

Canadian ETF Association

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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
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55
Toronto, ON M5H 3S8

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3

Dear Sirs / Mesdames:

Subject: Cost Disclosure and Performance Reporting of Investment Funds in the Proposed Amendments to NI 31-103 Registration Requirements and Exemptions

We are writing to provide comments with respect to the Proposed Amendments to National Instrument 31-103 Registration Requirements and Exemptions – Cost Disclosure and Performance Reporting (the “Proposed Amendments”) and the proposed amendments to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registration Obligations (the “CP Amendments”).

The Canadian Exchange Traded Funds Association (the “CETFA”) is a newly created association with the mandate to educate institutional and retail investors and advisors on the benefits and appropriate use of exchange traded funds (“ETFs”) and to be the voice of the ETF industry to regulators and government. The three founding members, BMO ETFs, Claymore Investments and Horizons ETFs currently represent over \$12 billion in assets under management (AUM).

The CETFA and its members support the general principles of the Proposed Amendments to provide investors with clear and transparent information about the performance of, and costs associated with, their investments. Meaningful performance and cost information is important so that clients can make informed decisions about their investments and understand the services they receive in exchange for fees paid. Since general information about the costs of investing in ETFs and their past performance is available in each fund’s prospectus, management reports of fund performance and financial statements, the CETFA would recommend that a statement referring clients to those

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documents, on the fund's or the manager's website, for additional information also appear in conjunction with the new reporting to ensure that the manufacturer's disclosure is also highlighted.

Use of Benchmarks

The CETFA also supports the principles behind the Proposed Amendments that would result in investors receiving an annual account performance report. Although the use of benchmarks is optional under the Proposed Amendments, the CETFA endorses the use of appropriate and meaningful benchmarks by registrants. Doing so would allow investors to determine 'value added' to their account and assess appropriate return expectations. The guidance on how to select appropriate benchmarks raises some concerns for members of the CETFA, as the restrictions may result in misleading disclosure to investors. While the CP Amendments give some guidance as to what the CSA would consider a meaningful and relevant benchmark for performance comparison purposes, some of the restrictions may be inappropriate in the context of ETFs. There are numerous benchmarks in Canada and internationally and many ETFs have investment objectives that require them to seek to replicate the performance of a particular index ("Index ETFs"). For these individual ETFs, the most relevant and meaningful benchmark would be the index that the ETF is seeking to replicate. If a client has invested a portion of its portfolio in sector ETFs, a benchmark or combination of benchmarks that reflect those sectors may be most appropriate, rather than a benchmark that simply reflects the type or geography of the security (equity, Canadian, etc.) as contemplated under the CP Amendments. Comparing performance against broad-based securities market indices that are not sufficiently representative of the composition of a client's account would, in itself, be misleading. Registrants should be given the flexibility to select the most relevant and meaningful benchmarks, providing they are not misleading, and benchmarks should reflect either the diversity, *or the lack of diversity*, of a client's portfolio, as applicable.

Further, the prohibition against using benchmarks that are manufactured by the registrant or its affiliate may prevent the registrant from selecting the most appropriate benchmark for a particular investment or asset class. ETF manufacturers consider a number of factors in selecting the indices that will be tracked by their Index ETFs. These indices will vary widely among ETFs and sufficient flexibility should be given to registrants to use a benchmark manufactured by the registrant or its affiliate where it is the most relevant, meaningful and not misleading. At a minimum, and similar to the definition of "permitted index" in National Instrument 81-102 *Mutual Funds*, benchmarks manufactured by the registrant or its affiliate should be permitted providing they are "widely recognized and used".

Given the recent concerns raised by the CSA as to what constitutes a "market index" and the current lack of detailed guidance on how the term might be interpreted in the context of evolving products like Index ETFs, some of the language in the CP Amendments may leave doubt as to which benchmarks may be appropriate to reflect the performance of a portfolio of ETFs.

Finally, the CETFA would welcome the opportunity to participate in any future discussions or research involving benchmark selection and usefulness for performance reporting.

We appreciate the opportunity to provide comments on the Proposed Amendments. Please contact the undersigned at hatkinson@horizonsetfs.com directly with any questions concerning these comments.

Yours truly,

(signed) "Howard Atkinson"

Howard J. Atkinson, CFA, CIMA®, ICD.D
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Canadian Exchange Traded Funds Association

Chief Executive Officer
Horizons Exchange Traded Funds Inc.

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