September 16, 2015

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des Marchés Financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

Dear Sirs and Mesdames:

Re: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery – Proposed Amendments to NI 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements and Related Consequential Amendments (the "Proposed Amendments")

This letter is submitted on behalf of the Canadian Exchange-Traded Fund Association ("**CETFA**"). Based in Toronto, CETFA is the sole exchange-traded fund ("**ETF**") association in Canada and represents numerous Canadian ETF providers.

CETFA appreciates the opportunity to provide comments on the Proposed Amendments, comprising part of Stage 3 of the implementation of the point of sale disclosure project of the Canadian Securities Administrators (the "**CSA**").

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A. Content of the ETF Facts (Form 41-101F4)

The Proposed Amendments mandate mutual funds in continuous distribution, the securities of which are listed and traded on an exchange, to produce and file a summary disclosure document called "**ETF Facts**". The substance and purpose of the ETF Facts are to provide investors with the opportunity to make informed investment decisions by: (i) providing access to key information about an ETF, (ii) providing information that investors can easily understand, and (iii) establishing a consistent disclosure framework between mutual funds and ETFs.

CETFA agrees with the substance and purpose of the Proposed Amendments, and accordingly, believes that it is important to ensure that the prescribed form of the ETF Facts only prescribes disclosure that (i) is helpful to an investor's decision making process, (ii) provides consistent, not conflicting, information, and (iii) is not misleading or potentially misleading in any way.

Item 2 – Quick Facts, Trading Information and Pricing Information

(a) Total Value on Date

Consistent with the CSA's objective to simplify disclosure, CETFA suggests revising "Total Value on Date" to "Total Net Asset Value as at". As the ETF Facts have introduced and explained the concepts of "market price" and "net asset value" to investors, CETFA believes the ETF Facts should avoid any potential confusion by introducing new terminology such as "Total Value". It may not be clear to investors whether this is a reference to market price, net asset value or reference to a third valuation concept.

(b) Management Expense Ratio

As the management expense ratio is not tracked regularly by ETF providers, and often only tracked semi-annually or annually, CETFA suggests revising the "Management Expense Ratio" in the Quick Facts section to include an "as at" date (similar to the requirement in Instruction (2)).

(c) Distributions

Instruction (6) requires ETF providers to disclose the "frequency and timing" of distributions. Please provide additional guidance to describe the differences between "frequency" and "timing", if any.

(d) Dividend Reinvestment Plan (DRIP)

In accordance with the objective of developing a consistent disclosure framework between mutual funds and ETFs, we note that Form 81-101F3 does not prescribe a requirement to disclose a DRIP in

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the Fund Fact for conventional mutual funds. CETFA does not believe the significance of the DRIP to an investor's decision is any different for mutual funds versus ETFs.

In addition, we note that the Quick Facts does not mandate disclosure regarding any other types of plans, such as systematic withdrawal plans or pre-authorized cash contribution plans. CETFA does not believe there is any basis for prioritizing disclosure regarding one type of plan (e.g. DRIP), over another (such as SWP or PACC), as each plan may be considered differently by investors. Last, we note that although an ETF provider may not implement a DRIP directly, that individual dealers may still offer this service to investors. Accordingly, there is concern that by including this disclosure, investors may be misled into believing a DRIP is not possible in respect of a particular ETF, notwithstanding that it could be available through their dealer.

For the foregoing reasons, CETFA suggests deleting DRIP disclosure from the form requirement.

(e) Exchange

As all ETFs are primarily traded on the Toronto Stock Exchange, CETFA suggests deleting this component of the Quick Facts altogether, or, suggests amending "Exchange" to "Primary Exchange". In accordance with the objective of providing investors with key information, we do not believe disclosure regarding the multiple exchanges on which an ETF may trade is helpful to an investor's decision making process (note that many ETFs are listed on multiple exchanges).

(f) Average Daily Volume and Number of Days Traded

CETFA strongly urges the CSA to reconsider inclusion of this information in the ETF Facts. In accordance with the objective of providing key information to investors through the ETF Facts, it is equally important for the CSA to ensure that the information mandated by the form will not be misleading or potentially misleading in any way.

A more accurate proxy for the level of liquidity of an ETF is appropriately addressed in the section entitled "How ETFs are Priced". In particular, the fourth bullet under "Market Price" attempts to explain the concept of a bid-ask spread, and states "In general, a small bid-ask spread means the ETF is more liquid". In the event an ETF carries an average small bid-ask spread but may not trade on a particular number of days throughout the year, CETFA believes the prescribed form may send mixed messages to investors, resulting in confusion and a lack of understanding of ETF liquidity. Because ETFs are generally considered to be as liquid as the underlying securities in which the ETF is invested, an ETF that tracks the TSX 60, for example, should be considered to be a liquid ETF – regardless of its trading volume and whether or not it trades on certain days. The correlation between average daily volume and the number of days traded is not tied to the liquidity of an ETF.

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Instead, CETFA believes that the more appropriate indication of liquidity is the bid-ask spread, for which there is a correlation to liquidity, and which concept will already be explained under "Market Price". CETFA believes that attempting to incorporate additional concepts (such as the average daily volume and number of days traded) will lead to misleading or inconsistent messaging with respect to liquidity, and could result in investor confusion.

(g) Average bid-ask spread and Average premium/discount to NAV

Before finalizing Instruction (15) and Instruction (16) regarding inclusion of a daily average bid-ask spread and the average premium/discount to NAV, respectively, each of the ETF provider members of CETFA request to review a sample calculation prepared by the CSA of each item. In order to ensure that all ETF providers will be able to obtain the requisite information from data providers in order to satisfy the proposed form requirements, we believe it is important to provide ETF providers an opportunity to review the particulars of the calculation, to ensure all such information necessary to satisfy the disclosure requirements will be readily available, accessible and administratively practicable. By way of example, one CETFA member prepared a sample calculation for an ETF with a medium level of activity on the Toronto Stock Exchange, and noted that on a single day (between 9:30am until noon), the number of distinct bid and ask data points during that short period was approximately 718,000. Such volume and number of data points could make preparing similar calculations for a larger number of ETFs (including those with more activity on the exchange) administratively inefficient, costly and time consuming.

In addition, in order for disclosure of the average premium/discount to NAV to be helpful information to investors, CETFA believes that additional clarification should be included in Instruction (16) to exclude market-open and end-of-day data points from the calculation described therein. We note that due to the unique distribution structure of ETFs and the role played by market makers, the spread between market price and NAV is generally wider at the opening and closing of each trading day, and therefore submit that data points obtained during the first thirty minutes and last thirty minutes of each trading day should be expressly excluded from the calculation of the average premium/discount to NAV. Without such exclusion, CETFA believes that the average premium/discount to NAV disclosure would produce information that is skewed and potentially misleading to investors.

Item 7 – Pricing

(i) How ETFs are Priced – Market Price

CETFA recommends the following revisions to the prescribed disclosure under Item 7. Generally, we are supportive of the additional content to the trading and pricing characteristics of ETFs. However, if

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such basic components are to be conveyed in the ETF Facts, we believe such information should be accurate and complete.

We note that due to the role of the designated brokers and dealers, supply and demand factors do not impact the market price per unit of an ETF. Rather, such factors, among other things, may affect the value of an ETFs investments. We suggest the following revisions:

> You buy and sell ETFs at the market price. The market price can change throughout the trading day. Changes to the value of the ETFs investments, as a result of changes in supply and demand and other economic influences, can affect the market price of the units of the ETF.

CETFA believes it is important to explain to investors that the bid price and ask price may fluctuate throughout any given trading day, and that a bid price may increase or decrease on any given trading day, even if no units have traded on such day. We suggest the following revisions:

> The bid is the highest price currently offered to purchase your units if you wish to sell them. The ask is the lowest price at which a seller has currently offered to sell its units if you wish to buy them. The bid and ask prices may fluctuate throughout the trading day regardless of whether any trades have been executed. The difference between the two is called the "bid-ask spread".

CETFA believes that the ETF Facts should not make any reference to the "expectations" of investors and any such reference may be problematic. We suggest the following revisions:

> In general, a narrower bid-ask spread indicates the ETF is more liquid. That means your order to purchase or sell units of the ETF is more likely to be executed closer to the then-current fair value per unit.

(j) How ETFs are Priced – Net Asset Value

In the first bullet, we recommend clarifying that the NAV as at the end of each trading day only reflects the value of the ETF's investments as at that time. Accordingly, we suggest the following revisions:

> Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments at that point in time.

In the third bullet, we believe that the references to "market price" and "NAV" should be to "market price per Unit" and "NAV per Unit". Accordingly, we suggest the following revisions:

> If the market price per Unit is lower than the NAV per Unit, the ETF is trading at a discount. If the market price per Unit is higher than the NAV per Unit, the ETF is trading at a premium. If you

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sell your Units at a discount, you may be getting less than its investments are worth. If you buy Units at a premium, you may be paying more than its investments are worth.

Item 8 – Suitability

(k) Who is this ETF For?

We recommend additional guidance or instructions to clarify the circumstances under which the disclosure requiring an Exclamation Mark (or other colourful symbol) must be used by an ETF.

Part II – Costs, Rights and Other Information

(l) ETF Expenses

We recommend amending Item 1.3(3) to specify that the calculation of expenses are based on the prior 12 months. We suggest the following revisions:

> As at XXXX, the ETF's expenses, for the prior 12 month period, were equal to X.XX% of its value. This equals $XXXX for every $1,000 invested.

(m) Trailing Commissions

We respectfully submit that an explanation of the trailing commission should only be included on an ETF Facts if the ETF Facts is in respect of a class of securities that actually pays trailing commissions. The additional explanation is not applicable, nor relevant, to investors who purchase classes of an ETF that do not carry any ongoing commission. For such classes of an ETF that do not carry an ongoing commission, we believe it is adequate disclosure to simply indicate that the ETF does not have a trailing commission.

B. ANNEX B

Content of the ETF Facts

1. With respect to the specific questions raised, CETFA believes that the range of market prices should include, not exclude, odd lot trades. As many investors transact in such smaller sizes, including this information would provide a more accurate and relevant summary to such investors.

   In terms of the calculation of the average bid-asks spread, trading days that do not have a minimum number of quotes should not be excluded from such calculation. As previously stated, because ETFs and their bid-ask spreads are supported by designated brokers and dealers, the liquidity of an ETF should remain unaffected by days with few or no trades.

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2. With respect to the new disclosure regarding How ETFs Are Priced, we have recommended some language to improve the accuracy of the disclosure above. Notwithstanding the foregoing, we caution against over-simplifying certain concepts such as liquidity or factors which may affect the market price for units of an ETF or its underlying investments. For example, while supply and demand may affect the value of an ETF's investments, there are several other factors, not included in the ETF Facts, that may also play a significant contributing factor to changing the value of such investments, and disclosing only one or two of these factors at a high level, to the exclusion of others, may not be helpful to the end-investor.

3. Consistent with the goal of explaining basic market concepts to investors, we feel the ETF Facts should similarly be used to explain basic ETF specific concepts, such as ETF liquidity. CETFA believes that intraday liquidity, as one of the fundamental features of investing in an ETF as compared to a conventional mutual fund, deserves a more comprehensive explanation. In particular, the ETF Facts should explain why trading levels are not indicative of liquidity, but rather, the bid-ask spread which (i) reflects the liquidity of the underlying investments of the ETF, and therefore, a better proxy for liquidity of the ETF, and (ii) can also be wider for ETFs representing certain asset classes or jurisdictions.

Transition Period

4. To give ETF providers sufficient time to transition their compliance and operational systems, CETFA recommends that the appropriate transition period to file the initial ETF Facts should be 12 months (not six months) after the date the Proposed Amendments come into force.

5. To avoid confusion resulting from an investor receiving multiple iterations of the summary document and ETF Facts, we recommend that the switch-over should follow the prospectus renewal cycle of an ETF (rather than a single switch-over date). While a single switch-over date is problematic from a business planning perspective, it also results in duplication of work and unnecessary costs as it relates to mailing and printing. For ETFs that have a renewal date shortly after the switch-over date, we note that it is possible for investors to receive several iterations of the summary document (ETF Facts) over a short period of time. For example, an investor could receive,

   (i) a summary document on purchase of an ETF (prior to the switch-over date), (ii) a new ETF Facts on the switch-over date, and (iii) a third ETF Facts shortly thereafter on the renewal date). To avoid these issues, CETFA recommends that the switch-over should follow the current prospectus renewal cycle of each ETF.

Rights of Withdrawal

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6. We support the approach currently taken in the Exemptive Relief and the Proposed Amendments, and do not believe the right of withdrawal of purchase should be introduced for ETFs. We do not see a feasible manner in which such a right could be enforced and applied in an equitable fashion to all parties involved.

C. No Pre-Sale Delivery of ETF Facts

The CSA Notice and Request for Comment seeks to address an important balance between the need to harmonize the disclosure framework between mutual fund and ETFs, while specifically acknowledging the unique distribution model employed by ETFs (as compared to conventional mutual funds).

As a result of the unique distribution structure of ETFs, we submit that mandating pre-sale delivery of ETF Facts would not be an appropriate delivery regime. In particular, we note that securities of ETFs share the attributes of equities, are actively traded, available for purchase and sale on a designated stock exchange throughout each trading day, and that dealers may have difficulties in identifying purchasers of ETFs in instances when such purchasers do not receive trade confirmations. For several reasons, CETFA believes that the concerns regarding pre-sale delivery of ETF Facts are different than the concerns for pre-sale delivery of Fund Facts. CETFA supports the arguments advanced by the Investment Industry Association of Canada in favour of requiring the ETF Facts to be delivered only to investors to whom a trade confirmation is required to be delivered.

Thank you for this opportunity and we welcome any further discussions regarding this proposal.

Yours truly,

Patricia Dunwoody
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