3(7) of Part II in Form 81-101F3 is not necessary. Conflict of interest disclosure is already covered as part of the relationship disclosure requirements for dealers in National Instrument 31-103, *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103"). We believe that this discussion around conflicts of interest should remain at the dealer level, as it is best dealt with in a discussion between dealer and client. We submit that the CSA should consider amending the Companion Policy to NI 31-103 to clarify that the requirements in s. 13.4(3) of NI 31-103 include the disclosure of trailing commissions received from investment fund managers, and the conflicts of interest that could occur as a result of such arrangements.

30-45 days

We agree with the CSA's initiative to increase the required as of date for the Fund Facts from 30 days to 45 days.

Binding Requirements

We do not have concerns with the CSA establishing a requirement that limits the items that can be physically bound with the Fund Facts with a staple, or other binding method. We are concerned that there may be a restriction which prevents the delivery of additional educational materials of a financial literacy character in the same package as the Fund Facts. We believe that dealers are in a unique position in the mutual fund industry of being able to educate their clients on how to invest their money, be financially smart, and learn about what investments are available. Not all clients are able to learn this on their own. We submit that as long as additional materials enable financial literacy, and are not primarily intended for sales purposes, they should be permitted to be included in the same envelope as a Fund Facts document that was delivered pursuant to s. 3.2 of NI 81-101.

As mentioned earlier, we believe that the Fund Facts should be intended to help promote the financial literacy of Canadian investors. Investors must be able to receive a document that they can understand, will have an inherent desire to read, and will become more knowledgeable of the features of the mutual funds that they have purchased. While we understand that the Fund Facts are a statutory disclosure document, we do not believe that this understanding should shackle the industry into preventing additional educational materials which are financial literacy related from reaching investors at the same time that a Fund Facts document is delivered to them. We believe that the CSA and the industry should look back at the factors that have caused investors to avoid reading the simplified prospectus, and use those learnings as principles to avoid incorporating into

the Fund Facts. We submit that s. 7.4 of NI 81-101CP should be further amended to indicate that educational material can be delivered within the same package as the Fund Facts.

III. Conclusion

We commend the CSA for actively seeking input from market participants on the Proposed Amendments. ING Direct is grateful to have had the opportunity to provide its comments. We support the CSA's Proposed Amendments as these initiatives are expected, in our opinion, to result in more Canadian investors reading their mutual fund disclosure documents, and ultimately knowing more about the investments they are making. However, we believe that certain aspects of the Proposed Amendments may require further consideration or refinement as discussed in our responses and comments described above, particularly the addition of more disclosure which may be difficult for Canadian investors to read and understand.

Should you have any questions, we would be pleased to provide further explanation with respect to matters described above at your convenience.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Frank Blackman', with a stylized flourish extending to the right.

Frank Blackman
Senior Legal Counsel