Borden Ladner Gervais

AUM LAW

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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comments
Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers (the Proposed Amendments)

We are pleased to provide the members of the Canadian Securities Administrators (the **CSA**) with comments on the above-noted Proposed Amendments. The following viewpoints are those of the individual lawyers of Borden Ladner Gervais LLP (**BLG**) and AUM Law Professional Corporation (**AUM Law**) listed below. Our comments cannot be taken as the views of the other lawyers at our respective firms or our clients.

BLG and AUM Law are related law firms following BLG's acquisition of AUM Law in May 2021. Both firms have significant expertise in the investment management industry and with regulatory compliance. In this capacity, we have worked on hundreds of investment fund-related matters that have required the physical mailing of materials to investors. We therefore have first-hand experience about how costly and burdensome continuous disclosures are for investment fund reporting issuers (**IFRIs**), and wish to stress the fact that such resources could instead be used for other activities that would directly benefit investors.

We are strongly in favour of the "access-based model" of document disclosure proposed for IFRIs and support the CSA's commitment to reduce undue regulatory burden through such means. Given the widespread access to, and use of the internet by Canadian investors, we believe implementing this model would assist IFRIs in making their financial statements and management reports of fund performance (**MRFPs** and together with the financial statements, the **designated documents**) available to investors in a more cost-efficient, timely and environmentally friendly manner, without compromising on investor protection. The access-based model recognizes the benefits of having the designated documents prepared and available to the market-place, while also recognizing that many investors have little interest in, or inclination to review, these documents. And for those who do wish to review these documents – they will be readily available.

In our view, the access-based model will bring IFRI disclosure requirements into the electronic 21st century recognizing the ways that most Canadians wish to access information – through 24/7 availability on websites, rather than through physical or electronic delivery of multiple documents.

We understand why the CSA did not make similar changes with respect to non-reporting issuer mutual funds (that are subject to NI 81-106, but do not post documents publicly on a designated website), but we would urge the CSA to also consider what burden reduction efforts could be made here, including simplifying overly complex "standing instruction" sections.

We provide the following comments with the intention to assist the CSA in streamlining the Proposed Amendments to ensure the requirements are meaningful for investors and reasonable for IFRIs.

News Release Requirements

The Proposed Amendments repeal the current delivery requirements and replace them with requirements to issue, file on SEDAR and post on IFRIs' designated websites, news releases announcing the availability of the designated documents and containing prescribed information. We consider this a counterproductive, redundant and burdensome proposition.

Indeed, this approach is misaligned with the regulatory burden reduction goal of the access-based model since it would result in an added cost for IFRIs (e.g. costs associated with issuing a news release), with no clear benefit for investors who have come to expect the designated documents to be made publicly available on a periodic basis. The proposed news release requirements would lead to a myriad of non-material news releases disseminated within short time periods, which would hinder the ability of securityholders and dealers to easily find material changes about investment funds.

Nonetheless, we acknowledge that it may be beneficial for investors to be alerted to the statements proposed in paragraph 5.4(2)(d). Instead of disseminating a news release, we propose having IFRIs insert such disclosure in an evident text box on their designated websites or incorporate it into the introductory pages of each designated document, particularly since we would not expect this disclosure to vary greatly year over year. Please also see our comment below about the benefits of more educational initiatives by the CSA in this regard.

If a news release is required, we strongly recommend that a single news release covering the designated documents for all of the funds managed by an investment fund manager be sufficient to

satisfy the requirement, and that the news release be required to be filed within a few days, rather than immediately, since the news release does not relate to a material change. Otherwise, the markets (and the investing public and SEDAR) will be simply *flooded* with news releases, which we do not consider of any benefit to investors (there will be too many news releases, such that, one can reasonably assume, none will be read), and given the not immaterial costs of issuing such news releases.

Annual Notice

The Proposed Amendments repeal the current requirement to send an annual notice that would remind securityholders of their right to receive designated documents. While we are in favour of repealing this requirement, there are other rules remaining that would continue to require annual notices to be sent to securityholders unless amended. Specifically, subsection 10.1(3) of National Instrument 81-102 *Investment Funds* continues to require annual notices on redemption procedures to be sent to securityholders, and this notice is typically included in the same notice that would remind securityholders of their right to receive designated documents. In addition, there are also annual notice requirements for pre-authorized purchase plans and portfolio rebalancing plans pursuant to section 3.2.03 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and automatic switch programs pursuant to section 3.2.05 of NI 81-101. While these are dealer obligations, these notices are frequently delivered by the fund manager (on behalf of the dealer) and also included with the notice reminding securityholders of their right to receive designated documents.

We urge the CSA to take a similar approach as it has done with designated documents and replace the requirement to file annual notices for redemptions procedures, pre-authorized purchase plans, portfolio rebalancing plans and automatic switch programs, with clear labelled designated website disclosure regarding each matter. It is also open for the CSA to do away with the specified disclosure items, given that, in our view, the information required in these sections is fairly basic and widely known and can be easily requested from advisors and fund managers if investors have questions. Please see our comments below about the need for better investor education on this point by the CSA.

If this is not done, then repealing the requirement to send an annual notice in connection with the designated documents will not have much of an impact on reducing the regulatory burden (and may even have the opposite effect since annual notices would continue to be required, in addition to the new requirement of issuing a news release).

Standing Instructions – Proposed Section 5.3(2) and (4)

We urge the CSA to not move forward with the new concepts of standing instructions requirements, be it to request paper or electronic copies of the designated documents on a "standing basis". Technological advancements have allowed many Canadians to shift from paper to digital in recent years. The requirements are outdated in that they fail to acknowledge that most – if not all – investors now have access to the internet. The administrative burden of compiling a list of investors who have provided standing instructions (and keeping information updated), printing and mailing documents pursuant to a standing instruction is significant and unnecessary, especially when those documents can be easily viewed and downloaded online. Regarding a standing instruction to deliver documents

by email, we submit that maintaining a database of investors' email addresses and managing regular distribution of the documents by email has proven to be a significant administrative burden in the past and would continue to be a heavy load on IFRIs. We also note that investors who have email will already be in a position to access the online documents themselves. In light of the foregoing, we simply no longer see value in delivering the designated documents directly to investors, particularly on a standing basis, when they could easily retrieve them online with the click of a button. We recognize that the CSA may wish to continue to require managers to deliver documents without charge to investors who ask for them, in paper or electronically, although we also consider this to be an outdated concept.

Educational Initiatives by the CSA

We encourage the CSA to consider what steps the CSA could take to educate investors about what information these documents contain and why they should be reviewed on at least a periodic basis and where they can be accessed. We recommend the same educational initiatives regarding designated websites. More information about the disclosure documents, including where they can be accessed, could easily and very usefully be added to the information found at this link.

https://www.getsmarteraboutmoney.ca/invest/investment-products/mutual-funds-segregated-funds/

We also point out that the CSA's brochure *Understanding Mutual Funds* (which is required to be referred to in all Fund Facts documents) is now outdated – it is not clear when it was last updated (the title refers to 2012). For instance, it still refers to "deferred sales charges". This document should also be updated to refer to these documents and why an investor may wish to review them and where they can be accessed.

https://www.securities-administrators.ca/uploadedFiles/General/pdfs/Understanding%20Mutual%20Funds%20ENG%20Web_2012.pdf

Transitional Provisions

In our view, Sections 5 and 6 of the Transition Section in the Proposed Amendments should be deleted as creating an undue regulatory burden. With the new access-based model, all previous standing instructions should be considered at an end. As recognized by the CSA, investors can access the information online or request documents be sent to them, on an as needed basis. Many of the standing instructions are likely historical and outdated, with investors not realizing that they even asked for these documents to be sent to them. With the new system, we recommend a clean break for the future.

Further CSA Review and Next Steps

We also encourage the CSA to continue their efforts in reducing regulatory burden, while also ensuring that the regulatory regime remains technologically current. In this regard a review of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer,* as well the guidance in National Policy 11-201 *Electronic Delivery of Documents* could

usefully be reviewed and updated to facilitate ease of electronic delivery and recognize technological advancements. Both instruments contain outdated references and requirements and guidance with respect to electronic delivery of documents.

Timing of the Proposed Amendments

We urge the CSA to finalize the Proposed Amendments as soon as possible, and at the very least, in time for IFRIs to utilize the access-based model to make their 2023 financial statements available to investors.

We hope our comments will be considered positively by the CSA and as helpful to advance the considerations of the important matters outlined in the Proposed Amendments. Please contact any of the lawyers indicated below if you have any questions or wish to meet with us to discuss our comments.

Yours very truly,

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