



**SIPA**

SMALL INVESTOR PROTECTION ASSOCIATION

**A Voice for the Small Investor**

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**PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-101  
MUTUAL FUND PROSPECTUS DISCLOSURE, FORMS 81-101F1 AND 81-101F2  
AND COMPANION POLICY 81-101CP MUTUAL FUND PROSPECTUS  
DISCLOSURE AND RELATED AMENDMENTS**

The Small Investor Protection Association is pleased to respond to the CSA's request for comments. We are limiting our discussion here to mutual funds. However, regulators should consider expanding the Fund Facts concept to cover higher-risk products like hedge funds, limited partnerships, leveraged ETF's, non-bank ABCP and PPN's. We note also that NI 81-101 currently does not apply to LSIFs, or funds that are listed and posted for trading on an exchange or quoted on an over the counter market. These types of funds must currently use the long form prospectus disclosure system described in NI 41-101 *General Prospectus Requirements*. The POS requirements would apply to index funds that currently use the 81-101 form of prospectus. Wrap accounts are generally administered or sold in reliance on registration and prospectus exemptions, so we assume would not be required to use the Point of Sale disclosure document, **hence sidestepping a large and growing segment of the market.**

**Introduction**

The provision of information in a choice situation can provide important consumer benefits such as improved decision making, enhanced product quality, and lower prices etc. However, in order

for that information to have a positive impact on the consumer decision-making process, it must be easily accessible and presented in a clear and understandable format.

Mutual funds are the investment of choice for small investors with over \$500 billion invested. The inability of investors to make wise investment decisions may have a significant negative impact on their quality of life in retirement and increase the likelihood of their dependence on government assistance programs. It is vital for regulators to examine the whole field of behavioural finance and the client- advisor relationship in developing the need for and content of the point- of- sale documents. The absence of a fiduciary model for advice inherently limits the benefits of single transaction fund disclosure. The U.K.'s FSA is tackling this issue head on by proposing rules that would in effect ban sales commissions from those purporting to provide advice.

We must take note that a transaction based model as is postulated here is inherently deficient in that it is the composition of the entire portfolio taken as a whole that must be designed to satisfy client objectives and suitability constraints.

### **Recent Relevant Research**

Effective POS disclosure is all the more important given some recent disturbing research reports.

In 2003, the IFID Centre at the Field Institute in Toronto examined 10-year returns from 343 equity and balanced mutual funds managed by Canadian companies and found that performance of these funds on an after-tax basis was significantly different from returns on a pre-tax basis. Mutual fund trusts are taxed at the highest marginal tax rate on all forms of income earned, so they usually distribute their earnings to unitholders at least once a year. When examining prospectuses and looking at the returns for your various funds, investors are not getting the whole picture about just how their funds are performing. After-tax research found that an investor in the highest tax bracket, **lost, on average, 1.35% annually** to taxes on any Canadian equity or balanced fund because of distributions. This was based on a study done over a 10-year period beginning in 1991 *The impact of personal Income Taxes on Returns and Rankings of Canadian Equity Mutual Funds*, a study by Amin Mawani, Moshe Milevsky, and Kamphol Panyagometh *impact of personal Income Taxes on Returns and Rankings of Canadian Equity Mutual Funds*, [www.ctf.ca/pdf/ctjpdf/2003ctj2\\_mawani.pdf](http://www.ctf.ca/pdf/ctjpdf/2003ctj2_mawani.pdf) **Thus taxation is an important factor in assessing mutual fund returns.**

A January, 2006 U.S. study *Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry*, suggests that most mutual fund buyers do not benefit financially from professional advice. The researchers note that while brokerage customers are directed toward funds that are harder to find and evaluate, brokerage customers pay substantially higher fees and buy funds that have lower risk-adjusted returns than directly-placed funds. Comparing weighted average returns, net of all fees except charges paid up front or at the time of redemption, equity funds sold by brokers had an average annual return of 2.9 % between 1996 and 2002. Yet equity funds purchased directly earned 6.63 %, the professors report. **Conflicts-of interest are at the root of the problem**. Source: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=616981](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=616981) [In the U.S. 12b-1 fee might includes a service fee - the highest allowed by law is 0.25 percent] **The reality is that most investors simply follow their advisor's advice, and the depth of explanation they get depends on the advisor.**

ICI Research Study [2006] *Understanding Investor Preferences for Mutual Fund Information*. **The #1 piece of information desired was fees and expenses (74%)** ; fund risks (61%) and tax consequences (47%) [http://www.ici.org/pdf/rpt\\_06\\_inv\\_prefs\\_summary.pdf](http://www.ici.org/pdf/rpt_06_inv_prefs_summary.pdf) This is why we argue it should be on page 1 of FF's.

The 2007 "Tufano" report concluded that **Canada's mutual fund fees were among the highest in the world** suggesting that Canadians should expect truly superior performance for the outsized fees. Or, it could suggest an uninformed investor base paying an excessive price. Approximately 85 % of funds are purchased through an "advisory" (sales) channel so this is an important issue. [*Mutual Fund Fees Around the World* [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=901023](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=901023) ]

A comprehensive study by Canadian pension fund expert Keith Ambachtsheer has found that **defined benefit pension plans in Canada achieved annual average returns at least 3.8% higher than mutual funds with comparable investments**. Defined benefit pension funds outperformed the market by 1.23% per year, while mutual funds had average returns that were 2.6% below the market during the 1996 to 2004 period. Returns for most mutual fund investors were even less than this, as a result of sales fees and consistently poor selection of mutual funds by misinformed investors: buying high and selling low. This means that those with savings in mutual funds lost a total of about \$25 billion a year from the higher management fees and lower returns compared to workplace pension funds. **Higher management fees are responsible for about \$15 billion of this**. If these trends continue, those depending on private mutual funds will have retirement pensions that are about 40% lower than defined benefit pensions plans for the same amount invested. In the example used by the study of a \$45,000 annual pension, this means \$20,000 less per year for retirees. Mr. Ambachtsheer concludes that most of the difference in returns is because of much higher management fees charged by the mutual fund industry [*The \$25 billion annual mutual fund ripoff*] [http://cupe.ca/pensions/The\\_25\\_billion\\_annua](http://cupe.ca/pensions/The_25_billion_annua) We thus argue that these fees need to be highlighted and clearly exposed not just in % but in dollars and cents terms..

A paper *The effects of summary information on consumer perceptions of mutual fund characteristics* in the *Journal of Consumer Affairs*, Spring, 2008 by John Kozup, Elizabeth Howlett, Michael Pagano [http://findarticles.com/p/articles/mi\\_hb3250/is\\_1\\_42/ai\\_n29419895/](http://findarticles.com/p/articles/mi_hb3250/is_1_42/ai_n29419895/) explored mutual fund disclosure issues. **Results indicate that while investors continue to place too much emphasis on prior performance, the provision of supplemental information, particularly in a graphical format, interacts with performance and investment knowledge to influence perceptions and evaluations of mutual funds** The results show that investors will respond positively to summary data presented on a single page. The authors note that **further testing of modified summary documents is needed to lessen existing biases on the part of retail investors, particularly an overemphasis on past performance versus expense information**. All the more reason not to present returns data ahead of fees and expenses in FF's.

In *How Does Simplified Disclosure Affect Individuals' Mutual Fund Choices?* by John Beshears, James Choi, David Laibson and Brigitte C. Madrian the results say, not really. They conduct a laboratory experiment amongst Harvard University Staff and do not find evidence that people make better financial choices:

“We use an experiment to estimate the effect of the SEC’s Summary Prospectus [the SEC’s version of FF’s], which simplifies mutual fund disclosure. Our subjects chose an equity portfolio and a bond portfolio. Subjects received either statutory prospectuses or Summary Prospectuses. We find no evidence that the Summary Prospectus affects portfolio choices. Our experiment sheds new light on the scope of investor confusion about sales loads. Even with a one-month investment horizon, subjects do not avoid loads. Subjects are either confused about loads, overlook them, or believe their chosen portfolio has an annualized log return that is 24 percentage points higher than the load-minimizing portfolio”.

Nor did the Summary Prospectus lead subjects **"to change the extent to which they deviate from the naïve diversification strategy of equal allocations to four funds."** (p. 12). **"There is also no strong evidence that the Summary Prospectus made subjects feel better about their investment decisions."** (p. 12) So, it didn't increase investor confidence as the SEC had hoped.

The study concludes that the **"principal welfare gain ... comes from allowing investors to spend less time and effort to arrive at the same portfolio decision they would have come to after reading only the statutory prospects"** - a time saving of 8.7 minutes. Making quicker decisions may not in fact be a positive as far as investment choices are concerned.

We're not surprised with the overall results although we are surprised that it doesn't show any positives. [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1400943](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1400943) It would not be in the public interest for the CSA to ignore this important research.

The SEC has **proposed using Web-based "tagging" technology such as XBRL** to make it easier for investors to compare the performance of different mutual funds. Tagging involves the placement of electronic tags on specific data items (e.g., fees, returns or risk), which allows investors to compare these interactive data across companies and industry groups. *Modernizing the Commissions Disclosure System*, <http://www.sec.gov/spotlight/disclosureinitiative/report.pdf> Spain, China, India and Israel already require this approach. This approach is the embryonic stage in Canada; we encourage its implementation for mutual funds.

### **Commentary on the Fund Facts Form**

The FF Form requires the disclosure under *What Does The Fund Invest In?* to be a brief description of the fundamental investment objectives and strategies of the mutual fund and should not simply copy the disclosure in the simplified prospectus. As we understand the requirement, investment strategies are to be included only if it is an essential aspect of the fund, as evidenced by the name of the fund or the manner in which it is marketed. In the sample FF provided, this abbreviated disclosure is even more abbreviated than that expected under National Instrument 81-106 for Management Reports of Fund Performance. **RECOMMENDATION 1:** **We recommend that a meaningful description of the investment objective should be included, as it is an important element of information an investor should have to allow making an informed investment decision.**

SIPA retains its belief in simplified, effective disclosure at or prior to the point –of- sale i.e. wise investment decisions. In our prior representations we stressed the importance of performance comparisons to index benchmarks, a key and easy to understand assessment statistic to validate if the active fund manager adds value relative to a passive investment product. This

recommendation is fundamental to protecting investors, detecting closet indexing and reducing information asymmetry. **RECOMMENDATION 2: It is in the public interest to include a benchmark.**

We had also recommended that after-tax returns be provided as is required in the United States. With about 50 % of fund assets in non-registered accounts, this was to us a critical and material disclosure especially since fund portfolio turnover will not be provided. **RECOMMENDATION 3 At a minimum, the Fund Facts document should address tax issues head on and make the issue highly visible and apparent for the taxable investor.**

We agree with the CSA that the only MER presented should be the one before waivers and absorptions.

We would like to elaborate on the TER inclusion issue. A fund's ability to perform is largely due to its cost structure. We therefore believe that full fund expense disclosure is essential. In some cases the TER has equaled or even exceeded the MER in magnitude. Retail investors typically determine how much it costs to own a fund by looking only at its management expense ratio, or MER. But trading expenses can be a key component of fund costs, and they're not reflected in the MER. **RECOMMENDATION 4: We therefore urge the CSA to require that FF's include both the TER and MER with it being made clear that the sum of the two is the Total Expense Ratio. (the annual cost of ownership)**

We feel that to better convey the impact on the investor of sales charges and ongoing fund expenses, an illustration of the amounts payable in **dollars and cents** would be attention getting and effective. **RECOMMENDATION 5 A simple metric like the dollars and cents fees for a fund if held for 10 years would get the message across. (A hypothetical 6 % pre-tax return could be assumed to standardize the calculation)** . The sheer size of this number would stimulate constructive investor-adviser dialogue which is a root purpose of POS fund disclosure. We note parenthetically that according to respected fund analyst Dan Hallett, the average hold period for equity and balanced funds (m/m funds excluded) is about 7 years.

For no-load funds, the CSA may want to add some language that makes it clear there are no buy or redeem charges for these funds.

**RECOMMENDATION 6: The location of the risk disclosure within FF should precede the disclosure of fund performance.** Research has shown that investors continue to use performance as the dominant or sole decision element. Regulators should do everything possible to counterbalance this behavioural trait. Putting it on page One (Part I) will catch the investor's attention. **As an aside, it might be a good idea to have a Header on page 1 stating the importance of reading the FF before investing.** The SEC counterpart form includes right at the top of the form in a red bordered section the caution ` **Before you invest, you may want to review the Fund's prospectus, which contains more information about the Fund and its risks.** ` This to us makes a lot of sense, given the tremendous abbreviation and truncation that's necessary to shrink a lot of valuable prospectus information down to two pages. It boldly highlights for the investor the fact that the form is important but the prospectus is more comprehensive. It encourages communication and dialogue.

The fund companies are still allowed to rate the relative riskiness of its fund on a sliding scale that will leave investors in the dark about the fund's true risks. With such a scale the investor is not provided the information he/she needs to make an informed decision. Different scales may yield different results. **RECOMMENDATION 7: We recommend, using the worst 12-month return if the fund has been around for at least 10 years. If not, we continue to suggest using the return of the corresponding CIFSC fund Category, realizing that a number of risks such as political risk, securities lending risk or currency risk are not captured in a simple statistic. Some narrative should be permitted even if an additional page is required. It is after all, the communication of risk and suitability that is at the heart of POS disclosure**

**RECOMMENDATION 8: Due to the high volatility of the Loonie, the hedging policy of the fund with significant foreign currency exposure should be clearly disclosed.** If it does not hedge, a definitive statement to that effect should be made cautioning investors of the risk involved. Currency has been a major determinant of fund performance and volatility for a number of fund Categories with significant assets.

Because it's likely that managers with similar Category mutual funds may adopt different methodologies (or metrics) to identify the mutual fund's risk level on the scale scheme prescribed we believe this approach will lead to a confusing situation. If this is permitted by regulators, there should be a requirement for full and fair prospectus disclosure of the methodology and the supporting rationale for its use. We remain not only unconvinced that a sliding scale will provide the necessary sensitivity to risk that a worst case number would but further that it may misrepresent the true riskiness of a fund .

Additionally, we are of the conviction that there should be a clear message that only the prospectus provides full and complete disclosure of investment risks. The proposed language: *This Fund Facts may not have all the information you want* simply isn't strong enough in our view. **RECOMMENDATION 9: Change the language to increase emphasis on the importance of the prospectus**

We add parenthetically that prospectus disclosure should consider including Beta as a risk measure and Fund Governance should be a listed risk, given known NI81-107 deficiencies and limitations.

**RECOMMENDATION 10: Other changes needed**

We also would like to mention a few other areas for improvement.

- Change "up to x %" in describing FEL fees to "0.0-1.0%" to better inform advisers that no-charge is a real option
- Include Cash in the Top 10 investments
- Require that the GST and Ontario's HST are broken out for visibility and possible rebating
- Add the word "Ongoing" to stress the point that sales commissions are not one-time payments. This will also reinforce an awareness that the advice is potentially biased and is being paid for by the investor .Too many investors still believe that the advice is free and free of any conflict-of-interest.
- Include the percentage of each investment holding. This will help assist in risk assessment. It's easy to do and is a readily available figure.



- Include cumulative returns for 1, 3, 5, 10 and since inception time periods
- Consider adding CIFSC Category and Fund Code to Quick Facts

It is our understanding that rules applicable to marketing materials and advertisements will also be updated to reflect these POS disclosure rules and principles. We found the advertising Guidelines of the HK Securities and Futures Commission to be particularly good [http://www.info.gov.hk/hkma/eng/guide/circu\\_date/attach/20090102e1a2.pdf](http://www.info.gov.hk/hkma/eng/guide/circu_date/attach/20090102e1a2.pdf)

### **Commentary on the Instrument**

We have previously recommended that the FF's be delivered for all categories of funds including money market [m/m] funds. Money market funds have had some of the biggest issues due to the credit crisis –the ABCP fiasco. Money market funds also were used as the conduit for perpetrating financial assault in the mutual fund market timing scandal. We believe the delivery requirements that permit investors to waive their right to receive the document when buying money market funds or in cases in which they initiate the purchase is questionable. Please note that in many cases a floating percentage in a portfolio is always in m/m funds, perhaps 5%. The average hold period is about 10 months. Historically, up to \$70 billion has been invested in m/m funds, many with high and/or growing MER's. Some Money Market funds are sold on a DSC basis which can be very costly for an uninformed investor.

Knowledgeable investors know that the MER is the #1 factor driving relative returns of money market funds and it is not uncommon to see their MERs in the 1 up to 2% range. At today's low interest rates, investors would be better off leaving cash in an interest-bearing account with higher net interest than a money market fund. An investor waiving his right to the FF may pay an expensive penalty. **RECOMMENDATION 11: We therefore recommend that funds categorized as m/m funds be treated like all other funds.**

We concur that no Fund Facts need be delivered to an investor on a subsequent trade in a mutual fund, provided the client already holds securities of the same class or series in the particular fund. The requirement to deliver a Fund Facts prior to purchase only in respect of "initial trades" in mutual funds makes sense. An Annual update should be adequate in the absence of material changes.

For salesperson-recommended initial purchases of funds, other than money market funds, Fund Facts will need to be delivered before or at the point of sale [An IFIC Investor survey revealed that 85% of mutual fund purchases are based on the recommendation of an adviser.]. We certainly agree with this but do not concur that m/m funds should be excluded.

**RECOMMENDATION 12: Identifying (presumably on a trade confirmation slip) a trade as "advisor-recommended" versus "investor-initiated"**. With the latter, the dealer may obtain client consent to send the Fund Facts with the trade confirmation, on the assumption that the client has conducted his or her own research about the fund and therefore doesn't need the fund facts to make an informed decision. Note that in all cases, the client must waive receipt of the Fund Facts before the trade, on a trade by trade basis. We concur with the CSA that a client cannot waive receipt of the fund FF on a blanket basis on account opening, for example. In addition, in these circumstances, we agree that a dealer must first explain the content of a Fund

Facts to the client and its suitability so the client can make an informed decision about whether or not to waive his/her right to receive it.

The so-called ‘investor-initiated’ order could give rise to a number of issues in the event of a dispute. If the CSA wants to distinguish between types of investors who should receive Fund Facts, the appropriate indicator ought to be how well informed they are, not who initiates a trade. In any event, the assumption that “investor initiated” and “advisor initiated” trades are separate, clear and distinct is naive. Even when investors initiate their decisions to buy mutual funds, they may be responding to incomplete, poor or unbalanced information, and would still benefit from prior receipt of the Fund Facts. The scale of who initiates trades is a fuzzy continuum rather than a clear distinction – and *not an appropriate distinction for POS disclosure*. Retail investors will inevitably be exposed to abuse, as under the FF regime they won’t see the full prospectus unless they formally request it. The delivery of the FF, depending on whether the salesperson recommended the fund or the investor initiated the purchase, raises some significant legal, compliance and operational issues for dealers as well as investors. Given the well-documented inadequacies in prevailing complaint systems, this constitutes a significant new risk for investors and the industry.

**RECOMMENDATION 13: Given the above concerns, we further recommend that the Fund Facts includes a block for the investor’s signature (and date) to confirm that the Fund Facts was received, read and the content understood.** By signing, investors are made aware of the importance of the Fund Facts’ content when making decisions and encouraged to ask their salesperson any questions if they have not understood the implication; salespersons are also made aware of their obligations and duties.

We do not disagree with the decision not to require FF delivery at POS if purchase is made through discount brokers or for subsequent purchases of the same fund (if no material changes).

The CSA proposal requires that a new or revised Fund Facts would have to be filed if there is a material change to the information in Fund Facts. Does the CSA consider the following as material changes?

- A change in investment mandate or style
- A change in fees, fee structure or expenses
- A major change in fund assets
- A change that would permit shorting of securities (or purchase of leveraged ETF’s)
- A change in manager
- A change in currency hedging strategy
- Any significant change in the fund’s risk profile e.g. initiating securities lending
- Any material change to the prospectus that would give rise to a change in FF’s
- A change in fund Auditor or Custodian
- Any change that would affect the liquidity of the fund

The one situation in which the new document must actually be provided at the point of sale is for new fund purchases recommended (however defined) by an advisor. The electronic delivery option can be met by merely providing an e-mail link to the document as well as by e-mailing the document itself. No documentation regarding proof of delivery is required to be maintained by



the firm. [A *Read Receipt* could be requested and retained as evidence of transmittal.] SIPA do not believe that making information available to clients on a website is equivalent to delivering the document in paper or electronic form as it is demonstrably not as effective in bringing the information to the attention of the client.

To us this mechanization by email of a critically important disclosure seriously negates its value. It effectively amounts to “access equals disclosure”. No client –adviser discussion on costs, risks or suitability, just the mechanical transmission of an important document to fulfill a regulatory obligation. The central idea of investor-salesperson interaction seems to have been lost. Again, this all stems from the lack of a fiduciary platform in the Canadian advisory business.

We understand that the CSA is considering allowing delivery of the Fund Facts document with the confirmation of trade in instances where the investor expressly communicates they want the purchase to be completed immediately, and it is not reasonably practicable for the dealer to deliver or send the Fund Facts document before the purchase is completed. It is to be hoped this is a rare occurrence for a long-term investment such as a mutual fund. In this type of extreme case, an oral description of the fund and how it fits into the portfolio would not be inappropriate. **RECOMMENDATION 14: Clearly, the costs of the fund ( initial and continuing), worst 12 mos. performance and any liquidity constraints need to be articulated as should the firm’s position on investor suitability for the portfolio.**

On the administrative side, we would suggest that the CSA rule be clear that when an investor requests a prospectus he need not repeat the request each year. Negative option delivery doesn’t work. As regards font size, we would suggest that a minimum of 10 be specified to satisfy the reading requirements of seniors. Further, when a print document is converted to pdf, care should be taken to ensure that it is still read-friendly. In the *For more information* block we recommend the wording be changed to: **RECOMMENDATION 15: “This document is an abbreviated summary of important information. You can ask for a copy of the fund’s simplified prospectus which provides more details on risks, sales commissions and other factors ”**. The proposed text is disingenuous in that implies that the FF *may* not be adequate when in fact it leaves out significant details especially on risk, found only in the prospectus.

We agree with FAIR Canada’s position that the new “cooling off” right is unfair to investors and a reduction in investor rights. **RECOMMENDATION 16: We also are strongly opposed to the amendment of the current “cooling off” right where the investor has a right of withdrawal and a return of his investment.** We see no benefit in replacing current withdrawal and rescission rights under securities legislation with a single, harmonized two-day cancellation right for investors that applies to all mutual fund purchases. It is in the public interest to maintain the status quo. We believe that the area of investor rights, including rights of investors to claim damages for misrepresentation contained in any of the disclosure documents, deserves close scrutiny. In our view, the CSA proposal leaves considerable uncertainty for the fund industry and investors alike. The CSA’s view that they do not perceive the change from the existing regulatory framework to be a reduction of investor rights is inexplicable. While the CSA consider the remedy under the proposed reduced rights to be appropriate in combination with delivery of the Fund Facts before or at the point of sale, we would argue that an even longer period, say 5 days or more, is warranted especially as we are hearing of fund sales occurring at ‘investment seminars’ and/or in retirement residences and even hospitals.

Transition

The CSA are considering implementing the rule amendments in stages with a two-year phase-in period for delivery of Fund Facts in advance of trades. We are disappointed at the lack of a sense of urgency to protect retail investors who have waited for years for a decisive outcome. Fund managers are required to prepare and file Fund Facts and make them available to investors at the end of the first renewal period after the effective date for the proposed amendments. The CSA are also considering modifying current requirements to allow dealers and fund managers to deliver the Fund Facts in satisfaction of today's prospectus delivery requirements (post-trade delivery of simplified prospectuses). We note that the transition timing is such that, even with a fast track effort by the CSA to bring the proposed amendments to National Instrument 81-101 into force within a year (by June 2010), that most mutual funds would not be required to create Fund Facts until late 2010 or 2011 and "point of sale" delivery of Fund Facts would not occur until after June 2012 at the earliest.

### **Bottom line**

Mutual fund investors are regarded as among the most vulnerable. Regulators have concluded that Grade 6 language is required to deal with literacy inadequacies. Further, it's generally accepted that financial literacy is also seriously wanting among this investor group. With so many information elements not provided and some disclosures like risk, potentially misleading, we're uncomfortable with the proposed disclosure regime.

**The requirement to provide benchmark performance, total costs and key risks is fundamental to safeguarding retail investors.** Without this compass they do not know what they are buying or how it fits into their portfolio. An important shortcoming of the proposed Fund Facts is that it fails to set rational expectations for the investment returns by utilizing a misleading risk scale.

A partial solution can be provided by the availability of a plain language FF Companion Guide. We note with considerable dismay that the 2003 idea of a **Consumers' Guide** has been abandoned. We believe the CSA is in the best and most trusted position to set rational expectations for investors, and to slay some important myths (past performance, future expectations, importance of fees, risk etc.). **RECOMMENDATION 17: We strongly recommend that a Companion Guide document be prepared by regulators that would add context and meaning for each element of FF information.** A range of expected returns for different securities would provide a reality check for investors and raise their awareness of the impact of fees on long-term returns. The document could also explain the pros and cons of a Deferred Sales Charge over an initial sales charge, and in the case of an initial sales charge, whether such charges can be negotiated at less than the "up to" amount stated in a prospectus. The FF should make reference to the document and it should be available free on-line and in hard copy upon request. Simultaneously, regulator educational materials should be beefed up so as to enable investors to better understand this complex product and confusing distribution system. SIPA have prepared a straw man version of such a Companion Guide and would be willing to share it upon request.

In the U.S., the SEC is aware that the ordinary investor faces a complex decision when choosing a mutual fund -it provides a detailed online guide that describes numerous relevant factors related to risk, return, and expenses.

In our view, any advisory firm that is unable or unwilling to provide fundamental fund information at or before sale should be excluded from providing advice to trusting retail fund investors. If the CSA or SRO's allow this new proposal to pass, without major changes, yet another opportunity to protect small investors will have been missed. If POS disclosure is important, it's worth doing right or not at all. Canadian demographics strongly suggest prompt, decisive action by securities regulators as seniors are often a target. An incremental improvement approach to this Instrument is not in the public interest given the big stakes involved.

As always, we point out that this Instrument will only be effective if there is constant regulatory monitoring and determined enforcement. Mechanisms need to be in place to ensure that the disclosures are compliant and delivery actually made. It's not clear however what remedies, if any, investors have if FF is not delivered. What is supposed to prompt the fund industry to make sure it delivers Funds Facts?

We would also like to take this opportunity to formally request that, given the critical importance of this Instrument to retail mutual fund investors especially seniors and retirees, that the CSA not depend solely on written submissions from the "public". It should be clear to all that retail investors are at a substantial disadvantage relative to fund industry participants with dedicated staff to make such submissions. Historically, the submissions from industry participants overwhelm the few retail investor inputs if indeed there actually are any. This unbalanced situation can lead to seriously flawed rule-making. **RECOMMENDATION 18: We therefore recommend that each member of the CSA undertake to pro-actively host a forum, inviting retail investors, investor advocates, software suppliers, academia, consumer associations and seniors and pension groups to dialogue the proposed changes face to face before the Oct. 17 deadline for submissions.**

Policy makers should be trying to understand (and then address) whether Canada's relatively high MER arises due to a concentrated industry with high barriers to entry, fragmented and ineffective regulation, investor lack of knowledge, an ill-informed or ineffective financial press or a weak education system that ignores financial matters. Canadian investors deserve a step function shift in how financial services are sold and delivered in this country. Sadly, the FDM, which was ahead of its time, was abandoned.

There has been little public discussion in Canada about the international initiatives regarding disclosure, advisors as fiduciaries and complaint handling. The U.K. FSA appears to be taking a leadership position followed by bold plans in the U.S. after the market breakdown of 2008. President Barack Obama's June White Paper on Financial Regulatory Reform proposed giving the Securities and Exchange Commission more authority to improve disclosure requirements so that investors know what they're paying for, either at or before the point of sale. It also suggested the SEC should have the power to ban types of compensation that could encourage brokers to act against investors' interests -- such as different rates of revenue-sharing with different fund firms. In June the Financial Industry Regulatory Authority, an SRO for the U.S. securities industry, suggested that brokers disclose revenue-sharing agreements with mutual-funds to their clients at the point of sale. Australia, HK and NZ also appear to be making bold investor-protecting moves. SIPA calls on the CSA, IIROC and the MFDA to undertake a review of regulatory initiatives in the world's leading financial markets and establish world class benchmarks.

Should you require any additional information, do not hesitate to contact us.

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