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Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Consultation Paper 81-408 – Consultation on the Option of Discontinuing Embedded Commissions

CSA CONSULTATION PAPER 81-408 – *CONSULTATION ON THE OPTION OF DISCONTINUING EMBEDDED COMMISSIONS*

January 10, 2017

Administering the Canadian Securities Regulatory System
Les autorités qui réglementent le marché des valeurs mobilières au Canada

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PART 1 – INTRODUCTION

Background

On December 13, 2012, the Canadian Securities Administrators (the **CSA** or **we**) published CSA Discussion Paper and Request for Comment 81-407 – *Mutual Fund Fees* (the **Original Consultation Paper**).[1] In that paper, we identified potential investor protection and market efficiency issues arising from the prevailing practice of remunerating dealers and their representatives for mutual fund sales through commissions, including sales and trailing commissions, paid by investment fund managers (**embedded commissions**). In particular, we identified how embedded commissions give rise to conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of the investors they serve.

Since the publication of the Original Consultation Paper, the CSA completed roundtable consultations and discussion forums[2], and commissioned independent research to further examine the identified investor protection and market efficiency issues.[3] After an extensive review of these inputs, in addition to our review of many other independent studies, we find that embedded commissions raise the following three key investor protection and market efficiency issues in Canada:

1. Embedded commissions raise conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of investors;

2. Embedded commissions limit investor awareness, understanding and control of dealer compensation costs; and

3. Embedded commissions paid generally do not align with the services provided to investors.

The evidence we have gathered to date shows that embedded commissions encourage the sub-optimal behavior of fund market participants, including that of investment fund managers, dealers, representatives and fund investors, which reduces market efficiency and impairs investor outcomes. In particular, the data and research we reviewed suggests that embedded commissions can:

- incent investment fund managers to rely more on payments to dealers than on the generation of performance to gather and preserve assets under management; this incentive can in turn lead to underperformance and drive up retail prices for investment products due to a competition between investment fund managers to offer attractive commissions to secure distribution;

- incent dealers and their representatives to sell funds that compensate them the best or focus on only those funds that include an embedded commission rather than recommend a more suitable investment product; specifically, they can encourage a push for higher commission generating funds, such as higher-risk actively managed funds, which can impair investor outcomes;

- due to their embedded nature and complexity, inhibit the ability of investors to assess and manage the impact of dealer compensation costs on their investment returns; and

- cause investors to pay (indirectly through fund management fees) dealer compensation that may not reflect the level of advice and service they may actually receive; the cost of the advice and service provided may exceed its benefit to investors.

These issues and their causes appear to be driven by a compensation model with inherent conflicts of interest that research suggests are pervasive and are difficult to manage effectively. Based on the evidence we have gathered, we believe that a change to a different compensation model must be considered. Investors should be provided with a compensation model that empowers them and that better aligns the interests of investment fund managers, dealers and representatives with those of investors.

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1 The Original Consultation Paper is available on the websites of the members of the CSA.

2 See transcript of Ontario Securities Commission roundtable held June 7, 2013, https://www.osc.gov.on.ca/documents/en/Securities-Category8/rpt_20130607_81-407_mutual-fund-fees-roundtable.pdf. The British Columbia Securities Commission and Autorité des marchés financiers held discussion forums in the summer and fall of 2013, respectively.

3 Brondesbury Group, "Mutual Fund Fees Research", Spring 2015, https://www.securities-administrators.ca/uploadedFiles/General/pdfs/Brondesbury%20Mutual%20Fund%20Fee%20Research%20Report_engwr.pdf; Douglas Cumming, Sofia Johan and Yelin Zhang, "A Dissection of Mutual Fund Fees and Performance" (Feb. 8, 2016), https://www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20160209_81-407_dissection-mutual-fund-fees.pdf

Consultation on direct pay arrangements

Before taking any regulatory action, and while we consider related regulatory initiatives underway, we want to consult with stakeholders on the potential option of discontinuing embedded commissions and transitioning to direct pay arrangements that:

- better align the interests of investment fund managers, dealers and representatives with those of investors;
- deliver greater clarity on the services provided and their costs; and
- empower investors by directly engaging them in the dealer and representative compensation process.

Direct pay arrangements could consist of various types of compensation arrangements including upfront commissions, flat fees, hourly fees, fees based on a percentage of assets under administration or other arrangements, provided in all cases:

i. the arrangement is negotiated and agreed to exclusively by the investor and the dealer, through the representative, pursuant to an explicit agreement; and

ii. the investor exclusively pays the dealer for the services provided under the agreement.

Under a direct pay model, we would expect dealers to offer their clients a compensation arrangement that suits their particular investment needs and objectives and the level of service desired. Investment fund managers could facilitate investors' direct payment of dealer compensation through payments taken from the investor's investment (for e.g. deductions from purchase amounts or periodic redemptions from the investor's account).

We recognize that such a change could have a profound effect on the fund industry and on investors in Canada, including potential unintended consequences. Therefore, a decision on whether to discontinue embedded commissions will only be reached after careful consideration and assessment of the possible impacts on investors and market participants and consultation with stakeholders. Accordingly, the aims of this consultation paper (**Consultation Paper**) are to obtain the requisite information the CSA needs to make an informed decision about discontinuing embedded commissions. Specifically, our objectives are to:

- assess the potential effects on investors and market participants of discontinuing embedded commissions, including on:
  - the provision and accessibility of advice for Canadian investors, and
  - business models and market structure, including the competitive landscape of the Canadian fund industry;
- if we decide to move forward, identify potential measures that could assist in mitigating any negative impacts of such a change; and
- obtain feedback on alternative options that could sufficiently manage or mitigate the identified investor protection and market efficiency issues.

We emphasize that we have not made a decision to discontinue embedded commissions. While we continue to consult and contemplate whether regulatory action should be taken to address the issues we have identified with the current commission-based compensation model, we encourage industry to create market-driven solutions and innovations that address the concerns we raise in this Consultation Paper, including adopting business models that:

- have at their core the interests of investors;
- align the benefits to the investment fund managers, dealers and representatives with the benefits to investors;
- make for more informed, engaged and empowered investors that expect and demand services that align with the fees they pay; and
- promote fair, competitive and efficient capital markets, and foster confidence in our market.

Impact analysis

This consultation will build on our previous consultations and the important body of research we have considered to date. We particularly seek from stakeholders analysis and perspectives that:

- were not raised in the prior consultations; and
- wherever possible, are evidence-based, data-centric and Canadian-focused.

The fund industry has to date provided research that finds that higher levels of wealth are achieved by advised investors over time, and maintains that embedded commissions are essential to delivering this benefit, particularly to investors with lower levels of wealth who may not otherwise be able to afford, or may not want to pay directly for, advice.

The fund industry has also pointed to the consequences of relevant regulatory reforms in other jurisdictions (such as the U.K. and Australia) as potential evidence of the likely impact of the discontinuation of embedded commissions in Canada. While observations about the impacts of relevant reforms in other jurisdictions are informative and insightful, we consider that the potential impacts from similar reforms in Canada might not be the same. The unique features of those foreign markets, including the characteristics of their respective market participants and the specific competitive dynamics within which they operate, their market structure, the savings habits of their local investors, as well as the scope of their respective reforms may all play a role in shaping the specific impacts.

The objective of this consultation is therefore to identify the potential effects of discontinuing embedded commissions in Canada based on what we know of our fund market and its participants, including our investment fund managers, our dealers, and the investors they currently serve. This objective includes understanding the potential impact such a change may have on the accessibility and affordability of advice for Canadian investors, including lower-wealth investors, and identifying ways to minimize this impact. Ultimately, our goal is to ensure that any regulatory action we may decide to take will provide a Canadian solution to challenges specific to the Canadian market, will result in more positive outcomes for Canadian investors and will minimize disruption for market participants. For this purpose, the contribution of the stakeholders to this consultation is very important.

Related regulatory initiatives and other alternatives

We are aware of the view of many fund industry participants that mutual fund fee reforms may be unnecessary in the wake of recent reforms aimed at improving investor awareness and understanding of fees and performance under the CSA's Point of Sale disclosure (**POS**) and Client Relationship Model Phase 2 (**CRM2**) projects, and the concept proposals to enhance the registrant-client relationship discussed in CSA Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives Toward Their Clients* (**CSA CP 33-404**). We also understand that industry participants are concerned by the number of current policy initiatives that affect their business and that require substantial changes in their operations and systems. Industry has urged us to allow full implementation of the POS and CRM2 reforms and fairly assess their results, and conclude consultations under CSA CP 33-404, before signaling that significant new reforms are needed.

We are of the view that the discontinuation of embedded commissions could be complementary to our recent reforms and proposals in that those existing and ongoing initiatives were not designed to, and may not fully address, the key investor protection and market efficiency issues we have identified in this Consultation Paper. In particular, we think that as long as dealer compensation remains embedded in the fund product, investment fund managers may continue to place greater emphasis on payments to dealers than on performance to gather and preserve assets under management. This compensation model may continue to encourage higher fund fees and impair investor outcomes and market efficiency, including effective competition in our market. We believe that discontinuing embedded commissions may address these issues by better aligning the interests of investment fund managers, dealers and representatives with those of investors. In this Consultation Paper, we seek your views on our assessment of the extent to which the discontinuation of embedded commissions may be required to address our key issues, including your views on whether recent disclosure reforms and proposals to enhance the registrant-client relationship may on their own sufficiently address our concerns.

We have also canvassed and thoughtfully considered a number of alternative options to address the investor protection and market efficiency issues we have identified. As more fully discussed in Appendix B of this Consultation Paper, we did not retain those other options as we found that they did not directly or fundamentally address the identified issues to the extent that discontinuing embedded commissions may.

Comment process

We welcome comments from investors, participants in the investment fund and financial services industries, and all other interested parties to the matters discussed in this Consultation Paper. Some CSA jurisdictions will hold in-person consultations in 2017 to facilitate additional feedback and further our consideration of the issues. Please see Part 7 of this Consultation Paper for information on how to submit comments. The comment period closes on **June 9, 2017**.

Structure of Consultation Paper

The remainder of this Consultation Paper is structured as follows:

- Part 2 discusses the key investor protection and market efficiency issues we have identified in connection with embedded commissions and highlights the evidence of these issues;
- Part 3 describes the potential scope of the discontinuation of embedded commissions if we were to proceed with rule-making;
- Part 4 sets out our assessment of the potential impacts of discontinuing embedded commissions on the Canadian fund market and specific stakeholders, including the potential impacts on market structure, business models and access to advice for Canadian investors, based on an analysis of data about Canadian fund investors and market participants;
- Part 5 explores measures that could mitigate the potential impacts and unintended consequences to investors and the Canadian fund market of discontinuing embedded commissions;
- Part 6 provides an overview of existing regulatory tools and related regulatory initiatives and our assessment of the extent to which these tools and initiatives may help address the key investor protection and market efficiency issues we have identified in connection with embedded commissions;
- Part 7 explains how stakeholders may provide comments and discusses next steps;
- Appendix A provides a detailed overview of the research that provides evidence of the key investor protection and market efficiency issues discussed in Part 2;
- Appendix B discusses other options we previously considered and the reasons why we did not retain them;
- Appendix C provides an overview of relevant reforms pertaining to dealer compensation in other jurisdictions; and
- Appendix D provides a list of the consultation questions.

PART 2 – KEY INVESTOR PROTECTION AND MARKET EFFICIENCY ISSUES RAISED BY MUTUAL FUND FEES AND RELATED EVIDENCE

Further to the CSA's consultations on the Original Consultation Paper and our review of recent Canadian and other independent research on mutual fund fees as well as various other pieces of evidence, we have identified the following three main investor protection and market efficiency issues in connection with the mutual fund fee structure in Canada:

1. Embedded commissions raise conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of investors;
2. Embedded commissions reduce investor awareness, understanding and control of dealer compensation costs; and
3. Embedded commissions paid generally do not align with the services provided to investors.

Below, we discuss each of the three issues in greater detail and reference various pieces of research and other data set out in Appendix A that evidence the issues.

We then consider the policy implications of the available evidence and the extent to which they suggest a need for change.

A. The issues and related evidence:

Issue 1: Embedded commissions raise conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of investors

Based on the available evidence, the current embedded commission dealer compensation model appears to facilitate a mutually beneficial relationship between the investment fund managers who manufacture fund products and the dealers and representatives that distribute them. It aligns the investment fund manager's asset gathering and preservation objectives with the dealer's revenue maximization objectives. The evidence suggests that this alignment of commercial goals can alter the behavior of investment fund managers, and of the dealers and representatives who distribute the investment fund manager's products, in a way that is detrimental to market efficiency and investor outcomes. Specifically:

i. embedded commissions can reduce the investment fund manager's focus on fund performance, which can lead to underperformance;

ii. embedded commissions can encourage dealers and representatives to make biased investment recommendations which may negatively affect investor outcomes; and

iii. embedded commissions encourage high fund costs and inhibit competition by creating a barrier to entry.

i. Embedded commissions can reduce the investment fund manager's focus on fund performance, which can lead to underperformance

Investment fund managers who pay embedded commissions to dealers may be incented to rely more on those payments than on generating performance to attract and preserve assets under management. Consequently, the embedded commission structure may encourage investment fund managers to regard dealers and representatives, rather than their fund investors, as their "customers".[4]

The research that we have gathered and reviewed suggests that this inherent conflict of interest diminishes the investment fund manager's focus on risk-adjusted outperformance, thus impairing investor returns.

ii. Embedded commissions can encourage dealers and representatives to make biased investment recommendations which may negatively affect investor outcomes:

Dealers and representatives who are compensated through embedded commissions may be incented to make biased investment recommendations that give priority to maximizing compensation over the interests of the client. The research we have gathered and reviewed suggests that:

- compensation bias arising from embedded commissions can incent dealers and representatives to:
  - recommend higher cost fund products that pay them higher embedded commissions than other suitable lower-cost and, possibly, better performing products, and
  - promote the use of a particular purchase option[5], such as the deferred sales charge (**DSC**) option[6],

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[4] This observation was similarly made by Gloria Stromberg in *Regulatory Strategies for the Mid-'90s, Recommendations for Regulating Investment Funds in Canada*, January 1995, at pages 17-18 where she discusses this concern as follows:

> "Another result that has flowed from the need to secure distribution channels is that independent investment fund organizations no longer appear to regard the investors in their sponsored investment funds as being their "customers" in terms of such investors being the persons whose needs, expectations and interests that their operations are intended to serve. Instead, their organizations regard the distributors – i.e. mutual fund dealers, mutual fund specialists, financial planners, investment dealers and, in some cases, the individual sales representatives that are employed by these firms – as being their "customers" and their immediate focus is on satisfying the needs of these people instead of the needs of the investors in their sponsored investment funds."

We note the U.K.'s Financial Services Authority (**FSA**) (now known as the Financial Conduct Authority) also made similar observations in the work leading up to its Retail Distribution Review reforms discussed in Appendix C of this Consultation Paper. In a speech entitled "Is the present business model bust?" given on September 16, 2006, the Chairman of the FSA stated the following:

> "And one of the key questions that must be addressed is this: who is the real customer of the provider – is it the policyholder who invests their money in the hope of seeing a decent return? Or is it the distributor, who in the main, secures access to the end-consumer for the provider? If, as many commentators would have it, it is indeed the distributor who is the actual customer of the provider, this raises all manner of difficulties which further perpetuate the shortcomings of the current model – particularly with regard to treating the real customer fairly. I understand well that many are frustrated by what they describe as the "commission stranglehold" that the advisory community enjoys, but so long as providers continue to compete over the attractiveness of their commission proposition, the fundamental flaws in the present business model will remain."

[5] Mutual funds in Canada can be purchased under one of four primary options:

1. **No load:** The investor does not pay any direct charges for fund securities purchased or redeemed; the dealer is paid a trailing commission by the investment fund manager.
2. **DSC:** The investor does not pay a sales charge for fund securities purchased, but may have to pay a redemption fee if the securities are sold before a predetermined period has elapsed; the dealer is paid both an upfront commission and a trailing commission by the investment fund manager. For more details on this option, see note 6.
3. **Front end:** The investor pays a negotiable sales charge to the dealer at the time of purchase that is deducted from the amount invested, but does not pay a redemption fee to redeem; the dealer is paid a trailing commission by the investment fund manager.
4. **Fee based:** The investor does not pay a sales charge to purchase, or a redemption fee to redeem, fund securities, but instead pays an ongoing fee directly to the dealer pursuant to an agreement with the dealer; the dealer generally does not receive any compensation from the investment fund manager.

that pays higher upfront embedded commissions, regardless of the availability of other purchase options that may better suit the investor's needs and objectives; and

- biased advice has an economically significant cost on investor outcomes.

iii. Embedded commissions encourage high fund costs and inhibit competition by creating a barrier to entry:

The research we have gathered and reviewed suggests that competition between investment fund managers to offer high embedded commissions to attract and secure distribution encourages and preserves high overall fund fees and discourages the manufacturing and sale of lower-cost alternatives, thus limiting price competition in Canada. This competition on the basis of commissions has a distorting effect on the allocation of capital by rewarding some investment fund managers more than is warranted, and others less than is warranted, while discouraging some from entering the market entirely.

Evidence:

In Appendix A, we provide evidence substantiating how the conflicts of interest inherent in embedded commissions alter the behavior of investment fund managers, dealers and representatives at the expense of market efficiency and investor interests.

Issue 2: Embedded commissions limit investor awareness, understanding and control of dealer compensation costs

Based on the available evidence, embedded commissions appear to limit investor awareness, understanding and control of dealer compensation costs. Specifically:

i. the lack of saliency of embedded commissions reduces investors' awareness of dealer compensation costs;

ii. embedded commissions add complexity to fund fees which inhibit investor understanding of such costs;

iii. the product embedded nature of dealer compensation restricts investors' ability to directly control that cost and its impact on investment outcomes.

i. The lack of saliency of embedded commissions reduces investors' awareness of dealer compensation costs:

To facilitate the sale of funds, the Canadian fund industry has over the last several years gradually shifted away from transaction-based sales commissions paid directly by investors toward a greater reliance by both investment fund managers and dealers on product embedded commissions. For example, in 1996, trailing commissions accounted for slightly more than one quarter of a typical representative's book of business; by 2011, that share had grown to an estimated 64%.[7]

[6] When purchasing fund investments under the DSC option (also known as the "back end load" option), the investor does not directly pay a sales commission to their dealer or representative at the time of purchase. The entire amount paid by the investor is accordingly invested in the fund at the time of purchase. While the investor does not directly pay a sales commission to the dealer or representative at the time of purchase, the dealer and the representative, through the dealer, typically receive a commission from the investment fund manager equivalent to 5% of the amount purchased. The investment fund manager may borrow the money necessary to pay these upfront commissions and therefore will incur financing costs. These costs are recouped by the investment fund manager through the ongoing management fees charged to the fund. Accordingly, the cost of the upfront commissions is embedded in the ongoing costs of the fund.

While investors do not pay a sales charge to their dealer at the time they make their purchase under the DSC option, they may pay a redemption fee to the investment fund manager if they redeem their investment within a predetermined number of years from purchase, typically 5 to 7 years. The redemption fee is designed to deter an investor from redeeming the investment and accordingly preserve assets under management. The redemption fee works on a declining scale, typically starting around 6% in the first year and declines by about 1% each year down to 0% at the end of the specified holding period. The investor may switch his investment to other funds within the investment fund manager's fund lineup without triggering redemption fees. However, a switch fee of typically up to 2% may apply.

Many investment fund managers offer a low-load sales charge option, which works like the DSC option, but on a shorter schedule – typically 3 years or less. The upfront commission paid by the investment fund manager to the dealer and the redemption fee payable by the investor on a redemption made within the specified holding period are also correspondingly reduced (down to approximately 2 to 3%).

In this Consultation Paper, unless otherwise indicated, references to the "DSC option" include the "low-load sales charge option".

According to data from Investor Economics, as at December 2015, 20% of Canadian fund assets totalling $234 billion were held in the DSC option.

[7] Investor Economics, *Investor Economics Insight,* March 2012, at p. 9.

This move away from transaction-based sales commissions has reduced the saliency of dealer compensation costs for investors and, accordingly, reduced their sensitivity to such costs. The research we have gathered and reviewed is clear that the majority of Canadian fund investors are not aware of what they pay for financial advice or that they pay for financial advice at all.[8] Consequently, these costs do not figure into their decision-making. The research we have gathered and reviewed suggests that investors are more sensitive to salient upfront fees like front-end loads and are more likely to control such visible and salient fees that they must pay directly.

ii. Embedded commissions add complexity to fund fees which inhibit investor understanding of such costs:

Further contributing to investors' limited awareness and understanding of fund fees, including embedded commissions, is the complexity of fund fees in terms of structure and options on offer. Although all dealer compensation costs that fund investors pay directly (such as sales charges) and indirectly through ongoing fund fees (such as trailing commissions) are disclosed in the fund's prospectus, the fund facts document and the annual report on charges and other compensation, the variance in such fees between investment fund managers, fund types (i.e. asset classes), fund series and purchase options can overwhelm investors' capacity to understand the specific fund fees, including dealer compensation costs, that apply to their investment.

The complexity of the mutual fund fee structure can make it challenging for all but sophisticated investors to measure the value of the services they receive against the costs they pay and assess the impact of fees on their investment returns.

The research we have gathered and reviewed suggests that price complexity in retail financial products increases the information asymmetry between investors and product manufacturers and distributors, which increases investors' reliance on more informed intermediaries for their investment choices and decisions.

iii. The product embedded nature of dealer compensation restricts investors' ability to directly control that cost and its effect on investment outcomes:

Since the cost of dealer compensation is embedded in the fund's ongoing management fees, investors have no ability to directly negotiate this cost and consequently have no control over the amount they ultimately pay their dealer and their representative. The only control investors have on dealer compensation costs under the embedded commission model is to vote on a proposed increase to fund management fees (from which dealer compensation is paid).[9]

Opportunities for retail investors in Canada to reduce the trailing commissions they indirectly pay or avoid them altogether are very limited. As a result, investors who may desire little or no advice (e.g. do-it-yourself investors) may often bear the cost of full unreduced trailing commissions. And investors who do desire advisory services but who wish to pay for them directly rather than through embedded commissions similarly have limited options because direct pay arrangements are typically available only through dealers servicing higher net worth investors. We note that even though the vast majority of investment fund managers now offer fee-for-service series (e.g. Series F) for minimal investments, the distribution of such series is still limited in comparison to the distribution of series with embedded commissions due to the fee-based account minimums imposed by the dealer.[10]

Furthermore, because trailing commissions are deducted at the fund level rather than the account level, some investors indirectly subsidize certain dealer compensation costs that are not attributable to their investment in the fund, which means they indirectly pay excess fees. This situation is called "cross-subsidization". For example, front-end load investors in a fund may cross-subsidize the costs attributable to DSC investors.[11] Opportunities for cross-subsidization would be reduced if each investor were charged a fee covering his/her own distribution costs at the account level, which would enable each investor to pay only for his/her costs and thus have greater control over such costs.

Investors' inability to make an informed choice based on fund costs, including dealer compensation, and to control such costs due to their product-embedded nature can lead to sub-optimal investment choices and outcomes.

[8] The new report on charges and other compensation implemented in the context of CRM2 was designed to increase the transparency of dealer compensation costs for investors. In Part 6 of this Consultation Paper, we provide an analysis of the extent to which CRM2 is expected to respond to Issue 2 above.

[9] Under section 5.1 of National Instrument 81-102 *Investment Funds*, the prior approval of securityholders of an investment fund is required for an increase in a fee or expense that is charged to an investment fund or directly to its securityholders.

[10] Investor Economics, *Investor Economics Insight*, July 2016.

[11] We refer you to note 6 where we explain the DSC option and the associated cost to the investment fund manager of funding the payment of an upfront commission to dealers for sales made under that option.

Evidence:

At Appendix A, we provide evidence that:

- the lack of saliency and the complexity of fund fees, including embedded commissions, impacts investors' awareness and understanding of such fees and accordingly reduces the significance of fund fees as a factor in investor decision-making; and

- the product embedded nature of dealer compensation restricts investors' ability to directly control that cost and its impact on investment outcomes; this evidence includes an overview of:

  - the cross-subsidization that results from dealer compensation charged at the fund level, and

  - the limited options investors currently have in Canada to limit or avoid the payment of embedded commissions.

Issue 3: Embedded commissions paid generally do not align with the services provided to investors

There is generally no clear relationship between the level of embedded commissions set and paid by the investment fund manager to the dealer and the level of services and advice the dealer and the representative provide to investors in exchange for such compensation. Specifically:

i. investors do not receive ongoing advice commensurate with the ongoing trailing commissions paid; and

ii. the cost of advice provided through commissions may exceed its benefit to investors.

i. Investors do not receive ongoing advice commensurate with the ongoing trailing commissions paid:

As mentioned above, trailing commission rates may vary between investment fund managers, fund types, fund series and purchase options. They may also in some cases vary over the course of the investment.[12] While a reasonable assumption might be that the rate of the trailing commission is reflective of the level of service an investor receives from a dealer and their representative (i.e. the greater the rate, the greater the service), current practice suggests that no such relationship exists between the fees paid and the services provided in exchange.

Embedded commissions are paid to dealers regardless of the extent of the services that a representative provides to the investor in connection with an investment in a fund. The same compensation is paid irrespective of whether the representative provides only transaction-oriented advice or provides a broader range of ongoing investment services and financial advice that is tailored to the investor's specific needs. For example, our review of the Canadian fund market finds that higher than average trailing commissions are sometimes paid on investment funds offering pre-packaged investment solutions (i.e. funds-of-funds) that relieve the representative from having to do much of the fund selection and asset allocation they might otherwise have to do for a client. Similarly, discount brokers who provide execution-only services often distribute fund series that pay them the same trailing commission that would be paid to a full service dealer.

The 'one-size-fits-all' nature of the trailing commission payment therefore seems misaligned with the provision of services and advice customized to the investor's specific needs, expectations and preferences. A contributing factor to this misalignment is likely investors' low awareness and understanding of fees including dealer compensation (as discussed under Issue 2 above), which causes investors to not demand a level of service and advice commensurate with the fees they have indirectly paid for.

Absent a clear relationship between the rate of the embedded compensation paid to the dealer and their representative and the level of services an investor receives in return, the payment of embedded compensation may be perceived to be tied to the simple distribution of the fund product as opposed to the provision of ongoing advice and services. Certain industry submissions received in response to our Original Consultation Paper would seem to confirm this view as several commenters indicated that trailing commission payments support dealer operations and sales activity more than the provision of ongoing advice.

If investors are getting basic one-time services centered on the trade as opposed to ongoing advice and services in exchange for the ongoing embedded commissions paid out of their funds' management fees, they may be indirectly paying too much for the services they are actually receiving. Moreover, since the aggregate amount of embedded commissions that investors pay increases as their holding period increases, those investors who remain invested longer may pay more fees than others for the same basic service.

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[12] For example, we have seen trailing commission rates that increase in steps with each year the investor continues to hold the investment, reaching a specified maximum rate after a certain number of years. It is also typical for trailing commission rates to double at the expiration of a DSC redemption schedule (5 to 7 years). For example, a trailing commission rate of 0.50% for an investment held in an equity fund under the DSC option may increase to 1.00% at the expiration of the redemption schedule.

ii. The cost of advice provided through embedded commissions may exceed its benefit to investors:

Some of the research we reviewed suggests that investors may derive no measurable net benefit from financial advice paid for through embedded commissions and may in some cases be worse off because of it. Certain research finds that the advice of representatives may be skewed not only by compensation biases, but may also be affected by representatives' varying skills and knowledge about investing which in some cases may benefit from increased proficiency requirements. Other research suggests that the benefits that investors derive from the advice of representatives may be largely behavioral and thus intangible in nature, such as the development of good savings discipline, overcoming inertia, the reduction of anxiety, and the creation of trust.

Evidence:

In Appendix A, we provide evidence that:

- investors do not receive ongoing advice commensurate with the ongoing trailing commissions paid; and
- the cost of advice provided through embedded commissions may exceed its benefit to investors.

Questions

1. Do you agree with the issues described in this Part? Why or why not?

2. Are there other significant issues or harms related to embedded commissions? Please provide data to support your argument where possible.

3. Are there significant benefits to embedded commissions such as access to advice, efficiency and cost effectiveness of business models, and heightened competition that may outweigh the issues or harms of embedded commissions in some or all circumstances? Please provide data to support your argument where possible.

B. Policy implications:

The foregoing shows that product embedded commissions affect the behavior of fund market participants in a way that undermines investor protection and the fairness and efficiency of our capital markets as well as confidence in our market. This situation suggests a need to consider regulatory action.

To address the investor protection and market efficiency issues outlined in this Consultation Paper, the CSA considered and discussed the range of policy options set out in the chart below:

<table>
<tr><th colspan="10">Potential regulatory options</th></tr>
<tr><th colspan="2">1. Use existing tools</th><th colspan="2">2. Enhancements to disclosure</th><th colspan="3">3. Investment fund manager focused initiatives</th><th>4. Enhance-ments to registrant-client relation-ship</th><th colspan="2">5. Mutual fund fee reforms</th></tr>
<tr><td>Roll out POS and CRM2 and monitor impact</td><td>Conduct NI 81-105 mutual fund sales practices reviews</td><td>CRM2 cost reporting / performance reporting benchmarking</td><td>Better fee disclosure in fund facts (giving more context for fund costs)</td><td>Require separate series for each purchase option</td><td>Make distribution costs an expense of the fund</td><td>Require DIY discount series</td><td>Consider extent to which concept proposals under CSA CP 33-404, if implemented, may respond to fund fee issues</td><td>Cap all forms of embedded compensation to a maximum limit</td><td>Discontinue all forms of embedded compensation</td></tr>
</table>

CSA regulatory project focus	Regulatory options not retained

Guiding considerations for evaluation of options:

Our evaluation of the range of options and determination of which options should be retained and which ones should not were guided by the extent to which an option directly addresses the three investor protection and market efficiency issues we identified. We specifically considered the questions below:

a. How many problems does the option address and to what degree?

b. Would the impact be direct/immediate rather than indirect/over time?

c. What is our level of uncertainty regarding the impacts/what is our expectation regarding unintended consequences?

d. Does it simplify or add to the complexity of the fund fee structure?

e. Does it enhance competition in our market and market efficiency generally?

Where we determined that an option would potentially address one issue to some degree, but at the same time would fail to address or would likely exacerbate another issue, or would potentially increase the complexity of fund fees or fail to enhance competition in the market, we opted to not retain the option.

When we evaluated the options through this lens, our analysis drew us to not retain the options highlighted in red and retain the options highlighted in green in the table above.

The options we opted to not retain and the reasons why are described in Appendix B of this Consultation Paper.

The options we retained include:

i. maintain and use our existing tools, namely enhanced transparency of fund fees under POS and CRM2, and review of sales incentives under NI 81-105 *Mutual Fund Sales Practices* (**NI 81-105**);

ii. continue to explore concept proposals under CSA CP 33-404 to strengthen the obligations of dealers and their representative towards their clients; and

iii. discontinue embedded commissions and transition to direct pay arrangements.

Following a thorough evaluation, we believe that options “i” and “ii” may provide only a partial resolution to the issues identified in this Consultation Paper and that option “iii” may need to be considered in conjunction with options “i” and “ii” to achieve the desired outcomes. We accordingly view option “iii” as being complementary to options “i” and “ii”.

In Part 6 of this Consultation Paper, we provide our detailed assessment of the extent to which the above key issues may be addressed by existing CSA regulation and ongoing proposals, and seek your views on that assessment.

PART 3 – OVERVIEW OF THE PROPOSED OPTION TO DISCONTINUE EMBEDDED COMPENSATION

In this part, we discuss the potential scope of the discontinuation of embedded commissions should the CSA decide to move forward with rule-making. In particular, we consider:

- what types of securities would be affected, and
- what types of payments would be discontinued.

1. Types of securities affected

NI 81-105, implemented in 1998, governs the payments that investment fund managers may make to dealers in connection with the distribution of securities of a mutual fund.[13] While that rule currently applies only to mutual funds that are reporting issuers, we recognize that its regulatory objectives have equal application to the distribution of other investment funds and comparable investment products that we regulate.[14]

[13] NI 81-105 came into force on May 1, 1998. Part 2 of Companion Policy 81-105CP provides background on NI 81-105 and describes its purpose. NI 81-105 was adopted by the CSA as a response to the concern of many participants in the mutual fund industry that prospectus disclosure of sales practices, coupled with the discipline imposed by competitive market forces, were not sufficient to discourage sales practices and compensation arrangements that gave rise to questions as to whether dealers and their representatives were being induced to sell mutual fund securities on the basis of the incentives they were receiving as opposed to what was suitable for and in the best interests of their clients.

The purpose of NI 81-105 is to ensure that the interests of investors remain uppermost in the actions of participants in the mutual fund industry by setting minimum standards of conduct designed to minimize the conflicts between the legitimate commercial goals of industry participants and the fundamental obligations that are owed by industry participants toward investors.

[14] See “Request For Comments on Sales Practices Applicable To The Sale Of Mutual Fund Securities – Notice of Proposed Rule and Proposed Companion Policy Under The Securities Act”, Ontario Securities Commission (**OSC**) Bulletin, (1996) 19 OSCB 4727, in which the OSC sought comments on a local rule proposal that would later become NI 81-105 and be adopted by all CSA jurisdictions. At page 4728, the OSC states: “Although the proposed Rule applies only to the distribution of publicly offered mutual funds, the Commission is of the view

Over the last few years, the CSA have made regulatory changes to ensure a consistent regulatory framework in key areas for all types of retail investment funds, regardless of whether structured as a mutual fund, an exchange-traded mutual fund (**ETF**) or a non-redeemable investment fund.[15] We have also recognized the growth of structured notes[16] as a retail investment product and communicated our intention to regulate them in a similar manner to investment funds, where appropriate.[17]

While investment funds and structured notes sold in the exempt market have to date generally not been subject to the same requirements as retail investment funds, we consider that the investor protection and market efficiency issues that stem from embedded commissions, as evidenced under Part 2, require consistent treatment both in the prospectus-qualified and prospectus-exempt markets. To do otherwise would create an opportunity for regulatory arbitrage.[18]

Recognizing that the fee structure of various types of investment funds and structured notes commonly includes embedded commissions, and with the aim of promoting a level playing field amongst comparable investment products and limiting opportunities for regulatory arbitrage, we currently anticipate that any regulatory proposal to discontinue embedded commissions would affect:

- an "investment fund"[19], as defined under securities legislation and
- structured notes,

whether sold under a prospectus or in the exempt market under a prospectus exemption.

Although investment fund-like products, such as segregated funds, are not within the purview of securities legislation and therefore would not be captured in any CSA rule proposal to discontinue embedded commissions, we recognize the importance of a harmonized approach to regulating such products given their similarity to investment fund products, including their payment of product embedded commissions to intermediaries. The CSA will accordingly continue to liaise with insurance regulators to address the potential risk of regulatory arbitrage between investment funds and individual segregated funds.

In the interest of achieving a harmonized approach, the Canadian Council of Insurance Regulators (**CCIR**) established a Segregated Funds Working Group in 2015, with a mandate to, among other things, identify potential gaps in the comparative regulatory frameworks for segregated funds and mutual funds and assess the potential risk of regulatory arbitrage by dually-licensed (insurance and mutual funds) insurance agents. In their May 2016 issue paper calling for input on how to address key gaps between the regulations pertaining to mutual funds and segregated funds[20], the CCIR indicates that although it is currently not aware of any statistical evidence to demonstrate that regulatory arbitrage is occurring between mutual funds and segregated funds, it will act proactively to amend regulation where appropriate to ensure that intermediaries have little incentive to prioritize their own interests over those of clients. The issue paper identifies the CSA's consultation on how to address the potential investor protection and market efficiency issues arising from embedded commissions as an issue of particular relevance, and the CCIR will review the CSA policy direction on this matter and assess its appropriateness for segregated funds.[21]

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that the regulatory objectives of the proposed Rule have equal application to the distribution of all collective money management schemes. Ultimately, the distribution of all schemes should be subject to the same or equivalent rules and standards."

[15] See "Modernization of Investment Fund Product Regulation (Phase 2) – Final Amendments", in force as of September 22, 2014, https://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20140619_81-102_final-amendments-phase2.htm. The objective of Phase 2 of this project was to identify and address any market efficiency, investor protection and fairness issues that arose out of the differing regulatory regimes that applied to publicly offered mutual funds and non-redeemable investment funds and make the necessary amendments to achieve consistent product regulation across the spectrum of retail investment funds. Under these amendments, certain investment restrictions and operational requirements applicable to mutual funds and ETFs were extended to non-redeemable investment funds.

[16] A structured note, or linked note, is a specified derivative, as defined in National Instrument 44-102 – *Shelf Distributions*, for which the amount payable is determined by reference to the price, value or level of an underlying interest that is unrelated to the operations or securities of the structured note issuer. Structured notes issued under the shelf prospectus are generally non-principal protected securities issued by a deposit taker.

[17] In CSA Staff Notice 44-305 – *2015 Update – Structured Notes Distributed under the Shelf Prospectus System* (**CSA Staff Notice 44-305**), the CSA recognized the growth of structured products as a retail investment product and our intention to adapt our regulatory approach to ensure consistency, where appropriate, in how we regulate structured notes and similar retail products such as investment funds. CSA Staff Notice 44-305 noted that some structured note issuers charge fees on a basis similar to investment funds. These fees may include sales commissions and embedded ongoing service fees or trailing commissions paid by the structured note issuer to dealers and their representatives.

[18] In the Original Consultation Paper, we recognized that there may be other investment fund products whose fee structure may raise similar investor protection and fairness issues for investors, and that accordingly, any regulatory initiative that we would ultimately undertake would assess whether the same initiative should also apply to other investment funds and comparable securities products.

[19] The definition of "investment fund" captures conventional mutual funds, ETFs and non-redeemable investment funds.

[20] Canadian Council of Insurance Regulators, *Segregated Funds Working Group Issues Paper*, May 2016, http://www.ccir-ccrra.org/en/init/IVIC_POS/IVICs%20Issues%20Paper%20(ENG).pdf.

[21] Ibid. p. 15

Questions

4. For each of the following investment products, whether sold under a prospectus or in the exempt market under a prospectus exemption:

   - mutual fund
   - non-redeemable investment fund
   - structured note

   should the product be subject to the discontinuation of embedded commissions? If not:

   a. What would be the policy rationale for excluding it?

   b. What would be the risk of regulatory arbitrage occurring in the exempt market if embedded commissions were discontinued for the product only when sold under prospectus?

5. Are there specific types of mutual funds, non-redeemable investment funds or structured notes that should not be subject to the discontinuation of embedded commissions? Why?

6. Are there other types of investment products that should be subject to the discontinuation of embedded commissions? Why?

2. Types of payments discontinued

NI 81-105 currently prohibits mutual funds that are reporting issuers and members of the organization of such mutual funds from making payments to dealers or their representatives in connection with the distribution of securities of a mutual fund. The rule however excepts from this prohibition the payment of commissions (including trailing commissions) and the provision of support to dealers for marketing and educational practices by members of the organization of mutual funds.

If the CSA were to move forward with a rule proposal, we currently anticipate that we would seek to discontinue any payment of money to dealers in connection with an investor's purchase or continued ownership of a security described above that is made directly or indirectly by any person or company other than the investor. The rule would preclude compensation to dealers that is paid or funded by the investment fund or the investment fund manager or structured note issuer out of fund assets or revenue.

We anticipate this change would at a minimum prohibit the payment by investment funds, investment fund managers or structured note issuers to dealers of the following embedded commissions:

- ongoing trailing commissions or service fees; and
- upfront sales commissions for purchases made under the DSC option.

To be clear, the discontinuation of embedded commissions would enable dealers and their representatives to adopt various types of compensation arrangements. Under direct pay arrangements, dealers and their representatives could opt to be compensated through upfront commissions (such as front-end sales loads), hourly fees, a flat fee, a fee based on a percentage of the client's assets under administration (**fee-based arrangement**), or other suitable compensation arrangement, provided in all cases:

a. the method and the rate of the representative's compensation in connection with the purchase of a security and other services provided to the investor are negotiated and agreed to exclusively by the investor and the dealer, through the representative, pursuant to an explicit agreement; and

b. the investor exclusively pays the dealer for the services provided under the agreement.

Under direct pay arrangements, we would expect dealers and representatives to offer their clients a compensation arrangement that suits their particular investment needs and objectives and reflects the level of service desired. For example, ongoing fees should be charged for ongoing services.

We believe that the above terms mitigate the close alignment of interests between investment fund managers, dealers and representatives.

While investment funds, investment fund managers and structured note issuers would no longer be allowed to pay or fund compensation to dealers from their own assets or revenue in connection with an investor's purchase or continued ownership of a security, we anticipate allowing them to facilitate the investor's payment of dealer compensation. Specifically, the investment fund manager would be permitted to collect the dealer's compensation, either through deductions from purchase amounts or through periodic withdrawals or redemptions from the investor's account, and remit it to the dealer on the investor's behalf, provided the investor consents to this method of payment.

At this time, we anticipate that we would permit the following types of dealer compensation payments:

- referral fees paid for the referral of a client to or from a registrant;[22]
- dealer commissions paid out of underwriting commissions on the distribution of securities of an investment fund or structured note that is not in continuous distribution under an initial public offering;
- payments of money or the provision of non-monetary benefits by investment fund managers to dealers and representatives in connection with marketing and educational practices under Part 5 of NI 81-105; [23] and
- internal transfer payments[24] from affiliates to dealers within integrated financial service providers[25] which are not directly tied to an investor's purchase or continued ownership of an investment fund security or structured note.

We acknowledge that the above types of payments may give rise to conflicts of interest that may continue to incent registrant behavior that does not favour investor interests. We therefore seek your responses to the questions below.

Questions

7. Do you agree with the discontinuation of all payments made by persons or companies other than the investor in connection with the purchase or continued ownership of an investment fund security or structured note? Why or why not?

8. Are there other fees or payments that we should consider discontinuing in connection with the purchase or continued ownership of an investment fund security or structured note, including:

    a. the payment of money and the provision of non-monetary benefits by investment fund managers to dealers and representatives in connection with marketing and educational practices under Part 5 of NI 81-105;

    b. referral fees; and

    c. underwriting commissions.

    Why? What is the risk and magnitude of regulatory arbitrage through these types of fees and commissions?

9. If payments and non-monetary benefits to dealers and representatives for marketing and educational practices under Part 5 of NI 81-105 are maintained further to the discontinuation of embedded commissions, should we change the scope of those payments and benefits in any way? If so, why?

[22] Referral fees are defined in NI 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and would continue to be permitted subject to the requirements of that rule.

[23] Under Part 5 of NI 81-105, members of the organization of a mutual fund may:

- pay to a dealer direct costs incurred by the dealer relating to investor conferences or investor seminars or other conferences or seminars prepared or presented by the dealer (ss. 5.1 and 5.5),
- provide a non-monetary benefit to a representative of a dealer by allowing him or her to attend a conference or seminar organized and presented by the investment fund manager (s. 5.2),
- pay the registration fees of a representative of a dealer for a conference, seminar or course that is organized and presented by a person or company other than the investment fund manager (s. 5.3), and
- provide a non-monetary benefit of promotional nature and of minimal value to a representative of a dealer,

subject in each case to compliance with specified requirements.

[24] See MFDA Bulletin #0689-P, *Implementation of Requirements under CRM2 Phase 2 Amendments to NI 31-103 – Frequently Asked Questions (FAQs)*, May 13, 2016. Question #18 and the MFDA response on pages 8 and 9 discuss internal transfer payments.

[25] For the purpose of this consultation, an "integrated financial service provider" is a firm that is comprised of at least one dealer and one investment fund manager or structured note issuer that are affiliates of each other.

10. With respect to internal transfer payments:

    a. How effective is NI 81-105 in regulating payments within integrated financial service providers such that there is a level playing field for proprietary funds and third party funds?

    b. Should internal transfer payments to dealers within integrated financial service providers that are tied to an investor's purchase or continued ownership of an investment fund security or structured note be discontinued? Why or why not? To what extent do integrated financial service providers directly or indirectly provide internal transfer payments to their affiliated dealers and their representatives to incent the distribution of their products?

    c. Are there types of internal transfer payments that are not tied to an investor's purchase or continued ownership of an investment fund security or structured note that should be discontinued?

11. If we were to discontinue embedded commissions, please comment on whether we should allow investment fund managers or structured note issuers to facilitate investors' payment of dealer compensation by collecting it from the investor's investment and remitting it to the dealer on the investor's behalf.

PART 4 – REGULATORY IMPACT

The purpose of this part is to outline our assessment of the possible market impacts of discontinuing embedded commissions. In particular, we assess the potential impacts this change could have on the Canadian investment fund sector, including on market structures, business models and on the accessibility and scope of advice provided to retail investors, based on data we have gathered and the conclusions we have drawn from this data.

The regulatory impact part is divided into four sections. In section one, we provide a number of important facts about Canadian households, the fund market and the distribution of funds and securities in general that will help us anticipate possible market impacts of discontinuing embedded commissions. In section two, we outline possible overall or high-level impacts on the market in the event of the discontinuation of embedded commissions. This section is followed, in section three, by a more narrow focus on the impacts to specific stakeholders. Finally, in section four, we conclude by outlining how the discontinuation of embedded commissions may address the key issues outlined previously in Part 2 of this Consultation Paper. We look to all stakeholders to provide feedback and data responding to the conclusions that we draw here.

1. Important facts about the fund market and fund market participants today

A prerequisite for the CSA's assessment of possible policy options regarding fund fees was to understand and analyze what we know about the market today and in particular, what we know about the respective market participants – advised and non-advised fund investors, consumers of financial services generally, access to advice by retail investors, investment fund distribution channels and investment fund managers.

We provide pertinent information for each of these groups below using data from Investor Economics, Investment Industry Regulatory Organization of Canada (**IIROC**), Mutual Fund Dealers Association (**MFDA**), Morningstar Direct and the Ipsos Canadian Financial Monitor survey.[26]

a. Canadian Households

At the end of 2015, financial wealth of Canadian households reached $3.8 trillion dollars, increasing an average 5.8% per year since 2005. In comparison, household credit (due primarily to the increase in residential mortgages) grew 7.6% over the same period reaching just under $2 trillion dollars at the end of 2015. In aggregate, and as widely reported elsewhere,[27] Canadian households have become more leveraged over the last 10 years.

Within the asset side of the balance sheet, Canadian households, in aggregate,[28] had a significant and growing share of their total financial wealth in funds and cash and cash equivalents. At the end of 2015, Canadian households held $1.5 trillion or 40% of their aggregate financial wealth in investment fund securities and $1.2 trillion or 32% of aggregate wealth in cash and cash

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[26] We have tried to provide the most recent data available wherever possible.

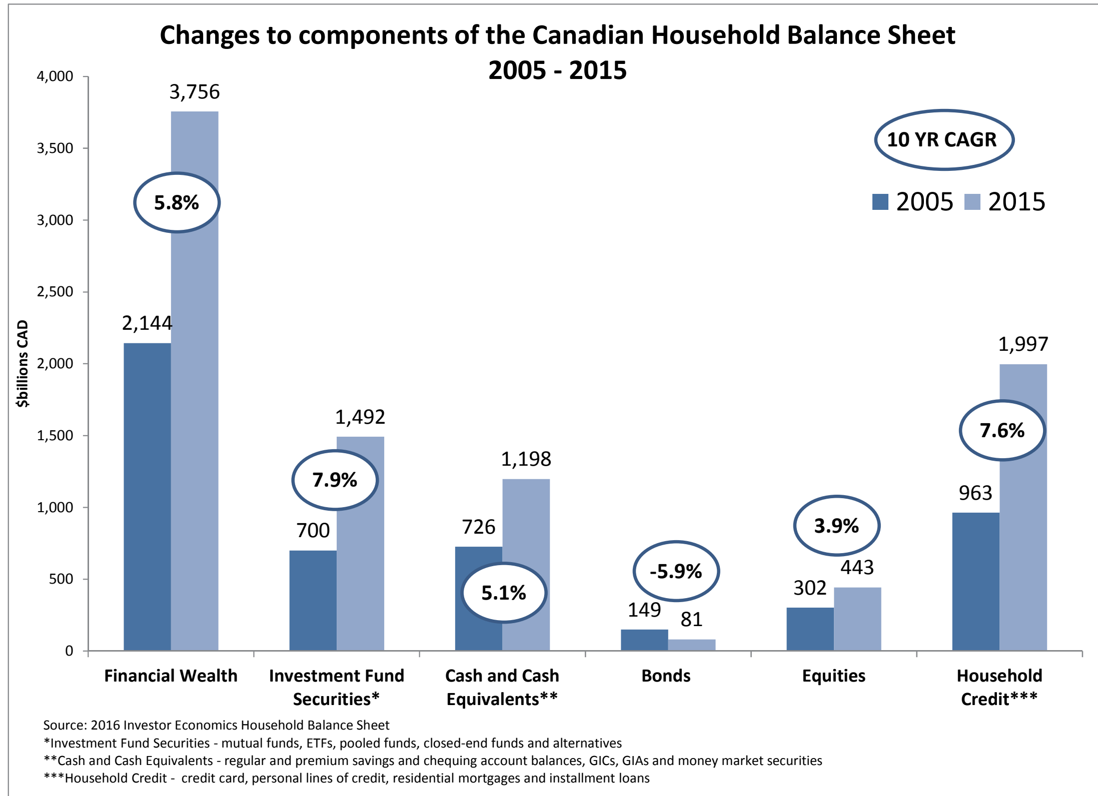
[27] See for example, Maciej Onoszko, "Canada's record household debt is threatening its financial stability, global bankers fear", *Bloomberg News*, October 24, 2016.

[28] It is important to note that aggregated household wealth figures do not provide information regarding the importance of these savings and investment products to the average household or to specific household segments (e.g. mass market, affluent, etc.). For example, investment funds may make up 40% of aggregate household financial wealth at the end of 2015 but they do not make up 40% of the average Canadian household's financial wealth.

equivalents[29]. In comparison, directly held securities (stocks and bonds) made up only $524 billion or 14% of aggregate financial wealth. Total assets held in bonds in particular declined over the last 10 years while assets held in equities saw relatively modest growth.

While both investment fund securities and cash and cash equivalents made up a significant portion of aggregate household financial wealth at the end of 2015, assets within investment funds have grown faster since 2005. On average, investment fund assets increased by 7.9% per year over the last ten years compared to 5.1% for cash and cash equivalents.

Figure 1: The Canadian household balance sheet in aggregate



We turn now to the distribution of assets and investment fund ownership across households by analyzing the data from the 2012 Ipsos Canadian Financial Monitor.[30]

[29] Investor Economics, *Household Balance Sheet Report, Update and Rebased Forecast*, July 2016. In this report, “Financial Wealth” encompasses financial products held for the purpose of accumulating and preserving wealth including short-term instruments, deposits (including GICs and market-linked securities), fixed income securities, equities, investment funds and assets held in capital accumulation plans such as defined contribution plans (but not defined benefit plans).

[30] The Ipsos Canadian Financial Monitor survey is a syndicated survey based on an annual sample of 12,000 households that are demographically and regionally representative of the Canadian population. Each household completes a detailed questionnaire providing comprehensive information on all aspects of its financial holdings and activity.

The majority of Canadian households have investable assets below $100,000

Table 1: Household distribution by investment fund ownership and investable asset band

Breakdown of households by investable assets and fund ownership (base: all households)

Household Investable Assets	Household owns investment funds	Household does not own investment funds	% of total households
Up to $100k	14.6%	52.6%	67.2%
$100 - $500k	18.0%	8.9%	27.0%
Greater than $500k	4.5%	1.4%	5.9%
% of total households	**37.1%**	**62.9%**	**100.0%**

Source: 2012 Ipsos Canadian Financial Monitor

The first important fact with respect to Canadian households is that the majority of households that save have investable assets of $100,000 or less. At the end of 2012, 67% of households had investable assets[31] of $100,000 or less (**mass-market households**), 27% had investable assets of between $100,000 and $500,000 (**mid-market households**) and 6% of households had investable assets of $500,000 or more (**affluent households**).

The majority of Canadian households do not own investment funds

The second relevant fact is that the majority of Canadian households do not own investment funds. At the end of 2012, 37% of Canadian households held investment funds[32] while the balance did not.

Mass-market households make up the largest share of those that do not own investment funds

Table 2: Household distribution by investment fund ownership

Breakdown of households by investable assets and fund ownership (base: fund ownership type)

Household Investable Assets	Household owns investment funds	Household does not own investment funds	% of total households
Up to $100k	39.4%	83.6%	67.2%
$100 - $500k	48.6%	14.2%	27.0%
Greater than $500k	12.0%	2.2%	5.9%
% of household ownership type	**100.0%**	**100.0%**	**100.0%**

Source: 2012 Ipsos Canadian Financial Monitor

By far, the majority of households that do not hold investment funds (84%) are those with investable assets of $100,000 or less.

However, among investment fund owning households, the majority have relatively modest to moderate levels of accumulated financial wealth

Yet, like their share of Canadian households generally, mass-market and mid-market households made up the largest share of households that own investment funds.

At 2012, 39% of all households that owned investment funds were mass-market households, 49% were mid-market households, and the remaining 12% of fund owning households were affluent households.

[31] "Investable assets" include holdings of cash, GICs, bonds, stocks and investment funds. Only households with positive investable asset balances and households with total income below $30,000 that are holding cash in excess of 30% of household income are considered as possessing investable assets.

[32] Throughout this section, we look at holdings of investment fund products and fund wraps of all types including mutual funds, segregated funds, structured notes, principal protected notes, hedge funds etc. in order to get a sense of the entire investment fund and fund wrap market as utilized by Canadian households.

Investment funds, like most securities, are more frequently owned by households with higher levels of accumulated financial wealth

The distribution of fund ownership, like the distribution of financial wealth generally, skews toward households with higher levels of investable assets.[33] Mass-market households appear underrepresented relative to their share of total households (i.e. only 39% of those households own funds despite comprising 67% of all households), while the opposite appears true for mid-market and affluent households. Investment funds, like most securities, tend to be a higher-wealth product.

Investment funds are less popular than traditional savings vehicles with mass-market households

Table 3: Household distribution by investable asset band

Breakdown of households by investable assets and fund ownership (base: household investable asset band)

Household Investable Assets	Household owns investment funds	Household does not own investment funds	% of households in investable asset band
Up to $100k	21.8%	78.2%	**100%**
$100 - $500k	66.8%	33.2%	**100%**
Greater than $500k	76.1%	23.9%	**100%**
% of total households	**37.1%**	**62.9%**	**100%**

Source: 2012 Ipsos Canadian Financial Monitor

We can see this lack of relative popularity more clearly when we look at the proportion of investment fund ownership across investable asset bands. Table 3 above provides the breakdown of the Canadian households that own investment funds (i.e. 37% of all households).

At the end of 2012, only 22% of mass-market households held investment funds. These households will typically hold more conservative financial products instead, such as cash, GICs etc. For mid-market and affluent households, the majority held investment funds at the end of 2012. 67% of mid-market households held investment funds and 76% of affluent households held investment funds at the end of 2012. Once again, investment fund ownership is less prevalent for households with modest levels of savings relative to households with higher levels of accumulated wealth.

Investment fund owning households with lower levels of accumulated wealth are less likely to state that they use advice

Table 4: Fund owning household distribution by investable asset band

Investment fund owning households by investable assets and advisor usage (base: household investable asset band)

Household Investable Assets	Use Advisor	Do not use Advisor	% of households in investable asset band
Up to $100k	45.0%	55.0%	**100%**
$100 - $500k	66.0%	34.0%	**100%**
Greater than $500k	72.4%	27.6%	**100%**
% of investment fund owning households	**58.5%**	**41.5%**	**100%**

Source: 2012 Ipsos Canadian Financial Monitor

Table 4 above provides a breakdown of the households that own investment funds (i.e. the subset of 37% of all households) and their use of an advisor[34].

As Table 4 highlights, the data suggests that advice usage tends to be more of a higher-wealth product. Its prevalence among investment fund owning households rises with the level of investable assets. At the end of 2012, only 45% of investment fund owning mass-market households stated that they used an advisor[35] while the majority of investment fund owning mid-market (66%) and affluent households (72%) used an advisor.

[33] At the end of 2015, Investor Economics estimates that households with financial wealth below $100,000 held 7% of total financial wealth while those households with greater than $500,000 in financial wealth held 81% of total financial wealth in Canada (2016 Investor Economics Household Balance Sheet).

[34] The term "advisor", as used in this Consultation Paper, is not indicative of an individual's category of registration with Canadian securities regulators, but is rather a plain language term that is commonly used by the public, including fund industry participants and investors, to refer to a representative.

[35] Survey respondents said yes to the question, "Does anyone in your household use a financial planner / advisor to help manage his / her financial portfolio?" Note that this question is dependent on the respondent's impression of whether or not they have an advisor. No specific definition of "advisor" was provided in the survey.

b. *Investment Fund Distribution*

Whether advised or not, households must purchase their investment funds through a dealer. A key piece of information needed in order to anticipate the possible market impact of the discontinuation of embedded commissions is an understanding of where investors access investment funds today. We will look at this question from a number of different angles and data sources, starting with the Ipsos Canadian Financial Monitor data.

In the tables below, we have grouped fund distribution by the following firm types:

- deposit-taker owned[36] fund distributors;
- insurer owned[37] fund distributors;
- independent[38] fund distributors; and
- other integrated[39] fund distributors.

In each of the tables, we take a closer look at where households that hold investment funds accessed their funds. Households may have multiple relationships with different types of fund distributors (e.g. a household may work with a deposit-taker and an insurer or a deposit-taker and an independent or just a deposit-taker etc.). We have cross-tabbed fund distributor types by grouping deposit-takers and insurers (the traditional integrated financial product distributors) together and independents and other distributors (the group traditionally labeled as independent fund dealers) together.

Note that households that have not purchased their funds through a deposit-taker/insurer or through an independent/other dealer have purchased their funds through an association[40] or have not identified where they purchased their funds.

Most households purchase their funds through a deposit-taker or insurer owned dealer

Table 5: Fund owning household distribution by fund dealer relationship

Households by relationship type (base: All investment fund owning households)

Relationship Type	Purchased from Independent/Other	Not purchased from Independent/Other	% of investment fund owning households
Purchased from Deposit-taker/Insurer	8.2%	78.5%	86.7%
Not purchased from Deposit-taker/Insurer	9.5%	3.8%	13.3%
% of investment fund owning households	**17.7%**	**82.3%**	**100.0%**

Source: 2012 Ipsos Canadian Financial Monitor

Deposit-taker and insurer owned fund dealers dominate fund distribution in Canada. At the end of 2012, of the 37% of households that owned investment funds, 87% purchased their funds through a deposit-taker/insurer owned distributor while only 18% purchased their funds through an independent/other fund distributor (a small percentage of households purchased their funds from both dealer groups).

[36] We use the term ‘deposit-taker owned’ to refer to dealers or investment fund managers that are owned by deposit taking institutions including banks, credit unions and caisses populaires.

[37] We use the term ‘insurer owned’ to refer to dealers or investment fund managers that are owned by or affiliated with an insurer.

[38] We use the term ‘independent’ to refer to dealers or investment fund managers that are not owned by deposit-takers or insurers and are not affiliated with an investment fund manager

[39] We use the term ‘other integrated’ to refer to dealers that are not owned by or affiliated with a deposit-taker or insurer but that are affiliated with an investment fund manager, or to investment fund managers that are not owned by or affiliated with a deposit-taker or insurer but that are affiliated with a dealer.

[40] The term ‘association’ refers to a dealer or investment fund manager that is owned by a trade or professional association.

Households with lower levels of accumulated wealth are less likely to purchase their funds through an independent dealer

Table 6: Mass-market household distribution by fund dealer relationship

Households by relationship type (base: fund owning households with up to $100k in investable assets)

Relationship Type	Purchased from Independent/Other	Not purchased from Independent/Other	% of fund owning households in asset band
Purchased from Deposit-taker/Insurer	5.3%	82.6%	87.9%
Not purchased from Deposit-taker/Insurer	8.8%	3.3%	12.1%
% of fund owning households in asset band	**14.0%**	**86.0%**	**100.0%**

Source: 2012 Ipsos Canadian Financial Monitor

Table 7: Mid-market household distribution by fund dealer relationship

Households by relationship type (base: fund owning households with $100k - $500k in investable assets)

Relationship Type	Purchased from Independent/Other	Not purchased from Independent/Other	% of fund owning households in asset band
Purchased from Deposit-taker/Insurer	9.7%	75.9%	85.6%
Not purchased from Deposit-taker/Insurer	10.2%	4.2%	14.4%
% of fund owning households in asset band	**19.8%**	**80.2%**	**100.0%**

Source: 2012 Ipsos Canadian Financial Monitor

Table 8: Affluent household distribution by fund dealer relationship

Households by relationship type (base: fund owning households with $500k or more in investable assets)

Relationship Type	Purchased from Independent/Other	Not purchased from Independent/Other	% of fund owning households in asset band
Purchased from Deposit-taker/Insurer	11.8%	75.3%	87.1%
Not purchased from Deposit-taker/Insurer	9.4%	3.4%	12.9%
% of fund owning households in asset band	**21.2%**	**78.8%**	**100.0%**

Source: 2012 Ipsos Canadian Financial Monitor

Mass-market households are less likely to purchase their funds through an independent/other fund distributor. At the end of 2012, only 14% of mass-market households purchased their funds through an independent/other fund distributor compared to 18% of households overall and 21% of affluent households. Mass-market households were also much more likely to be solely purchasing their funds through a deposit-taker/insurer owned dealer (i.e. 83%) than were households with higher levels of investable assets (i.e. 76% and 75% respectively for mid-market and affluent households).

Fund distributors owned by deposit-takers and life insurers dominate investment fund distribution

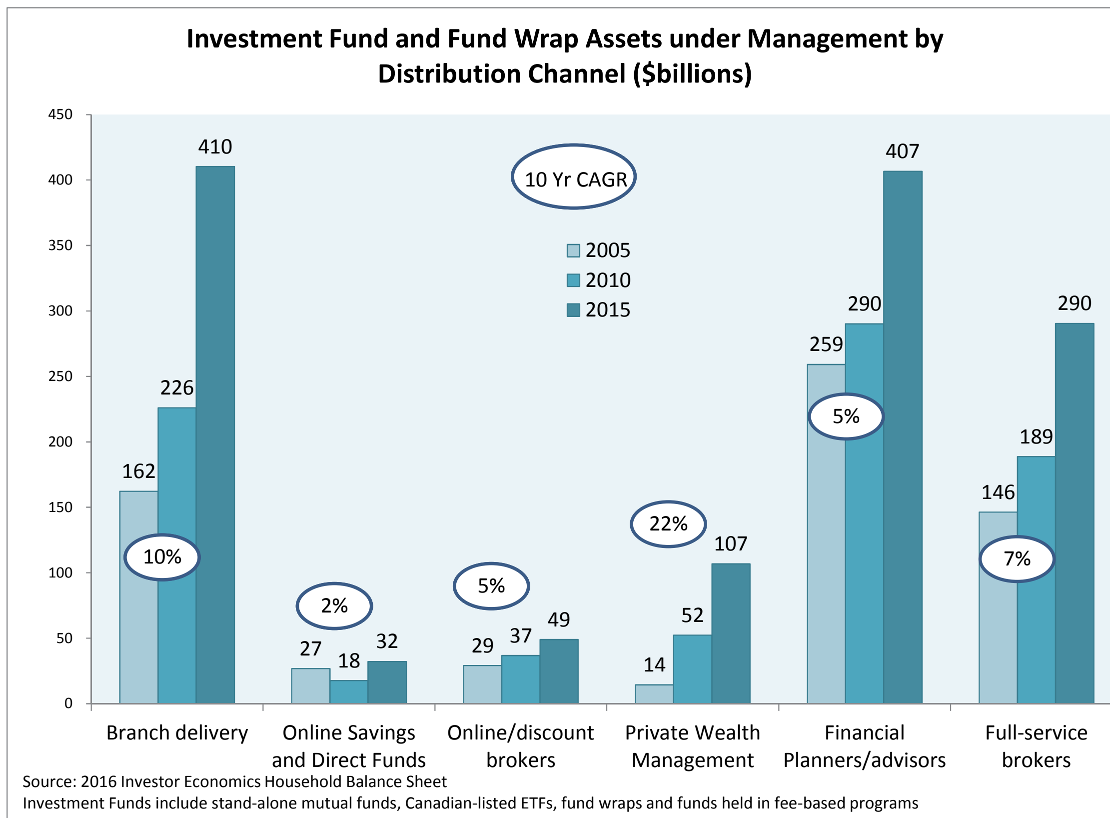
Across all levels of investable assets, deposit-taker and insurer owned fund distributors tended to dominate fund distribution. The majority of households were working with a deposit-taker/insurer for at least one of their investment fund holdings (i.e. 88% for mass-market, 86% for mid-market and 87% for affluent households). Usage of deposit-taker/insurer fund distributors did not fall below 86% of households for all household types and for the industry as a whole. The data suggests that Independent/Other fund distributors tend to have a relatively small footprint in the market today.

These insights are also confirmed by data from Investor Economics.[41] In the two graphs below, we show investment fund and fund wrap assets, their 10 year compound average growth rates (CAGR) and market share for Investor Economics' six distribution categories – branch delivery, online savings and direct funds, online/discount brokers, private wealth management, financial planners/advisors and full-service brokers. We also highlight the change in market share for deposit-taker and insurer owned fund distributors in each channel.

[41] This data is similar to the Ipsos data in that it looks at investment fund distribution. Investor Economics also uses their own categorization for distributors which does not neatly line up and in some cases encapsulates groups outside of our registration categories.

Deposit-taker and insurer owned fund dealers dominate investment fund distribution today

Figure 2: Investment fund assets by distribution channel



As is shown in Figure 2 above, the majority of fund assets reside in the branch delivery channel and the financial planner/advisor channel.

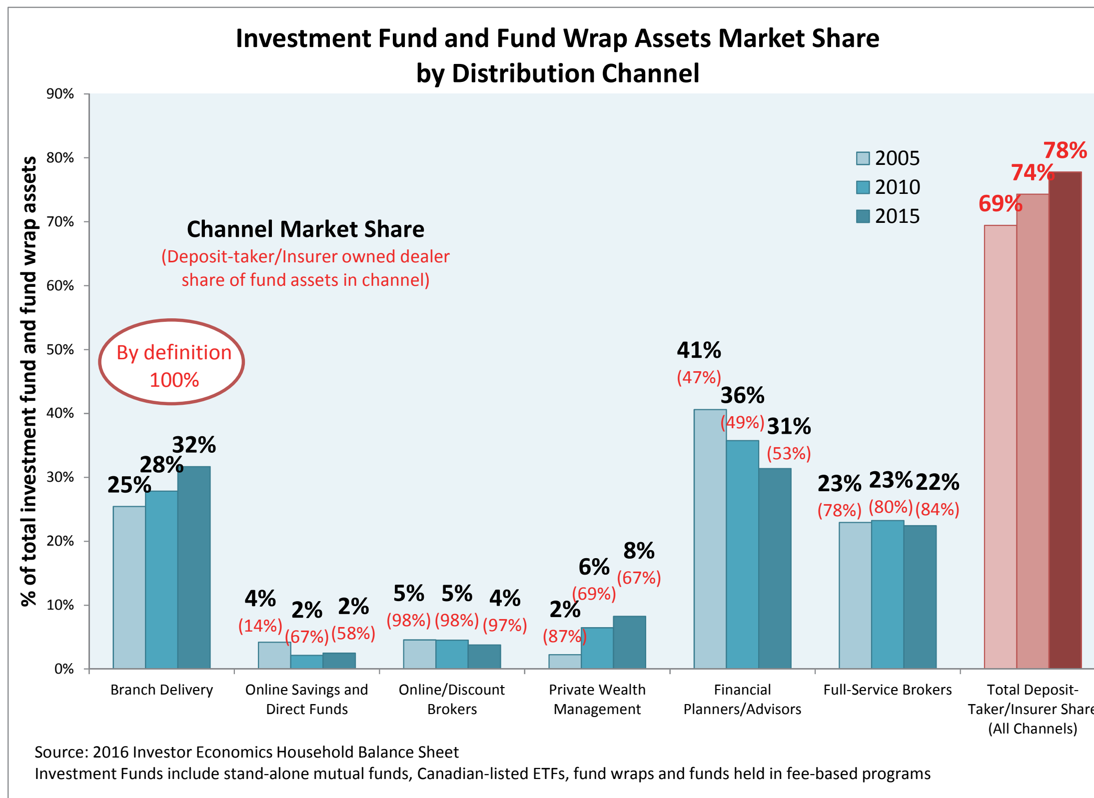
The branch delivery channel saw the second highest rate of fund asset growth over the last ten years (10%) after the private wealth channel (22%). This growth rate is particularly impressive given the size of the branch delivery channel 10 years ago.

The financial planner/advisor channel[42], which had possessed the largest share of investment fund assets ten years ago, was still the second most important distribution channel at the end of 2015 but had grown much slower than all but the online savings and direct funds and the online/discount brokerage channels. Investment fund asset growth in the financial planner/advisor channel was also slower (5%) than in the full-service brokerage channel over the period (7%). Growth of investment fund assets in the full-service broker channel in particular was driven by a number of factors including the growth in fee-based account usage and in the share of investment funds used in these accounts.[43]

[42] The financial planner/advisor channel is probably the most heterogeneous of Investor Economics' distribution channels. It is made up of non deposit-taker mutual fund dealers, non-registered financial planning firms, insurance firms and some 'fund-centric' IIROC firms.

[43] Investor Economics, *Retail Brokerage and Distribution Advisory Service*, (various years) as well as data series from these reports requested by OSC staff.

Figure 3: Investment fund assets market share by distribution channel and dealer type



The relative growth of investment fund assets in the financial planner/advisor channel is noteworthy because this is where the majority of independent mutual fund dealers are captured. As shown in Figure 3 above, at the end of 2015, the financial planner/advisor channel was the only channel where the deposit-taker/insurer share of investment fund assets was below 55%. Although, even in that channel, there has been an increase in deposit-taker and insurer ownership over the last ten years, increasing from 47% to 53% of investment fund assets in the channel.

As also highlighted in Figure 3, the branch delivery and full-service brokerage channels which had the second and third highest average annual growth over the last ten years, also had significant deposit-taker and insurer ownership at the end of 2015 (the former category is by definition 100% deposit-taker owned distribution).

At the end of 2015, the branch delivery channel held 32% of total investment fund assets, up from 25% ten years earlier. Much of that growth in market share came at the expense of the financial planner/advisor channel which saw its share of market decline from 41% to 31% over the period. The full-service broker channel saw its investment fund market share remain essentially constant while deposit-taker and insurer owned share of that channel increased from 78% to 84%. In total, at the end of 2015, deposit-taker and insurer owned dealers administered 78% of the investment fund and fund wrap assets held by Canadian households, up from 69% ten years earlier. In dollars, investment fund assets held through deposit-taker and insurer owned dealers, across all channels, increased from $443 billion in 2005 to $1 trillion at the end of 2015.

Next, we turn to data from the MFDA and IIROC in order get a sense of whether or not the insights from the Investor Economics and Ipsos data, which focused on investment fund distribution, carry over to retail securities distribution generally.

i. MFDA Channel

As outlined above in our review of the Ipsos Canadian Financial Monitor data and the Investor Economics Household Balance Sheet data, deposit-taker and insurer owned dealers have a strong market presence in the fund industry. This presence also extends across specific registration channels with deposit-taker and insurer owned dealers administering the largest share of assets in the MFDA and IIROC channels.

95% of assets in the MFDA channel are administered by integrated dealers[44]

Table 9: MFDA member assets and approved persons by dealer type[45]

MFDA Member Type	# Members	% of Total	Assets Under Admin $B	% of Total	# Approved Persons	% of Total
Independent	**60**	**61%**	**29.1**	**5%**	**3,399**	**4%**
Integrated	**39**	**39%**	**552.7**	**95%**	**77,970**	**96%**
Of which,						
Bank	*15*	*15%*	*349.1*	*60%*	*52,167*	*64%*
Insurer	*10*	*10%*	*177.0*	*30%*	*23,893*	*29%*
Other	*12*	*12%*	*25.5*	*4%*	*1,881*	*2%*
Association	*2*	*2%*	*1.1*	*0.2%*	*29*	*0.04%*
Of which,						
Proprietary Only	*20*	*20%*	*403.3*	*69%*	*54,458*	*67%*
Proprietary and Third Party	*19*	*19%*	*149.4*	*26%*	*23,512*	*29%*
Total	**99**	**100%**	**581.9**	**100%**	**81,369**	**100%**

Source: Mutual Fund Dealers Association at December 2015, OSC categorizations

The MFDA channel is fairly concentrated and highly integrated. At the end of 2015, there were a large number of both integrated and independent firms in the channel with the majority of firms being independent of asset management. However, the majority of the assets in the channel and approved persons employed were at the integrated firms. At the end of 2015, integrated MFDA firms administered 95% of assets and employed 96% of approved persons in the channel.

90% of assets in the MFDA channel are administered by deposit-taker and insurer owned dealers

The 25 deposit-taker owned and insurer owned MFDA firms administered 90% of assets and employed 93% of approved persons. Independent/Other[46] MFDA firms, while making up 73% of firms in the channel, administered only 9% of assets and employed 6% of approved persons.

Independent MFDA dealers have tended to serve higher-wealth clients

Independent MFDA dealers have tended to serve higher-wealth clients while deposit-taker/insurer owned firms have tended to serve all client types.[47] Deposit-taker/insurer owned dealers had traditionally focused on clients with investable assets up to $250,000 but have increasingly focused on more affluent clients. Typically, mass-market clients will be serviced by front line representatives at the branch, while those with investable assets above $100,000 will be serviced by 'financial planners'[48] at the branch. Clients with assets above $1 million or more will typically be referred to the related IIROC dealer or the related private wealth management arm for service.

For independent/other MFDA firms, typically they will not take on clients unless they have at least $100,000 in investable assets. This information, coupled with our analysis of the Ipsos data, suggests that the majority of households (particularly mass-market households) will be working with a deposit-taker or insurer owned MFDA dealer.

The majority of assets in the MFDA channel today are administered by dealers that focus on proprietary funds

Given that the majority of integrated mutual fund dealer firms limit their product shelf primarily to proprietary products[49], this restriction also implies that the majority of mass-market households are primarily sold proprietary products. At the end of 2015, 69% of assets in the MFDA channel were held at dealers that focused primarily on proprietary products.

[44] An "integrated dealer" is a dealer that is owned by or affiliated with an investment fund manager.

[45] In addition to the fund dealers which were members of the MFDA at the end of 2015, we note that there were also 21 mutual fund dealers in Québec that were not members of the MFDA and that employed 700 representatives. 71% of these dealers were independent and employed 83% of the representatives.

[46] Similar to the Ipsos analysis, "Other" MFDA firms refer to dealers that are owned by non-deposit-taker and non-insurer asset managers. We group Independent and Other firms together here as this is typically what commentators refer to as 'independent' fund distributors.

[47] Information in this section comes from Investor Economics *Retail Brokerage Reports* as well as OSC review of mutual fund dealers.

[48] Financial planners within the branch will typically have attained a financial planning qualification such as the Personal Financial Planner (PFP) designation through the Canadian Securities Institute, the Certified Financial Planner (CFP) designation through the Financial Planning Standards Council or the *Institut québécois de la planification financière*.

[49] MFDA dealers with 80% or more of their mutual fund assets held in funds managed by an affiliate were considered proprietary only.

The majority of investment fund owning mass-market households are working with representatives that are not compensated by commissions

For many integrated fund dealers and in particular for the deposit-taker owned fund dealers, compensation for the representative is not derived from commissions but rather through non-activity based transfer payments from affiliated corporate entities.[50] Given that deposit-taker owned fund dealers administered 60% of the assets and employed 64% of approved persons in the channel at the end of 2015 and that these firms tend to service the majority of households with modest levels of investable assets, the majority of mass-market investors today are working with representatives that are not compensated via embedded commissions.

ii. IIROC Channel

95% of retail assets in the IIROC channel are administered by integrated firms

Table 10: IIROC member assets and approved persons by dealer type

IIROC Member Type*	# Members	% of Total	Assets Under Admin $B	% of Total	# Approved Persons	% of Total
Independent	**46**	**45%**	**90**	**5%**	**2,895**	**11%**
Integrated	**56**	**55%**	**1,878**	**95%**	**22,383**	**89%**
Of which,						
Deposit-taker	*14*	*14%*	*1,515*	*77%*	*15,291*	*60%*
Insurer	*4*	*4%*	*33*	*2%*	*1,361*	*5%*
Other	*36*	*35%*	*306*	*16%*	*5,198*	*21%*
Association	*2*	*2%*	*24*	*1%*	*533*	*2%*
Of which,						
Proprietary Only	*8*	*8%*	*6*	*0.3%*	*126*	*0.5%*
Proprietary and Third Party	*48*	*47%*	*1,872*	*95%*	*22,257*	*88%*
Total	**102**	**100%**	**1,968**	**100%**	**25,278**	**100%**

Source: Investment Industry Regulatory Organization of Canada at December 2015, OSC categorizations

*Note: Only IIROC members categorized as Retail, Managed Account, Integrated and Discount Broker are included. Total assets for each firm include both retail and institutional client assets.

The IIROC channel also has a wide range of both integrated and independent dealers. At the end of 2015, integrated IIROC firms administered 95% of assets[51] and employed 89% of approved persons in the channel. Independent dealers – when one includes the 'other integrated' dealer category, made up 80% of firms, administered 20% of assets and employed 32% of approved persons at the end of 2015. Deposit-taker and insurer owned dealers, while only making up 18% of firms, administered 79% of assets and employed 66% of approved persons.

The IIROC channel is almost entirely "open shelf" today

While slightly less concentrated among integrated dealers than the MFDA channel (where independent and other integrated firms administered 10% of assets) the IIROC channel is still dominated by the deposit-taker owned dealers. Where the two channels differ is with respect to the level of related party product distribution. While the deposit-taker and insurer owned MFDA firms primarily distribute proprietary funds, their counterparts in the IIROC channel are primarily open shelf largely due to the types of representatives employed in this channel. Almost 100% of integrated IIROC firms offer proprietary and third party products. IIROC representatives also have more flexibility and are able to offer a wider variety of security types. Therefore, IIROC representatives tend to be more independent than their MFDA counterparts, even if they are working for a firm that offers their own mutual funds, making them and the whole channel less focused on the sale of proprietary products including proprietary funds.[52]

[50] See the discussion in MFDA Bulletin #0689-P, supra note 24 for an explanation.

[51] IIROC representatives may deal in a wider range of securities compared to dealer representatives in the MFDA channel, thus assets here will include not only mutual funds but also equities, fixed income, ETFs and in some cases options and other derivatives.

[52] Information in this section comes from Investor Economics and the CSA review of advisor compensation practices. See for example, the following main stories from Investor Economics, *Retail Brokerage and Distribution Advisory Service*: "Investment fund attraction still strong in full-service brokerage channel," Spring 2011; "Accessing today's and tomorrow's distribution paradigm," Spring 2012; "Profitability Update: Gauging the Changing Influence of Revenue Costs and Compensation on the Industry's Bottom Line," Summer 2012; "Branch Advice: Managing Growth and Success into the Future," Fall 2012; "Mutual Funds in Full-service Brokerage—Either Ride the Fee-based Wave or Be Pulled Under by It!," Summer 2016.

Deposit-taker-owned IIROC dealers also tend to differ in their methods of compensating representatives relative to their mutual fund dealer peers owned by deposit-takers. Representatives employed by deposit-taker owned IIROC dealers tend to be compensated via commission grid while their counterparts at deposit-taker owned MFDA dealers are typically compensated via salary plus a performance bonus which may impact the way in which the firm can incent behavior in the two channels.

IIROC representatives also tend to be more selective regarding their clientele. IIROC dealers typically aim to service households with investable assets of $500,000 or more, although some IIROC dealers will service clients with lower investable assets.[53] This fact, coupled with what we have highlighted from the Ipsos data, suggests that the potential market for the IIROC channel is roughly 6% to 14% of households. These households are typically the wealthiest households in Canada which is one of the reasons why retail assets under administration in this channel are over three times the size of assets in the MFDA channel. The IIROC channel administers more assets but services fewer households than the MFDA channel.

Table 11: Combined MFDA and IIROC member assets and approved persons by dealer type

Total MFDA and IIROC	# Members	% of Total	Assets Under Admin $B	% of Total	# Approved Persons	% of Total
Independent	**106**	**53%**	**119.6**	**5%**	**6,294**	**6%**
Integrated	**95**	**47%**	**2,430.6**	**95%**	**100,353**	**94%**
Of which,						
Deposit-taker	*29*	*14%*	*1,864.1*	*73%*	*67,458*	*63%*
Insurer	*14*	*7%*	*209.7*	*8%*	*25,254*	*24%*
Other	*48*	*24%*	*331.3*	*13%*	*7,079*	*7%*
Association	*4*	*2.0%*	*25.6*	*1.0%*	*562*	*0.5%*
Of which,						
Proprietary Only	*28*	*14%*	*408.9*	*16%*	*54,584*	*51%*
Proprietary and Third Party	*67*	*33%*	*2,021.8*	*79%*	*45,769*	*43%*
Total	**201**	**100%**	**2,550.3**	**100%**	**106,647**	**100%**

Sources: Mutual Fund Dealers Association at December 2015, OSC categorizations

Investment Industry Regulatory Organization of Canada at December 2015, OSC categorizations

*Note: Only IIROC members categorized as Retail, Managed Account, Integrated and Discount Broker are included. Total assets for each firm include both retail and institutional client assets.

We can see that in total, 95% of the assets under administration in Canada are administered by integrated firms. 16% of these assets are administered by dealers that primarily offer proprietary products. As explained above, dealers that only offer proprietary products are concentrated in the MFDA channel. Deposit-taker and insurer owned dealer firms administered 81% of the assets and employed 87% of approved persons. We also note that, at the end of 2015, there were 106,647 registered representatives just in the MFDA and IIROC channels alone[54] servicing a total population of 35.8 million Canadians. This equates to one representative for every 336 Canadians.

By way of comparison, in 2011, the year before the Retail Distribution Review (**RDR**) reforms were implemented in the United Kingdom (see Appendix C for an overview of the RDR reforms), there were 40,566 advisers registered[55] servicing a total population of 63 million (one advisor for 1,553 people) and only 21% of these advisers were employed by a bank or building society.[56]

This comparison suggests that Canadian investors currently have access to a relatively large number of representatives, particularly in the deposit-taker owned channel. 63% of the representatives were employed by a deposit-taker owned dealer and a further 24% were employed by an insurer owned dealer.

[53] Investor Economics, *Retail Brokerage Report*, Winter 2012.

[54] This does not include portfolio manager and exempt market dealer registrants, although it is fair to say that this number would cover retail securities advice. Note that we have also not included those registered to sell insurance.

[55] Association of Professional Financial Advisers, *The Financial Adviser Market: In Numbers,* 2015, page 5, http://www.apfa.net/documents/publications/financial-adviser-market/apfa-the-financial-adviser-market-in-numbers-v4.0.pdf.

[56] If Canada was to see the same post-ban decline that was experienced in the U.K. – a 23% decline, 3 years after the ban – we would still have a representative coverage rate close to four times the rate per capita in the U.K pre-RDR.

It also suggests that the distribution landscape in Canada is relatively more concentrated and vertically integrated than is the distribution landscape in the United Kingdom.[57]

In the next section, we take a closer look at the online/discount brokerage channel – the non-advised market for funds.

iii. Online/Discount Brokerage Channel

Table 12: Online/discount brokerage assets under administration

Online/Discount Brokerage Channel

$Millions	Dec 2011	Dec 2012	Dec 2013	Dec 2014	Dec 2015
Investment Fund Assets held in Online/Discount Brokerage	38,706	42,607	47,398	55,109	56,516
Total Online/Discount Brokerage Assets under Administration	231,560	254,480	292,606	324,665	330,448
Investment Fund % Share	17%	17%	16%	17%	17%

Source: Investor Economics

The online/discount brokerage channel shows a lower use of investment funds relative to other channels. As shown in Table 12 above, investment funds' share of total assets in the online/discount brokerage channel has been constant over the last five years, remaining at approximately 17% of channel assets over that period. In contrast, investment funds' share of assets in the financial planner/advisor and branch delivery channels stood at 78% and 33% respectively of channel assets at December 2015.[58] In total, there was $330 billion held by do-it-yourself (**DIY**) investors in the online/discount brokerage channel at December 2015.

ETFs have become more popular over time with DIY investors

Table 13: Investment funds in the online/discount brokerage channel

Online/Discount Brokerage Investment Funds

$Millions	Dec 2011	Dec 2012	Dec 2013	Dec 2014	Dec 2015
Mutual Funds	26,059	26,083	27,893	29,792	30,227
Exchange Traded Funds (ETF)	12,647	16,524	19,505	25,317	26,289
Investment Funds Total	**38,706**	**42,607**	**47,398**	**55,109**	**56,516**
ETF % Share	33%	39%	41%	46%	47%

Source: Investor Economics

ETFs have always been popular with DIY investors and they have become more popular over time. While the share of investment funds held within the online/discount brokerage channel has remained steady, DIY investors' preference between mutual funds and ETFs has moved in favour of ETFs over time. At December 2015, DIY investors held $30 billion in mutual funds and $26 billion in ETFs. ETF assets owned by DIY investors have more than doubled since December 2011 and as a share of total assets in the online/discount brokerage channel, ETFs increased from 33% to 47% over the period.

Canadian ETF managers must compete with their U.S. domiciled peers while Canadian mutual fund managers do not

Table 14: ETFs held in the online/discount brokerage channel

Online/Discount Brokerage Exchange Traded Funds (ETF)

$Millions	Dec 2011	Dec 2012	Dec 2013	Dec 2014	Dec 2015
ETFs Canadian Domiciled - Common Share Class	9,459	12,474	13,947	17,897	18,695
ETFs Canadian Domiciled - Advisor Share Class	42	58	61	75	67
ETFs Foreign Domiciled (U.S.)	3,146	3,991	5,497	7,345	7,527
ETFs Total	**12,647**	**16,524**	**19,505**	**25,317**	**26,289**
% Passive	97%	95%	94%	94%	92%
% Foreign Domiciled	25%	24%	28%	29%	29%

Source: Investor Economics

57 For example, at 2012, before RDR was introduced, bank and insurer owned advisory firms serviced only 41% of advised individuals. See, Deloitte, *Bridging the advice gap: Developing investment products in a post-RDR world* (2012), https://www2.deloitte.com/content/dam/Deloitte/uk/Documents/financial-services/deloitte-uk-fs-rdr-bridging-the-advice-gap.pdf.

58 Investor Economics, 2016 Household Balance Sheet, page 141.

Unlike investment fund managers of conventional mutual funds in Canada, investment fund managers of ETFs in Canada must compete both within the Canadian market and compete with ETFs domiciled in other markets, primarily the U.S. market.[59]

DIY fund investors buy both Canadian domiciled and U.S. domiciled ETFs. At December 2015, Canadian DIY investors held $19 billion in Canadian domiciled ETFs and $8 billion in U.S. domiciled ETFs – fully 29 cents of every dollar invested in ETFs by DIY investors is invested in U.S. domiciled ETFs.

ETFs held in the online/discount brokerage channel are overwhelmingly passively managed

In contrast to the conventional mutual fund space, passively managed funds make up the largest share of assets. At December 2015, passively managed ETFs made up 87% of the Canadian domiciled ETF market. This preference for passively managed products is even more prevalent for Canadian DIY investors investing in ETFs. At December 2015, 92% of ETF assets were held in passively managed ETFs although that market share has declined over the last five years as more actively managed ETFs have entered the market.

The majority of DIY investors investing in mutual funds pay full trailing commission despite not receiving advice

Table 15: Do-it-yourself mutual funds

Low Cost/Discount Brokerage Fund Series (Series D)

$Millions		Dec 2011	Dec 2012	Dec 2013	Dec 2014	Dec 2015
Mutual Funds (Series D)	Total	10,746	10,705	10,752	11,961	11,957
	% Passive	6%	9%	12%	14%	16%

Estimated amount of Series D in the Online/Discount Brokerage at the end of 2015 - 4.6 Billion
Source: Investor Economics

If we look more closely at the types of mutual fund series sold through the online/discount brokerage channel, we see that the majority of fund series sold are the full trailing commission fund series despite the increased availability of Discount/DIY fund series (typically denoted "D" series) [60] in the market. Consequently, many DIY mutual fund investors in the online/discount brokerage channel indirectly pay for services they do not receive.

Assets held in the Discount/DIY mutual fund series are however slowly increasing. These assets totaled $12 billion at December 2015 up from $11 billion in December 2011, although by the most recent estimate, the majority of these assets were not held in the online/discount brokerage channel. At the end of 2015, it is estimated that out of the total $12 billion of Discount/DIY fund series assets, only $4.6 billion was actually held in the online/discount brokerage channel.[61] This data suggests that $25 billion of the total $30 billion held in mutual funds in the channel (83%) remains in the full trailing commission paying fund series.

As is the case for many DIY mutual fund investors in the online/discount brokerage channel, there are also some DIY ETF investors that indirectly pay trailing commissions without receiving advice because they hold the trailing commission paying "Advisor" class units of the ETF.[62] However, the amount of assets held in these "Advisor" class units is relatively low (only $67 million at December 2015) in comparison to the share of full trailing commission paying mutual funds in the online/discount brokerage channel.

Finally, we note that unadvised fund investors as a group (those buying Discount/DIY fund series) have a higher share of assets invested in passively managed mutual funds relative to advised mutual fund investors.

[59] In many cases, these investment fund managers may be competing with their own products in these other markets.

[60] Some investment fund managers offer a series (typically Series D) of their funds that is designed for Discount/DIY investors. These fund series pay a much lower trailing commission than do the traditional full service retail series (typically 25 bps compared to 100 bps for the traditional full service retail series of an equity fund) to account for the fact that no advice is provided to investors in the online/discount brokerage channel. This is further discussed in Appendix A.

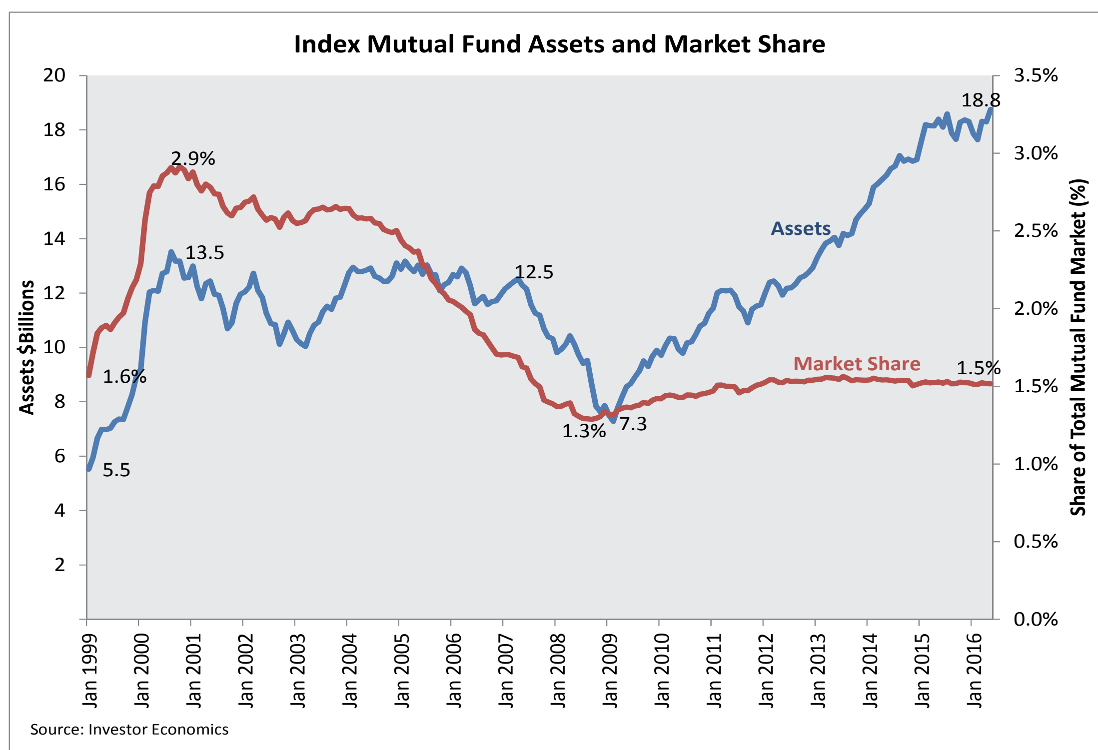
[61] Investor Economics estimate. The remaining $7.4 billion of DIY series assets was purchased directly by investors outside of the online/discount brokerage channel.

[62] Advisor class units that are offered by some ETF providers are designed for advised investors and are meant to be purchased through an advisor. The only difference between this class of units and the common class units is the trailing commission component (or alternatively denoted the "service fee" component) embedded in the management fee of the Advisor class.

We do not know if these holdings of Advisor class units in the online/discount brokerage channel are a consequence of previously advised assets transferring in or are due to investor error. However, we note that some discount brokerages do make Advisor class units available for trade on their platforms.

At the end of 2015, 1.5% of total mutual fund assets (excluding ETFs) were held in passively managed funds. Index fund market share has remained essentially unchanged over the last 10 years. However among the relatively new Discount/DIY fund series, index funds made up a much larger share of assets (16% or $2 billion) that has been growing steadily over time.[63]

Figure 4: Index mutual funds in Canada



We now turn our attention to some important facts about investment fund managers.

c. *Investment Fund Management*

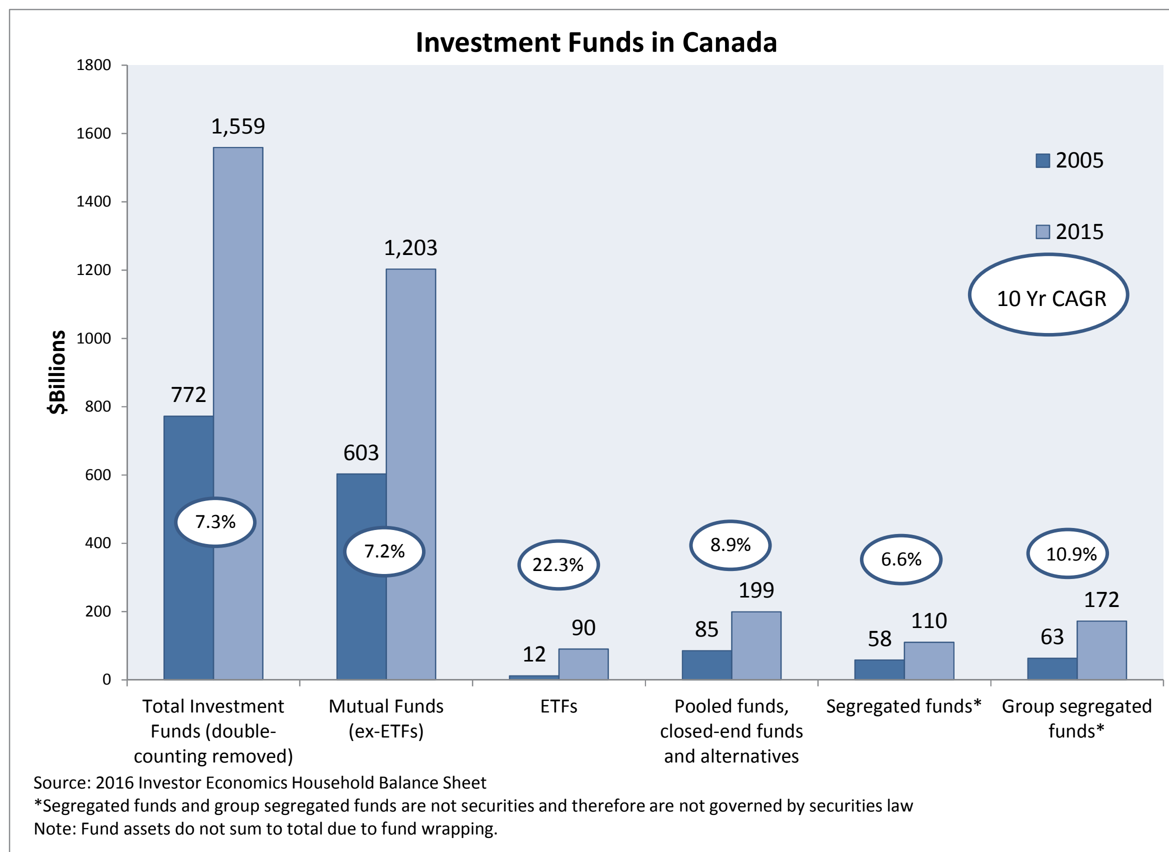
Mutual funds are by far the dominant type of investment fund sold in Canada today. This has been the case since organized investment fund asset monitoring in Canada started in the early 1990s. At the end of 2015, Canadians held $1.2 trillion in mutual fund assets, $90 billion in ETF assets, $110 billion in segregated fund[64] assets, $172 billion in group segregated fund assets, and $199 billion in pooled fund, closed end funds and alternative fund assets. Although there have been articles at various times in the past regarding the growth of ETFs and segregated funds, and despite impressive annual growth rates for ETFs, the dominance of mutual funds has never been challenged in a significant way.[65]

[63] Some have argued that while index mutual fund ownership among advised investors is perennially low in Canada, index fund usage by Canadians is substantially higher when one includes the index-tracking ETFs held by Canadians. In fact, within the full service brokerage channel, of the $47 billion in ETFs held in this channel only $17 billion was held by clients of commission-based advisors (not all of which was held in index tracking ETFs). The remaining $29 billion was held by clients of fee-based advisors. Source: Investor Economics ETF and Index Fund Report 2016 Q2.

[64] Segregated Fund – a separate and distinct group of assets (fund) maintained by an insurer in respect of which the non-guaranteed benefits of a variable insurance contract are provided. Source: Canadian Life and Health Insurance Association (CLHIA) Guideline G2 – Individual Variable Insurance Contracts Relating to Segregated Funds; Autorité des marchés financiers, Guideline on Individual Variable Insurance Contracts relating to Segregated Funds, January 2011.

[65] See for example, Rob Carrick, "Segregated funds on the rise: Seven key things you need to know", *Globe and Mail*, May 29, 2015.

Figure 5: Investment funds by fund type



Fund management is concentrated but is less concentrated than fund distribution

Table 16: Mutual funds by investment fund manager type

IFM Type	AUM $M	% of Total	#IFMs	% of Total
Independent	**288,619**	**22%**	**61**	**58%**
Integrated	**1,010,263**	**78%**	**44**	**42%**
Of which,				
Deposit-taker	*625,598*	*48%*	*13*	*12%*
Insurer	*199,712*	*15%*	*9*	*9%*
Other	*150,065*	*12%*	*15*	*14%*
Association	*34,888*	*3%*	*7*	*7%*
Total	**1,298,882**	**100%**	**105**	**100%**

Source: Investor Economics, SEDAR, SEC Filings at December 2015. OSC Categorizations

Similar to what we found with the Ipsos, Investor Economics, IIROC and MFDA data, the investment fund manager market in Canada is dominated by the deposit-taker and insurer owned fund managers. At the end of 2015, integrated investment fund managers[66] made up 42% of the firms but managed 78% of mutual fund assets. Deposit-taker and insurer owned investment fund managers managed 64% of the mutual fund assets. We also note that 73% of all mutual fund assets were managed by the 10 largest investment fund managers in Canada.[67]

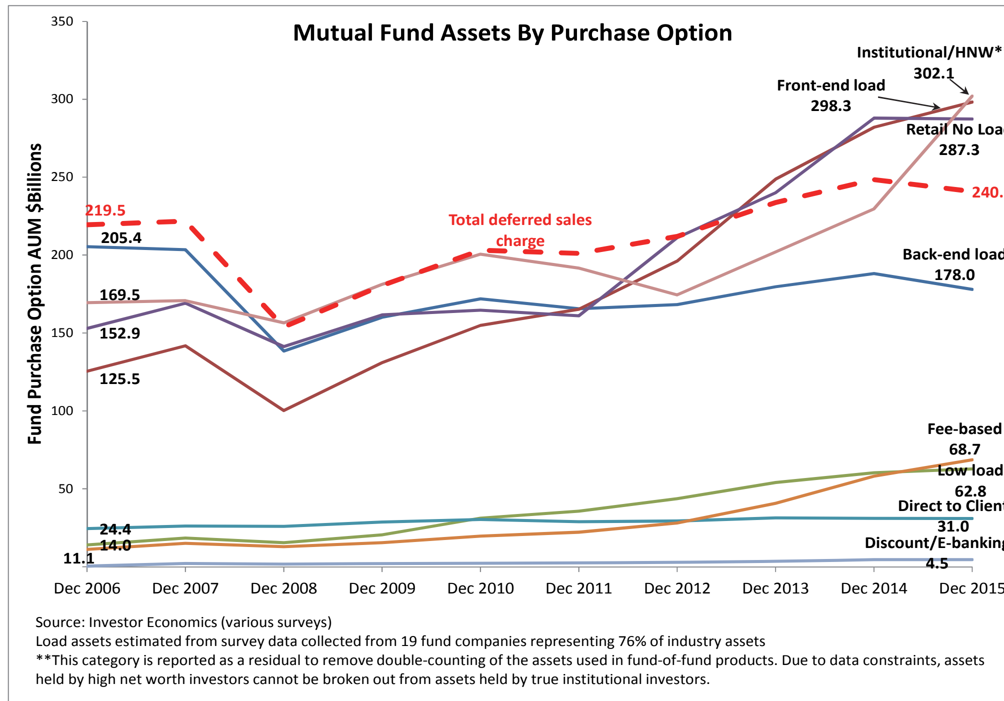
[66] An "integrated investment fund manager" is an investment fund manager that is affiliated with at least one dealer.

[67] Sources: *Investor Economics Insight*, January 2016 Annual Review; SEDAR; SEC filings at December 2015; OSC calculations.

While asset management is concentrated among the deposit-taker and insurer owned investment fund managers, it is relatively less concentrated than distribution where deposit-taker and insurer owned dealer firms administered 81% of assets in the combined IIROC and MFDA channel. Using the traditional definition of independent investment fund manager which would encompass both 'Independent' and 'Other Integrated' investment fund managers, these firms managed 34% of industry assets.

d. Fund Purchase Option Popularity

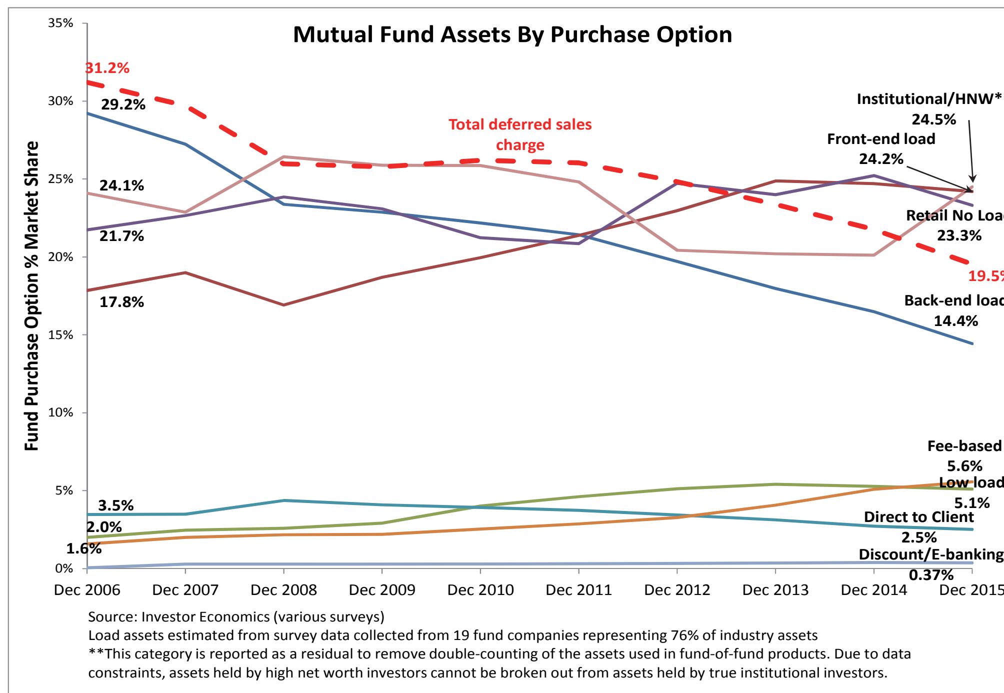
Figure 6: Mutual fund assets (ex-ETFs) by fund purchase option



Source: Investor Economics (various surveys)
Load assets estimated from survey data collected from 19 fund companies representing 76% of industry assets
**This category is reported as a residual to remove double-counting of the assets used in fund-of-fund products. Due to data constraints, assets held by high net worth investors cannot be broken out from assets held by true institutional investors.

25% of mutual fund assets (net of wrapping) are held in institutional/high net worth series

Figure 7: Mutual fund market share (ex-ETFs) by purchase option



We update fund assets by purchase option, a graph included in the Original Consultation Paper, to show how fund purchase options have changed over the last few years.[68]

In terms of the types of fund purchase options available in the industry today, the institutional/high net worth (**HNW**) purchase option, which typically does not pay trailing commissions, made up the largest share of fund assets totaling $302 billion or 25% of market at December 2015. HNW fund series assets have grown by 51% over the last five years.

The majority of mutual fund assets are still held in traditional fund series that include embedded commissions

The front end purchase option[69] was the second largest purchase option by assets with $298 billion or 24% of market at the end of 2015, growing 93% over the previous five years.

The retail no load purchase option – the option commonly offered within the branch network and through some vertically integrated fund managers – was the third largest purchase option by assets at $287 billion at December 2015, making up 23% of the market and growing 70% over the last five years.

The back-end load and low-load purchase options, which are both a form of DSC purchase option, remained a large component of industry assets at the end of 2015. Though DSC options have been falling in terms of market share, assets in these series continue to grow.[70] In total, $241 billion was held in DSC options at the end of 2015, and these options grew 19% over the last five years (largely due to the growth of low load fund series assets which grew 101% over the last five years versus 3% for traditional back-end load series).[71]

[68] CSA Discussion Paper and Request for Comment 81-407 *Mutual fund fees* (2012), 35 OSCB 11248.

[69] Although there are reports that many front end load funds are sold with 0% commissions, this is based on surveys of investment fund managers rather than fund distributors. We still see many front end fund sales with commissions in the market today. We would expect front-end sales commissions to continue to be charged in order to reflect factors such as differences in the scope and timing of advice and services provided, and the experience and skill level of the advisor, etc.

[70] The decline in market share also masks its importance to certain investment fund managers and fund dealers where DSC share of firm assets can be as high as 80% or more.

[71] The Canadian fund market is unique in its relative reliance on DSC and low load options. While making up 20% of mutual fund assets in Canada today, these options make up less than 1% of mutual fund assets in the United States and Europe.

It is still the case that trailing commission paying fund series make up the bulk of mutual fund assets in Canada. At the end of 2015, trailing commission paying purchase options – back-end, low load, front end, and retail no load – made up 67% of assets and increased by 58% over the five years ending 2015.

A small, but fast growing, share of mutual fund assets are held in fee-based purchase options

Fee-based purchase options remain a very small part of the mutual fund market, but they are growing quickly. Fee-based fund series made up only $69 billion or 6% of industry assets at the end of 2015. However, fee-based assets had the highest rate of increase over the five years ending 2015, increasing by 248%.

Fee-based options, while growing quickly, remain a small part of the mutual fund market as these purchase options are not available to all investors in all channels.

Not all purchase options are available to all investors in all channels

Given the number of series and purchase options available in the market, it may seem that investors are provided a wide range of purchase options.[72] However, not all (or in some cases not many) purchase options are made available to all investors in all channels.

Figure 8 below lays out the availability of fund purchase options in Canada using the information previously discussed regarding the MFDA and IIROC channels and data from Investor Economics, Morningstar, and Ipsos. Availability of products and purchase options tend to vary by the level of investable assets, by distribution channel, and by distributor type.

Mass-market households will typically choose between the purchase of proprietary funds with advice[73] or the full universe of fund products (and securities generally) with no advice, and may have limited access to certain other purchase options, such as fee-based options.

Dealers that offer an open shelf of fund products typically service investors with $100,000 or more in investable assets. Investors that do not want proprietary funds may have to forgo advice and purchase through a DIY channel. As previously discussed, despite the availability of Discount/DIY purchase options, the majority of online/discount brokerage channel purchase options will be sold under the no load or front end (with front end commission waived) options with the same rate of trailing commission paid as the fully advised channel.

Fee-based purchase options are typically not available for mass-market households. In terms of the purchase options available to mass-market households, all purchase options (no load, DSC purchase options and front end load) *except* for fee-based options are generally available. If the fund investor is investing through a deposit-taker owned mutual fund dealer, the investor will typically be offered a no load purchase option. If the investor is working with an insurer owned mutual fund dealer, the investor will typically be offered front end, no load and DSC purchase options. Fund investors with little to invest are the most likely to be offered DSC purchase options and some firms primarily offer their clients DSC options.[74] The dealer will typically choose which purchase options to make available and if multiple options are made available, the representative will choose which of these options are presented to the client depending on their needs and the representative's revenue requirements.

Fund investors typically gain access to advice and a wider range of product options as their investable assets increase. For mid-market households, those with investable assets between $100,000 and $500,000, there will be a wider range of products and types of advisor available. These investors can choose to invest through a deposit-taker owned or insurer owned mutual fund dealer focused on proprietary products or an independent mutual fund dealer offering the full universe of fund products.[75] They will also be able to invest in a wider range of investment fund and non-investment fund securities through an IIROC dealer.

[72] See page 1 of Investment Funds Institute of Canada, *Paying for Advice: Why Options are Important*, August 2014 for example.

[73] We note that there tends to be more variation with respect to the use of proprietary products across insurer owned fund dealers relative to deposit-taker owned fund dealers, with some offering primarily proprietary products and others offering a wider universe of both proprietary and non-proprietary products. However, it is not clear that insurer owned fund dealers offering a wider universe of products target mass-market households.

[74] We note that one of the largest integrated firms in Canada recently announced that they will discontinue offering the DSC option. See Rudy Luukko, "Investors Group will eliminate deferred sales charge option", *Morningstar Canada*, September 19, 2016. We estimate that, based on assets at December 2015, this change will impact 25% of total assets held in the DSC option.

[75] Although open shelf fund dealers can offer the full universe of fund products, they will typically focus on a subset of funds from a smaller list of preferred fund families. See for example, the 2015 Environics Advisor Perception Study (http://environicsresearch.com/wp-content/uploads/2016/02/Infographic-E_FINAL.pdf).

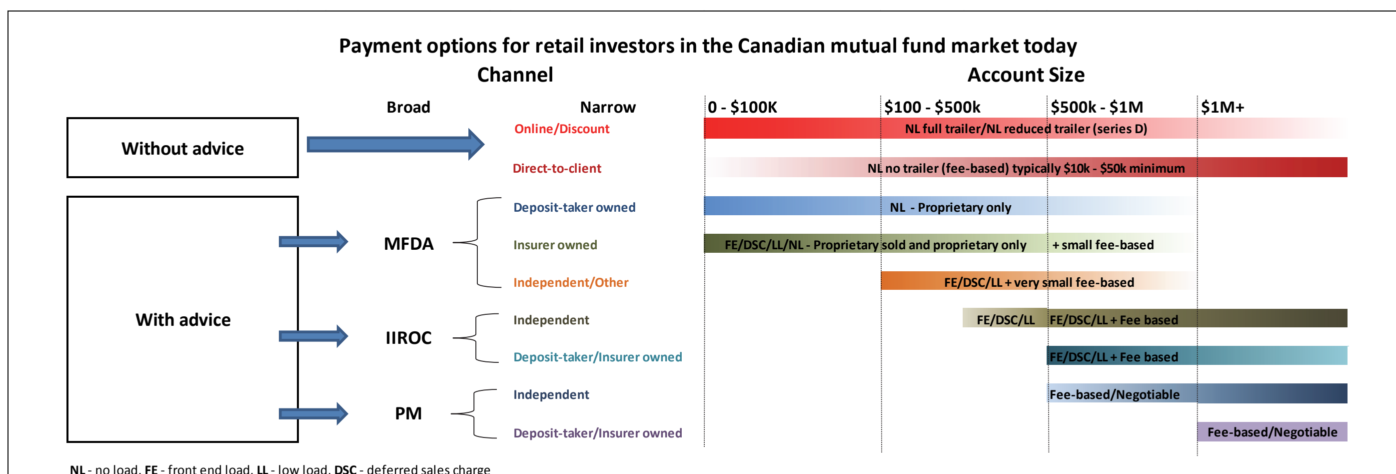
Fee-based purchase options have historically been limited for mid-market households, although access to these options has begun to increase recently.[76] When purchasing through a deposit-taker owned mutual fund dealer, mid-market households will typically be offered a no load option. When purchasing through other mutual fund dealers or through independent IIROC dealers, mid-market households will typically be offered front end, no load and DSC options.

These investors also have the option of foregoing advice and choosing to purchase their funds directly without trailing commissions through direct-to-client purchase options[77] offered by some investment fund managers.

Those with large amounts of investable assets get access to advice, product options and a broader choice in purchase options. Affluent households, those with investable assets above $500,000, have access to all purchase options, product options and advisory options available in the market. They can access a fee-based or commission-based advisor who can offer them the universe of fund products (and other securities), or they can choose to work with a traditional commission-based mutual fund dealer (who may also be a financial planner). Investors with $1 million or more in investable assets can also work with a deposit-taker owned portfolio manager and those with investable assets above $500,000 can work with an independent portfolio manager firm directly, typically through a fee-based arrangement.[78]

We have provided data and our analysis of the mutual fund and securities market in Canada today. In the next section, we look at the anticipated effects if we transition away from embedded commissions.

Figure 8: Mutual fund payment options by channel and account size



2. *Overall market impact of the discontinuation of embedded commissions*

For the discussion that follows, unless otherwise indicated, we assume that the market has transitioned away from embedded commissions and that current details about the market hold.

We also assume that the requirements in CRM2 and POS are fully implemented, and where applicable, we discuss the implication of potential intersections between the discontinuation of embedded commissions and the proposals set out in CSA CP 33-404.

i. Reduction in fund series and in fund fee complexity:

We anticipate that the number of fund series available in Canada would significantly decline as a result of a transition away from embedded compensation. As also discussed in Appendix A, this effect is expected because the vast majority of fund series available in the market today differ only by the level and type of embedded compensation paid to the dealer.[79] The transition

[76] See for example, Rudy Mezzetta, "Credential introduces fee-based product for mutual fund advisors", *Investment Executive*, January 26, 2016, and Rudy Luukko, "Investors Group eases into fee-based investing", *Morningstar Canada*, November 22, 2016. We also note that other deposit-takers have recently been slowly rolling out fee-based options within their branch networks.

[77] Purchase options that are offered by an investment fund manager that sells investment funds directly to investors through a related mutual fund dealer via online or telephone access.

[78] We note that the number of households working directly with portfolio managers is relatively low (i.e. below 200,000 households or less than 1% of all households). These firms also vary considerably in their usage of investment funds.

[79] In addition to the number of fund series available, some fund series are available for purchase under more than one purchase option (e.g. back end, low load, front end purchase options available within one fund series). Taking into account available purchase options, there

away from embedded commissions would make these series redundant given the embedded commission free fund series (i.e. series F and high net worth fund series) that are already available today.

Based on figures from Morningstar Direct at February 2016, if we were to eliminate the fund series that include some form of embedded compensation from the market today, the total number of fund series would fall from 13,899 to 4,901 – a 65% decline. This would significantly simplify fund fee structures which are currently very complex and difficult for investors to understand, as shown in Part 2. Fund series that remain would be larger on average after the change. For example, using total industry assets at December 2015 ($1.2 trillion) and the number of fund series that we estimate would remain after the discontinuation of embedded commissions if it were to take immediate effect today (4,901), average assets per fund series would rise from $86.6 million to $245.5 million – a 184% increase. We anticipate that this impact alone could drive down fund costs.[80]

Accompanying the simplification and standardization of fund series would be a simplification of, and amendments to, fund disclosure documents (fund facts, simplified prospectus, management report of fund performance, etc.). We do not anticipate significant cost implications arising from these amendments to fund disclosure documents.[81] Rather, we anticipate that any costs incurred would be offset by significantly lower ongoing fund series maintenance costs (in terms of both disclosure documents and marketing materials).

We do not anticipate that any switches between series of the same fund that may occur as a consequence of the simplification of fund series would have any financial or tax implications for fund investors because, as is the case today for switches between fund series of the same fund, these switches would not be considered a deemed disposition for tax purposes.

We do anticipate that, as is the case today with switches between series of the same fund, this activity will generate many in-kind transactions or book adjustments on client account statements that may require a conversation between the advisor and client to explain the occurrence or may be accompanied by a notice from the investment fund manager and/or fund dealer. Each would entail one-time costs.[82]

ii. New lower-cost product providers may enter the market:

We anticipate that new lower-cost product providers would enter the mutual fund market after a transition away from embedded compensation. Some lower-cost mutual fund providers have expressed to the CSA the view that embedded commissions function as a barrier to market entry.[83] We anticipate that these new product providers would enter the market with a wide range of passively and actively managed mutual funds.

Based on an analysis of low-cost fund product provider pricing in other markets,[84] while taking into account pricing practices specific to Canada (e.g. tax differences such as the HST etc.), the estimates suggest that management expense ratios (**MER**)

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were 39,848 unique mutual fund series/purchase option combinations available in Canada (source: FundSERV – mutual fund and fund wrap products) at the end of June 2016 and a total of $1.3 trillion ($999 billion USD) invested in mutual funds (source: Investor Economics) at the end of June 2016. In contrast, there were 32,555 unique fund series/purchase option combinations available in the United States (source: Morningstar Direct) at the end of June 2016 and a total of $15.9 trillion invested in mutual funds (source: Investment Company Institute) at the end of June 2016.

[80] We also note that in some cases, investment fund managers today charge management fees on their series F that are less than the management fees net of trailing commission for their retail – trailing commission paying – series. If this pricing differential were to persist after the discontinuation of embedded commissions, then we would also expect to see a decline in fees from this as well. We also note that some investment fund managers, recognizing the extent of the complexity and confusion in the market, have already begun to rationalize their series offerings in order to simplify the cost structures for advisors and investors and to reduce price discrimination (see for example R. Luukko, "RBC flexes its muscle on fund fees", *Morningstar Canada*, February 29, 2016; J. Hemeon, "TDAM lowers management fees on certain funds series", *Investment Executive*, November 22, 2016).

[81] We anticipate these amendments to include only deletions from current disclosure documents and significant simplification and removal of sections such as the dealer compensation from management fee section, etc. We anticipate that investment fund managers will choose to merge assets into existing, and likely repriced, fund series rather than launch new series.

[82] We anticipate that these costs would be incurred in any case as the representative and client would need to communicate and agree on a direct pay arrangement going forward.

[83] See for example the transcript of OSC Roundtable Re Discussion Paper and Request for Comment 81-407 *Mutual Fund Fees* (June 7, 2013) at p. 98 – Question from Commissioner Deborah Leckman to Atul Tiwari, Managing Director/Head of Canada for Vanguard Investments, infra note 201. Other evidence that embedded commissions inhibit competition by creating barrier to entry is provided in Appendix A.

[84] The estimates for low-cost manager pricing come from a cross-sectional regression of non-institutional management fees and MERs controlling for fund size, domicile (U.S., Canada, U.K. Ireland, Australia), product structure (ETF or mutual fund), broad asset class and management type (active or passive). Current fee-based fund series pricing is for the Canadian fund market only. Currently, the average fixed income fund fee-based series MER in Canada is 48 bps for an index tracking fund and 92 bps for an actively managed fund. The average equity fund fee-based series MER in Canada is 77 bps for an index tracking fund and 124 bps for an actively managed fund. All data is sourced from Morningstar Direct at July 2016.

for index funds offered by these new entrants could be up to 40 bps lower than average index fund costs today. Also, MERs for actively managed funds offered by these new entrants could be up to 75 bps lower than average actively managed fund costs today.

Aside from certain large low-cost product providers, it may be possible for smaller emerging asset managers that have a good track record of risk-adjusted performance to enter the mutual fund market (either through a public fund launch or through a sub-advisory relationship) after the transition away from embedded commissions. Those managers that offer a distinct mandate or a niche style – a comparative advantage – could have a greater chance of success in a post trailing commission world as they would compete on their performance without the trailing commission factor.

iii. Increased price competition / decrease in fund management costs:

Over time, the discontinuation of embedded commissions should curtail the incentive for mutual fund dealers and their representatives to recommend products that give priority to maximizing revenue over the interests of clients. Mutual fund dealers and their representatives are therefore likely to focus more on fund performance and fund fee levels, which in turn will put pressure on investment fund managers to improve their performance and reduce their fees. Investment fund managers with affiliated mutual fund dealers are also likely to be affected by this pricing and performance pressure over time.

The potential entrance of lower-cost product providers will likely increase the competitive pressure to decrease fund management costs even further (if not also distribution costs)[85] over time. We anticipate that the impact of new entrants into the mutual fund market will lead to a decline in the cost of existing funds as incumbent investment fund managers may adjust their pricing to retain market share. Based on the estimates provided above for low-cost provider pricing, we may see an MER decline of 25 to 50 bps for actively managed equity funds and 10 to 25 bps for actively managed fixed income funds shortly after the discontinuation of embedded commissions.[86]

iv. Shift in product recommendations to lower-cost / passively managed products:

It is reasonable to assume that the transition away from embedded commissions, coupled with the growth of lower-cost passively managed fund products, will also likely drive a shift to lower-cost passively managed funds in terms of the (i) product shelf chosen by dealers, (ii) recommendations made by representatives, and (iii) funds chosen by mutual fund investors over time. However, we are cautious regarding the extent and pace at which this shift would likely occur. As noted earlier and in Appendix A**,** the Canadian mutual fund market (excluding ETFs) is overwhelmingly focused on actively managed funds.[87] While the level of trailing commissions paid historically on index funds relative to actively managed funds was likely a driver of their lack of popularity with fund dealers and representatives, we also acknowledge that it takes time for habits to change.[88] In addition, while there are several investment fund managers that have offered and continue to offer index funds, they have historically not always ‘actively’ marketed them.[89]

If we consider the experience in the U.K.,[90] they began to see a significant increase in both sales and assets held in index tracking funds several years before the RDR reforms were introduced in January 1, 2013. According to data from the Investment Association, shown in Figure 9 below, index tracking fund (“tracker funds”) market share began to significantly increase after

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[85] See for example, Victor Reklaitis, “The Vanguard effect on fund fees, in one handy table”, *Market Watch*, November 16, 2015, http://www.marketwatch.com/story/the-vanguard-effect-on-fund-feeds-in-one-handy-table-2015-11-13.

[86] This estimate is based on incumbent investment fund managers reducing their existing fees by one third to two thirds of the difference between their fees and those charged by new low-cost market entrants. Note, as well, that we saw similar price declines after the entrance of low-cost ETF providers into the Canadian market in 2011 and in reaction to competition from U.S. domiciled ETFs which were going through their own pricing war at about the same time. Unlike the mutual fund market, the ETF market in Canada is open to competition from abroad. Canadians routinely purchase U.S. domiciled ETFs. At March 2016, 27 cents of every retail dollar invested in ETFs in Canada was held in a U.S. domiciled ETF.

[87] While the mutual fund industry launches an average of about 200 funds a year, the most recent index fund launch was in 2013.

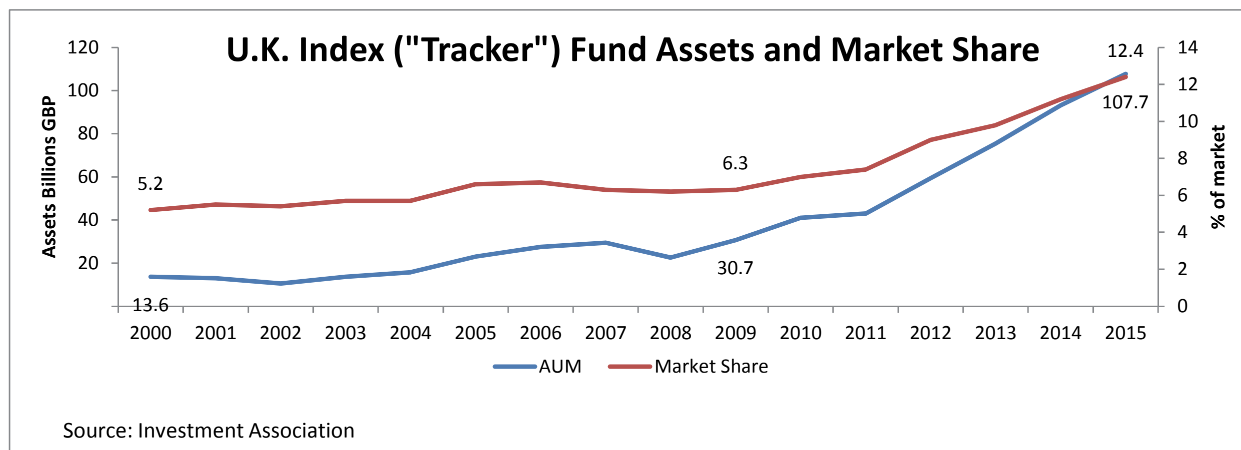
[88] Recent research highlighting the sub-optimality of the investment choices made by financial advisors for their portfolios suggests that established beliefs coupled with a lack of proficiency can be significant obstacles to change (See Juhani T. Linnainmaa, Brian T. Melzer, and Allessandro Previtero, “Costly Financial Advice: Conflicts of Interest or Misguided Beliefs?”, December 2015, http://faculty.chicagobooth.edu/juhani.linnainmaa/MisguidedBeliefs.pdf). It’s not clear from this research however how much of this product bias might be driven by the dealer’s decisions regarding the product shelf. We know that the majority of mutual fund dealers in Canada are either proprietary only or are proprietary focused.

[89] See for example, Rob Carrick, “TD's e-series funds: Easy to love, hard to buy”, *Globe and Mail*, May 9, 2011; Dan Bartolotti, “More Fun With the TD e-Series Funds”, *Money Sense Magazine Online*, September 23, 2010; Dan Bartolotti, “TD Responds to e-Series Concerns”, *Money Sense Magazine Online*, August 20, 2010.

[90] As mentioned in Part 1, while the analysis of relevant reforms in other jurisdiction is informative and insightful, the unique features of those markets, including the characteristics of their respective market participants and the specific competitive dynamics within which they operate, their market structure, the savings habits of their local investors, as well as the extent of their respective reforms, the specific impacts from the reforms in those jurisdictions might not be the same for the Canadian market.

2009.[91] Market share of index tracking funds increased from 6.3% to 12.4% and assets under management increased by 251% (£77 billion) between December 2009 and December 2015.

Figure 9: Growth of Tracker Funds in the United Kingdom



If we were to see a similar increase in the run up to the discontinuation of embedded commissions in Canada, we would expect index fund market share to increase from their current share of 1.5% of market today ($18.8 billion[92]) to between 5% and 10% of market five years after the transition away from embedded commissions.[93]

v. Shift in assets across existing investment fund managers:

A shift toward lower-cost and passively managed funds stemming from the discontinuation of embedded commissions[94] would also likely occur between funds managed by the same investment fund manager. We may also see a shift of assets between conventional mutual funds and ETFs (whether managed by the same investment fund manager or not). In such cases, we would expect that all investment fund managers would be reviewing their fund offerings with respect to cost and performance and, in some cases, introducing or expanding their passively managed fund offerings.

Beyond the shift to passively managed products, we would also expect a potential shift in assets across active investment fund managers. For example, if active investment fund managers will need to compete more on the level of their risk adjusted performance after the discontinuation of embedded commissions than they do presently, it is reasonable to assume that actively managed funds producing negative alphas today could be considered at risk over time.

Based on a review of current actively managed fee-based (series F) fund offerings[95] and their five year alphas, the data suggests that:

- 87% of investment fund managers offering actively managed funds today have some funds with negative alphas which could be at risk of redemption if embedded commissions were discontinued and these managers were not able to adjust their fees or improve performance;[96]

[91] While final rules and guidance for the U.K.'s RDR reforms were released in March 2010, they were announced well before this date which allowed the securities industry to adjust in anticipation of the change (see for example, David Ricketts, "Rapidly evolving online platforms face competition", *Financial Times*, September 7, 2008).

[92] See Figure 4 above (source: Investor Economics).

[93] This estimate is dependent on both how fast index fund demand increases after the discontinuation of trailing commissions and how strong aggregate growth is in the fund industry (among other factors). For example, if growth in the mutual fund industry over the last 10 years of around 7% were to persist, we were to see similar growth rates for index funds in Canada as we have seen in the U.K., and we were to eliminate embedded commissions in 2020, this would suggest total assets invested in index funds would grow from $18.8 billion today to $125 billion by 2025 – a 5% market share. If aggregate fund industry growth was to substantially slow (to 1 to 2% per year) and index fund growth was to remain the same, then index fund market share would move closer to the 10% mark.

[94] Besides the discontinuing of embedded commissions, many other factors could result in a shift in allocation of capital to lower-cost and passively managed funds.

[95] Since we are looking at what would happen after the discontinuation of embedded commissions, we have focused on 5 year alpha based on fee-based pricing. All analysis in this section is based on data from Morningstar Direct at June 2016.

[96] These assets may already be at risk today. However with the discontinuation of embedded commissions we would expect this risk to increase further. For funds that are already in net redemptions, their redemption rate may increase further.

- For active investment fund managers that manage funds with negative alphas, the proportion of assets at risk or redemption could be on average 53% of firm assets;

- In aggregate, an estimated 44% of actively managed fund assets may experience redemption and reallocation pressure to competitor investment fund managers over time if embedded commissions were discontinued and these managers were not able to adjust their fees or improve performance; and

- For active investment fund managers with little or no access to related party distribution[97], on average 59% of assets at these firms may experience redemption pressure over time assuming once again these managers were not able to adjust their fees or improve performance.

As we have emphasized throughout this section, much depends on how investment fund managers react to the discontinuation of embedded commissions. And as noted earlier, we expect investment fund managers to alter the way that they compete over time by reducing prices and refocusing their distribution efforts toward improvements in risk adjusted performance to retain market share.

vi. Market innovations in product distribution and advice:

When considering the overall effects on product distribution and advice, it is important to note that the discontinuation of embedded commissions would not require dealers to move to a fee-based arrangement. As discussed in Part 3, dealers could still charge commissions to clients directly, move to a fee-based arrangement, move to an hourly rate, or move to any other combination of payments as long as compensation is not embedded within the product or paid by the investment fund manager.[98]

It is anticipated that if we were to discontinue embedded commissions, existing and new market innovations would help ensure that mass-market households still have access to advice.

As we highlighted earlier, the majority of mass-market households do not own investment funds and would not be affected by the discontinuation of embedded commissions. However, based on current market developments, they are likely to have more access to online advice over the next few years.[99]

Online advice (typically referred to as robo-advice) is still an emerging sector within Canadian financial services, though there are a number of online advice platforms that have been established for some time. While online advisers[100] have yet to make a large impact, either in the number of households serviced or in the share of wealth held by these firms, considering that online advisers typically offer investment fund products under an asset allocation service, there are a number of reasons why we should anticipate that they will be disruptive to the status quo and could have the potential to increase access to advice over time.

First, online advice is often less expensive than traditional advice channels and would likely remain so particularly if we were to discontinue embedded commissions.

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[97] We focus here on those investment fund managers without significant access to captive distribution because Canadian and other international research has shown that affiliation (i.e. access to affiliated distribution) can be an effective barrier to price and performance competition (see for example, Douglas Cumming et al., supra note 3). However, we note in the next section that even for fund managers with access to captive distribution we anticipate that there could be significant product price and performance pressure after the removal of embedded commissions.

[98] For example, in its latest data bulletin, the FCA reports that a number of charging structures are popular post-RDR including charging based on hourly rates (20% of firms), percentage of assets (48% of firms), fixed fees (22% of firms) and combined structures (10% of firms). Note that, unlike our current proposal, new front end commission arrangements were prohibited in the U.K. (Financial Conduct Authority, *Data Bulletin Issue 7,* October 2016).

[99] The result of a survey published by Ernst & Young in 2016 show that, in Canada, 8.2% of digitally active consumers have used at least two digital/online (**FinTech**) products within the last six months, in the form of money transfers and payments, and savings and investments, in comparison to 15.5% globally. The survey also shows that, if awareness of the available FinTech products by consumers increases, adoption rates could triple within a year from 8.2% to 24.1%.

[100] We refer to “online advisers” because in the Canadian market, advisers that provide advice using an online platform must be registered portfolio managers and restricted portfolio managers. These firms provide discretionary investment management services at a low cost to retail investors through an interactive website. Online advisers still have to review the accounts created through the automated process as outlined in CSA Staff Notice 31-342 *Guidelines for Portfolio Managers Regarding Online Advice*. The online advisers that have been approved to carry on business in Canada are not “robo-advisers” of the kind that are operating in the United States, which may provide their services to clients with little or no involvement of a representative of the adviser. By comparison, Canadian online advisers can be seen as providing hybrid services, in that they use an online platform for the efficiencies it offers, while their representatives remain actively involved in (and responsible for) decision-making.

The cost of distribution and advice when dealing with a traditional mutual fund dealer from a vertically integrated firm, not including any account fees or product costs, is typically 1% of assets or more.[101] Account pricing for online advice, net of mutual fund product costs, is typically between 0.15% and 0.7% of assets per year depending on the amount invested,[102]and the average fund MER on these platforms is approximately 0.25%. This ability of online advisers to undercut the costs of the dominant advice delivery channel for investment fund owning households with modest levels of accumulated wealth is likely to limit what this channel can charge going forward for investment fund distribution and advice.

In Figure 10 below, we show what the minimum, maximum and average online adviser costs in dollars are today for account assets up to $1 million. Against the traditional 1% mutual fund distribution cost model, it seems that online advice has the potential to become an important distribution model in Canada.

However, as we said at the outset, online advice is an emerging sector in Canada. Early pricing and services provided may not be indicative of pricing over the long term. For example, it remains to be seen whether these new online adviser entrants can gain enough scale before incumbents adopt innovation.[103] If these new entrants do not gain sufficient scale, the current pricing pressures that their entrance has brought about may be transitory. In addition, we have yet to see the entrance of low-cost, hybrid, online advice models in Canada as we have seen in other markets.[104]

If we were to discontinue embedded commissions, the ability of incumbents to limit this pricing pressure could be curtailed by the actions of more established and better capitalized entrants into the market post the discontinuation of trailing commissions.

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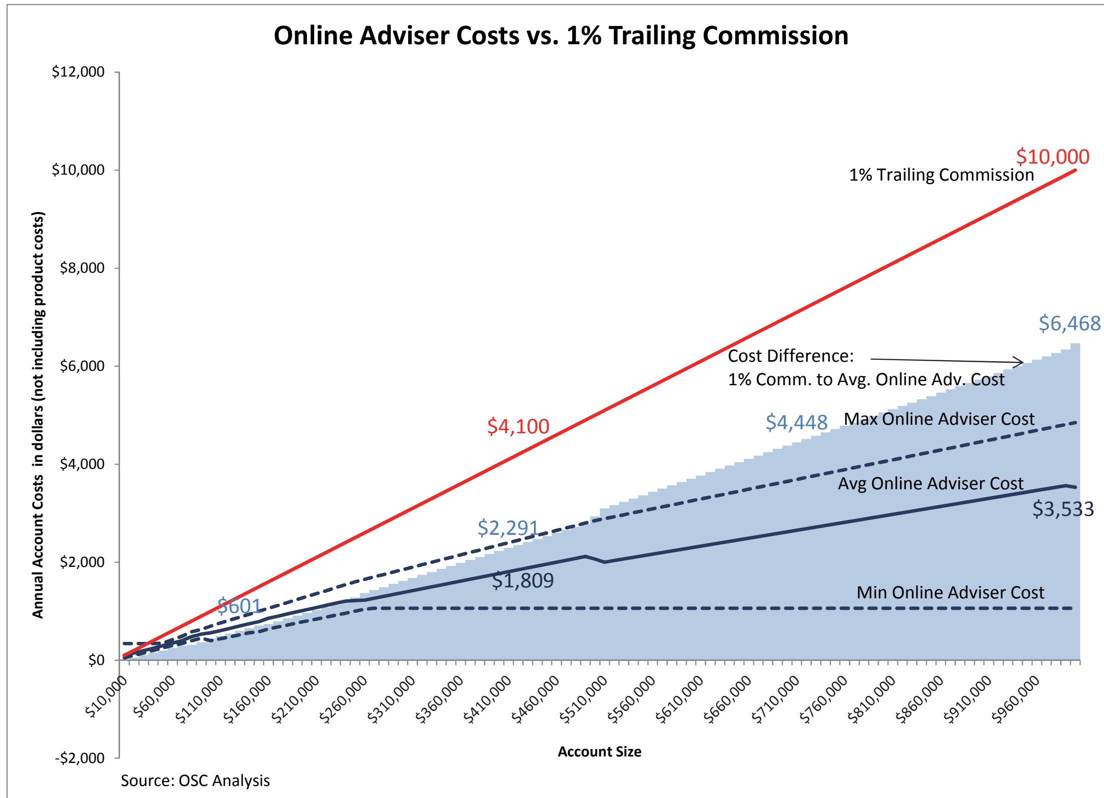
[101] The majority of mutual funds sold through bank branches are fund-of-funds (see for example, Investor Economics, *Insight Report*, November 2016, page 3). These funds typically include a posted trailing commission of 1% and in some cases more than 1%.

[102] We note however that not all online advice costs are this low today.

[103] We have seen some evidence of this already with BMO and RBC either moving or getting ready to move into online advice and Power Financial providing a large investment into Wealth Simple. See, for example: Fiona Collie, "RBC Wealth Management explores adding robo-advisor", *Investment Executive*, October 8, 2015; Paul Lucas, "Royal Bank of Canada turns to robo advisors", *Wealth Professional*, February 4, 2016. Several online advisers have also expanded to provide financial advisors a web-based platform that will allow them to keep offering services to non-core clients (i.e. mass-market households).

[104] See for example, the Vanguard Personal Advice Service offered in the United States, which offers clients with a minimum of $50,000 to invest automated advice coupled with access to a traditional advisor for an advice cost of 30 bps which decreases as assets rise (https://personal.vanguard.com/pdf/vpabroc.pdf). The program has been more successful relative to other automated advice only offerings. Assets in the program totaled $41 billion, one year after launch (see Alex Eule, "The Future of Mutual Funds", *Barron's*, July 9, 2016.).

Figure 10: Online adviser versus traditional advice costs



While online advisers are likely to have an impact on the price of distribution, they also may have an impact on the types of products distributed, particularly if embedded commissions are discontinued.

Once again, the majority of households with modest levels of accumulated savings have a relationship with a deposit-taker or insurer owned dealer. As previously discussed, the scale of the advice these households require may tend to be more limited and the types of products they are being offered are often packaged solutions such as fund-of-funds – because they are easy to sell and reduce the representative's compliance risk as they transfer the representative's portfolio creation role to the investment fund manager. In many ways, fund-of-funds are the equivalent of the asset allocation service offered by many online advisers. According to data from IFIC, for the six years ending December 2015, fund-of-fund net sales totaled $191 billion versus $32 billion for traditional stand-alone funds. They have become the dominant product in the mutual fund industry.

Fund-of-funds offered through the deposit-taker channel are typically invested in related party actively managed funds. Research suggests that while actively managed funds tend not to outperform their benchmarks, a portfolio of actively managed funds is even less likely to outperform a portfolio of passively managed funds.[105]

This trend is borne out by the performance of fund-of-funds in Canada. At the end of March 2016, and not accounting for survivorship bias,[106]which would reduce the percentage of outperformers further, only 8% of fund-of-fund products were able to beat their indices on a risk-adjusted basis[107] over 3 years, only 10% over 5 years, and only 8% over 10 years. Notably, only 3 funds were able to do it over all three periods.

As most fund-of-funds tend to be actively managed while many (but not all) portfolios managed by online advisers tend to be made up of lower-cost passively managed ETFs or mutual funds, we should expect that these portfolios will do at least as well as traditional fund-of-funds offered by vertically integrated firms today. Moreover, we should expect that the sophistication of online advice offerings will improve over time.

105 Richard A. Ferri and Alex C. Benke, "A Case for Index Fund Portfolios: Investors holding only index funds have a better chance for success", June 2013. See additional research at Appendix A, note 194.

106 Not accounting for funds that have closed or merged over the period. Including these funds would have reduced the percentage of outperforming funds even further.

107 As measured by information ratios over the time periods cited.

The fact that the advice is more automated means that, with the same number of representatives, online advice platforms have the potential to service more households relative to traditional advice channels. Furthermore, given that online advice tends to be less expensive and that it encompasses at least part of the benefits thought to be the potential drivers of value with traditional advice[108], we anticipate that its growth could potentially increase investors' access to advice in the future.[109]

Increased automation is also expected to benefit the traditional advice channel such that we should expect productivity gains here too. Automation may make it possible for the traditional advice channel to service parts of the market previously not covered.[110]

The discontinuation of embedded commissions, along with any potential enhancements to the obligations of dealers and representatives and the growth of online advisory services, may also drive up the demand and the supply of discretionary management[111] in Canada. This change is expected because these initiatives, along with the CRM2 initiative, may encourage dealers and their representatives to explain their value proposition to clients in a way many have never had to. In some cases, the easiest way for the representative to do this will be to show the client that the use of discretionary advice creates a savings discipline, simplifies their life and frees up their time. There is some evidence that this shift has occurred in the U.K. post-RDR and across Europe generally where similar changes have been introduced.[112] There is also an expectation that use of discretionary advice will continue to grow in these markets for the foreseeable future.

It is important to note that this trend, were it to occur either in response to the discontinuation of embedded commissions or other ongoing policy initiatives, would be likely to drive up the cost of advice. However we should also expect, in such a scenario, that the level of service and advice would be potentially more aligned with the costs paid.

Whether or not this shift is a benefit to investors depends on whether investors or dealer firms are driving the change. For example, European and U.K. firms surveyed have suggested that they have moved or are expecting to move more toward discretionary advice at least in part because they consider it is a less-time intensive (and thus more profitable) model to run from a compliance cost perspective relative to traditional advisory services.[113] Others surveyed have argued that, while this model is simpler and more scalable, what is equally driving the change is the fact that this model is also easier for clients to understand and thus more valuable to them.[114]

We anticipate that some dealers would be less impacted by the discontinuation of embedded commissions than others, at least initially. Those dealers, typically deposit-taker and insurer owned mutual fund dealers, that do not receive embedded commissions today but instead receive transfer payments unrelated to an investor's purchase or continued ownership of a mutual fund security from their non-securities registered parent firm, may be less affected by the discontinuation of embedded commissions. It is anticipated that even these firms would be encouraged to make changes over time to their products and services and their pricing in order to compete with new low-cost distribution models.[115]

We focus in the next section on the potential impact to specific stakeholders.

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[108] From the Vanguard Advisor Alpha report – the drivers of value that would be incorporated into online advice options would be asset allocation, usage of low-cost products and rebalancing. Ryan Rich, Colleen M. Jaconetti, Francis M. Kinnery Jr., Donald G. Bennyhoff, and Yan Zilbering, "Putting a value on your value: Quantifying Vanguard Advisor's Alpha in Canada", 2015, The Vanguard Group, Inc.

[109] Accenture notes that "much of the initial uptake and interest in robo-advice is coming from the "mass-affluent, delegator" market segment, which has traditionally been underserved". See Accenture "The Rise of Robo-Advice: Changing the Concept of Wealth Management," 2015, page 2.

[110] See for example: Tessie Sanci, "Nest Wealth readies launch of new tool for financial advisors", *Investment Executive*, April 19, 2016; James Langton, "Canada's robo-advisor market to see robust growth", *Investment Executive*, May 19, 2016; Tessie Sanci, "Wealthsimple for Advisors readies for launch", *Investment Executive*, May 11, 2016.

[111] Discretionary management means a form of investment management in which a portfolio manager has the authority to make investment decisions for a client's account, including the discretion to trade in securities for the account without requiring the client's express consent to a transaction (ref.: definition of "managed account" in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*).

[112] See for example: Joint report of Oliver Wyman and J.P. Morgan, "The Future of European Wealth Management: Imperatives for Success", November 2014; BlackRock, "Wealth Management Industry Survey 2015"; David Boyle, "A strong DFM market", *Defaqto*, March 26, 2016; "DFMs open up a greater choice for clients", *FT Adviser*, October 24, 2016.

[113] Joint report of Oliver Wyman and J.P. Morgan, "The Future of European Wealth Management: Imperatives for Success", November 2014, page 15.

[114] BlackRock, "Wealth Management Industry Survey 2015".

[115] It is worth noting that some firms have anticipated these changes and have already begun to simplify their purchase options, lower product costs, and introduce direct pay arrangements within their branch network (see note 80).

3. *Impact of the discontinuation of embedded commissions on specific stakeholders*

a. *Investors*

We set out below the potential impact of the discontinuation of embedded commissions on different investor segments. The impact we have outlined for one segment of investors could also apply to a certain degree to another segment of investors.

i. *Investors with investable assets below $100k (mass-market)*

As explained above, we anticipate that, like all fund investors, this group of investors would likely see the cost of active management and fund management generally decline. New players entering the market would likely service these investors and their usage of low-cost, passively managed funds would likely increase. In order to service these investors, dealers will likely be encouraged to increase or introduce the use of simplified online advice options. An implication of this development, coupled with the discussion earlier about the number of households in this group that do not own investment funds today, is that the size of this group has the potential to grow over time. Fund ownership has the potential to move beyond 37% of all Canadian households today.

Considering the shift in product recommendations discussed previously, we anticipate that representatives, particularly at independent mutual fund dealers which offer an open product shelf, would focus more on lowering product costs and choosing better performing products over time. The discontinuation of embedded commissions would also eliminate the incentive for representatives to potentially engage in unsuitable leverage strategies. A potential negative impact of the discontinuation of embedded commissions for mass-market households is that some independent fund dealers may choose not to continue to service these households.[116]

Some investors, when presented with the cost of advice may not see value in it and choose to move to another dealer, to an online/discount broker or to an online adviser. We do question though the extent to which this change will occur given that the implementation of the new CRM2 annual report on charges and other compensation will have been completed. It is possible that investors that do not see value from advice, in reaction to the CRM2 disclosures, may have already moved their assets to another dealer, to an online/discount broker or to an online adviser. Where we may see movement is for those investors who want to use mutual funds but do not want to use advice. For investors that move their assets to an online/discount broker, they will no longer bear the cost of full trailing commissions if they make the switch.

It is fair to say that this group of investors is the group most at risk of falling into the "advice gap" – the group of investors who cannot obtain the amount of advice they desire at the price they are willing to pay – today.[117] As was outlined earlier, this is also the group of fund investors that are least likely to be receiving advice today and when they do receive advice, the range of services[118] provided tends to be less than for those with higher levels of wealth.[119] Households with little to invest are considered to be the most difficult for the industry to service today given the costs and scalability of existing advice models versus the potential revenue gained. Admittedly, in terms of the number (though not in terms of the share of total wealth) this group makes up the largest share of households.

For a number of reasons alluded to earlier in this section, despite the potential risks, we do not anticipate a significant advice gap in the event that we move forward with our proposals.

First, with respect to the risk of increasing the "advice gap", we note that the majority of mass-market households do not own investment funds and that for the mass-market households that do own investment funds, the majority have tended to purchase them through a deposit-taker or insurer owned dealer. We anticipate that deposit-taker and insurer owned dealers will continue to serve mass-market households if we transition away from embedded commissions. As noted earlier, by virtue of being both vertically and horizontally integrated, many deposit-taker and insurer owned dealers (particularly in the mutual fund dealer channel where we have shown the majority of these households are serviced) have already moved away from traditional grid

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[116] We note that based on the Ipsos data, an estimated 14% of mass-market households work with an independent/other integrated fund dealer today. About 38% of these households also have a relationship with a deposit-taker or insurer owned dealer.

[117] In the FCA and HM Treasury's *Financial Advice Market Review: Final Report (*March 2016), "advice gap" is similarly defined as situations in which consumers are unable to get advice and guidance on a need they have at a price they are willing to pay. Based on the experience in other jurisdictions, we note that an advice gap is not a phenomenon that occurs only because of a ban on embedded commissions, but rather it is a function of a number of factors (changes to existing business models, changes to consumer preferences, technological changes etc.) that occur normally in any competitive market for financial services.

[118] Financial services and advice can, but need not always, encompass a broad range of services such as investment recommendations, asset allocation, the setup of systematic savings plans and/or registered plans, the preparation of a written financial plan, tax planning, estate planning, debt management, budgeting cash flows, etc.

[119] As noted earlier when looking at the Ipsos household survey data, the usage and, likely, the breadth of advice tend to increase with household wealth.

based compensation that relies on embedded commissions.[120] Their high level of horizontal integration has led these firms to focus less on any one business line (e.g. mutual funds, GICs, mortgages, credit cards etc.) and focus more on gathering assets across all business lines and on directing clients to the appropriate business line.[121]

The discontinuation of embedded commissions by itself will likely have little direct impact on these integrated business models. They will continue to provide a wide array of financial products and services (including mutual funds) to households with little to invest. We have already outlined trends with respect to automation that may actually increase access to advice for this group[122] and we have noted the much higher levels of advice coverage and advisor availability in Canada versus other jurisdictions such as the U.K.

With respect to the developments in the advice market in the U.K. post-RDR, it is important to take note of the other factors that have led to the advice gap that are not present in the Canadian context.

In the recent financial advice market review conducted by the Financial Conduct Authority (**FCA**) and HM Treasury in the U.K.[123], they identify that the standards and professionalism in the industry have increased. As well, the move to a direct pay model for advice on retail investment products has improved transparency and significantly reduced certain conflicts of interest. However, they also identified a number of obstacles post-RDR implementation that are limiting accessibility and affordability of advice, including:

- a need for clarity as to when general forms of advice become or are considered "regulated advice" [124];
- a need for clarity on responsibilities when providing guidance that is not "regulated advice" (e.g. online calculators and tools, providing general behavioural nudges to clients);
- a need for clarity on how to tailor suitability assessments when providing narrow forms of advice;
- extending the time new employees can work under supervision while obtaining qualifications in order to provide more flexibility to train a new generation of advisers;
- clarifying the length of time a firm can cross-subsidize the cost of new advice delivery models while still ensuring that over the long-term the charges for their advice service cover the costs of providing that service **(the cross-subsidization rule);** and
- assistance in introducing new technologies to automate advice and to streamline and codify the fact finding process used in traditional advice in order to reduce the cost of suitability assessments.

None of these obstacles limiting access and affordability were found to be related to the removal of embedded commissions but rather they tended to be tied to the particular way in which the FCA chose to raise the standard of care.

The new standard for advisors implemented in the U.K. with RDR has much wider scope, in terms of the types of advice covered and the limitations on business conduct, than is contemplated in CSA CP 33-404. For example, the CSA has not contemplated an equivalent to the FCA's cross-subsidization rule which seems to have played a role in limiting the introduction of new advice delivery models in the U.K. Therefore, we do not anticipate the same obstacles to the development of new lower-cost distribution models in Canada after the discontinuation of embedded commissions.

In addition, as discussed later in Part 5, if the CSA were to discontinue embedded commissions, the CSA would aim for a transition period sufficient to allow market participants time to adjust their business models with the objective of mitigating any investor harm. Finally, as has been the case with the introduction of CRM2 and POS, we anticipate that the industry will find it in its interest to educate and prepare their clients for such a change in order to minimize disruption to its business.[125]

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[120] For example, see the discussion in MFDA Bulletin #0689-P, supra note 24, regarding the cost disclosure requirements for dealers that do not receive commissions but instead receive transfer payments from affiliates based upon a management agreement with the corporate parent. Also see previous research completed by CSA staff into advisor compensation practices.

[121] For example, to their related branch direct, branch advice, financial advisor, full-service dealer or private wealth management arm.

[122] See also Accenture, "2016 North American Consumer Digital Banking Survey, Banking on Value: Rewards, Robo-Advice and Relevance," 2016.

[123] Financial Conduct Authority, HM Treasury, *Financial Advice Market Review: Final report*, March 2016.

[124] Advice relating to a particular investment given to a person in their capacity as an investor or potential investor (or their agent) and relates to the merits of them buying, selling, subscribing for, or underwriting (or exercising rights to acquire, dispose of, or underwrite) the investment. See Financial Conduct Authority, *Finalised Guidance FG15/1: Retail investment advice: Clarifying the boundaries and exploring the barriers to market development*, January 2015 (http://www.fca.org.uk/static/documents/finalised-guidance/fg15-01.pdf).

[125] James Langton, "MFDA, IFIC help inform investors about pre-sale disclosure", *Investment Executive*, February 25, 2016; Rosemary McCracken, "Talk with your clients about compensation before CRM2 comes into effect", *Insurance & Investment Journal*, November 20, 2015.

It is possible, however, that the cost of *traditional* advice may rise for this group. 'Bricks and mortar' advice is also likely to decline for this group (although this change may occur anyway for this group over the next few years as account minimums to access advice may continue to increase).

As mentioned in Part 5, the transition to direct pay arrangements and the implementation of other regulatory reforms may lead to an increase in the cost of dealers' operations and compliance, which may lead to an increase in the cost of advice. Some investors may be pushed into online advice relationships, other more simplified forms of advice, or the online/discount brokerage channel even though these services may not meet all their needs and even though they may prefer, but can no longer afford, face-to-face advice.[126]

We do not anticipate that there would be a significant change in the fund products recommended through integrated mutual fund dealer firms although, as we have noted, the cost and performance of those products may change in reaction to new market entrants. There is also the possibility that some representatives may have less of an incentive to service clients after the initial sale were we to move to more widespread use of fee-based arrangements. This may lead to reverse churning.[127]

As the investor may not be equipped to negotiate the fees or may not fully appreciate that there is a cost to distribution, moving to a fee-for-service model could have the consequence of discouraging some investors from seeking financial advice, particularly where they are indirectly paying for but are not receiving advice (outside of the required suitability assessment) today, as they may be unwilling to pay a fee for such advice.[128] Finally, where representatives choose to offer their services to clients under a transaction-based commission arrangement, they may be incented to churn the account.[129]

ii. Investors with investable assets between $100k and $500k (mid-market)

Similar to investors with modest levels of accumulated wealth, we would expect this group to benefit from lower fund management costs, whether funds are actively or passively managed. We also expect that new players entering the market would tend to target this group and their usage of passively managed funds would likely increase. A transition away from embedded commissions will likely drive a shift in products recommended by representatives and made available on the dealer product shelf toward lower-cost and passively managed funds, which could improve investor outcomes. We expect client engagement with this segment of investors to increase with respect to the services and advice options offered (e.g. full, partial, à la carte options). These different types of service and advice options are likely to give investors more control and more clarity over the advisor/client relationship. This group is also likely to be offered more discretionary advice over time.

Similar to the push toward online advisory services for investors with less than $100,000 to invest, it is possible that some "buy-and-hold" investors may be moved into fee-based accounts when transaction-based fees may be better for their circumstances (we note that this shift is already occurring today). We anticipate that the concept proposals outlined in CSA CP 33-404, if implemented, would limit this potential impact. As outlined above, there is also the potential for reverse churning in these arrangements.

iii. Investors with investable assets above $500k (affluent)

We anticipate that this group of investors will be the least impacted by the discontinuation of embedded commissions as they are the most likely to be using non-embedded forms of dealer compensation today. They would, however, likely benefit from the fund management cost declines outlined above. As with the other two investor groups, representatives at private wealth management firms and representatives at IIROC dealers would likely focus more on recommending lower-cost and passively managed funds to their affluent clients where it is appropriate to do so. Usage of discretionary advice is likely to go up substantially for this group. We anticipate similar potential negative impacts as those anticipated for the other two investor groups. Given that the affluent group of investors is the most sought after by advisors today, we anticipate that they will continue to be provided the most flexibility in terms of payment arrangements and the most number and scope of advice delivery and service offerings.

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[126] We note however that recently released data on the cost of fee-based – percentage of asset fee – charges in the U.K. post-RDR suggest the fees are not too different from the fees charged today in Canada. Initial fees of 1% to 3% with annual ongoing fees of 0.5% to 1% of assets (see Financial Conduct Authority, *Data Bulletin Issue 7,* October 2016, page 11).

[127] Churning typically occurs when a dealer engages in excessive buying and selling of securities in a customer's account chiefly to generate commissions that benefit the dealer. In contrast, "reverse churning" occurs when a dealer places a customer's assets in a fee-based account (or receives some form of asset based compensation) chiefly to collect the fee then subsequently does little for the client, in terms of actual advice, trading or account activity, in exchange for that fee.

[128] A recent article questions how much advice is provided to the typical advised client given the number of clients typically serviced by the average advisor (see Dan Hallett, "Advice gap exists now," Investment Executive, Mid-November 2016.

[129] Although churning is something that can typically be detected easily and that self-regulating organizations (**SRO**) and compliance officers routinely check for.

iv. Do it yourself investors

For DIY investors, the discontinuation of trailing commissions would significantly lower costs as we would expect them to benefit from the decline in fund management costs and the removal of the full trailing commission costs they often pay today. The supply of DIY fund series options may also increase from 493 today to 4,901 options (based on a comparison of the D series and F series available today). These investors will, however, be required to pay transaction-based or asset-based fees directly, to offset the revenue lost from trailing commissions. We do not expect these payments to be any higher than the trailing commissions paid on DIY fund series today – typically 0.25% – which would represent a 75 bps decline from what they would typically pay today.

b. Dealers and investment fund managers

Based on the facts outlined in the previous sections of Part 4, we anticipate that, if we were to discontinue embedded commissions, all industry stakeholders would take the necessary steps to adapt to direct pay arrangements by innovating, segmenting their products and services, and using new technologies, to the extent possible within firm specific resource constraints.

i. Independent investment fund managers

As outlined previously, we expect fund management costs to decline and the share of lower-cost funds and passively managed funds sold in Canada to increase over time. Given that total mutual fund assets have been growing at an average 7.2% per year over the last ten years, we anticipate that a potential increase in the sale of passively managed funds would not necessarily involve a decline in the sale of actively managed funds in Canada nor a decline in the total dollars invested in actively managed funds.

We also estimate that, based on current five year fund alphas, there would be some proportion of actively managed fund assets likely at risk of experiencing redemption pressure. For relatively higher cost active investment fund managers with a large proportion of negative alpha funds and no access to affiliated dealer distribution today, there would likely be more challenges in the event that there is a discontinuation of embedded commissions. These investment fund managers could potentially have fewer options to cross-subsidize across business lines relative to their integrated investment fund manager peers.

We do anticipate, however, that the remaining active investment fund managers are more likely to be high alpha producing firms. For those active investment fund managers that do not pay trailing commissions or pay relatively lower trailing commissions today, it is reasonable to assume that they will have better access to the discount brokerage channel than they do today.[130] The discontinuation of embedded commissions could also provide high alpha generating independent investment fund managers with a better opportunity to access the IIROC channel and the independent MFDA channel than is the case today as we anticipate that fund performance would become a more important driver of fund flows resulting in a shift in market share towards these managers.

While we anticipate increased access to lower-cost fund products in the IIROC and independent MFDA platforms, we also anticipate that independent investment fund managers will still be at a disadvantage as they may not be able to gain access to those firms with closed, proprietary only, product shelves (predominantly deposit-taker and insurer owned MFDA firms). As an alternative, these investment fund managers may be required to set up a direct to client channel and obtain a dealer registration in order to compete in this space or alternatively, access these investors via a third party online advisory service.

ii. Independent mutual fund dealers

We anticipate that independent mutual fund dealers, similar to the situation for investment fund managers, would be required to compete more on their overall level of services and advice in a market that is likely to be transformed significantly by automated solutions and technological change generally over the next few years. Despite the increase in competition, there may be opportunities that arise for these firms as well.

The introduction of more low-cost fund products is likely to allow independent dealers, at least initially, to put pressure on their integrated fund dealer competitors. Representatives at independent firms will be further encouraged to study the product market on behalf of their clients with price and performance in mind which may result in better recommendations and better outcomes for their clients over time. Representatives are also likely to have access to more tools that will allow them to service a wider range of clients than is the case today.[131] It is possible that, similar to the case for independent investment fund managers, these firms could have fewer cross-subsidization options relative to their integrated fund dealer peers.

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130 Gail Bebee, "Choosing a discount broker", *Morningstar Canada*, April 15, 2014

131 Some established online advisory firms are now offering advisor access to their platforms to help financial advisors better serve small retail investors and reduce the administrative burden related to the administration of smaller accounts. See for example, Tessi Sanci, "Wealthsimple for Advisors readies for launch", *Investment Executive*, May 11, 2016 (http://www.investmentexecutive.com/-/wealthsimple-for-advisors-readies-for-launch) and Wealthsimple website (https://www.wealthsimple.com/advisors).

We anticipate that some independent dealers, if they cannot explain their value proposition, may have trouble maintaining their assets under administration. However, this may already become a trend to a certain degree with the introduction of the annual report on charges and other compensation (CRM2), whether or not embedded commissions are discontinued. Client engagement for the remaining firms will increase as will the service options that can be offered to clients.

There is also a risk that some dealers and representatives that can recommend non-securities products may prioritize their compensation interests over the interests of their clients by inappropriately shifting their clients' assets to non-securities investment products with embedded fees.[132]

All things being equal, following the discontinuation of embedded commissions, it is expected that dealers will compensate for the loss of revenue from embedded commissions with revenue from direct pay arrangements. It is possible that the discontinuation of embedded commissions may disadvantage small-to-medium sized independent mutual fund dealers relative to full-service IIROC dealers because they rely more heavily on embedded commissions than do IIROC dealers.

As at September 2014, trailing commissions represented approximately 27% of the fee revenue and mutual fund commissions represented 16% of annual commission revenue for full-service IIROC dealers.[133] We recognize that this change will represent an important shift in the business model of independent MFDA dealers and, were we to move forward, the method by which we would transition would be key to its success (as outlined in Part 5 of this Consultation Paper).

iii. *Integrated financial service providers*

We set out below the potential impacts specific to a dealer or an investment fund manager that is part of an integrated financial service provider. The impacts outlined above may also apply to them to a certain degree.

For the asset management arms of integrated financial service providers, we anticipate that new entrants to the market would put pressure on asset management pricing. Integrated investment fund managers would likely need to lower their asset management pricing to compete. They would also likely need to reassess their product pricing and would be encouraged to distribute their low-cost, passively managed fund options. It is important to note however that, given their access to their closed shelf related mutual fund dealer channel, these firms would likely not feel the same pricing and redemption pressure as their independent investment fund manager peers, at least initially.

For integrated dealers that choose to be open shelf, due to the potential introduction of the enhancement to KYP obligations as currently outlined in CSA CP 33-404, representatives may be required to study the market, including the use of non-proprietary funds, on behalf of their clients with price and performance in mind which could result in better recommendations and better outcomes over time.

For integrated dealers that choose to offer a closed shelf, as mentioned above, they would not feel the same level of pressure and would, at least initially, still be able to operate mostly as they do today, although as previously mentioned, the cost of the proprietary funds offered may fall. Furthermore, we would anticipate that both the discontinuation of embedded commissions and the potential KYP reforms proposed in CSA CP 33-404 would be unlikely to reverse, and may even increase, the trend toward retaining mid-market and affluent households within the branch network[134] (rather than referring them to their related party open shelf platforms or private wealth management arms). Integrated firms as a whole would have more options, at least initially, to cross subsidize across both securities and non-securities business lines to maintain market share.

Over time however, it is reasonable to assume that even these firms would feel pricing pressure in their closed shelf distribution channels which may incent these firms to embrace new technologies, adopt new pricing strategies and service offerings and rely less on traditional advice (many are already doing so). Furthermore, the potential entrance of low-cost hybrid online adviser models into Canada would likely put further pressure on the integrated fund distribution model.

Now that we have looked at the potential overall and specific market impacts of the discontinuation of embedded commissions, we discuss how this policy change may address our identified concerns.

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[132] Such recommendations would however have to be in compliance with the requirements of the regime applicable to non-securities products. If an important shift to non-securities products were to happen, we would assume that the SROs and regulators of non-securities products (including some CSA members) would remain vigilant and take any necessary action in the case of non-compliance. Non-securities regulators are increasingly considering regulatory initiatives in order to ensure a harmonized approach with securities regulators on similar products. See Part 3. Also, with the introduction of POS and CRM2, we continue to monitor the potential for regulatory arbitrage. We note the data in Figure 5 above showing assets and growth rates of mutual funds versus other investment funds does not suggest that regulatory arbitrage is occurring today. This is also borne out when we look at net sales and sales rates for these products and advisor dual licensing.

[133] Investor Economics, *Retail Brokerage and Distribution Advisory Service*, Fall 2015 edition.

[134] On the increase in the client wealth "ceiling" within the branch network see, Investor Economics, *Retail Brokerage Report*, Fall 2012, page 10.

4. How does the discontinuation of embedded commissions potentially address some of the CSA's concerns?

Eliminating important inherent conflicts of interest

The discontinuation of embedded commissions would eliminate an important inherent conflict of interest that research has shown misaligns the interests of investment fund managers, dealers and representatives with those of investors. Our analysis leads us to believe that discontinuing embedded commissions would increase investment fund managers' focus on fund performance and discourage biased recommendations that may prioritize the maximization of compensation over the interest of the investor. The discontinuation of embedded commissions would also eliminate the incentive for representatives to potentially engage in unsuitable leverage strategies (as explained in Appendix A). The discontinuation of embedded commissions is the clearest and most direct way to address these conflicts of interest. In addition, when combined with certain concepts in CSA CP 33-404, if implemented, the representative-client compensation discussion is more likely to result in a compensation arrangement that is more appropriate for the client's situation.

The discontinuation of embedded commissions also complements the proposals outlined in CSA CP 33-404. Generally, jurisdictions that have enhanced the advisor's standards and obligations have eliminated embedded commissions at the same time (as outlined in Appendix C) because they have recognized that these payments are one of the main obstacles preventing the advisor from working in the interest of their clients. Research suggests that these payments are a conflict that is very difficult to manage or mitigate, except through avoidance.[135]

Addressing dealer affiliation biases

To a lesser extent, discontinuing embedded commissions may address some dealer affiliation biases directly through the IIROC channel where representatives are paid trailing commissions and indirectly through the mutual fund dealer channel where, despite the focus on proprietary products, asset management fees would need to fall in-line with the rest of the market in order to be competitive on total costs. We recognize that discontinuing embedded commissions does not address all dealer affiliation issues. However the proposals outlined in CSA CP 33-404, if implemented, in conjunction with this proposal may address some conflict issues with respect to internal compensation arrangements at the dealer.[136]

Reducing the number of mutual fund series and the fee complexity that these series create

The fund fee structure has grown increasingly complex due to the growing number of fund series on offer, with each series charging different fees (largely due to differences in dealer compensation). We anticipate that the discontinuation of embedded commissions would significantly simplify the fund fee structure in Canada, facilitate easier product cost and performance comparisons, and incrementally reduce information asymmetry for all market participants (in particular, for retail investors).[137]

Increasing the transparency of dealer compensation costs

We anticipate that eliminating embedded commissions would address fund fee and dealer compensation awareness concerns. Unlike disclosure, which only requires delivery and not understanding, the discontinuation of embedded commissions requires the representative to engage in an in-depth discussion with the client and obtain the client's agreement upfront in order to get paid.[138] More general compensation disclosure such as when a new product is being introduced to the portfolio (fund facts) or more specific compensation disclosure 12 months after engaging the representative (CRM2) serves many purposes and is important, but research suggests that this may not be as effective as an upfront discussion and agreement regarding compensation.

Better alignment between the costs paid by investors for financial advice and the services provided to clients by dealers and representatives

The discontinuation of embedded commissions, replaced by an upfront discussion and agreement regarding compensation, also addresses the questions regarding what fees are being paid and more importantly, what they are being paid for. As we have seen already with high net worth client relationships, moving to a direct pay model may allow services and pricing to be more easily tailored to the client's needs.[139]

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[135] Note that Part 6 of this Consultation paper also explores these issues in the context of why existing reforms may not go far enough.

[136] See CSA CP 33-404, Appendix A.

[137] See for example, Dan Hallett, "Be wary of unmentioned fees in ads for F-Series funds", *Globe and Mail*, May 30, 2016.

[138] The outset of the relationship is arguably when the investor has the highest level of bargaining power as a opposed to 12 months after the engagement of the advisor when they receive their cost disclosure statements and the investor may incur switch costs to make a change.

[139] Advisors making the switch to fee-based and other direct pay arrangements today are routinely counselled to make sure that they understand and can communicate their value proposition to their clients before making the change. See for example, Ahmad Hathout, "Transition to fees requires support", *Investment Executive*, June 2016.

The discontinuation of embedded commissions would incent investment fund managers, dealers and representatives to be clear about, and to better demonstrate, their respective value propositions. It also allows DIY fund investors to forgo advice and the cost of advice.

In addition, after the discontinuation of embedded commissions, the representative-client compensation discussion is more likely to result in a compensation arrangement that is most appropriate for the client's situation. Transition to direct pay arrangements may also help to increase investors' control over dealer compensation costs and the services provided.

Encouraging new lower-cost fund providers to enter the market

The discontinuation of embedded commissions may encourage new low-cost fund providers to enter the market with a range of passive and actively managed funds. These new entrants will likely service retail investors in all wealth segments as they do today in other jurisdictions in which they compete.

Increasing price competition and decreasing fund management costs

It has been well-documented that one of the things new lower-cost entrants bring to the markets that they enter is significant competitive pressure on incumbents to decrease fund management costs over time.[140] We anticipate that their entrance will encourage the manufacturing and distribution of lower-cost funds. We would expect to see a shift in product recommendations to lower-cost and passively managed products, and a shift in the allocation of capital across active investment fund managers that will ultimately benefit investor outcomes.

Questions

Where possible, we strongly encourage commenters to provide data to support responses.

Addressing the issues

12. Based on a consideration of the data and evidence provided in this Part, would a proposal to discontinue embedded commissions address the three key investor protection and market efficiency issues discussed in Part 2?

13. Are there other ways in which the CSA could address these issues that could be introduced in conjunction with, or separate from, the discontinuation of embedded commissions?

14. Are there other conflicts of interest that could emerge following a transition to direct pay arrangements that would not be addressed in the current securities regulation framework?

Change in investor experience and outcomes

15. What effect do you think the removal of embedded commissions will have on investor experience and outcomes? In particular:

    - Will investors receive advice and financial services that are more aligned with the fees they pay?
    - What effect will the proposal have on the growth of automated advice? Is this likely to be beneficial to investors?
    - Is discretionary advice likely to increase in Canada as we have seen in the other markets that have transitioned away from embedded commissions and, if so, would this shift be positive or negative for investors?
    - What effect will the proposal have on the growth of the online/discount brokerage channel and cost of fund products offered in this channel? Is this likely to be beneficial to investors?
    - What effect will the proposal have on the cost and scope of advice provided to specific investor segments?

16. What types of payment arrangements are likely to result if this proposal is adopted? In particular:

    - Would the payment arrangements offered by dealers to investors differ based on investor segment? If so, how and why?

[140] See for example, "Index we trust", *The Economist*, June 11, 2016.

17. Do you think this proposal will lead to an advice gap? In particular:

- Which segments of the market are likely to be affected? Please consider segmentation by wealth, geography (size and location of community e.g. remote, small, medium, large), age, technological sophistication, the level of fund ownership across households, etc.
- Do you agree with our definition of an advice gap?
- Should we differentiate between an advice gap for face-to-face advice and an advice gap generally?
- What types of advice or services currently provided today would be most affected by the proposal?
- Are there any potential interactions between this proposal, existing reforms such as CRM2 and other potential reforms such as CSA CP 33-404 that may affect the size of any potential advice gap?
- How could a potential advice gap, face-to-face advice gap or financial service gap be mitigated?
- Do you think that online advice could mitigate an advice gap? If so, how?
- Do you think that the significant market share of deposit-taker owned and insurer-owned dealers in fund distribution in Canada will affect the size or likelihood of an advice gap to develop?

Industry change independent of regulatory response to discontinue embedded commissions

18. Given some of the changes we have seen in the industry over the past few years (fee reductions, introduction of DIY series, streamlining of fund series, automatic fee reductions increasing access to fee-based options etc.), what is the likelihood that the fund industry will transition away from embedded commissions without regulatory action? In particular:

- Will the industry continue to transition away from embedded commissions if the CSA does not move forward with the proposal?

19. How accurate is Figure 8 regarding the purchase options available to fund investors by channel, account size and firm type? In particular:

- Do you see payment options and business models evolving at present?
- How are they likely to change over time if the CSA were to choose not to move forward with the proposal?

20. We note that the distribution of fee-based series is still relatively limited in Canada versus other markets. Are there obstacles (structural, operational, regulatory, investor demand, etc.) specific to Canada limiting the use of fee-based series by dealers?

Potential impact on competition and market structure

21. Please describe how discontinuing embedded commissions will affect competition and market structure and whether you agree with the analysis set out in Part 4? In particular:

- Do you think the proposal will have an impact on the level of industry consolidation or integration? What about with respect to the concentration of mass-market investor assets held in investment products managed by deposit-taker owned firms?
- What are the likely impacts on investor outcomes and market efficiency of any potential consolidation?
- What opportunities and what challenges do you think the proposal would introduce for specific industry stakeholder groups?
  - Independent dealers?
  - Independent fund manufacturers?
  - Integrated financial service providers?

    - Mutual fund dealers?
    - IIROC dealers?
    - Online/discount brokers?
- What is the likelihood and magnitude of regulatory arbitrage across similar financial products such as segregated funds and deposit-taker products?
- What would be the impact on dually-licensed mutual fund dealers and insurance agents?
- Will the proposal lead new, lower-cost entrants to the market? Why and how?
- Does the interaction between this proposal and the proposals set out in CSA CP 33-404 change your responses to the questions above and, if so, how?
- Will a transition away from embedded commissions reduce fund series and fee complexity, as we have contemplated?
- Do integrated financial service providers have an advantage in terms of their ability to cross-sell and cross-subsidize across business lines? If so, how?
- What are the potential effects on competition of the rise in online advice? Are these effects likely to be large and positive?

22. What impact will the proposal have on back office service processes at the investment fund manager or at the fund dealer? In particular:
    - Is there any specific operational or technological impact that we should take into consideration?

23. The payment of embedded commissions requires the dealer and the investment fund manager to implement controls and oversight (with associated compliance costs) in order to mitigate the inherent conflicts of interest today.
    - Would the transition to direct pay arrangements alleviate the need for some of these controls and oversight?
    - To what extent, if any, does the use of direct pay arrangements by representatives today (e.g. when a representative provides services under a fee-based arrangement) alleviate the need for some of these controls and oversight?

24. Embedded commissions, especially trailing commissions, provide a steady source of revenue for dealers and their representatives. If embedded commissions were discontinued, would dealers be able to compensate for the loss of this revenue with direct pay arrangements?

25. Aside from commission grids and salaries, what other approaches to representative compensation might dealers use if we were to discontinue embedded commissions? How are these approaches likely to change over time?

26. What impact will the proposal have on representatives in the industry? In particular, what impact will the proposal have on the:
    - career path;
    - attractiveness of the job;
    - typical profile of individuals attracted to the career;
    - recruitment; and
    - relative attractiveness of careers in competing financial service business lines?

PART 5 – MITIGATION MEASURES

The CSA appreciate that a transition to direct pay arrangements would be a significant policy change that would take considerable time to implement and that may have unintended consequences for both investors and fund industry participants. Therefore, to the extent we may decide to move forward with a rule proposal discontinuing embedded commissions, our goal is to proactively identify and incorporate into our rule proposal various mitigation measures as well as transition options that could help alleviate any negative impacts and facilitate a successful transition to direct pay arrangements.

1. Measures to mitigate potential unintended consequences

In response to our Original Consultation Paper, several fund industry stakeholders submitted that the discontinuation of embedded commissions could have unintended consequences for retail investors and the fund industry,[141]including:

- a reduction in access to advice for lower-wealth investors due to:
  - substantial changes to dealer business models, and
  - reticence of investors to pay directly for advisory services;
- the elimination of choice in how investors may pay for financial advice; and
- an uneven playing field among competing products and opportunities for regulatory arbitrage.

a. Access to advice:

The data we consider in Part 4 on Canadian fund investors and the institutions that currently serve them suggests that the discontinuation of embedded commissions is not likely to lead to a significant advice gap for lower-wealth investors in Canada. Nevertheless, we recognize that such a change may (i) impact dealer business models in a way that may reduce the range and affordability of advice and (ii) affect the behavior of certain investors in a way that may reduce their use of advice.

i. Impact to dealer business models

We recognize that a transition to direct pay arrangements would involve substantial changes in current dealer business models. The transition could have the following potential impacts on dealers, among others:

- dealers may incur potentially costly changes in information technology systems, as well as changes in operational and compliance processes, that may increase the cost to provide advisory services[142];
- the transition would require dealers and their representatives to communicate with their clients to inform them of, and obtain their agreement to, the direct pay arrangement;
- going forward, dealers would need to collect their compensation directly from their clients on an individual basis, rather than be compensated on a wholesale basis through trailing commissions; this change would impose new administrative processes which may reduce efficiencies and increase costs; and
- overall revenues may be reduced due to the loss of a form of cross-subsidy from high net worth fund investors to lower-wealth fund investors; this change may increase the cost of servicing lower-wealth investors.[143]

We acknowledge that these potential impacts could be magnified for smaller independent dealers. Some dealers may not be able to adequately compensate with direct pay arrangements their loss of revenue stemming from the discontinuation of embedded commissions and the costs associated with the transition. Some dealers and their representatives may decide to refocus their business on high net worth fund investors and/or charge a fee for advisory services that some investors may not be able to afford, thus increasing the potential for certain investors to lose access to advisory services.

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[141] See CSA Staff Notice 81-323 *Status Report on Consultation under CSA Discussion Paper and Request for Comment 81-407 Mutual Fund Fees*, published on December 17, 2013, which provides a summary of the key comments received on the Original Consultation Paper.

[142] We note these costs would be in addition to those already incurred in connection with the implementation of POS and CRM2 and the costs associated with the potential implementation of any of the CSA CP 33-404 proposals.

[143] Industry stakeholders have submitted that lower-wealth investors in a fund benefit financially from the current embedded commission structure because the cost of providing advice and services to lower-wealth investors is subsidized by the higher-wealth investors in the fund who pay more on account of their larger assets under management. It is reasonable to assume that the mandated use of direct pay arrangements would eliminate this pooling of fees from both higher-wealth and lower-wealth investors and cause the price of servicing lower-wealth investors to increase.

We anticipate that some of these impacts could be alleviated to some extent by innovations in technology, including various forms of online advice, which could be used by dealers and their representatives to automate part of the advice process.[144] The integration of such technology into the business models of dealers and their representatives could potentially add new capabilities and deliver efficiencies that could make the provision of advisory services to smaller accounts more viable.

We think they could also be alleviated to a certain extent by our proposal, as discussed in Part 3, to allow investment fund managers to facilitate investors' payment of dealer compensation by collecting payments from the investor's fund investment (for e.g. deductions from purchase amounts or periodic withdrawals or redemptions from the investor's account) and remitting them to the dealer on the investor's behalf.[145]

ii. Impact to investor use of advice

We recognize there are a number of factors, including behavioral factors, which may influence the decision of investors to use financial advice.[146] For example, the requirement for investors to directly pay for advisory services provided by their representative under direct pay arrangements may affect the behavior of certain investors in a way that may reduce their use of advice. Specifically, some investors may consider direct payments less convenient relative to the current embedded commission model, which may accordingly deter them from seeking advisory services.

We also understand that retail investors' varying levels of financial literacy and lack of frame of reference as to what is a reasonable fee for advisory services may reduce their ability to assess the value of such services or to negotiate a fair fee under direct pay arrangements.

In order to address the risk that some investors may be deterred from using financial advice due to the requirement to pay upfront for their representative's services, we would propose, as discussed in Part 3, to allow investors to pay for their representative's compensation through deductions from their purchase amounts or redemptions from their investment fund holdings that would be effected by the investment fund manager and remitted to the dealer on the investor's behalf.[147]

A factor which may further mitigate the risk that investors may not want to pay upfront for advice is the extent to which the front-end purchase option – where investors may pay both a direct commission at the time of purchase and an ongoing embedded trailing commission – is currently used by investors in Canada. As discussed in Part 4, assets held under the front end purchase option made up 24% of the market ($298 billion) at the end of 2015, growing 93% over the previous five years. Investors who make their fund investments under the front-end purchase option may be more sensitized to upfront fees for advice and may accordingly be less affected by a transition to direct pay arrangements.

As for the issue of low financial literacy potentially hindering investors' ability to assess the value of advisory services or to negotiate fair fees for such services, the CSA anticipate continuing to work on investor literacy initiatives to increase investors' awareness of investing costs and empower them to confidently engage in the negotiation of fees with their representative. We also expect that our recent POS and CRM2 reforms (further discussed in Part 6) will improve investors' awareness and understanding of fund and dealer compensation costs in the lead up to any potential rule proposal discontinuing embedded commissions. This improved awareness and understanding in turn should give investors an initial point of reference from which to gauge the appropriateness of advisory fees under direct pay arrangements.

However, industry participants have submitted that a transition to direct pay arrangements would decrease the transparency of dealer compensation costs as investors would not have any benchmark to help them assess the reasonableness of the fees they are paying for advice. As discussed in Appendix B, the CSA considered the option of making certain enhancements to cost disclosure, including providing certain benchmarking information on product and advice costs. However, we identified certain drawbacks to that option which led us to decide not to further pursue it at this time. If we decide to proceed with the discontinuation of embedded commissions, we anticipate further exploring the potential issue of reduced cost transparency.

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[144] Some Canadian firms are now offering online advice services designed for use by advisors. See note 131.

[145] We recognize that not all investment fund managers may have the capability to offer this service to dealers. Some investment fund managers may need to implement new systems and processes and may therefore incur additional costs to offer this option.

[146] In their *Financial Advice Market Review: Call for input* (October 2015), https://www.fca.org.uk/publication/call-for-input/famr-cfi.pdf, the Financial Conduct Authority and HM Treasury identified eight factors preventing people from seeking financial advice. These factors include: 1) the price of advice; 2) the lack of trust investors have toward financial advisory firms; 3) investors' lack of knowledge of their need for financial advice and how to obtain it; 4) investor overconfidence – believing they do not require help in making financial decisions; 5) investors' access to face-to-face advice; 6) the lack of engagement, where investors who are disengaged with financial services are unlikely to seek financial advice; 7) the lack of skills to use new channels such as the internet if available, and 8) the lack of need for financial advice.

[147] We recognize that periodic redemptions may trigger tax consequences (i.e. capital gains or losses) for some investors. Investors would need to understand the potential tax consequences of this method of payment before agreeing to it.

b. Choice for investors

Several fund industry stakeholders submit that the discontinuation of embedded commissions will eliminate the ability of investors to choose[148] the payment arrangement they prefer and that is most convenient to them, and force all investors to enter into fee-based arrangements under which they would have to pay a fee that is based on a percentage of their assets under administration.

We recognize that fee-based arrangements may not be suitable for all investors in all circumstances. Accordingly, as discussed in Part 3, we expect that further to the discontinuation of embedded commissions, dealers and representatives would offer their clients a compensation arrangement that suits their particular investment needs and objectives and reflects the level of service desired. Such compensation arrangements could include commissions on trades, hourly fees, a flat fee, a fee-based arrangement, or other suitable arrangement. We would expect representatives to fully inform their clients of the types of accounts available, and the differences between those accounts, both in terms of service and cost. Our expectation is that investors would have more choice in how they may pay for advisory services further to the discontinuation of embedded commissions, not less.

c. Uneven playing field and regulatory arbitrage

Several fund industry stakeholders submit that to require mutual funds to move away from embedded commissions would create an uneven playing field between mutual funds and competing financial products with embedded commissions, including banking and insurance investment products. As discussed in Part 3, we anticipate that any rule proposal we might undertake would discontinue embedded commissions for all types of investment funds and similar products that are governed by securities regulation. The rule proposal would capture not only conventional mutual funds, but also ETFs, non-redeemable investment funds, and structured notes, whether sold under a prospectus or in the exempt market. Accordingly, this would assure a level playing field amongst investment fund and fund-like products that the CSA regulates.

We recognize the potential for regulatory arbitrage in banking and insurance products, and as discussed in Part 3, the CCIR does as well. It is examining potential gaps in the regulatory framework for segregated funds and assessing the risk of regulatory arbitrage by dually-licensed insurance agents and has indicated an intention to act proactively to amend regulation where appropriate to address this risk. The CSA plans to continue to liaise with other regulators to discuss the risk of dealers and representatives prioritizing their compensation interests over the interests of their clients by inappropriately shifting their clients' assets to other investment products with embedded fees.

Questions

27. How practicable are the mitigation measures discussed and how effective would these measures be at assuring:

    - access to advice for investors,
    - choice of payment arrangements for all investor segments, and
    - a level playing field amongst competing investment products?

28. What other measures should the CSA consider to mitigate the above unintended consequences?

29. Other than the potential impacts we have identified in Part 4, what other potential unintended consequences, including operational impacts and tax consequences, may arise for fund industry stakeholders and investors further to the discontinuation of embedded commissions? In particular:

    a. Would there be a negative tax impact to investors associated with their payment of dealer compensation under direct pay arrangements? In particular, would the investor's payment of dealer compensation through periodic fund redemptions facilitated by the investment fund manager attract tax consequences? Please explain.

    b. To the extent a transition to direct pay arrangements results in the rationalization of fund series, could this rationalization attract negative tax consequences for investors?

[148] Many fund industry stakeholders submit that investors currently have the option of choosing fee-based arrangements by investing in a fee-based series of a fund (for e.g. Series F). In Parts 2 and 4 and Appendix A of this Consultation Paper, we suggest that the fee-based series may not be a true option for all investor segments due to the fact that dealers offering fee-based arrangements typically require a minimum investment amount of $250,000 or more prior to establishing an account.

c. What, if any, measures, regulatory or otherwise, could assist in mitigating potential operational and tax impacts?

30. With respect to the loss of a form of cross-subsidy from high net worth investors to lower-wealth investors in a fund further to a transition to direct pay arrangements,

a. to what extent (please quantify where possible) would the loss of this cross-subsidy increase the cost of providing advice and services to lower-wealth fund investors under direct pay arrangements?;

b. does the existence of this form of cross-subsidy suggest that high net worth fund investors may be indirectly paying fees that are not aligned with the services they are receiving (i.e. do the fees they pay exceed the actual cost of the services and advice they receive?); and

c. what measures may mitigate the potential effects on dealers, representatives and investors from the loss of the cross-subsidy?

31. What measures could fund industry participants proactively take to mitigate the unintended consequences that may stem from the discontinuation of embedded commissions?

2. Transition options

We recognize that a transition to direct pay arrangements would require fund industry participants to adopt new business models that would likely entail the use of new systems and the adoption of new processes that would take a significant amount of time to set up and implement. We also recognize that this change would have important implications for investors, and that it would be essential for fund industry participants, including investment fund managers, dealers and representatives, to successfully manage their clients' experience during a transition.

Therefore, to the extent we may decide to move forward with a rule proposal discontinuing embedded commissions, we wish to identify potential transition options that could mitigate possible negative business and client impacts that may result throughout a transition.

With the foregoing in mind, we are currently considering a number of alternative measures that could be used to assist in promoting a successful transition while minimizing any resulting negative impacts. However, before we decide to implement any particular transition option, we want to ensure we have a full understanding of, and carefully consider, each option's potential impacts and consequences.

The following provides a brief discussion of some potential transition options we could consider. We seek your feedback on these options and any other possible options.

Option 1: Transition to direct pay arrangements within a defined transition period

One potential option could be to discontinue all embedded commission payments within a certain time period (the **Transition Date**) after the effective date of any final rule implementing such a transition (the **Effective Date**). For greater certainty, such payments would include trailing commissions and other ongoing service fees paid to dealers by an investment fund, investment fund manager or structured note issuer, and internal transfer payments from affiliates to dealers within integrated financial service providers which are directly tied to an investor's purchase or continued ownership of an investment fund security or structured note. The sale of investment funds by means of DSC purchase options would also cease upon the Transition Date.

Under this option, existing redemption schedules set by DSC purchase options (including those entered into before the Effective Date) could either be maintained after the Transition Date until the redemption schedule is completed (i.e. redemption fees could continue to be charged until the schedule expires in its normal course), or discontinued contemporaneously with all other payments at the Transition Date.

In our view, to successfully achieve a transition to direct pay arrangements, dealers would need sufficient time to design and implement direct pay arrangements, and representatives would need to meet with their clients to explain the upcoming changes and their associated impact.

Likewise, investment fund managers and structured note issuers would need sufficient time to modify affected areas of their business. For instance, we anticipate that issuers will likely rationalize the number of purchase options or series options offered for their investment fund products as a result of a transition to direct pay arrangements. Disclosure documentation will also need to be revised to account for changes that may result from the transition (for example, to account for the specific fees that may apply following the transition periods, or to account for any change in the number of purchase and series options).

Investment fund managers, structured note issuers, dealers and representatives would also need time to make necessary system, compliance, procedural and process changes needed to implement the potential transition. Issuers and dealers will also need time to coordinate and cooperate to successfully manage the associated client impact resulting from the transition (for example, to move clients from one series of a fund to another to the extent certain series are no longer offered).

Given what we understand will need to be completed by investment fund managers, structured note issuers, dealers and representatives, we recognize that it will be imperative to provide sufficient time to all affected parties to ensure a successful transition. In this regard, we suggest that a Transition Date of 36 months after the Effective Date could provide sufficient time to complete all required transition steps. We are open to other transition periods and encourage stakeholders to specifically comment on this point.

Option 2: Transition to direct pay arrangements by account

An alternate option could be to transition to direct pay arrangements in phases, by phasing in a dealers' account base over multiple periods. This approach would require dealers to transition a certain percentage of accounts by a certain date, a further percentage by a later date, and so on until all accounts have fully transitioned.

Similar to option 1, existing redemption schedules set by DSC and low-load purchase options (including those entered into before the transition) could either be maintained until the redemption schedule is completed (i.e. redemption fees could continue to be charged until the schedule expires in its normal course), or discontinued contemporaneously with all other payments at the Transition Date. Consistent with option 1, we anticipate that if the Transition Date were 36 months after the Effective Date, it could provide sufficient time to transition to the final percentage of accounts, but are open to other transition periods and encourage stakeholders to specifically comment on this point.

We recognize that there may be some logistical and practical constraints in transitioning to direct pay arrangements via a phased-in approach. For example, it may be difficult to coordinate tailored disclosure for investment products with the various time points, and it may also be difficult for issuers to rationalize their series and purchase options. We are therefore interested in your feedback on these potential approaches.

Questions

32. For each transition option, please tell us how your business (investment fund manager or dealer) would have to operationally change or restructure in terms of systems and processes and the related cost implications. Where possible, please provide data on the estimated costs.

    - Are there unique costs or challenges to specific businesses?
    - What transition period would be appropriate?
    - Should existing redemption schedules for DSC and low-load purchase options be maintained until the redemption schedule is completed, or discontinued at the Transition Date?

33. Which transition option would you prefer? Why? Are there alternative transition options that we should consider?

34. As discussed in Appendix B, the CSA did not retain the option of capping embedded commissions, either as a stand-alone solution to the key issues discussed in Part 2 or as an interim step toward an eventual discontinuation of embedded commissions. Should the CSA further consider using a fee cap as a transition measure? Why?

PART 6 – RELATED REGULATORY INITIATIVES AND EXISTING TOOLS

In this part, we consider the extent to which related CSA initiatives and existing regulatory tools may help address the market efficiency and investor protection issues we identified in Part 2. The initiatives and tools discussed below include:

1. The POS and the Client Relationship Model (**CRM**) disclosure requirements and enhancements;
2. Compliance review initiatives; and
3. The proposals under CSA CP 33-404.

1. Discussion of Point of Sale & CRM

Overview of POS and CRM reforms

Over the last several years, the CSA have through the POS and CRM reforms, enhanced the disclosure of fund fees and dealer compensation provided to investors at the point of sale, at account opening, and in the account performance reporting process. The POS and CRM reforms aim to improve investors' awareness and understanding of the initial and ongoing costs associated with their investment, including their dealer's compensation, in order to enable them to:

- make a more informed investment decision at the time of the initial sale; and
- assess the cost of the services their dealer and representative provides over the course of the registrant-client relationship.

The fee disclosure enhancements under the POS and CRM reforms are briefly summarized below.

i. Point of Sale

The POS reforms introduced the four page fund facts disclosure document that, as at June 13, 2014, has replaced the lengthier simplified prospectus as the document that dealers are required to send or deliver to investors in connection with a trade in a conventional mutual fund. As at May 30, 2016, the fund facts is required to be delivered to the investor 'pre-trade'; that is, before the dealer accepts an instruction from the purchaser for the purchase of the security.

The fund facts aims to improve fee transparency by disclosing, in summary form, the costs of buying, owning, and selling conventional mutual fund securities. The costs disclosed include:

- the sales charges that an investor may pay at the time of purchase and any deferred sales charges that an investor may pay if the securities are redeemed within a specified period after purchase, each expressed in percentages and in dollars based on a $1,000 investment;
- the commission, expressed on a percentage basis, that the investment fund manager pays to the dealer for purchases made under the DSC option;
- the range of the trailing commissions paid by the investment fund manager to the dealer for each purchase option, expressed both in percentages and in dollars based on a $1,000 investment; and
- the management expense ratio, trading expense ratio, and fund expenses, expressed in percentages. The fund expenses are also expressed in dollars based on a $1,000 investment.

To alert investors to the conflict of interest created by embedded compensation such as trailing commissions, the foregoing cost disclosure is required to be prefaced by a statement that "higher commissions can influence representatives to recommend one investment over another". The disclosure also includes a general description of what trailing commissions pay for.

While the fund facts document currently only applies to conventional mutual fund securities, the CSA will, at the time of publication of this Consultation paper, have published final rules introducing a similar summary disclosure document for exchange traded funds, called "ETF Facts".

ii. CRM

The CRM reforms, which have been implemented in phases over the last several years, introduced new requirements in a number of areas related to a client's relationship with a registrant. The first phase of CRM introduced relationship disclosure information delivered to clients at account opening (by explaining, for example, the types of products and services provided by the registrant), and comprehensive conflicts of interest requirements. CRM2 introduced new disclosure requirements relating to investment performance at the account level and the commissions and other amounts paid to dealers. A particular objective of this second phase was to increase mutual fund investor's awareness of trailing commissions paid to dealers. CRM2 was not intended to address product costs. Generally, the CRM reforms apply broadly to all types of securities held by a client.

As a result of the CRM reforms, at account opening, clients are now provided with more fulsome information on charges, including transaction charges, which they may expect to pay in connection with their investment. Where the investment is in mutual funds, for example, the information should include:

- the management fee paid by the fund;

- the initial sales charge and DSC options available to the client (along with an explanation of how such charges work); and

- any trailing commissions or other embedded fees paid in connection with the investment.

Following a transaction, clients are provided with a trade confirmation that includes disclosure of each transaction charge, deferred sales charge or other charge applying to a transaction, and the total amount of all charges. Thereafter, on an annual basis, the report on charges and other compensation now provides a summary of all charges incurred by the client and all compensation received by the dealer that relates to each account the client holds with the dealer, including:

- the total dollar amount of each type of transaction charge related to the purchase or sale of securities paid by the client during the period covered by the report, and the total amount of those charges;

- the total dollar amount of each type of payment, other than a trailing commission, that is made to the dealer or any of its representatives by a securities issuer or another registrant (e.g. an investment fund manager) in relation to registerable services to the client – this amount captures upfront commissions that investment fund managers pay to dealers for sales made under DSC arrangements; and

- the total dollar amount of trailing commission received by the dealer in connection with securities held in the client's account, accompanied by a statement advising the client that the trailing commission is paid by investment fund managers, that its amount varies depending on the purchase option selected, and that these fees affect the client because they reduce the amount of the fund's returns.

The client's annual investment performance report for each account held with the dealer also includes the following information to better enable the client to evaluate how their investments have performed:

- a detailed breakdown of all deposits into and withdrawals out of the account;

- the change in market value of the account (in dollars); and

- the annualized total percentage return of the account for the previous year, as well as the previous three, five, and ten years.

How POS and CRM may address the identified issues

The CSA will monitor the impact of the POS and CRM.[149] While we expect it will be a number of years before these impacts may be fully evaluated, generally, we expect the reforms to appreciably improve investors' awareness and understanding of mutual fund costs and performance, and make them more informed consumers of investment fund products and advice services. We anticipate that these improvements will partially address the key issues we have identified.

The following discussion provides further analysis for each of the key issues:

➢ Issue 1 – Embedded commissions raise conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of investors

We anticipate that the enhanced disclosure required at the time of sale (by the POS reforms), at account opening and annually thereafter (by the CRM reforms) will lead to increased transparency of fund costs and dealer compensation. The increased transparency should better enable investors to compare the costs of investing in one mutual fund over another, which should equip investors with better tools to manage the impact of fund costs on their returns.

The introduction of account performance reporting coupled with the heightened transparency of fund costs and dealer compensation (and in particular trailing commissions) may also cause investors to question the services that their representatives provide and allow investors to better assess the true costs and value of the services they receive. This awareness in turn may, over time, lead to changes in the consistency and level of services provided by dealers and representatives to investors, and the selection of lower-cost funds and, possibly, better performing funds. To the extent this occurs, we anticipate that investment fund managers may respond to dealers' different product demands by producing lower-cost funds and focusing more on performance, thus potentially increasing competition and market efficiency. The investment

[149] The CSA recently began a multi-year research project to measure the impacts of CRM2 and POS on investors and the industry. The research will measure outcomes related to investor knowledge, attitude and behavior, registrant practices, and fund fees and product offerings. It will cover activity from 2016 through 2019 and is expected to be completed in 2021.

fund manager response may be further shaped by the extent to which the POS and CRM reforms may cause clients to also question the cost of the investment fund manager.

Overall, these potential positive effects of enhanced disclosure on the registrant-client relationship and investment fund manager behavior may combat some of the harms resulting from Issue 1. However, we believe disclosure alone may fall short of fully addressing the inherent conflicts of interest under Issue 1 for the reasons below:

i. The research we have reviewed (see Part 2 and Appendix A) suggests that, as long as product embedded commissions continue to be permitted,

  a. the compensation bias in such commissions may continue to incent dealers and their representatives to recommend to investors products that give priority to maximizing revenue over the interests of clients – potentially impairing investor outcomes and market efficiency; and

  b. investment fund managers will continue to be incented to compete for sales on the basis of the compensation they pay dealers, reducing the likelihood that they will compete on the basis of performance and skill – potentially disadvantaging skilled fund managers who do not pay higher than standard trailing commissions or who do not pay any trailing commissions. As discussed in Part 2, this incentive can drive up fund costs overall and limit the availability of low-cost and passively managed funds, thus impairing competition and market efficiency;

ii. Research has shown that disclosure alone may not be an effective remedy at addressing conflicts of interest in an advisor-client relationship. Specifically, research suggests that advisors provide more biased advice when a conflict of interest is disclosed than when it is not, and that advisees may not sufficiently discount the advice to counteract the increased bias.[150] Further research also suggests that disclosure of a conflict of interest can have unintended, perverse effects such as advisees being more likely to follow conflicted advice.[151] To the extent such effects occur in the advisor-client relationship as a result of the disclosure, advice and decision making may be suboptimal leading to poor investor outcomes and decreased market efficiency; and

iii. Investors' high level of trust and reliance on their advisors for investment decisions may cause them to not thoroughly review disclosure documents and reports, and thus limit the benefits to be derived from disclosure. For example, a recent study conducted by the British Columbia Securities Commission (**BCSC**) found that, among other things, 89% of respondents described their existing level of trust in their investment representative as strong or very strong. This trust led some clients to place less importance on reading their account statements because they were confident that their representative was taking care of their investments.[152] Similarly, a recent survey conducted by the CSA shows that investors' primary source of investment information is their advisors, with 43% of investors classified as exclusively relying on their advisor.[153] To the extent that clients do not rely on disclosure for their investment decisions, the resulting benefits of the disclosure may be limited as they may not be fully informed with respect to all account fees and performance, and may not fully or effectively question or assess the services provided.

➢ Issue 2 – Embedded commissions limit investor awareness, understanding and control of dealer compensation costs

As discussed in connection with Issue 1 above, the enhanced and more prominent disclosure of fund fees, including embedded dealer compensation, should increase an investor's awareness and understanding of such costs and better equip them to manage the impact of those costs on their investment returns.

However, to the extent dealer compensation continues to be paid out of fund management fees, we think the POS and CRM reforms may only partially address Issue 2 for the reasons below:

i. The fund fee structure will remain relatively complex which, as discussed in Part 2, may continue to impede investors' understanding of dealer compensation costs and fund fees;

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[150] Daylain M. Cain, George Loewenstein and Don A. Moore, "The Dirt on Coming Clean: Perverse Effects of Disclosing Conflicts of Interest", *The Journal of Legal Studies*, Vol. 34, No. 1 (January 2005), pp. 1-25, http://www.arts.uwaterloo.ca/~dkoehler/ACC784/CainLoewensteinMoore2006.pdf.

[151] Sunita Sah, "The Paradox of Disclosure", *The New York* Times, July 8, 2016, http://nytimes.com/2016/07/10/opinion/sunday/the-paradox-of-disclosure.html?_r=0.

[152] BC Securities Commission, National Smarter Investor Study, Public Opinion Research (November 2015), https://investright.org/wp-content/uploads/2016/09/Smarter-Investor-Study-FULL-REPORT-1.pdf.

[153] The CSA Investor Education Study 2016, https://www.osc.gov.on.ca/documents/en/About/csa_investor-education-study.pdf.

ii. Investment fund managers will continue to determine the compensation paid to the dealer without any direct involvement of the client. This current arrangement limits a client's engagement in the dealer compensation process and consequently limits their awareness and control over that compensation.

Discontinuing embedded commissions would remove the investment fund manager from the dealer compensation process and enable the direct involvement of the client with their representative over the compensation paid. This involvement in turn may lead to greater fee awareness, as well as create opportunities for a client to negotiate, and have greater control over, the ultimate compensation paid.

- Issue 3 – Embedded commissions paid generally do not align with the services provided to investors

As noted in Issue 1 above, the increased performance reporting coupled with the increased saliency of fund costs and dealer compensation should cause investors to question the services provided by their representative. To the extent that investors respond to fund fee disclosure under CRM2 by either questioning the overall level of services and advice they are receiving from their representative or switching to lower-cost alternatives, we would expect the representative to respond by demonstrating their value proposition and reviewing the level of services provided. To the extent this change occurs, these disclosure reforms may improve the alignment between the embedded dealer compensation paid and the services provided to investors and therefore assist in addressing Issue 3. Nevertheless, embedded commissions will remain a "one-size-fits-all" fee that may not align well with the services and advice actually provided to individual investors in accordance with their specific needs, expectations and preferences. This misalignment in turn may cause some investors to pay more fees than necessary relative to the services received, thus impeding investment returns.

2. Discussion of Compliance Review Initiatives

Overview of the compliance review initiatives

Some CSA members are completing various compliance review initiatives on sales incentives that may give rise to conflicts of interest when distributing investment funds. In certain cases, the compliance initiatives are also being coordinated with the MFDA and IIROC.

While some reviews are completed and others are ongoing, the reviews include an examination of, among other things, practices that are designed to influence the selection of investment funds for distribution by a representative to clients. For example, in early 2016, the Ontario Securities Commission (**OSC**) completed a focused review of mutual fund sponsored conferences organized and presented by investment fund managers to assess compliance with NI 81-105. The OSC and the Autorité des marchés financiers (**AMF**) have also issued a survey requesting information from a sample of investment fund managers relating to management fee discounts that are based on total assets held by a dealer.

How the compliance review initiatives may address the identified issues

The CSA will monitor the results of the compliance reviews to determine the full extent to which the review addresses each of the market efficiency and investor protection issues identified. While the full effect of the reviews remains to be determined, the CSA do not at this time anticipate that the initiatives will, on their own, materially address the identified key issues.

The following discussion provides further analysis for each of the key issues:

- Issue 1 – Embedded commissions raise conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of investors

The CSA expect that the reviews may reduce the incidence of inappropriate practices designed to drive sales. To the extent inappropriate practices designed to drive sales are reduced, the CSA anticipate a reduced incentive for products to be recommended on the basis of inducements received by the representative – potentially leading to a shift in recommendations from funds that were inappropriately favored to those that may be more suitable for an investor. If these funds are better performing funds, the shift in recommendations may reward better performing investment fund managers with an increase in market share, which should in turn lead to greater competition in the marketplace and efficiency in general (as investment fund managers would face increasing pressure to compete on the basis of performance, and not on incentives they offer to dealers).

Given the foregoing, the CSA expect that the review may partially assist in addressing Issue 1. However, we do not anticipate that the review will fully address Issue 1 primarily because the payment of trailing commissions and other forms of embedded compensation will continue to be permitted. As a result, the conflicts of interest facing dealers and representatives will continue to be present, which may continue to encourage investment recommendations that may impair investor outcomes. Additionally, the continued presence of embedded commissions will not address the conflicts that exist at the investment fund manager level, maintaining the potential for underperformance and higher-costs overall.

➢ Issue 2 – Embedded commissions limit investor awareness, understanding and control of dealer compensation costs

The CSA do not expect the outcomes of the review to address Issue 2. As this initiative will be focused on incentives provided to dealers and representatives and is not disclosure or client focused, it is not expected to increase investors' overall awareness, understanding and control of dealer compensation costs and fund fees. Additionally, we do not anticipate the review having any impact on reducing the complexity of the mutual fund fee structure or on the industry generally.

➢ Issue 3 – Embedded commissions paid generally do not align with the services provided to investors

The CSA also do not expect the outcomes of the review to address Issue 3. Similar to Issue 2, as this initiative will be focused on incentives provided to dealers and representatives and is not disclosure or client focused, there are no aspects of this review that are expected to directly increase the alignment between embedded commissions and services provided to fund investors.

3. Discussion of the proposals to enhance the obligations of advisers, dealers and representatives toward their clients outlined in CSA Consultation Paper 33-404

Overview of CSA Consultation Paper 33-404

On April 28, 2016, the CSA published CSA CP 33-404 seeking comment on proposed regulatory action aimed at enhancing the obligations and duties of advisers, dealers, and representatives toward their clients. The proposals, which are in response to issues the CSA identified in the client-registrant relationship, include measures to:

- better align the interests of registrants to the interests of their clients;
- clarify the nature of the client-registrant relationship; and
- improve outcomes for clients.

The concept proposals outlined in CSA CP 33-404 introduce a number of targeted reforms to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that include, among others, proposals to strengthen the regulation of conflicts of interest, the know-your-client (**KYC**) and KYP requirements, the suitability obligation, proficiency of representatives, and the use of titles.

For example, with respect to the regulation of conflicts of interest, dealers and representatives would be required to respond to each identified material conflict of interest in a manner that prioritizes the interests of the client ahead of their own. Moreover, any disclosure given to a client about a conflict of interest would need to be prominent, specific, and clear. Importantly, the disclosure should be meaningful to the client to allow the client to fully understand the conflict, including the implications and consequences of the conflict for the client. CSA CP 33-404 states that disclosure alone is a generally inadequate mitigation mechanism because of its limited impact on a client's decision-making process.[154] That consultation paper also provides guidance on specific conflict of interest situations related to compensation practices.

The KYC process would also be improved to ensure it results in a thorough understanding of the client, and as a result would require a representative to gather more client-centered information relating to the client's investment needs and objectives, financial circumstances, and risk profile.

Amendments to the KYP process would explicitly require representatives to have sufficient knowledge of a product, together with the KYC analysis, to support a proper suitability analysis. Ultimately, this process would require representatives to thoroughly consider, among other things, the product strategies, features, costs and risks of each security on the firm's product list. Moreover, representatives would be required to understand and consider how a product being recommended compares to other products and how the recommendation would fit within the client's account and overall strategy.

Dealers would be required to identify whether they have a proprietary or mixed/non-proprietary product shelf. Dealers with a mixed shelf would be required to undertake a fair and unbiased market investigation of a reasonable universe of products to satisfy themselves they have a range of products that are most likely to meet the investment needs and objectives of its clients based on its client profiles.

The suitability analysis would also be reinforced to ensure that recommendations satisfy the following three broad elements: basic financial suitability, investment strategy suitability, and product selection suitability. Of note, the product selection suitability determination would need to take into account the impact on the performance of the product of any compensation paid to the registrant by the client or a third party in relation to the product.

[154] See CSA CP 33-404, Appendix A.

The proposals would also introduce new requirements aimed at increased proficiency for representatives, including increased proficiency of how product costs and investment strategies (such as active and passive) can impact investment outcomes for clients.

In addition to the targeted reforms discussed above, all of the CSA jurisdictions other than the BCSC are consulting on a regulatory best interest standard, accompanied by guidance, that would form both an over-arching standard and governing principle against which all other client-related obligations would be interpreted. Generally, a regulatory best interest standard would require that a registered dealer and its representatives deal fairly, honestly, and in good faith with its clients and act in its clients' best interests. Several CSA members have expressed strong reservations relating to the adoption of a regulatory best interest standard.

If the potential reforms outlined in CSA CP 33-404 are implemented, they would cover a broad spectrum of obligations for registrants and apply to all advisers, dealers and representatives, including those who are members of IIROC and the MFDA. Ultimately, these potential reforms are intended to work together to improve the overall client-registrant relationship.

How the CSA CP 33-404 proposals may address the identified issues

It is important to note that the concept proposals discussed in CSA CP 33-404 are not specifically designed to address the key investor protection and market efficiency issues identified in this Consultation Paper. The CSA will however monitor the development of those proposals over the consultation process and continue to evaluate the extent to which they may address our key issues. We consider that the potential reforms discussed in CSA CP 33-404 may, to the extent they are adopted in their current form, better align the interests of registrants with the interests of their clients, clarify the nature of the client-registrant relationship and improve outcomes for investors overall. The CSA expect that these potential reforms may assist in addressing, to a partial extent, the investor protection and market efficiency issues we have identified in this Consultation Paper.

The following discussion provides further analysis for each of the key issues:

- Issue 1 – Embedded commissions raise conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of investors

The CSA anticipate that the potential reforms discussed in CSA CP 33-404 would, if implemented, lead to better conflict of interest management that may, in turn, assist in mitigating the conflict of interest that embedded commissions raise for dealers and representatives. We are of this view for several reasons, including because representatives would be required to respond to conflicts of interest in a manner that prioritizes the interests of the client ahead of their own. With respect to dealer compensation, for example, dealers would need to assess whether any remuneration could reasonably be expected to inappropriately influence how representatives interact with their clients. To the extent that the compensation gives rise to a conflict, firms would need to ensure that there are adequate controls and oversight in place to mitigate the conflict. Importantly, if the conflict cannot be managed, it must be avoided.

We are also of the view that the CSA CP 33-404 proposals would lead to better conflict of interest management because dealers and representatives would specifically be required to consider the impact of their compensation on performance as part of the suitability analysis. To the extent a product is recommended because it benefits the dealer or representative, but there is another equally suitable product on the dealer's product list that would be less costly for the client, such recommendation would not comply with the suitability obligation or the dealer's general duties to their client.

As a result of the foregoing, the CSA anticipate that tied forms of compensation may play less of a role in product recommendations. Combined with the enhancements to KYC, KYP, suitability, and proficiency, the CSA anticipate that representatives' recommendations may shift to more suitable products that may be lower-cost and, possibly, better performing products. To the extent that the CSA CP 33-404 proposals result in shifts in product recommendations toward lower-cost and better performing products, we anticipate that those proposals may also have an indirect effect over time on investment fund managers as they may respond to these shifts by producing lower-cost funds and placing a greater emphasis on performance. This shift would potentially reward better performing investment fund managers with increased market share, thereby improving competition and market efficiency.

Given the apparent benefits of the foregoing, the CSA expect that the concept proposals outlined in CSA CP 33-404 (if adopted in its current form), in combination with the POS and CRM reforms as well as the compliance review initiatives, may address Issue 1. For the following reasons, we are nevertheless considering whether discontinuing embedded commissions may also be necessary.

Firstly, the proposals were not developed to address the conflict that embedded commissions raise at the investment fund manager level. As a result, the anticipated positive effects of the proposals on investment fund manager behavior (i.e. production of lower-cost funds and increased focus on performance), as well as the consequential positive effects on competition and market efficiency, are dependent on the effect the proposals have on representatives' recommendations. While

the extent to which representatives' recommendations would shift remains to be determined, there are certain aspects of the proposals that may lessen its ultimate impact on investment fund manager behavior, competition and market efficiency generally.

Until such time as dealer recommendations shift to the degree necessary to trigger change at the investment fund manager level (if at all), investment fund managers may continue to be incented to rely more on the payment of embedded commissions rather than on skill to sell their products and gain market share. As discussed in Part 2 above, the payment of embedded commissions can reduce a manager's focus on performance and lead to underperformance.

Secondly, the payment of embedded commissions is not addressed under CSA CP 33-404. Embedded commissions may continue to create a barrier to entry that may reduce the likelihood of lower-cost providers entering the market. As discussed in Part 4, the entrance of lower-cost providers may place competitive pressure on fund costs and encourage the manufacturing and distribution of lower-cost funds. Embedded commissions may also dampen the extent to which independent investment fund managers are able to access the IIROC and independent mutual fund dealer distribution channels. Taken together, these effects may limit price competition and market efficiency.

Finally, in our view, a potential discontinuation of embedded commissions may complement the concepts outlined in CSA CP 33-404. We are of this view because a discontinuation may remove the conflict of interest that embedded commissions raise for dealers, representatives and investment fund managers and may better align their interests with those of investors.

➢ Issue 2 – Embedded commissions limit investor awareness, understanding and control of dealer compensation costs

CSA CP 33-404 was not designed to address Issue 2. While transparency of fees may increase to the extent embedded dealer compensation arrangements are disclosed as part of the conflict of interest mitigation process, investment fund managers would still continue to determine the compensation paid to dealers without any direct involvement of the client. The lack of direct client involvement in the dealer compensation process may limit fee awareness, as well as the level of control a client has over the compensation ultimately paid to their dealer and their representative for the services provided. Moreover, the presence of embedded compensation may continue to make the fee structure more complex, which may continue to inhibit investors' understanding of such costs.

➢ Issue 3 – Embedded commissions paid generally do not align with the services provided to investors

CSA CP 33-404 was also not designed to address Issue 3. The CSA expect that the enhancements to KYC, KYP, suitability, and proficiency requirements, along with improved conflict of interest mitigation, may encourage the provision of advice and services to investors that better meet their needs and objectives. However, embedded commissions will still remain a "one-size-fits-all" fee that may not align well with the services and advice actually provided to individual investors in accordance with their specific needs, expectations and preferences. This misalignment may cause some investors to pay more fees than necessary relative to the services received, thus impeding investment returns.

Questions

35. Please explain whether you think each of the initiatives discussed above will, either alone or in combination:

    - address the three investor protection and market efficiency issues and their sub-issues identified in Part 2; and

    - address or not address any additional harms or issues that you have identified.

36. Are there alternative options or measures, whether regulatory or market-led, that could successfully address the three investor protection and market efficiency issues and their sub-issues identified in Part 2. If so, please explain.

PART 7 – COMMENT PROCESS AND NEXT STEPS

The issues addressed in this Consultation Paper are important ones which affect all participants in the Canadian capital markets. Due to the broad impact of the policy option discussed in this Consultation Paper, the contribution of stakeholders is important. We invite all interested parties to make written submissions.

Some CSA jurisdictions will hold in-person consultations in 2017 to facilitate additional feedback and further our consideration of the issues discussed in this Consultation Paper. The details of any in-person consultations will be announced.

Once we have considered the feedback received through the written comment process and any in-person consultations, we will decide on the appropriate policy response, if any, communicate our policy direction and propose any necessary rule changes to implement the policy. Any rule proposal would be published for comment in accordance with the regular rule-making process.

Please submit your comments in writing on or before **June 9, 2017**. You may provide written comments in hard copy or electronic form. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Certain CSA regulators require publication of the written comments received during the comment period. We will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca), the Ontario Securities Commission (www.osc.gov.on.ca), and the Alberta Securities Commission (www.albertasecurities.com). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please address your submission to all of the CSA as follows:

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
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA regulators.

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
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Questions

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APPENDIX A

EVIDENCE OF HARM TO INVESTOR PROTECTION AND MARKET EFFICIENCY FROM EMBEDDED COMMISSIONS

Issue 1: Embedded commissions raise conflicts of interest that misalign the interests of investment fund managers, dealers and representatives with those of investors

i. Embedded commissions can reduce the investment fund manager's focus on fund performance, which can lead to underperformance

Trailing commissions and DSC arrangements may influence fund flows and negatively impact fund performance:

Research by Douglas Cumming et al[155], examining whether sales and trailing commissions influence fund sales and using fund level data provided by Canadian investment fund managers, finds that trailing commissions insulate the investment fund manager by reducing flow sensitivity to past performance, evidencing the misalignment of interests associated with embedded commissions. Key findings from the research included:

- All flows, with the exception of flows originating from affiliated dealers of the investment fund manager, are sensitive[156] to past performance. Funds that outperform receive more sales, while funds that underperform receive less sales;
- The sensitivity of fund sales to past performance is considerably reduced when:
  a. investment fund managers pay embedded commissions to dealers/representatives – the greater the payment, the greater the level of net flows that is indifferent to past portfolio manager skill (i.e. alpha). At a 1% trailing commission – the amount typically paid by front end equity/balanced funds and funds-of-funds in Canada today – the investment fund manager could expect inflows to increase by 0.3% of assets per month or 3.7% per year, regardless of past performance. Similarly, a 1.5% trailing commission was found to increase the average monthly flows by 0.45% of assets under management each month or 5.4% per year regardless of past performance. On the converse, the research found that fund flows for mutual fund series that do not pay embedded commissions (fee-based series) are more sensitive to past performance; and
  b. investors are invested under the DSC option. Investments under that option show the lowest sensitivity to past performance out of all purchase options, which reflects the impact of the redemption fee on investor behavior; it may deter investors from redeeming even in the face of consistently poor performance.
- The payment of trailing commissions impacts the relationship between performance and fund sales such that, for any increase (decrease) in performance, inflows (outflows) are 15% less than what they would be in the absence of trailing commissions.
- Reduced sensitivity to past performance also impacts future fund performance and this result applies to funds that pay embedded commissions, funds sold under DSC arrangements and funds that receive affiliated dealer flows. For example, an increase in trailing commissions and sales commissions under the DSC by 1% is indirectly associated with a reduction in future outperformance before fees by 1.4% and 0.6% respectively, relative to the average monthly performance. This finding potentially suggests that investment fund managers who pay trailing commissions to dealers, understanding that outperformance may not be rewarded with additional inflows, may have a tendency to cease trying to outperform.

Consistent with the Cumming et al. research, a *study by Susan Christoffersen et al*[157] which examined fund flows between 1993 and 2009 among U.S. mutual funds with loads or revenue-sharing found that higher payments to fund brokers lead to higher inflows and that net returns are approximately 50 basis points lower for every 100 basis points of loads.

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[155] Douglas Cumming et al., supra, note 3.

[156] 'Sensitivity' is referring to the relationship between past risk-adjusted outperformance and future fund flows after controlling for all other product specific factors (e.g. fund type, risk classification, series type, etc.) that may provide a reason for investors and their dealers/representatives to select the product.

[157] Susan Kerr Christoffersen, Richard B. Evans and David K. Musto, "What do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives", *The Journal of Finance*, Vol. 68, Issue 1, (February 2013), pp. 201-235, available on SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1393289.

In contrast to the above research, a *study by Investor Economics for the Investment Funds Institute of Canada*[158] argues that no single factor can satisfactorily explain the volume of mutual fund sales and redemptions into a specific fund at a given point in time. Rather, their study asserts that the flow activity in and out of Canadian mutual funds reflects the interplay of more than 40 factors, of which they argue the following three to be the most relevant:

i. macro-economic and demographic factors;

ii. individual fund investment return characteristics; and

iii. preferred access to distribution, via either direct affiliation or strategic alliance.

Funds that pay commission tend to underperform those that do not:

The *Mutual Fund Fees Research by the Brondesbury Group*[159], evaluating the extent to which the use of fee-based versus commission-based compensation changes the nature of advice and impacts investment outcomes, while not finding evidence that fee-based arrangements produce better outcomes for investors, finds conclusive evidence that commission-based compensation creates problems that must be addressed. They find, among other things, that funds that pay a commission (sales loads and trailing commissions) underperform those that do not, whether looking at raw, risk-adjusted or after-fee returns.

A *study by Jonathan Reuter*[160] similarly finds evidence that the payment of dealer compensation impairs fund performance. Specifically, this study finds over a 10-year period that when actively managed non-specialized U.S. equity mutual funds are sold through brokers, they underperform similar actively managed funds sold directly to investors (i.e. sold without the intermediation of a dealer) by an average of 0.65% on a risk-adjusted basis. When performing the comparison without 12b-1 fees (i.e. the U.S. form of trailing commissions), the average 10-year return for direct-sold funds held a 0.42% point advantage over broker-sold funds, using a value-weighted comparison.

Embedded commissions may increase flow volatility and decrease gross returns:

A *study by the Office of Economic Analysis of the U.S. Securities and Exchange Commission* (**SEC**)[161] that empirically tests the benefits to fund shareholders of 12b-1 fees (i.e. the U.S. equivalent of trailing commissions) finds no apparent benefits accruing from such payments to fund unitholders. Overall, while funds with 12b-1 fees attract higher flows and accordingly grow faster than funds without them[162], they appear to increase flow volatility[163] and decrease gross returns. The SEC notes that the results of the research highlight the conflict of interest that 12b-1 plans create – investment fund managers use fund unitholder money to pay for asset growth from which the investment fund manager is the primary beneficiary through the collection of higher fees and the unitholders are not obtaining the benefits they should from the payments of 12b-1 fees.

ii. Embedded commissions can encourage dealers and representatives to make biased investment recommendations which may negatively affect investor outcomes

Commissions encourage biased representative recommendations:

The *research by Douglas Cumming et al*[164] referenced above showed that a rise in trailing commissions reduces the sensitivity of fund flows to past risk adjusted performance (i.e. portfolio manager skill), suggesting that these payments bias dealers/representatives toward funds that pay higher trailing commissions, and away from funds that do not pay industry standard trailing commission rates, regardless of their performance;

158 Investor Economics, *Analysis of Factors Influencing Sales, Retention and Redemptions of Mutual Fund Units*, September 2015 Study for The Investment Funds Institute of Canada, https://www.ific.ca/wp-content/uploads/2015/12/Investor-Economics-Analysis-of-Factors-Influencing-Fund-Flows-September-2015.pdf/12353/

159 The Brondesbury Group, supra, note 3.

160 Jonathan Reuter, Boston College – Department of Finance, National Bureau of Economic Research (NBER), “Revisiting the Performance of Broker-Sold Mutual Funds”, November 2, 2015, available on SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2685375.

161 Lori Walsh, SEC Office of Economic Analysis, *The Costs and Benefits to Fund Shareholders of 12b-1 Plans: An Examination of Fund Flows, Expenses and Returns*, April 26, 2004, https://www.sec.gov/rules/proposed/s70904/lwalsh042604.pdf.

162 Ibid, at page 10, the SEC Office of Economic Analysis states: “[F]unds with 12b-1 plans obtain significantly higher annual net flows than do funds without 12b-1 plans. Fund portfolios with a weighted-average 12b-1 fee of 0.34% had 4% higher flows than similar non-12b-1 funds. This is significant considering that the average net flow is 8% annually. Funds with 12b-1 fees thus have grown more quickly than funds with no 12b-1 fund fees.”

163 ‘Flow volatility’ means the volatility of fund purchase and redemption flows which may increase liquidity costs.

164 Douglas Cumming et al. supra, note 3.

The *study by Susan Christoffersen et al*[165] referenced above found that higher payments to U.S. fund brokers led to higher inflows, suggesting that brokers' recommendations are biased by the payments they receive;

A *study by Daniel Bergstresser et al.*[166] examining broker-sold and direct-sold funds in the U.S. from 1996 to 2004 found "that flows in broker-sold funds are positively related to distribution fees, suggesting that sales in the broker sector might reflect broker compensation incentives.";

The *Mutual Fund Fees Research by the Brondesbury Group*[167], referenced above found that:

- higher embedded commissions drive mutual fund sales;
- financial advisor recommendations are sometimes biased in favour of higher commission generating products; and
- commissions affect the effort made by financial advisors to overcome investor behavioral biases, including biases that may lead to sub-optimal returns;

A *study by John Chalmers and Jonathan Reuter*[168] studying the impact of financial advisors on the retirement portfolios of a large sample of U.S. public college and university employees finds empirical evidence that commissions, rather than the suitability of financial products, drive sales. Chalmers and Reuter conclude in their analysis that "funds paying higher broker fees receive economically and statistically significantly higher retirement contributions from broker clients. Our evidence that broker incentives influence broker recommendations highlights the agency conflict that can arise when financially unsophisticated investors seek advice from intermediaries."[169]

A *study by Sendhil Mullainathan et al*[170]**,** using an audit methodology where trained auditors met with U.S. retail commission-based financial advisors and presented different types of portfolios, examined whether advisors reinforce investor biases that help further the advisor's own economic interests. The study found that financial advisors fail to de-bias their clients and often reinforce biases that are in the advisor's interests. Financial advisors encourage returns-chasing behavior and push for actively managed funds that have higher fees, even if the client starts with a well-diversified low-fee portfolio. The researchers state that "[t]he evidence suggests that most of the interaction is driven by the need to generate fees rather than to respond to the client's rebalancing needs."[171]

Embedded commissions incent unsuitable use of DSC arrangements:

In addition to embedded trailing commissions, there is evidence that embedded commissions paid by investment fund managers to dealers/representatives on sales made under the DSC option can similarly incent unsuitable recommendations. A recent *MFDA compliance review* completed in December 2015[172] uncovered instances of the inappropriate use of the DSC option. The MFDA examined the use of that option, particularly with senior clients, and dealers' supervision, suitability assessment, and disclosure practices in this area. The review covered 12 firms of various sizes with assets totalling $140 billion (30% of all mutual fund dealers) and employing 24,650 approved persons (30% of all approved persons).

The review uncovered several problematic practices, including:

- clients over age 70 that were sold funds under DSC arrangements;
- clients who were sold funds with DSC redemption schedules that are longer than their investment time horizon; and

165 Susan Kerr Christoffersen et al, supra, note 157.

166 Daniel Bergstresser, John Chalmers and Peter Tufano, "Assessing the Costs and Benefits of Brokers in the Mutual Fund Industry," *Review of Financial Studies*, Vol. 22, (2009), pp. 4129-4156, at p.4131, https://pdfs.semanticscholar.org/192b/4d9cde7f484200b037ffbdadabef1b90b800.pdf.

167 The Brondesbury Group, supra, note 3.

168 John Chalmers and Jonathan Reuter, "What is the Impact of Financial Advisors on Retirement Portfolio Choices and Outcomes?", NBER Working Series/Working Paper 18158, (09 June 2012), https://www2.bc.edu/jonathan-reuter/research/NBER_WP18158.pdf.

169 Ibid, page 4.

170 Sendhil Mullainathan, Markus Noeth and Antoinette Schoar , "The Market for Financial Advice: An Audit Study", NBER Working Paper 17929, (2012) http://www.nber.org/papers/w17929.

171 Ibid p. 16.

172 MFDA Bulletin #0670-C, *2015 DSC Sweep Report*, December 18, 2015.

- evidence of poor disclosure of the redemption fees at certain firms and poor suitability assessment and supervision of sales under the DSC option.

In a recent *MFDA Review of Compensation, Incentives and Conflicts of Interests*, the MFDA identified compensation and incentive practices that increased the risk of mis-selling funds under the DSC option.[173]

Further analysis of *MFDA enforcement files* show that the DSC option can attract dealers/representatives promoting unsuitable leverage strategies on their clients or churning the client accounts.[174] Recommendations that clients borrow to invest in funds on a DSC basis enable the dealer and their representative to increase the total compensation they can earn from the investment. Specifically, they may receive a referral fee from the financial institution in connection with their client's loan in addition to the 5% upfront commission (plus the ongoing trailing commission) they may receive from the investment fund manager on the purchase transaction.

The *Inspections Branch of the AMF* also issued a compliance notice in July 2015 that reported that the AMF found some important risks of non-compliance with the KYC rules among mutual fund dealers in Québec. In particular, certain dealers' compliance systems permitted the sale of funds with DSC redemption schedules to investors with short investment horizons.

These findings suggest that the DSC option remains an attractive option for dealers and their representatives because it offers a guaranteed initial commission of up to 5% of the purchase amount (paid by the investment fund manager rather than the investor), plus the ongoing trailing commission.

The DSC option may have a significant impact for the investor, being the redemption fee payable on investments that are redeemed within a certain number of years of purchase (typically up to 6 years from the date of purchase) where an investor wishes to redeem its investment from the firm. This penalty, which aims to discourage redemptions in order to preserve assets under management, has progressively reduced the popularity of the DSC option with investors.

Recent market data suggests that the use of the DSC option in Canada remains in stark contrast to its very limited use in other jurisdictions. As at the end of 2015, 19% of the Canadian fund assets totalling $234 billion were held in DSC options.[175]The latest data from the U.S. and Europe shows that less than 1% of assets in each jurisdiction are invested under the DSC option (0.71% for the U.S. and 0.49% for Europe).[176]

We note that an important Canadian group of mutual funds has announced that it will discontinue the DSC purchase option effective January 1, 2017.[177]

Conflicted advice may negatively affect investor outcomes:

A *study by the Executive Office of the President of the United States*[178] examined the evidence on the cost of conflicted investment advice and its effects on Americans' retirement savings. It found that conflicted advice leads to lower investment returns. Savers receiving conflicted advice earn returns roughly 1 percentage point lower each year (for example, conflicted advice reduces what would be a 6 percent return to a 5 percent return).

A similar *study by John Chalmers et al*[179] examined whether conflicted advice yielded better investment outcomes than no advice. Researchers examined account-level data for participants in a defined contribution plan over time, allowing them to compare the portfolios of advised and non-advised clients with similar attributes over time and to compare advisor recommendations against a simple default option – a target date fund[180]. They found that:

[173] MFDA Bulletin #0705-C, *Review of Compensation, Incentives and Conflicts of Interest*, December 15, 2016.

[174] See for example, the cases against Enzo DeVuono, George William Popovich, Michael Darrell Harvey, Tony Siu Fai Tong, Jacqueline De Backer, Carmine Paul Mazzotta and David John Ireland.

[175] Investor Economics, *Insight Monthly Update*, May 2016. The 19% figure includes DSC (14.4%) and low load (5.1%).

[176] U.S. – Morningstar Direct Non-Institutional B Shares with minimum investment below $25,000 USD at February 2016; Europe – Morningstar Direct Non-Institutional series Open-End and SICAV with minimum investment below 25,000 (base currency) at February 2016.

[177] Investors Group website: https://www.investorsgroup.com/en/media-releases/deferred-sales-charge-purchase-optionto-be-discontinued.

[178] Executive Office of the President of the United States, "The Effects of Conflicted Investment Advice on Retirement Savings" (2015), https://www.whitehouse.gov/sites/default/files/docs/cea_coi_report_final.pdf.

[179] John Chalmers and Jonathan Reuter, "Is Conflicted Advice Better than No Advice?", NBER Working Paper 18158, (2012), http://www.nber.org/papers/w18158.

[180] A "target date fund", also known as a "lifecycle fund", is designed to provide a simple pre-packaged investment solution through a portfolio whose asset allocation mix becomes more conservative as the target date (usually retirement) approaches. These funds relieve the dealer and their representative from performing any asset allocation and rebalancing for the investor as this occurs automatically within the fund's portfolio as time progresses and the investor nears the target date.

- investors that used the services of a broker earned annual after-fee returns that were 2.98% lower than they would have earned investing in a target date fund – offering similar levels of risk;
- brokers are significantly more likely to place their clients in funds that pay them higher fees.

In Canada, a *study by Stephen Foerster et al*[181] analyzing the value of advice by tracking account level data from three mutual fund dealers covering 581,044 investors and 5,920 representatives over a 14 year period reached similar results. Researchers found that:

- representatives encourage increased risk taking among their clients, allocating as much as 30% more to higher risk mutual funds (with higher fees/dealer compensation) than non-advised clients. The higher expected return (i.e. the equity risk premium) that should be generated as a result of greater risk taking is completely nullified by the higher costs borne by clients in high fee mutual funds. For the average investor, it is the representative and mutual funds who capture all of the additional returns from the increased risk taking;
- variation in client attributes tended not to result in a variation in client portfolios. Client portfolios tend to resemble the representative's own portfolio over time, independent of their clients' risk preferences and stage in the life cycle. Investor characteristics including risk tolerance and point in the lifecycle explain only 13% of the variation in risky share across clients; and
- the costs of advice are economically significant given the lack of customization. The average advisor generated a yearly negative alpha of -3.34%, reflecting the average fees borne by the clients each year (nearly 2.7% on average) and the underperformance of the advised portfolio on a before-fees basis, compared to using low-cost passive index funds. Investors' net underperformance therefore equals (or exceeds) the fees that they pay.

Foerster et al. concludes that for the average investor, "investment advice alone does not justify the fees paid to advisors".[182]

Finally, a *study by Daniel Bergstresser et al.*[183] sought to measure the benefits that advised investors enjoy in exchange for the distribution costs they pay. Their research, which studied "broker-sold" and "direct-sold" funds from 1996 to 2004 in the U.S. market, failed to find that brokers deliver substantial tangible benefits. In comparison to investors in direct-sold funds, they found that clients of brokers, on average, purchase funds that deliver lower risk-adjusted returns (on a pre-distribution fee basis) and pay substantial distribution charges, and that the broker channel displays no obvious asset allocation skills that help their investors time the market.

iii. Embedded commissions encourage high fund costs and inhibit competition by creating a barrier to entry

Certain research finds that price formation in retail financial markets runs counter to classic microeconomic theory telling us that more competition leads to lower prices. This research suggests that the prevalence in Canada of mutual funds with higher fees is largely due to financial product providers relying on intermediaries to distribute their product and paying them incentives to promote their collective profit maximization aims. The pursuit of these mutual goals serves to entrench higher fee arrangements and to curb the growth of less costly alternatives.

Commissions tend to drive up retail prices for financial service products:

A *paper by Mark Armstrong* on the economics of consumer protection states that commissions drive up retail prices for financial service products. The increase in price is "due to competition between firms to offer high sales commissions to have their product promoted, which artificially inflates the marginal cost of selling a product".[184]

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[181] Stephen Foerster, Juhani Linnainmaa, Brian Melzer and Alessandro Previtero, "Retail Financial Advice: Does One Size Fit All?", NBER Working Paper 20712, (2014), http://www.nber.org/papers/w20712.

[182] Ibid, at page.27.

[183] Daniel Bergstresser et. al., supra, note 166.

[184] Mark Armstrong, "Economic Models of Consumer Protection Policies", MPRA/Paper No.34773 (16 November 2011), p.14, https://mpra.ub.uni-muenchen.de/34773/1/MPRA_paper_34773.pdf. At pages 15 and 16, Armstrong goes on to state:

> "This section has described a model where firms attempt to influence a salesman's marketing efforts by means of per-sale commission payments. The salesman gives prominence to the product which pays the highest commission, and in equilibrium this entails steering uninformed consumers toward the more expensive products. Competition between sellers to set the highest commission means that the marginal cost of supply is inflated and equilibrium retail prices are high. Therefore, the outcome for consumers, both informed and uninformed, is poor: worse than the situation without commission payments where the uninformed shop randomly, and far worse than the situation in which consumers pay directly for advice. This model therefore gives some support to consumer policies which restrict the use of commission payments as a marketing tactic."

Intermediaries are incented to promote high fee arrangements:

Research by Kathryn Judge examining the influence of intermediaries in financial markets finds that the continued prevalence of higher-cost institutional arrangements despite the presence of more efficient alternatives is due to the influence of intermediaries that use positional and informational advantages to promote self-serving high-fee arrangements in order to maximize their revenue. She also finds that intermediary influence has a distorting effect on the allocation of capital as it may cause certain firms to receive more capital than may be warranted. Her research also shows that the intermediary's influence helps to explain an array of observable trends such as the growth and increasing complexity of the financial sector.[185]

Pricing complexity and incentive contracts tend to maintain high prices in retail financial markets, even as more firms enter:

Research by Bruce Ian Carlin examining pricing in retail financial markets finds that, despite the large number of firms in the market, prices remain above marginal cost and may even rise as more firms enter. He finds that these anomalies arise when product providers (i) add complexity to their price structures which affects consumer literacy about prices, thereby preserving market power and corporate profits, and (ii) align themselves with the advice channel and sign incentive contracts that are mutually profitable. These incentive contracts make it more profitable for the advice channel to hold back information from consumers and preserve industry profits.[186]

The findings from the above research may offer an explanation for why the embedded dealer compensation model remains predominant in Canada, despite the availability of alternatives, and why high fund fees continue to persist in Canada.

Mutual fund fees in Canada are consistently among the highest in the world:

The persistence of high fund fees in Canada has been observed by a number of research studies published over the last 13 years which, when comparing mutual fund ownership costs globally, consistently conclude that Canadian mutual fund fees are among the highest in the world.[187]

In response to these studies, a *study by Investor Economics and Strategic Insight for The Investment Fund Institute of Canada*[188] proposed an analytical framework[189] to enable comparisons of the total cost of mutual fund ownership by mutual fund investors in the United States and Canada as well as other countries. The framework identifies and highlights the impact of structural differences between the U.S. and Canadian mutual fund industries, including differences in taxation of

[185] Kathryn Judge, "Intermediary Influence", *University of Chicago Law Review*, Vol. 82, Issue 2, Article 1, (2015), pp. 573-642, http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5853&context=uclrev. At page 629, Judge states:

> "Intermediary influence may also distort the allocation of capital in systematic ways. When intermediaries earn greater fees from particular types of transactions, they tend to use their influence to favor that transaction type. The greater the influence an intermediary enjoys, the greater the resultant distortion in the mix of transactions actually consummated, that is, the greater the fee effects. Thus, when intermediary influence results in institutional arrangements that make parties more reliant on a particular type of intermediary, greater fee effects generally result. And, when certain firm types or sectors of the economy receive capital through pathways that are particularly profitable for financial intermediaries, greater fee effects result in greater capital being allocated to those firms and sectors than is socially optimal. At the extreme, asset bubbles can result. A closely related effect is that when firms or sectors are funded in ways that are less profitable for intermediaries, those firms or sectors may receive less capital than is socially optimal."

[186] Bruce Ian Carlin, "Strategic Price Complexity in Retail Financial Markets" (December 4, 2006). Available on SSRN: http://ssrn.com/abstract=949349.

[187] Examples of such studies include: B.N. Alpert et al., "Morningstar Global Fund Investor Experience Study (June 2015); B.N. Alpert et al., "Morningstar Global Fund Investor Experience", 2013 Report; B.N. Alpert et al., "Morningstar Global Fund Investor Experience 2011" (March 2011); J. Rekenthaler et. al., "Morningstar Global Fund Investor Experience 2009 (May 2009); A. Khorana et al., "Mutual Fund Fees Around the World" (July 23, 2007); and K. Ruckman, "Expense Ratios of North American Mutual Funds", *Canadian Journal of Economics* (February 2003) p. 192-223.

[188] Investor Economics and Strategic Insight, "Monitoring Trends in Mutual Fund Cost of Ownership and Expense Ratios, A Canada – U.S. Perspective", November 2012, a study for The Investment Funds Institute of Canada. This study was subsequently updated in: Investor Economics and Strategic Insight, "Monitoring Trends in Mutual Fund Cost of Ownership and Expense Ratios: A Canada – U.S. Perspective, 2015 Update", May 2015 Update to the 2012 study by Investor Economics and Strategic Insight For The Investment Funds Institute of Canada.

[189] These findings are based on the assumption that investment choices (i.e. the usage of actively managed mutual funds) remain the same whether the advisor uses a fee-based or commission-based arrangement and reflect the fact that large low-cost fund providers in the U.S. were not included in the cost comparisons. The total cost of ownership in the U.S. would otherwise be lower if this assumption was relaxed and if the sample were changed. In addition, as highlighted by Investor Economics at page 17 of their separate report on the Canadian fund market (Investor Economics, *Mutual Fund MERs and Cost to Customer in Canada: Measurement, Trends and Changing Perspectives*, September 2012), the total cost of ownership in Canada would be lower if the switch to fee-based compensation led to higher usage of ETFs and index funds.

management fees, economies of scale in mutual fund distribution and investment management, and the manner in which advisory fees are charged, as being among the factors that combine to explain the differences in the level of the cost of ownership of funds in the two countries and make it difficult to make detailed comparisons between the two jurisdictions. Beyond these differences, the study suggests that the cost of ownership of funds in advised relationships in Canada – both commissions and fee-based – is at a comparable level to the average cost of ownership incurred by a typical fee-based investor in the U.S. On a tax-adjusted basis, through the elimination of the impact of Canadian taxes on management fees, the asset-weighted cost of ownership in Canadian advice channels is estimated to be 2.02% of invested assets compared to the level of approximately 2% in the U.S.

According to recent *Investor Economics* data, the average asset-weighted fund industry MER for long term funds has fallen from 2.01% in 2004 down to 1.95% in 2015.[190] Management fee reductions by several investment fund managers are responsible for the bulk of the six basis point MER decline during this period.

Low availability of low-cost passively-managed index funds in Canada:

Passively-managed index mutual funds in Canada typically:

- bear a substantially *lower management fee* – usually no more than 0.50% compared to the more typical 1.5 to 2% charged on actively managed equity funds; and

- pay a substantially *lower trailing commission* to dealers – usually between 0.10% and 0.25%, compared to the more typical 1% trailing commission paid on actively managed equity funds.

The lower cost of passively managed index mutual funds suggests that these funds are substantially less profitable for both investment fund managers and dealers, which in turn reduces the incentive to manufacture and distribute these lower-cost products.[191]

At June 2015, low-cost passively-managed mutual funds (excluding ETFs) in Canada made up only 1.5% of mutual fund total assets under management – a level that has remained essentially unchanged over the last 10 years – while the remaining 98.5% of mutual fund assets is actively managed. By comparison, passively-managed mutual funds comprise 15.3% of the U.S. market and 11.2% of the U.K. market.[192]

The low availability of low-cost passively managed mutual funds persists in Canada despite the volume of research finding that most actively-managed funds generally tend to not perform sufficiently well to justify their higher fees[193] and tend to underperform their passive counterparts on a net of fees basis.[194]

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[190] Investor Economics, *Investor Economics Insight*, July 2016. Investor Economics looks at the average asset-weighted fund industry MER for long term funds which excludes money market funds, funds with performance fees, funds with management fees charged at the account level and labor-sponsored funds.

[191] Morningstar Canada discusses the reasons why index funds have not grown in popularity in Canada. See C. Davis, "Why hasn't indexing taken root in Canada", *Morningstar Canada*, November 23, 2016.

[192] Source: Based on data from Investor Economics and internal OSC analysis.

[193] Eugene F. Fama and Kenneth R. French, "Luck Versus Skill in the Cross Section of Mutual Fund Returns", *Journal of Finance*, Vol. 65, (2010), pp. 1915-1947 (at p. 1916 finding that the evidence regarding the value of actively managed funds is "disheartening". They find "that few active funds produce benchmark adjusted expected returns that cover their costs," indicating that "if many managers have sufficient skill to cover costs, they are hidden by the mass of managers with insufficient skill."); Mark Carhart, "On Persistence in Mutual Fund Performance", *Journal of Finance*, Vol. 52, (1997) pp. 57-82 (at p.80 finding that "[a]lthough the top decile mutual funds earn back their investment costs, most funds underperform by about the magnitude of their investment expenses. The bottom-decile funds, however, underperform by about twice their reported investment costs."); Martin J. Gruber, "Another puzzle: The growth of actively managed mutual funds", *Journal of Finance*, Vol. 51, (1996), pp. 783-810 (at page 789 finding that actively managed "mutual funds underperform an appropriately weighted average of the indices by about 65 basis points per year" because even though "active management adds value, . . . mutual funds charge the investors more than the value added"). We note however certain research finding that some actively managed mutual funds perform sufficiently well to justify the associated fees, but such funds are the minority and they do not perform sufficiently well to justify the average actively managed fund. For example, Malcolm Baker et al., "Can Mutual Fund Managers Pick Stocks? Evidence from Their Trades Prior to Earnings Announcements", *Journal of Financial and Quantitative Analysis*, Vol. 45, (2010) pp. 1111-1131, (at p. 1119 finding that "the average mutual fund . . . does not appear to possess stock picking ability," but that some funds do outperform the market); Robert Kosowski et al., "Can Mutual Fund "Stars" Really Pick Stocks? New Evidence from the Bootstrap Analysis", *Journal of Finance*, Vol. 61, (2006), pp. 2551-2595 (at p. 2553 finding that "while most funds cannot compensate for their expenses and trade costs, a subgroup of funds exhibit stock-picking skills that more than compensate for such costs").

[194] Morningstar Canada Research, "Have Active Canadian Equity Fund Managers Earned Their Keep?", May 7, 2015 (finding that fund fees gobble up most of Canadian equity funds' excess returns: Just 18% of funds in the category outperformed the passive alternative on a net-of-fees basis over the 10-year period); Morningstar Manager Research, "Morningstar's Active/Passive Barometer: A new yardstick for an old debate", June 2015 (finding that U.S. actively managed funds have generally underperformed their passive counterparts, especially over longer time horizons and experienced mortality rates (i.e. many merged or closed). In addition, the report finds that failure tended to be

A similar trend may generally be observed with ETFs. Most Canadian ETFs are passively managed (86.2%) and typically do not pay embedded commissions.[195] Most ETFs bear lower management fees – 88.3% of Canadian ETFs pay management fees of less than 0.75%. However, ETF assets under management have increased significantly over the last few years. As at June 2016, ETFs made up 7.3% of investment fund total assets under management. By comparison, ETFs represented a total of 11.6% of the U.S. investment company total assets.[196]

Countries with low levels of index funds may experience poor price competition:

A recent *study by Martijn Cremers et al*[197] suggests that countries with low levels of explicitly indexed funds (i.e. passive index tracking investment funds that are advertised as such) experience poor price competition and thus higher fees. The study examined the relation between indexing and active management in the mutual fund industry worldwide. They found that actively managed funds are more active and charge lower fees when they face competitive pressure from low-cost explicitly indexed funds. Moreover, the average alpha generated by active management is higher in countries with more explicit indexing and lower in countries with more closet indexing.[198] Overall, the evidence from the study suggests that explicit indexing improves competition in the mutual fund industry. Canada was found to have low levels of explicit indexing with explicit indexing ETFs and mutual funds collectively making up only 7% of the market.

'Direct-to-client' funds may have difficulty competing on an equal basis in Canada:

Lower-cost mutual funds that are sold under the 'direct-to-client' model[199] (i.e. without the intermediation of a third party dealer) and that do not pay any dealer compensation make up only 2.8% of assets under management in Canada. Assets in the 'direct-to-client' channel have remained flat, with no increase in market share over the last several years.[200] The investment fund managers of these funds must rely strictly on the performance and attributes of their product to attract sales rather than the payment of compensation to dealers.

New low-cost providers may have difficulty entering the Canadian market:

The slow growth of the 'direct-to-client' model in Canada may have discouraged new low-cost providers from entering the market in Canada. Specifically, when Vanguard, one of the largest U.S. 'direct-to-client' mutual fund and ETF manufacturers, entered the Canadian fund market in 2011, it did so with its ETFs only, and not with its 'no trailing commission' mutual funds that are widely distributed in the U.S. Vanguard Investments Canada stated that the barrier to entry in Canada was the requirement to pay for distribution.[201] This statement suggests that the payment of trailing commissions may essentially be

positively correlated with fees (i.e. higher cost funds were more likely to underperform or be shuttered or merged away and lower-cost funds were likelier to survive and enjoyed greater odds of success) and that fees matter as they are one of the only reliable predictors of success.); Vanguard Research by Christopher B. Philips et al., "The Case for Index-Fund investing for Canadian Investors", April 2015 (finding that low-cost index funds have displayed a greater probability of outperforming higher-cost actively managed funds, even though index funds generally underperform their targeted benchmarks); Richard A. Ferri and Alex C. Benke, "A Case for Index Fund Portfolios: Investors holding only index funds have a better chance for success", June 2013 (finding that diversified portfolios of index funds consistently outperform portfolios of actively managed funds – specifically, when comparing a ten-fund index fund portfolio to a portfolio consisting of ten randomly selected actively managed funds using identical asset class categories and weightings, the ten-fund index fund portfolio beat actively managed portfolios 90% of the time over a 10 year period running from 2003 to 2012).

[195] There are currently 93 ETFs that offer advisor class shares for which the investment fund manager will pay an ongoing commission (usually called "service fee") to the dealers. These ETFs represent less than 1% of Canadian ETF assets under management.

[196] Based on data from Investor Economics and the 2016 Investment Company Fact Book, 56th edition, Investment Company Institute, https://www.ici.org/pdf/2016_factbook.pdf.

[197] Martijn Cremers, Miguel A. Ferreira, Pedro P. Matos and Laura T. Starks, "Indexing and Active Fund Management: International Evidence", *Journal of Financial Economics, Forthcoming*; Darden Business School Working Paper No. 2558724, (February 1, 2015). Available on SSRN: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2558724.

[198] "closet indexing" refers to an investment fund that purports to be actively managed but actually follows more or less a benchmark index.

[199] There exist only a handful of Canadian fund companies that sell directly to the public. In those cases, the investment fund manager or a related party is registered as a mutual fund dealer and sells its funds directly to the public.

[200] Source: Investor Economics (various surveys).

[201] See transcript of OSC Roundtable Re Discussion Paper and Request for Comment 81-407 Mutual Fund Fees (June 7, 2013) , supra, note 2, at p.98 – Question from Commissioner Deborah Leckman to Atul Tiwari, Managing Director/Head of Canada for Vanguard Investments:

> "COMMISSIONER LECKMAN: So I have a final question for Atul, and then maybe there will be some more questions from either the panelists or from the audience. You came into Canada and chose only to use ETFs. What was the business reason you chose not to offer your conventional mutual funds that don't pay trailers in Canada?
>
> MR. TIWARI: Good question. Well, Vanguard actually looked at coming into Canada for well over 20 years; I'm told this was the seventh business plan that had been put together. We are a pretty prudent and deliberate organization, to say the least. The original barriers all had to do with paying for distribution. Again, Vanguard doesn't pay for distribution. So when you look at the structure of the

the 'price of admission' to the Canadian market and that low-cost investment fund providers that do not pay any or low trailing commissions may not be able to access major fund distribution channels. This barrier to entry inhibits effective price competition in our market.

Issue 2: Embedded commissions limit investor awareness, understanding and control of dealer compensation costs

i. The lack of saliency of embedded commissions reduces investors' awareness of dealer compensation costs

Investors tend to understand 'visible' fees the most:

A *report by the Brondesbury Group on performance reporting and cost disclosure*[202] found that:

- The fees that investors understand the most appear to be those that are most visible, such as transaction-based commissions and account fees, which were understood by two-thirds of investors who participated in the study;
- only 4 out of 10 respondents indicated they understood DSCs;
- only one-third of respondents indicated they understood trailing commissions; and
- only half of respondents reported that they discussed costs with their advisor.

Investors are generally more apt to attempt to control salient fees:

A *study by Brad Barber et al.*[203] found that investors are less apt to control the impact of fees paid from fund assets. It found that mutual fund investors are more sensitive to salient, upfront fees, like front-end loads and direct commissions, than a fund's operating expenses. This study analyzes U.S. mutual fund flows over a period of 30 years and, when assessing how investors respond to expenses while investing in mutual funds, finds that investors treat front-end loads and fund expenses differently. It finds a negative relation between flows and front-end loads, but finds no relation between operating expenses and flows. This research suggests that investors are more apt to attempt to control visible fees which they must pay directly, but remain passive about ongoing fund fees paid out of fund assets.

Canadian investors are generally not aware of what they pay for financial advice or that they pay for financial advice at all:

The fund industry's latest *Pollara opinion survey*[204] found that only:

- 27% of investors could say they "definitely" believe that part of the fees charged within mutual funds are used to compensate their financial advisor, while 45% replied "I think so". Another 21% do not believe they pay for financial advice through embedded fees, while the remaining 10% indicated they "don't know";
- 56% of investors recalled that their advisor discussed his/her compensation when they last purchased a mutual fund;
- 62% of investors recalled that their advisor discussed mutual fund fees such as front-end sales charges and DSCs; and
- 57% of investors recalled that their advisor discussed MERs;

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market in Canada, it would be a tough slog to kind of come in and have a business proposition that's based around trying to sell mutual funds without a trailer."

[202] The Brondesbury Group, "Report: Performance Reporting and Cost Disclosure", prepared for: Canadian Securities Administrators (September 17, 2010), at p.15-16, http://www.osc.gov.on.ca/documents/en/Securities-Category3/rpt_20110622_31-103_perfomance-rpt-cost-disclosure.pdf.

[203] Brad M. Barber et al., "Out of Sight, Out of Mind: The Effects of Expenses on Mutual Fund Flows", *The Journal of Business*, Vol. 78, no 6 (2005), pp. 2095-2120, http://faculty.haas.berkeley.edu/odean/papers%20current%20versions/Out%20of%20Signt.pdf

[204] POLLARA Inc., "Canadian Investors' Perceptions of Mutual Funds and the Mutual Fund Industry" (2016), Report Prepared For: The Investment Funds Institute of Canada, https://www.ific.ca/wp-content/uploads/2016/09/IFIC-Pollara-Investor-Survey-September-2016.pdf/15057/.

A *BCSC National Smarter Investor Study*[205] finds that 23% of Canadians do not know how their advisor is paid. Over half (53%) do not know how much they paid to their advisor in the last 12 months;

The *OSC Mystery Shop report*[206] found that while 56% of the investors were told about fees for products, just 25% were told about how the advisor would be compensated;

A *study by PMG Intelligence*[207] found that:

- investors are confused about fees (whether they are disclosed or not, whether they pay them or not, whether they are discussed or not); and
- most investors aren't sure how much they pay for advice and what fees they pay for but acknowledge some form of disclosure;

A recent *survey by Tangerine Investments*[208] found that:

- although the majority of investors surveyed (89%) describe themselves as either "very knowledgeable" or "somewhat knowledgeable" when it comes to their investments, many were unaware of the associated fees – 36% of those surveyed claimed they do not pay any fees, and another 11% were unsure if they pay fees at all;
- when the survey narrowed in on the 67% of investors who use a financial advisor, 24% of those surveyed said they do not pay fees or commissions for their advisor's services, and another 13% were unsure; and
- of those who were aware of fees for their advisor's services, when asked how well they understood the fee structure, nearly 40% said "not very well" or "not at all".

A *report by the Brondesbury Group on advisor relationships and investor decision-making*[209] found that investors have minimal knowledge of mutual fund fees and what affects them, including how their advisors can get paid. Specifically, they found that:

- unless investors are told what affects the amount of fees they pay, they are unlikely to reach an accurate conclusion on their own. Even when the full range of fees and what affects them are identified, it is difficult for investors to assess the implications of what they have learned;
- only one third of investors were able to recognize several common compensation arrangements and one-third indicated they were aware of trailing commissions; and
- out of the one-third who indicated they were aware of trailing commissions, about 4 out of 10 respondents agreed that the amounts of these commissions may vary depending on the type of mutual fund and the mutual fund manufacturer that offers the fund.

This same study assessed respondents' knowledge about how advisors were paid by presenting them with five statements to agree or disagree with. The percentage agreement was so similar across all five statements that the authors concluded that "the results demonstrate that investors have little or no idea about how advisors can get paid."[210]

Costs do not figure significantly into investor-decision making:

According to the same *report by the Brondesbury Group on advisor relationships and investor decision-making*[211], costs do

[205] BC Securities Commission, supra note 152.

[206] OSC Staff Notice 31-715 – *Mystery Shopping for Investment Advice*, September 17, 2015, http://www.osc.gov.on.ca/documents/en/Securities-Category3/20150917-mystery-shopping-for-investment-advice.pdf .

[207] PMG Intelligence, "The Value and Price of Advice – A Benchmark Study 2014 Edition".

[208] Tangerine Investments conducted an online survey from June 29 to July 4, 2016 among 1,003 randomly selected Canadian adults. The results are discussed here: http://www.newswire.ca/news-releases/many-canadian-investors-unaware-of-fees-theyre-paying-to-invest-586603691.html.

[209] The Brondesbury Group, "Investor behavior and beliefs: Advisor relationships and investor decision-making study", a report prepared for the Investor Education Fund, 2012, http://getsmarteraboutmoney.ca/en/research/Our-research/Documents/2012%20IEF%20Adviser%20relationships%20and%20investor%20decision-making%20study%20FINAL.pdf.

[210] Ibid. page 25.

[211] Ibid.

not figure significantly into investor decision-making due largely to investors' lack of awareness and/or understanding of fund fees, as highlighted above. The cost of buying is a factor for only 2 out of 10 investors, but almost never a decisive factor. Management fees are treated similarly. Costs may deter 1 out of 6 of buying.

This study also found that most investors do not consider information in fund disclosure documents to make their investment decision, preferring instead to rely on their advisor for their investment decision. For 8 out of 10 investors, the advisor's opinion dominates all other sources as a factor in buying decisions. Investors trust their advisor to provide advice that benefits the client first.

ii. Embedded commissions add complexity to fund fees which inhibit investor understanding of such costs

Embedded dealer compensation results in numerous fund series that adds complexity to fund fees:

The fund fee structure has grown increasingly complex over the last several years due to the growing number of fund series on offer, with each series having different fees. The numerous fund series available today on most funds has effectively resulted in an *'alphabet soup'* of fund series[212] that can be confusing to investors and overwhelm their ability to understand the fees that apply to their investment.

Mutual funds typically offer various series of their securities which may be designed for:

i. specific types of dealer business models and the investors they serve (for example, retail, higher-net-worth, institutional, fee-based, DIY/discount brokerage), or

ii. a specific purpose (for example, hedged series or 'tax-advantaged' series paying fixed distributions that include a portion of return of capital).

Some Canadian investment fund managers may offer in excess of 30 different series of their funds. Each series is denoted with a different letter, but there is no official standard governing how investment fund managers use letter designations for their fund series. Each series may:

- have different eligibility requirements (e.g. specified investment thresholds);
- have different management fees (typically, the higher the investment threshold, the lower the management fee);
- be sold under various sales charge options (front-end load, low-load, DSC, fee-based, no-load); and
- pay different compensation (trailing commissions and other embedded sales commissions) to the dealer.

As at the end of June 2016, taking into account underlying purchase options, there were 39,848 unique mutual fund series/purchase option combinations available in Canada[213] in which were invested a total of $1.3 trillion[214].

Further adding complexity is the fact that trailing commissions payable on various fund series may vary based on:

- the investment fund manager – they may differ between similar funds and fund series managed by different investment fund managers, i.e. some investment fund managers may pay more/less than others;
- the asset class of the fund – they are typically highest on equity funds, lower on fixed income funds and lowest on money market funds;
- the main investment strategy – they are typically higher for actively managed funds and lower for passively managed funds;
- the purchase option selected – they are typically higher on fund investments made under the front-end load and low-

[212] The following news articles acknowledge the complexity of the Canadian mutual fund series "alphabet soup". See John Heinzl, "What do all those letters mean after mutual fund names?", *Globe and Mail*, August 16, 2013, http://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/what-the-f-the-abcs-of-mutual-funds/article13816786/; Bryan Borzykowski, "Decoding the mutual fund alphabet soup", *Money Sense*, August 16, 2012, http://www.moneysense.ca/save/investing/mutual-funds/decoding-the-mutual-fund-alphabet-soup/.

[213] Source: FundSERV – mutual fund and wrap products. By contrast, there were 32,555 unique mutual fund series/purchase option combinations available in the United States (source: Morningstar Direct) at the end of June 2016 in which were invested a total of $15.9 trillion USD (source: Investment Company Institute).

[214] Source: Investor Economics.

load options and lower on fund investments made under the DSC option; and

- the length of time the investment is held – for example, they may:
  - in some cases increase in steps with each year the investor continues to hold the investment, reaching a specified maximum after a certain number of years; or
  - where the investment has been made under the DSC option, double at the expiration of the redemption schedule (6 years on average).

The wrong choice of fund series may subject an investor to excess fund fees:

The complexity of fund fees created by the plethora of series on offer requires dealers to maintain robust systems of controls and supervision to ensure that investors are being invested in the fund series that is right for them. The failure to have such systems can result in investors holding the wrong fund series securities and paying excess fees as a result. In *recent no-contest settlements*[215], OSC staff alleged that certain dealers had inadequacies in their systems of controls and supervision which formed part of their compliance systems which caused clients to not be invested or switched into a lower-fee series of a fund for which they were eligible (further to having met the minimum investment threshold for investment in the series). OSC staff further alleged that these inadequacies resulted in clients paying excess fund management fees. These settlements were concluded after the dealers self-reported to the OSC. As part of the settlement agreements, the dealers undertook to pay compensation to affected clients and former clients.

Disclosure generally does not help investors identify the best fund series based on compensation:

The *Brondesbury Group Mutual Fund Fees Research*[216] finds that:

- most investors are unable to understand and assess different forms of compensation. They cannot make the economic assessment due to the complexity of calculations and the difficulty of choosing the right underlying assumptions, nor can they assess the implications of compensation arrangements for creating potential conflicts of interest in the advice that advisors give them; and
- in a commission-based environment, disclosure does not help investors identify either the best advisor or the best fund series based on compensation. The end result is that the advisor will propose the fund series and it will be advantageous to them.

The complexity of fund fees may discourage investors from asking about dealer compensation – investors trust the compensation is fair and reasonable:

The *BCSC National Smarter Investor Study*[217] finds that:

- the complexity of fund fees is intimidating to investors and discourages investors from asking about their dealer/representative's compensation. Specifically, the study finds that 23% of Canadians have never asked their advisor what fees they pay. Of these individuals, 37% agreed that they would ask about compensation more often if they had a better understanding of how fees and commissions for advisors worked;
- for Canadians who invest with an advisor but say they do not always ask about compensation, trust was the key reason they do not ask more often – 72% indicated that they trust that their advisor's compensation is fair and reasonable.

Complexity in fund pricing can increase investors' reliance on dealer/representative's advice:

Research by Kathryn Judge suggests that complexity in financial products is deliberate to ensure investors' reliance on intermediaries for investment decisions and assure intermediaries' long-term returns. She states that: "[G]reater complexity

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[215] See the no-contest settlements in the matters of *TD Waterhouse Private Investment Counsel Inc.* (http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20141113_td-waterhouse-private-investment.pdf), *Quadrus Investment Services Ltd.* (http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20151106_quadrus.pdf), *Scotia Capital Inc.* (http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20160725_scotia-capital.pdf), *CIBC World Markets Inc.* (http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20161024_cibc.pdf) and *BMO Nesbitt Burns Inc.* (http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20161209_bmo.pdf).

[216] The Brondesbury Group, supra, note 3, at pages 46 to 48.

[217] BC Securities Commission, supra, note 152.

can make an investor more reliant on an intermediary's guidance and other services. This increases the probability that the investor will continue to use that intermediary's services in the future, increasing the intermediary's long-term expected returns. Complexity can also make it more difficult for any of the parties involved to see the full range of fees an intermediary is earning on a transaction. To the extent that salience affects a party's inclination to push for a lower fee, intermediaries may prefer less transparent, and hence more complex, transactions and market structures." [218]

Retail financial product providers may strategically use price complexity to limit awareness of fees:

Research by Bruce Ian Carlin[219] suggests that product providers in retail financial markets strategically add price complexity to their product to maintain consumer ignorance about prices, which in turn preserves the provider's ability to gain market power and earn corporate profits. This complexity ultimately leads to failure of competition, despite the large number of firms in retail financial markets. He finds that: "increased competition always leads to higher industry complexity. When more firms compete for market share, the probability that they receive demand from the informed consumers decreases. To maximize expected profits, the firms tend to increase complexity in order to optimize the revenues they receive from uninformed consumers. Increased complexity and higher cognitive load makes it harder for consumers to become informed. If a larger fraction of consumers remain uninformed when more firms are present, then prices rise."

iii. The product embedded nature of dealer compensation restricts investors' ability to directly control that cost and its effect on investment outcomes

Dealer compensation charged at the fund level may cause cross-subsidization:

Embedding dealer compensation costs into fund management fees charged to a mutual fund rather than charging and collecting such compensation at the account level can cause some investors to subsidize the cost of certain commissions or other services that are not attributable to their specific investment in the fund. This cross-subsidization of dealer compensation costs can result in some investors indirectly paying excessive fees beyond their control.

One example of such cross-subsidization is the subsidization by front-end load investors of the specific distribution costs attributable to DSC investors. Specifically, investment fund managers may use part of the management fees they earn on a fund to fund the payment of upfront sales commissions to dealers on sales made under the DSC option.[220] The cost of these embedded sales commissions is allocated to the fund as a whole, and therefore to all investors in the fund, irrespective of the purchase option under which they made their fund investment. As a result, even though these costs are unique to the DSC option, investors who purchase under the front-end load option (under which the investor may have already paid a sales charge directly to their dealer or representative at the time of purchase) bear the same 'higher' management fee as, and therefore subsidize, those investors who purchase under the DSC option.

Less than a handful of Canadian investment fund managers have addressed this type of cross-subsidization by offering a different series or class of their funds for each of the various purchase options, with each bearing a different management fee reflecting the different costs associated with the different purchase options. In these cases, the management fee of the front-end load series is typically 15 basis points lower than the management fee of the DSC series.

We note that in the U.S., mutual funds offer separate classes of securities for each purchase option. The A share class is the front-end load purchase option and the B share class is the DSC purchase option. The B share class expenses are typically 0.60 to 0.75 percent higher each year than on class A shares.[221]

Discount/DIY series not widely available:

Some investment fund managers offer a discount series (e.g. series D) of their funds for DIY investors whose lower management fees reflect a reduced embedded trailing commission of typically no more than 0.25%. However, those investment fund managers that do offer a discount series typically offer it on only a portion of their fund lineup rather than all their funds[222]and their accessibility is limited. Discount series are typically available only online through certain discount dealers. Industry data shows that:

[218] Kathryn Judge, supra note 185 at page 627.

[219] Bruce Ian Carlin, supra note 186 at page 4.

[220] See note 6 for a description of the DSC option.

[221] The difference in expenses is observable by reviewing fee disclosure in U.S. mutual fund prospectuses. See also FINRA Investor Alert: "Class B Mutual Fund Shares: Do They Make the Grade?", http://www.finra.org/investors/alerts/class-b-mutual-fund-shares-do-they-make-grade.

[222] At February 2016, there were 17 investment fund managers offering at least one discount/DIY fund series on a total of 439 funds. Source: Morningstar Direct, SEDAR at February 2016.

- only 1% of Canadian mutual fund assets is held in a discount/DIY series;[223]and
- the bulk (roughly 84%)[224] of mutual fund assets held in the online/discount brokerage channel remain invested in the regular retail fund series paying full unreduced trailing commissions to the discount broker.

Fee-based option not a true choice for everyone:

Many investment fund managers offer a fee-based series (e.g. series F) for investors in fee-based arrangements with their dealer/representative whose reduced management fees reflect the absence of embedded trailing commissions. Instead, the investor pays the dealer directly for advisory services rendered in connection with their account.

While most investment fund managers offer a fee-based series of their funds which have relatively low investment minimums, not every investor can access this series because:

- dealers often impose significant account size requirements ($250,000+) that must be met in order for investors to be eligible to participate in a fee-based program; and
- not all dealers/representatives work under a fee-based model. Many dealers/representatives (particularly in the MFDA channel) operate on a commission-only basis which means that they do not offer the fee-based series to their clients. Only the fund series with embedded compensation is placed on their product shelf.

Fee-based fund series made up only $40 billion or 4% of fund industry assets at the end of 2013. While fee-based assets increased significantly over the five years ending 2015, increasing by 248% over that period, fee-based options still only made up $69 billion or 6% of fund industry assets at the end of 2015.[225]

Direct-to-client funds not widely available:

As explained above, only a few investment fund managers in Canada offer lower-cost mutual funds under the ‘direct-to-client’ model. These mutual funds charge lower management fees reflecting the absence of embedded trailing commissions. These mutual funds typically have minimum investment thresholds of $10,000 of more, which means that they may not be within reach of many retail investors. Mutual funds sold under the ‘direct-to-client’ model make up only 2.8% of assets under management in Canada.[226]

The lack of availability and/or accessibility of the above options for many Canadian investors allows embedded commissions to prevail and ultimately limits investors’ ability to control the impact of these fees on their investment outcomes.

Issue 3: Embedded commissions paid do not align with the services provided to investors

i. Investors do not receive ongoing advice commensurate with the ongoing trailing commissions paid

No rules requiring specified ongoing services:

The fund facts document for mutual funds typically states that trailing commissions are for the services and advice the dealer and its representative provide to the investor.

However, there is currently no securities regulation that prescribes, or guidance that articulates, the specific services that an advisor is expected to provide in exchange for ongoing trailing commissions. Under NI 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), dealers/representatives are required to provide certain services at the time of the trade (e.g. suitability, know-your-client), but no requirement to provide ongoing advice focused on the

[223] As at September 2015, assets in discount/DIY mutual fund series totaled $12.053 billion, up from $11 billion in December 2011, although not all of this was held in the online/discount brokerage channel. The $12 billion figure includes an estimated $4.6 billion in series D mutual fund assets held in the online/discount brokerage channel, as well as other similar discount/DIY series sold directly by the investment fund manager. Source: Investor Economics.

[224] As at September 2015, a total of $29.585 billion in mutual fund assets was held in the online/discount brokerage channel. Investor Economics estimated that only $4.6 billion in discount/DIY fund series assets was actually held in the online/discount brokerage channel. This suggests that $25 billion of the total $29.585 billion of mutual fund assets in the online/discount brokerage channel remains invested in the regular retail fund series paying full trailing commissions. Source: Investor Economics.

[225] Source: Investor Economics.

[226] See notes 199 and 200 above and related discussion under Issue #1.

client's portfolio.

Trailing commission payments are largely used to support dealer operations and sales activity:

The various comment letters submitted by fund industry participants in response to the Original Consultation Paper indicate that trailing commissions are largely used to support dealer operations and to compensate the advisor for work done at the time of the original investment, rather than for ongoing advice provided over the term of the investment.

IFIC's response letter dated April 12, 2013, states that the bulk of trailing commission payments are used to support dealer operations. At page 3 of their letter, IFIC states:

> *"The first misconception is found in the Discussion Paper's underlying theme that trailing commissions are used exclusively for the compensation of advisors. The reality is that trailing commissions are paid to the dealer firm to cover a whole host of regulatory and supervisory functions and services in addition to advisor compensation. The dealer may retain one half or more of the trailing commission to pay for, for example: tier 1 and tier 2 supervision and the systems that support it, regulatory costs including fees to fund the SROs, OBSI, and securities commissions, client complaint handling processes, advisor investigation and enforcement requirements, general compliance obligations of the SROs, OBSI, and securities commissions, client reporting, due diligence on products, etc."*

The letter dated April 12, 2013 from the *Investment Industry Association of Canada* (**IIAC**) similarly indicates that trailing commissions are used to cover the cost of a host of services other than the provision of investment advice, many of which may be provided equally by execution only and full-service dealers. At page 5 of their letter, IIAC states:

> *"The following is a list of some services supported by trailing commissions that are provided by investment dealers on an ongoing basis (many apply equally to execution only and full-service dealers):*
>
> - *Printing and mailing of disclosure documents (prospectuses, Fund Facts, other shareholder communications, including proxy material);*
> - *Processing of corporate events and distributions (Since mutual funds held by investment dealers are typically registered in nominee name, the dealer takes on responsibility for updating client account records for things such as mutual fund reorganizations and client payments of interest, dividends, etc.);*
> - *Preparation and distribution of tax reporting information such as annual trading summaries, and, in some cases, T3 and T5013 tax slips;*
> - *Provide the widest selection of mutual funds from multiple fund families (This requires efforts by the dealer/advisor to conduct extensive product due diligence and legal documentation before making these funds available to clients.);*
> - *Custody services;*
> - *Portfolio monitoring of margin requirements;*
> - *Clearing and settlement of purchase and sales through FundSERV and/or CDS.*
>
> *The services above should be taken into consideration with respect to the importance of trailers to advisors and their firms."*

The letter dated April 12, 2013 from *Investors Group* states that trailing commissions pay for distribution and a variety of dealer costs, and not just the provision of ongoing services by dealers and their representatives. At page 4 of their letter, Investors Group states:

> *"This proposal [to tie trailing commissions to the provision of specific services by advisors] arises from a misunderstanding that 100% of trailing commissions are paid for ongoing services provided by advisors. In fact, the compensation is paid to the dealer in connection with the distribution of the financial products and is generally the only source of revenue for mutual fund dealers. This revenue pays for a variety of dealer costs, including supervision, back office functions, client statement production, insurance and similar expenses – many of which, we note, have increased as a result of recent regulatory requirements – in addition to the cost of compensating advisors. The dealer, not the manufacturer, determines the level of service its advisors are to provide.*

Of the industry average of two-thirds of the trailing commission actually paid to advisors by the dealer, there are two facets involved. First, they represent deferred compensation to advisors for the initial work done by them in providing advice to clients at the time of the original investment. Second, these payments are to compensate for the ongoing service provided by the advisor to the client. Because of this, the services provided by advisors to investors will vary depending on a number of factors, including the size of the portfolio and specific needs of the particular client including desired frequency of contact and updates."

An *IFIC paper*[227] notes that, on average, 0.78% of the assets invested in a long-term fund are paid annually by the fund to the dealer, of which approximately two-thirds may go to the representative for advisory services and the rest kept by the dealer to pay for administrative, compliance and regulatory oversight functions.

Varying trailing commissions between different investment fund managers, fund types and purchase options:

As explained above, trailing commissions may vary between different investment fund managers and will generally further vary based on the asset class of the fund and the purchase option selected.[228] There is no evidence of different services despite the differences in fees. For example, trailing commissions are typically higher on equity funds and lower on fixed income funds. In such case, there is no evidence that an investor purchasing an equity fund would be provided with more services and advice than if the investor were to invest in a fixed income fund.

Higher trailing commissions for pre-packaged advice:

Most investment fund managers offer 'funds-of-funds', which are mutual funds that invest in other funds – most typically a portfolio of proprietary funds. They are pre-packaged mutual fund investment portfolios which relieve the dealer and their representative from having to do the fund selection and asset allocation they may otherwise be expected to do on their own for a client. Notwithstanding the efficiencies that funds-of-funds may provide for advisors, investors do not ultimately benefit from these efficiencies as the trailing commissions payable on funds-of-funds are the same or higher than on stand-alone equity mutual funds.[229] Accordingly, advisors who sell funds-of-funds receive greater compensation for seemingly less service and advice. The favourable dealer compensation paid on funds-of-funds may explain why this product makes up the bulk of net sales. According to data from IFIC, for the six years ending December 2015, funds-of-funds net sales totaled $191 billion versus $32 billion for traditional stand-alone funds. They have become the dominant product in the Canadian fund industry.

DIY investors in the discount channel may pay full trailing commissions:

As discussed above in connection with Issue 2, not all investment fund managers offer a discount/DIY series (e.g. Series D with reduced trailing commission of 0.25% or less) on their funds, nor do all discount brokers opt to put these series on their shelf when available. These series are available for purchase through certain discount brokerages only. Those investment fund managers that do not offer a discount/DIY series typically make their regular retail series available for purchase through the discount channel. These series pay full unreduced trailing commissions of 1% to the discount brokerage for execution-only services.

ii. The cost of advice provided through embedded commissions may exceed its benefit to investors

Investors may not derive offsetting financial benefits from the payment of trailing commissions:

Several studies show that investors derive almost no offsetting financial benefit from the payment of distribution fees, including trailing commissions. We refer to the studies by the *Executive Office of the President of the United States*[230], *John Chalmers et. al.*[231], *Stephen Foerster et. al.*[232] and *Daniel Bergstresser et al.*[233] discussed above in connection with **Issue 1 – *ii. Embedded commissions can encourage biased investment recommendations by dealers which negatively affect investor outcomes***. These studies overall show that:

[227] The Investment Fund Institute of Canada, "Paying for Advice: Why Options are Important" (August 2014), at p.7.

[228] Trailing commissions are higher on equity funds and balanced funds (typically 1%) than on fixed income funds (typically 0.50%) and on money market funds (typically 0.25%). Trailing commissions are also higher on investments made under the front-end load option (typically 1%) than under the DSC option (typically 0.50%).

[229] See data on funds-of-funds provided in the Original Consultation Paper, Figure 10. Funds-of-funds are very popular products that account for almost half of all long-term mutual fund assets under management.

[230] See research by the Executive Office of the President of the United States, supra note 178.

[231] John Chalmers et al., supra note 179.

[232] Stephen Foerster et al., supra note 181.

[233] Daniel Bergstresser et al., supra note 183.

- investors receiving conflicted advice through the payment of embedded commissions tend to perform worse than non-advised investors or passive benchmarks; and

- dealers/representatives collect more fees and commissions than any monetary value their investment advice may add to the account.

The following research however offers contrasting views on the value of advice:

- An econometric study by the *Centre interuniversitaire de recherche en analyse des organisations (CIRANO)*[234] finds that, on average, advised investors accumulate significantly more financial assets than do non-advised investors with similar socio-economic characteristics. This benefit of financial advice grows with the length of time households have received advice: after four to six years, the advised households have accumulated 1.58 times the amount accumulated by non-advised households; after 15 years, the difference has increased to 2.73 times. This difference in financial assets is explained most significantly by higher household savings rates and greater allocation into non-cash investments, not by better returns due to advisor skill;

- A *paper by the School of Public Policy at the University of Calgary*[235] asserts that embedded commissions facilitate affordable and broadly accessible financial advice which leads to greater individual wealth accumulation, which in turn makes a positive contribution to the retirement readiness of Canadian households and, ultimately, the economy. Based on a review of academic, government, regulatory and industry research, including the CIRANO study above, the author of the paper argues that eliminating embedded commissions would hurt less affluent investors who may not be willing or able to pay for advice upfront, thus creating an advice gap which would be a major setback for Canada-wide retirement savings and Canadians' quality of life in retirement;

- The fund industry's latest *Pollara opinion survey*[236] finds that investors perceive the advice they receive from their advisor to be beneficial. Specifically, 95% of respondents indicated they can rely on their advisor to provide sound advice and 88% agreed they get better returns as a result of the advice they receive. Eighty-two percent attributed better savings and investment habits to their advisor, while 91% said they get value for the money they pay to their advisor;

- Research by *Vanguard Investments Canada Inc.*[237] finds that working with an advisor can theoretically add about 3% in net returns when following the Vanguard Advisor's Alpha framework for wealth management which involves the application of the following five wealth management principles:

  - Being an effective behavioral coach by helping clients maintain a long-term perspective and a disciplined approach (potential value add: 1.50%);

  - Applying an asset location strategy, i.e. allocating assets between taxable and tax-advantaged accounts (potential value add: from 0% to 0.42%);

  - Employing cost-effective investments, i.e. passively managed funds (potential value add: 1.31%);

  - Maintaining the proper allocation through rebalancing (potential value add: 0.47%); and

  - Implementing a spending strategy to help clients make important decisions about how to spend from their

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[234] Claude Montmarquette et al., "Econometric Models on the Value of Advice of a Financial Advisor", CIRANO Institute, July 2012, http://www.cirano.qc.ca/pdf/publication/2012RP-17.pdf. Claude Montmarquette, one of the authors of that study, later admitted that a survivorship bias exists in the study and that he would like to see a more formal longitudinal study intimately tracking the performance of advised versus non-advised groups over a long period of time. See "*Financial Industry overselling value of financial advice*", Globe and Mail, November 15, 2012, http://www.theglobeandmail.com/globe-investor/personal-finance/household-finances/financial-industry-overselling-value-of-financial-advice/article5360796/. The study does not establish a causal relationship between the payment of trailing commissions and wealth accumulation as it does not identify whether its participants received advice through trailing commissions or other compensation arrangements. The study also does not factor into its findings any liabilities that its participants may have incurred through financial advice, which may offset the total wealth accumulation.

[235] Pierre Lortie, "A Major Setback for Retirement Savings: Changing How Financial Advisers Are Compensated Could Hurt Less-Than-Wealthy Investors Most", *University of Calgary School of Public Policy Research Papers*, Vol. 9, Issue 13, (April 2016), https://www.policyschool.ca/wp-content/uploads/2016/05/financial-advice-lortie.pdf.

[236] Pollara, supra note 204.

[237] Vanguard research, "Putting a value on your value: Quantifying Vanguard Advisor's Alpha", (September 2016), https://www.vanguard.com/pdf/ISGQVAA.pdf.

portfolios (potential value add: 0% to 0.41%).

Vanguard's research emphasizes that the potential 3% in net returns for clients should not be viewed as an annual value-add, but is likely to be intermittent, as some of the most significant opportunities to add value occur during periods of market duress or euphoria when clients are tempted to abandon their well-thought-out investment plans. The research also stresses that the applicability of the management principles, and the resulting value added, will vary by client circumstances (based on each client's time horizon, risk tolerance, financial goals, portfolio composition, and marginal tax bracket, to name a few) as well as implementation on the part of the advisor.

The beliefs of representatives may affect their advice:

A *study by Juhani Linnainmaa et al.*[238], using the same data as that used in the Foerster et al study[239], suggests that the quality of representatives' advice may be affected not only by conflicts of interest which can incent self-interested behavior, but also by personal beliefs and preferences regarding investment strategies (for e.g. the belief that active management – even after commissions – dominates passive management). They find that representatives manage their personal portfolios just like they manage their clients' portfolios. They trade frequently, chase returns, and prefer expensive, actively managed funds over low-cost index funds for both their clients and for themselves. Differences in representatives' beliefs affect not only their own investment choices, but also cause substantial variation in the quality and cost of advice they give to clients, raising costs for some investors.

The benefits of representatives' advice may largely be intangible:

Certain research suggests that, to the extent investors derive benefits from dealings with representatives, such benefits may be largely behavioral and thus intangible in nature, such as the development of good savings discipline, overcoming inertia, the reduction of investor anxiety, and the creation of trust. Such research includes:

- the *CIRANO Research* which finds that advised households in Canada accumulate greater financial assets over time, but that this finding is mainly due to their improved savings discipline due to the advisor.[240] Another CIRANO study finds that the discipline imposed by a financial advisor on the financial behavior of households and the increased savings of advised households are key to improving asset values of households relative to comparable households with no advisor.[241]

- the *paper by the School of Public Policy at the University of Calgary* which reviews a body of research showing that pervasive behavioral biases in decision-making limit an individual's ability to make sound financial decisions on their own. Such biases include the tendency to prefer short-term gratification (consumption) over longer-term returns (saving), inertia and status quo bias and a propensity to push to a later date actions that require self-control. The author asserts that financial advisors can help individuals overcome these behavioral weaknesses which can lead them to make sub-optimal investment decisions when left to their own devices.[242]

- *research by Foerster et al.*, which posits on the possible reasons why fund investors prefer to use the services of dealers/representative despite the research's finding that the investment advice provided through commissions does not justify the fees paid. He states: "Given householders' strong preference for using financial advisors, it is likely that they receive other benefits beyond investment advice. Our results, however, impose constraints on the set of plausible benefits. The benefits cannot be of one-time nature because investors pay the fee continually as they remain advised. Such benefits may come in the form of financial planning, including advice on saving for college and retirement, tax planning and estate planning. It is also possible that financial advisors add value by mitigating psychological costs rather than providing financial benefit; that is, reducing anxiety (Gennaioli, Shleifer, and Vishny 2014) or eliciting feelings of trust (Guiso, Sapienza, and Zingales 2008) rather than improving investment performance.";[243]

- *research by Bergstresser et al. which, further to their failure to find that brokers deliver substantial tangible benefits to inv*estors in broker-sold funds, speculates that brokers may deliver substantial intangible benefits that we do not

238 Juhani T. Linnainmaa, Brain T. Melzer and Alessandro Previtero, "Costly Financial Advice: Conflicts of Interest or Misguided Beliefs?", December 2015, http://faculty.chicagobooth.edu/juhani.linnainmaa/MisguidedBeliefs.pdf.

239 Stephen Foerster et al., supra note 181.

240 Claude Montmarquette et al., supra note 234.

241 Claude Montmarquette et al., *The Gamma Factor and the Value of Financial Advice*, CIRANO Institute, August 2016, http://www.cirano.qc.ca/files/publications/2016s-35.pdf.

242 Pierre Lortie, supra note 235, at pages 6 and 7.

243 Stephen Foerster et al., supra note 181 at pages 27-28.

observe. The researchers state that “[b]rokers may help their clients save more than they would otherwise save, they may help clients more efficiently use their scarce time, they may help customize portfolios to investors’ risk tolerances, and they may increase overall investor comfort with their investment decisions;”[244]and

- *research by Gino et al.* which finds a robust relationship between anxiety and advice seeking and between anxiety and advice taking. Specifically, this research finds that anxious individuals are found to be more likely to seek and rely on advice than are those in a neutral emotional state. The relationships between anxiety and advice seeking and anxiety and advice taking are mediated by self-confidence. Although anxiety also impairs information processing, impaired information processing does not mediate the relationship between anxiety and advice taking. Anxiety motivates individuals to seek advice from others and to be less discriminating between good and bad advice and between advice from advisors with and without a conflict of interest.[245]

[244] Bergstresser et. al., supra note 233, at p. 4131.

[245] F. Gino, A.W. Brooks and E. Schweitzer, “Anxiety, Advice, and the Ability to Discern: Feeling Anxious Motivates Individuals to Seek and Use Advice”, *Journal of Personality and Social Psychology*, Vol. 102, No. 3, (2012), pp. 497-512, http://www.hbs.edu/faculty/Publication%20Files/gino_brooks_schweitzer_jpsp_2012_fd79893e-9f44-4a69-9460-848527d2d598.pdf.

APPENDIX B

OTHER OPTIONS CONSIDERED

In determining how best to address the investor protection and market efficiency issues identified, the CSA considered the merits of a number of other policy options in addition to discontinuing embedded commissions and those discussed in Part 6 of this Consultation Paper. Some of these options were proposed in the Original Consultation Paper, while some options were identified following the consultation. Each option was thoroughly and thoughtfully evaluated.

Generally, where we determined that an option would potentially address one issue to some degree, but at the same time fail to address or even exacerbate another issue, we opted not to pursue the option. Other options were not retained because they were found to be inconsistent or redundant with options proposed in CSA CP 33-404.[246]

Like the options discussed in Part 6 of this Consultation Paper, for each of the options discussed below, we analyzed the anticipated positive and negative impacts/effects on each of the following stakeholders:

- advised investors (specifically those with investable assets below $100K, between $100K and $500K, and above $500K);
- DIY investors;
- independent investment fund managers;
- independent fund dealers; and
- integrated financial service providers.

The following discussion provides a brief overview of the primary alternative options considered by the CSA and why we have decided not to pursue such options further.

1. Enhancements to Disclosure

The CSA considered making a number of disclosure-based enhancements to the current account statements[247] and fund fact documents required by the CRM2 and POS reforms respectively. The primary focus of these enhancements would be to increase investor awareness of the costs associated with their investments and the impact that such costs play on investor returns. The particular enhancements considered are discussed below.

i. CRM2 account statement enhancements

The CSA considered enhancing the disclosure on dealers' websites and/or in the account statement currently provided by dealers to provide the median percentage return and total cost in dollars for a range of account sizes and risk types. The following diagram illustrates an example of the disclosure contemplated:

Median Client Account Returns in 2015

Account Size	Client Risk Tolerance: Low	Medium	High
0 - $100,000	2.5%	5.0%	3.0%
$100,000 - $500,000	2.5%	7.0%	3.0%
$500,000 and over	4.0%	10.0%	5.0%

Median Client Account Costs 2015

Account Size	Client Risk Tolerance: Low	Medium	High
0 - $100,000	750.25	801.38	1,002.30
$100,000 - $500,000	7,538.20	8,951.02	15,892.30
$500,000 and over	38,582.89	52,891.40	74,120.00

The foregoing information would be based on data aggregated at the firm level in respect of all accounts for which dealers are required to produce a report on charges and other compensation and investment performance.

[246] For example, the option of defining and disclosing advisor service levels in exchange for trailing commissions as set out in the Original Consultation Paper wasn't retained due to the proposals noted in CSA CP 33-404.

[247] Report on charges and other compensation and content of investment performance report.

If implemented, the CSA would anticipate this benchmarking exercise to have the following benefits:

- it may better allow investors to assess their performance and costs relative to others, which in turn may allow investors to better assess the quality of the services they receive from their advisor; and

- it may over time create competition among advisors and incent advisors to enhance their level of service, which could also lead to potential cost reductions in the services provided.

The drawbacks of this option would be that:

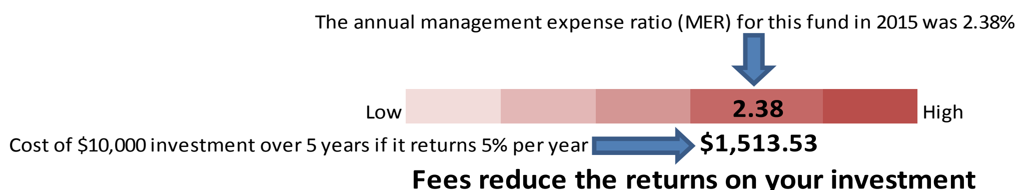
- it would be difficult to control for variability in services provided, as well as investor objectives and time horizon, making comparisons misleading and/or ineffective;

- investors may require a certain level of investment knowledge to fully understand and interpret the additional information to benefit from the added disclosure (especially when considered in the context of all of the other information provided in the account statement); and

- some dealers who distribute proprietary products and are part of larger, integrated financial service providers, do not receive commission revenue such as trailing commissions and instead receive internal transfer payments from affiliates based on agreements with their corporate group. In these instances the true costs of the services provided may be difficult to compare across different dealers.

ii. POS fund facts enhancements

One potential way we considered to enhance the disclosure in the fund facts document was to provide more prominent fee disclosure, and greater context about the fees charged and their impact on performance. For example, as shown in the following diagram, the CSA considered requiring an illustration of where a fund's MER falls on a spectrum from "low" to "high" based on industry averages:



In conjunction with the foregoing, the CSA also considered requiring disclosure of the actual dollar amount of fees paid and returns foregone (each demonstrated over certain investment periods assuming specified returns). This disclosure could also have been supplemented with educational statements to alert a potential investor of the impact that fees play on their investments, such as "fees reduce the returns on your investment".

As an alternative to the foregoing, the CSA also considered amending the fund facts to provide enhanced disclosure regarding fund MERs and what they pay for. For example, the CSA considered breaking down the individual components of the MER to give an investor a more complete picture of the fund's expenses. Such information expressed in dollars would include, for example, the portion of management fees paid by the fund that directly compensates the investment fund manager for its services, the portion paid for operating expenses of the fund, and the portion that is used for distribution (such as all compensation paid to a dealer, including trailing commissions and sales commission, and marketing and promotional material). In addition, the CSA considered changing the term "trailing commissions", which is used in the fund facts and other reports provided to investors, to a more descriptive term such as "fees for advice and dealer services".

If implemented, the CSA expect that the disclosure enhancements could have the following benefits:

- investors may have greater fee awareness at the time of sale, which may also cause investors to consider the impact of the fees on their investment and/or the value of their advisor's advice before making an investment decision;

- investors may be prompted to ask more questions about the costs of the investment fund products being recommended and potentially ask for lower-cost alternatives; and

- to the extent that such disclosure leads advisors to recommend less expensive alternatives, competition among investment fund managers may be increased over time as managers may be pressured to lower costs to compete for market share.

Some drawbacks with this approach, however, would be that:

- investors may require a certain level of investment knowledge to fully understand and interpret the additional information to benefit from the added disclosure (especially when considered in the context of all of the other information provided in the fund facts document);

- the costs associated with the amendments may be burdensome and would be borne by investment fund managers (and ultimately, by fund securityholders);

- it may be difficult to compare information between different fund types (for example, between fixed income and equity funds); and

- it may suggest that fund types that typically have lower fees are better than fund types that typically have higher fees.

Why the CSA is not pursuing enhancements to disclosure

Provided that the disclosure is simple and easy to understand, the CSA anticipate that the enhancements discussed above may lead to greater fee awareness among investors, as investors would be provided with more prominent fee disclosure that would include additional information to help an investor assess the costs and performance of their investment (both at the time of sale and ongoing).

Notwithstanding the enhanced disclosure, the CSA chose not to proceed with this option as it does not anticipate that it will have any measurable effect in addressing any of the other investor protection and market efficiency issues identified by the CSA, particularly the conflicts of interest stemming from embedded commissions. In our view, and as discussed in more detail in Part 6, we think that disclosure alone may not be an effective remedy for conflicts of interest in an advisor-client relationship.

Moreover, the CSA do not believe it is prudent to pursue additional enhancements to disclosure until such time as the effectiveness of the current POS and CRM2 requirements has been tested through a post-implementation review.[248]

2. Investment Fund Manager Focused Initiatives

The CSA also considered implementing a number of targeted reforms at the investment fund manager level to help address the investor protection and market efficiency issues identified. The particular initiatives considered are discussed below.

i. Require a separate series or class of funds for each purchase option

One option considered was to require investment funds to maintain a separate series or class of securities for each available purpose option (i.e. front end sales charge, DSC and no load)[249].

When an investment fund has multiple purchase options, part of the management fees earned by an investment fund manager are typically used to fund the payment of sales commissions to dealers on sales made under the DSC option. The cost of these commissions is commonly allocated to the fund as a whole and, by consequence, all investors in the fund regardless of the purchase option they chose. As a result, investors who purchase under the front end load option (who generally make an upfront commission payment directly to the dealer at the time of purchase) bear the same management fee as those investors who purchase under the DSC option (who do not make such upfront payments because the dealer's commission is paid directly by the investment fund manager).

To the extent investment funds would be required to maintain a separate series or class of securities for each available purchase option, the CSA would expect the resulting benefits to be that:

- the management fee charged to the particular series or class would reflect the costs attributable to that particular series or class; and

[248] The CSA recently began a multi-year research project to measure the impacts of CRM2 and POS on investors and the industry. See note 149.

[249] We note that currently there a few mutual funds that separate fund series by each purchase option (i.e. front end, no load, and DSC). In these instances, we note that pricing for the DSC/low-load series is generally greater than other series to reflect the higher distributions costs associated with this series.

- costs incurred by each series or class would be borne only by investors in that particular series or class, as opposed to all investors equally.

However, if this proposal was implemented, the CSA would expect some of the following drawbacks:

- a proliferation in the number of individual fund series currently offered by investment fund managers, which may negatively impact investors as it will add further complexity to the investment choice, and potentially reduce fee awareness due to the increased number of options;

- a fund facts document would be required for each purchase option as each purchase option would be an individual series. This requirement would lead to increased costs on the investment fund manager (and ultimately, fund securityholders) and require investors to refer to the prospectus to discern all of the other available purchase options, further adding to the complexity of this option; and

- there would be no guarantee that the pricing for the separate series or class would reflect only the costs attributable to that particular series or class.

ii. Require trailing commission and other embedded sales commissions to be charged as an expense of the fund

Another potential approach was to require all trailing commissions and other embedded commissions (such as sales commissions paid on DSC options) to be an expense of the fund. In particular, this option would require separation of the trailing commission from the management fee and require disclosure of any trailing commission paid as an individual, asset-based fee of the fund. This approach would be similar to the current practice in the U.S., where investment companies that pay trailing commissions to advisors bear an asset-based "12b-1 fee"[250], which is separate and apart from the management fee and covers the cost of distribution.

If this approach was implemented, the CSA would expect the requirement to make all embedded costs, which would include the sales commissions paid on DSC options, an expense of the fund to:

- necessitate the separation of purchase options into individual series (leading to the same benefits and drawbacks as the option discussed above);

- provide investors with greater transparency of the actual costs of advice and fund management; and

- allow investors to have greater control over, and awareness of, the costs and advice of distribution (as any increases to the commission, which would be an expense of the fund, would be subject to security holder approval). Similarly, the fund's independent review committee would also be in a position to provide governance and oversight over any potential rate increases.

There would be, however, several drawbacks to this approach that may reduce its effectiveness. For example:

- it could potentially lead to negative tax implications at the fund level;

- the funds offered by vertically integrated fund managers who make transfer payments rather than pay trailing commissions to their affiliated dealers may appear to have lower distribution costs than funds offered by independent fund managers as there may be no trailing commission to disclose; and

- changes to transfer payments would also not be subject to securityholder or IRC approval, which would limit the governance and oversight, as well as investor control, over these types of embedded payments.

iii. Require a standard class for DIY investors with no or reduced trailing commission

A further option considered was to require each investment fund to have a low-cost, "execution only" series or class of securities available for direct purchase by DIY investors and to require discount dealers/brokerages to offer such series or class. This series or class could be made available to investors in a number of ways, including through discount brokerages as well as directly from the investment fund manager. Since DIY investors typically do not seek advice, this series or class would have a lower management fee to reflect that no, or nominal, trailing commissions are paid to advisors. While advice is not provided to investors in these instances, the CSA understand that any nominal trailing commission paid would cover the costs of administrative, compliance, and technological services provided by the dealer or manufacturer.

[250] Details regarding "12b-1 fees" may be found at: https://www.sec.gov/answers/mffees.htm.

One potential benefit to this option would be that investors could choose to either: (a) use an advisor for the purchase of a fund and assume the higher costs associated with this choice; or (b) not use an advisor and have access to the same fund at a reduced cost. Accordingly, this option could:

- make the true costs of advice more apparent, which would allow those who use an advisor to better evaluate the value of the advice/services they receive;
- over time, lead investors to have greater awareness of, and control over, the level of fees paid with their investment; and
- improve the alignment between embedded dealer compensation paid and the services provided to DIY investors.

One potential significant drawback to this approach, however, is that it may not be feasible or possible for the CSA to compel investment fund managers to create a new "execution only" series; and/or compel dealers to distribute this type of series.[251]

Why the CSA is not pursuing the investment fund manager focused initiatives

The CSA acknowledges that these options would appear to introduce a beneficial governance mechanism to the fee structure that could help mitigate the conflict of interest that embedded compensation raises for the investment fund manager, and also possibly improve the transparency and fairness of fees for some investors. However, the CSA chose not to proceed with these initiatives as we determined that the costs associated with these reforms would likely outweigh any potential benefit to be received. Moreover, these reforms would fail to directly address some of the important investor protection and market efficiency issues we have identified, in particular the bias that embedded compensation engenders in sales recommendations and its detrimental effect on investor outcomes and market efficiency.

The CSA also determined that to the extent the initiatives would respond to an issue, it would mainly do so for only a small part of the market (in particular DIY investors)[252]. Moreover, these options would very likely add further complexity to our current fund fee structure through an expected significant increase in the number of new fund series, and fail to have a meaningful impact on competition.

3. Cap commissions

Another option considered by the CSA was the possibility of setting a maximum limit (i.e. cap) on embedded commissions that investment fund managers may pay to dealers/representatives. Under this option, dealer firms and their representatives would be free to directly charge their clients commissions or fees for their services, either as a supplement or a substitute to embedded commissions. The CSA considered that this option could also be a possible interim step toward an eventual discontinuation of embedded commissions.

A potential way to implement this option would be to limit the trailing commission rate payable from the investment fund manager's management fee revenue. This option could also be complemented by additional disclosure in fund offering documents that would plainly describe the fees charged as "ongoing sales commissions". In addition to, or as an alternative to, setting a cap on trailing commissions at the investment fund level, another potential option considered was to impose a cap on the aggregate sales charge (in terms of a total dollar value) that could be paid by an individual investor at the account level over the length of a fund investment. In this way, once the cap is reached, the investor's assets could be switched to a series or class of securities that does not have any ongoing trailing commission or other embedded commission payment, bringing certainty of costs to the investor.

The CSA anticipates the primary benefits of this option to be:

- standardization and reduction in the variability of trailing commissions across funds, which may reduce incentives for (a) dealers and their representatives to sell funds based primarily on the trailing commission, and (b) investment fund managers to rely on the trailing commission to attract and preserve assets under management;

[251] As further discussed in Part 4 of this Consultation Paper, we note that since 2012, certain investment fund managers have launched a series of securities for direct purchase for DIY investors (see for example, series D securities). However, the majority of mutual fund assets held in the discount brokerage channel still remain in a series that pay a full trailing commission. As a result, the CSA are of the view that this option could only reach its optimal effectiveness if investment fund managers are required to create, and dealers are required to sell, a discount series.

[252] According to *Investor Economics*, as at December 2015, only $56 billion of investment fund assets were held through the online/discount brokerage channel.

- reduction of the incentive for dealers and their representatives to promote the use of DSC options as the offering of these options is likely to be reduced or possibly eliminated as a result of the cap on embedded commissions; and

- decreased fund costs (as DSC purchase options typically tend to be more costly to administer than front end or no load options, we would expect a modest decline of 15-25 bps based on the pricing practices of investment funds that separate these purchase options into unique series).

The shortcomings with this approach would be:

- as the payment of embedded commissions will continue to be permitted, they may continue to create a barrier to entry that may reduce the likelihood of lower-cost providers entering the market;

- the presence of embedded commissions may continue to make the fee structure more complex, which may continue to inhibit investors' understanding of such costs;

- embedded commissions will still remain a "one-size-fits-all" fee that may not align well with the services and advice actually provided to individual investors in accordance with their specific needs, expectations and preferences; and

- to the extent DSC options are reduced or eliminated, this approach would tend to place firms that rely on these options (e.g. independent investment fund managers and dealers) at a disadvantage relative to those that do not (e.g. integrated investment fund managers and dealers).

Why the CSA is not pursuing a fee cap

Despite the apparent benefits to this approach, it is not being further considered by the CSA at this time, either as a stand-alone option or as an interim step toward discontinuing embedded commissions because, as the shortcomings demonstrate, many of the issues we have identified would likely continue to persist in the presence of a fee cap.

This option would also cause the CSA to take a non-traditional role of setting fee caps for investment products, rather than implementing measures intended to promote market efficiency. Moreover, the CSA is not prepared to cap commissions due to the potential unintended consequences that may result from a cap. For example, research has shown that a price cap can indirectly cause average prices to rise.[253] Accordingly, it would be very challenging to determine and justify the appropriate cap rate in the circumstances.

[253] Mark Armstrong, supra note 184. At page 6, Armstrong states: "Although the direct effect of a price cap is to reduce prices, the indirect effect of reduced search lessens each firm's demand elasticity so much that prices on average go up. This formalizes a claim sometimes made informally, which is that imposing price controls on an oligopoly market could raise equilibrium prices. One intuition for such a claim is that a price cap acts as a focal point for tacit collusion."

APPENDIX C

INTERNATIONAL MUTUAL FUND FEE REFORMS

Regulators of several international jurisdictions have implemented or are considering implementing regulatory reforms with a view to addressing some of the issues we discuss under Part 2 of this Consultation Paper. Below, we give an overview of the relevant reforms that have been implemented or proposed in the U.S., the U.K., Australia, New Zealand, Singapore, the European Union (**EU**), and in some of the EU's member states, namely the Netherlands, Germany and Sweden. We also give an account of their impact to date, as assessed further to initial post-implementation reviews.

1. United States

On April 6, 2016 the United States Department of Labor (**DOL**) issued a final rule to address conflicts of interest situations in the advisor-client relationship concerning the provision of retirement advice (the **Fiduciary Rule**).[254]

i. Scope of the regulation

The Fiduciary Rule significantly broadens the scope of who is considered a "fiduciary" under the *Employee Retirement Income Security Act of 1974* (**ERISA**). Generally, and among other requirements, those who are considered fiduciaries will need to abide by a fiduciary standard in the provision of investment advice to retirement accounts.

ii. Overview of the regulation

Under the Fiduciary Rule, any individual receiving compensation for providing advice that is individualized or specifically directed to a particular plan sponsor (e.g. an employer with a retirement plan), plan participant, or Individual Retirement Account (**IRA**) owner for consideration in making a retirement investment decision is a fiduciary. Such decisions can include, but are not limited to, what assets to purchase or sell and whether to rollover from an employer-based plan to an IRA. The fiduciary can be a broker, registered investment advisor, insurance agent, or other type of advisor. Basic order-taking is not considered a fiduciary activity.

To the extent an advisor is considered a fiduciary under ERISA, the advisor will need to abide by a fiduciary standard. The advisor must also, among other requirements, either avoid payments that create conflicts of interest (including, for example, trailing commissions) or comply with certain exemptions that will mitigate the conflict. Among the available exemptions is the "Best Interest Contract Exemption" (the **BIC Exemption**).

The BIC Exemption allows advisors to continue to receive commission-based compensation provided that they meet certain conditions intended to mitigate the conflict created by such compensation. Generally, advisors must acknowledge fiduciary status, provide advice that is in their client's best interest, avoid making misleading statements, and receive no more than reasonable compensation. The firm must also ensure it has policies and procedures aimed at mitigating conflicts of interest, must not provide incentives to its employee advisors to make recommendations that are not in the client's best interest, and must ensure all conflicts of interest are disclosed.

iii. Impacts

As compliance with the Fiduciary Rule will not be required until April of 2017, and there will be a further transition period for many requirements of the BIC exemption to January 1, 2018, the impacts of the Fiduciary Rule have yet to be determined.

2. U.K. – Retail Distribution Review

On December 31, 2012, the predecessor of the Financial Conduct Authority (**FCA**), the Financial Services Authority, introduced new rules under their Retail Distribution Review (**RDR**) reforms that aimed to raise advisor qualifications levels, improve the transparency of advisor charging and services, and realign advisor incentives with those of consumers by removing the commission they received from product providers.

i. Scope of the regulation

The commission ban relates to retail investment products only (including, but not limited to, investment funds and life insurance with investment component). It excludes mortgages and pure protection products such as non-investment life insurance, critical illness and income protection insurance.

[254] The Fiduciary Rule and summary by the DOL may be found at: http://www.dol.gov/ebsa/regs/conflictsofinterest.html

The commission ban originally applied in the case of any advisor (whether tied to or independent of a product provider) making a recommendation in respect of a retail investment product to a retail client. It requires advisors to be paid through fees charged directly to clients and not solicit or accept from providers any other commissions, remuneration or benefit of any kind (regardless of whether they intend to refund the payments or pass the benefits on to their retail clients). Ongoing commission payments generated by transactions entered into on or before the RDR entered into effect were not affected.

The commission ban was subsequently extended to retail platform service providers on April 6, 2014, with a sunset clause permitting ongoing commission payments generated by transactions executed on or before April 5, 2014 to continue until April 5, 2016 (when they were required to terminate).

ii. Overview of the regulation

The reforms under RDR introduce the following requirements:

- **Ban on conflicted advisor remuneration**: The rules require advisors to set their own charges for their services in agreement with their clients. Advisors may no longer receive commissions from product providers or commissions otherwise embedded in the cost of the product. Their charging structure must be based on the level of service they provide, rather than the particular provider or product they recommend. Whether the charging structure is based on a fixed fee, an hourly rate or a percentage of funds invested is for the advisor to decide together with the client, provided the advisor always bears in mind its duty to act in the client's best interests.[255] Ongoing fees are permitted only where a client is paying for an ongoing service that has been properly disclosed or where the product is one in which the client makes regular payments, and may be cancelled by the client at any time without penalty.

  Consumers can choose to pay an advisor's fee separately from the payments for the product, or have the advisor's fee deducted from their investment/insurance contribution. The FCA allowed for **"provider facilitation" of payments** under which the customer agrees to payments with their intermediary, but it is the provider that delivers the payment to the intermediary, for example from premiums paid. If payment is to be taken from the investment, the product provider must obtain clear instructions from the client about the amount to be deducted.

- **"Independent" vs. "Restricted" advice**: The rules aim to ensure that investors understand the services they receive by requiring advisors to clearly describe their services as either "independent" or "restricted". An "independent" advisor provides personal recommendations that are: (a) based on a comprehensive and fair analysis of the relevant market, and (b) unbiased and unrestricted. Where this test is not satisfied, an advisor offers "restricted" advice (e.g. advice limited to proprietary products or a reduced range of products).

- **Increased proficiency and professionalism**: The rules require that individual advisors meet higher proficiency requirements, subscribe to a code of ethics, carry out at least 35 hours of continuing professional development a year, and hold a statement of professional standing from an accredited body. Advisors that do not meet these standards are no longer able to make personal recommendations to retail customers since December 31, 2012.

The desired outcomes of the RDR were set out in a discussion paper (FSA DP07/01) and included, among others:

- standards of professionalism that inspire consumer confidence and build trust;
- an industry that engages with consumers in a clearer way about products and services; and
- compensation arrangements that allow competitive forces to work in favour of consumers.

[255] In the U.K., the *Financial Conduct Authority Handbook* provides that all registrants must act honestly, fairly and professionally in accordance with the best interest of the client. This best interest standard is qualified, however, since registrants are subject to a spectrum of requirements which vary according to the nature of the advice given to clients ("independent", namely on a broad range of products, and "restricted", namely on mainly proprietary or other specific products).

iii. Impacts

a. FCA – First stage of RDR post implementation review:

On December 16, 2014, the FCA published the findings from the first stage of its post implementation review.[256] While the FCA cautioned that it is too early to obtain a definitive picture of the impact of RDR, the evidence from the first stage of the review showed a positive picture, with encouraging signs that the RDR is on track to deliver its objectives in many areas. The main findings are described below:

- **Reduced product bias**: The removal of commission paid by providers to advisors has reduced product bias from advisor recommendations, reflected in a decline in the sale of products which paid higher commissions pre-RDR and an increase in the sale of those which paid lower or no commission pre-RDR. This reduced bias has led to an increased focus by advisors on the provision of more holistic ongoing advice services and an enhanced quality of advice for at least some consumers.

- **Reduced product cost and improved competition**: Product prices have fallen by at least the amounts paid in commission pre-RDR, and there is evidence some product prices may have fallen even further. This is due in part to the introduction of simpler products and funds with lower fees and advisors and platforms exerting more competitive pressure on providers, with platforms increasingly able to negotiate lower product costs. The removal of commission also means that providers who sold lower or no commission products pre-RDR (e.g. index tracker funds) are now competing on a more equal basis.

- **Higher advice costs for some**: Post-RDR, one-off charges appear in line with pre-RDR initial commissions paid to advisors and ongoing charges have increased relative to ongoing commissions for at least some firms and in some regions of the U.K. There however lacks a comprehensive evidence base (particularly for the pre-RDR period) to tell whether payments to advisors have increased more generally, or whether such changes will be long-term. A longer post-RDR trend in advisor charges will help inform this.

- **Number of firms/advisors not significantly impacted**: While there was some exit from the advisory business in the period leading up to RDR, by the banks and by some financial advisors (largely due to the requirement to meet higher proficiency requirements and also due to a number of market factors), there remains a large number of advisory firms and advisors to serve consumers. Average revenues and profitability of these advisory firms has increased.

- **Increased focus on higher wealth clients**: The reforms have led many firms to consider the fundamentals of their business models and make key changes, e.g. segmenting their customers, with some focusing on services to those with higher levels of investible assets and more complex (and profitable) investment advice needs.

- **Limited evidence of an "advice gap"**: There was limited evidence of an advice gap emerging for lower-wealth consumers as a result of some firms having moved to target higher net worth clients post RDR and not being able or willing to provide advice to consumers outside this segment. The evidence however suggested that the number of consumers affected by this was generally small and that these consumers were likely to have been picked up by other advisory firms. The FCA determined that there was little evidence that the availability of advice had reduced significantly as a result of the RDR, with the majority of advisors still willing and able to take on more clients. At the same time, there was evidence that consumers were increasingly buying products on a non-advised basis. The FCA also found that the group of consumers who seek advice but were not willing to pay the true cost of such advice on the grounds that it did not represent value for money was likely to have increased under the RDR. The FCA however pointed out that these consumers existed to a degree prior to the RDR and that it was arguable as to whether this group was in fact part of an "advice gap". The FCA further noted that the increase in this group of consumers had been limited by the adoption by the majority of advisory firms of contingent charging structures rather than upfront fees. The FCA also noted the efforts they were making to increase the supply of lower-cost simplified advice to meet consumer demand.

The FCA expects to publish the next phase of its post-implementation review in 2017, which will allow it to draw from at least three years of evidence. A subsequent, third phase of the review will consider the longer-term implications**.**

[256] FCA, *Post-Implementation review of the Retail Distribution Review – Phase 1*, December 2014, https://www.fca.org.uk/publication/research/post-implementation-review-rdr-phase-1.pdf. The FCA commissioned external consultants Europe Economics to undertake the first phase of the review. Their full report is available here: https://www.fca.org.uk/static/documents/research/rdr-post-implementation-review-europe-economics.pdf.

b. HM Treasury and FCA – Financial Advice Market Review:

In the face of concerns of a potential advice gap for some consumers and a lack of engagement with financial services, the HM Treasury (**HMT**) and the FCA launched the Financial Advice Market Review (**FAMR**) with a consultation paper (**Call for input**) published on October 12, 2015[257], seeking input on how to make financial advice work better for consumers. The aim of the review was to explore ways in which government, industry and regulators can take individual and collective steps to stimulate the development of a market which delivers affordable and accessible financial advice and guidance to everyone, at all stages of their lives.

The review explored the supply and demand sides of the market for financial advice and guidance, the barriers to providing these services and the potential remedies.

HMT and the FCA published the final FAMR report on March 14, 2016.[258] Some of the report's key findings include:

- **Access to advice**: Following the RDR, FAMR notes that the U.K. has a high quality financial advice market and that standards and professionalism in the industry have increased. The drive for higher standards and professionalism, along with other factors, has however contributed to a reduction in advisor numbers. The move to fee-based advice on retail investment products has improved transparency and eliminated conflicts of interest caused mainly by a commission-driven model. Nonetheless, advice is expensive and is not always cost-effective for consumers, particularly those seeking help in relation to smaller amounts of money or with simpler needs. It may not be economical for firms to serve consumers with lower amounts to invest or with simple needs. These changes have highlighted concerns that there is an advice gap in the U.K. as not all consumers can currently access the advice they need at a price they are willing or able to pay. FAMR also notes that the low levels of consumer demand for advice are also contributing to the advice gap. Such low demand is driven by several factors, including but not limited to high costs (especially relative to small amounts available to invest), limited confidence in engaging with financial issues, and a lack of trust following past instances of mis-selling.

- **Decline in advisor numbers**: The review notes a decline in advisor numbers over recent years (an approximate 23% decline of registered advisors between 2011 and 2014) for a range of reasons, including the introduction of the RDR. FAMR identifies that the majority of advisors exiting the market during this period were those employed by the banks and building societies. There are a number of reasons for these exits, including declining profitability of branch-based distribution models, a lesser role for branch-based activity, anticipation of the RDR and the consequences of past episodes of mass mis-selling (in terms of redress and reputational damage).

- **Services to mass market customers**: FAMR also identifies that banks, insurers and other large firms have, however, traditionally been more likely to serve mass-market customers with lower levels of wealth. The FCA's recent survey of advisors found that customers with pension wealth of less than £30,000 made up 27% of customers advised by medium or large advisory firms and 19% of customers advised by very small firms (those with only one or two advisors). This is likely to be because firms with high numbers of advisors are able to benefit from economies of scale, which make it possible to serve consumers with lower levels of affluence. Larger, more diversified financial services firms also benefit from having an existing customer base across which they can cross-sell their advisory services.

- **Cost of receiving advice**: FAMR notes that there are many consumers who would be willing to pay for advice but who are discouraged by higher prices. The responses received to the Call for input noted, among other things, that the perception and the reality of clients affect their willingness or their ability to pay fees for advice. FAMR also notes that it is currently difficult for the traditional model of advice to serve consumers economically at lower fee levels.

- **Cost of providing advice**: For the cost of providing advice, a 2016 industry survey of advice firms suggested that, over the last two years, the proportion of firms who ask for a minimum portfolio of more than £100,000 has more than doubled, from around 13% in 2013 to 32% in 2015. The FCA's recent survey of advisors also supports this, suggesting that 45% of firms very rarely advise customers on retirement income options, if those customers have small funds (i.e. less than £30,000) to invest. There are several reasons for this. A consistent theme emerging is that there are significant minimum costs per customer associated with supplying face-to-face advice which inevitably affect commercial decisions about whether to offer services to consumers with

[257] HM Treasury & FCA, FAMR – Financial Advice Market Review – Call for input, October 2015, http://www.fca.org.uk/static/documents/famr-cfi.pdf.

[258] https://www.fca.org.uk/publication/corporate/famr-final-report.pdf.

lower amounts to invest. It will also inevitably affect whether the consumer feels that the service they receive represents good value for money.

FAMR notes, however, that some larger firms have recently signalled a return to the advice market. In some cases this is being facilitated by effective and creative use of new technologies. A number of firms currently in the advice market are also planning to increase the number of customers they serve. The FCA's recent survey of advisors found that around 30% of firms surveyed expect to grow the number of advisors over the next year.

The FAMR's recommendations for tackling the barriers to consumers accessing advice fall into 3 key areas:

- **Providing affordable advice to consumers** – these recommendations include proposals to make the provision of advice and guidance to the mass market more cost-effective. FAMR makes a number of recommendations intended to allow firms to develop more streamlined services and engage with customers in a more engaging and effective way. These recommendations include a proposal that the FCA should set up a dedicated team to assist firms that are seeking to develop automated advice models to bring those to market more quickly;

- **Increasing the access to advice** – these recommendations are aimed at increasing consumer engagement and confidence in dealing with financial advice. FAMR proposes a number of measures to help consumers engage more effectively with advice. These recommendations include making their own information more easily available to those that advise them; the development of 'rules of thumb' and the use of nudges to encourage customers to seek support at key life stages and recommendations to help employers give more support to their staff in financial matters; and

- **Addressing industry concerns relating to liabilities and consumer redress** – these recommendations aim to address concerns about the boundary between regulated advice and more general forms of guidance. In particular, firms do not feel able to develop more streamlined advice services that meet simple consumer needs in the absence of clarity around the liabilities involved in providing simpler forms of advice or guidance. Firms consider that if streamlined advice services cannot be guaranteed to involve lower liabilities, it may not be commercially worth the risk to provide it. FAMR makes a number of recommendations to increase clarity and transparency about the way in which the Financial Ombudsman Service deals with consumer complaints. The report also includes proposals relating to the funding of the Financial Services Compensation Scheme to assist in managing longer term liabilities.

In June 2016, a Financial Advice Working Group was established to take forward the three recommendations outlined above. Since then, the FCA has set up an Advice Unit to provide regulatory feedback to firms developing automated models that seek to deliver lower-cost advice to consumers.[259] In addition, HMT has issued a consultation looking to narrow the current definition of regulated investment advice.[260]

c. FCA – Retail Mediation Activities Return results:

In October 2016, the FCA issued a Data Bulletin[261] providing insights into the activities, revenue and charges of advice firms post RDR. These insights are based on the FCA's analysis of data from the Retail Mediation Activities Return, which is submitted by approximately 12,000 FCA regulated firms. The FCA's findings are:

- *Overall revenue:* Overall revenue from retail investment business increased by 16% between 2013 and 2015 and the number of firms increased by 6% over the same period;

- *Revenue from commission vs direct fees/charges:* In 2015, commission accounted for 31% of revenue earned and direct fees/charges accounted for 64%, compared to 2013 when commission accounted for 56% and direct fees/charges accounted for just 37%. The reduced but continuing revenue from commissions consists of legacy (pre-RDR) business which advice firms are allowed to continue to receive under RDR subject to certain conditions;

- *Type of advice:* 83% of retail advice firms report that they provide independent advice with only 14% providing restricted advice and 3% both types. However, restricted advice accounted for 62% of revenue from advisor

[259] Further details about the Advice Unit can be found here: https://www.fca.org.uk/firms/project-innovate-and-innovation-hub/advice-unit.

[260] Further details of this consultation can be found here: https://www.gov.uk/government/consultations/amending-the-definition-of-financial-advice-consultation/amending-the-definition-of-financial-advice-consultation.

[261] FCA Data Bulletin, October 2016, Issue 7, https://www.fca.org.uk/publication/data/data-bulletin-issue-7.pdf

charges (with independent advice at 38%). These numbers reflect that, although fewer in number, the restricted advice population includes some very large firms that account for a significant slice of the total business conducted;

- *Method of advisor payment:* Payments facilitated by product providers are the main form of advisor payment accounting for 81% of initial charges and 74% of ongoing charges, with 19% and 26% respectively being paid direct to the advisor by the client;

- *Charging method:* The main advisor charging methods include charging by the hour, as a percentage of investment value, fixed fee, or a combined charging structure, with the most typical charging method used being charging as a percentage of investment value. Some firms may use more than one method of charging;

- *Fee rates:* Where charging as a percentage of investment value, the average charges for initial advice are 1% (minimum) and 3% (maximum). For ongoing charges, the average rates are 0.5% (minimum) and 1% (maximum). Where charging an hourly fee, the most common hourly rate nationally is £150 per hour. National average minimum and maximum rates vary between £150 and £195 per hour, with regional variations in charges.

As for insights into the activities of product providers post-RDR, a sales activity report from the Investment Management Association[262] shows that from 2012 to 2015, gross retail sales of investment funds in the U.K. increased from £105.4 billion to £160.2 billion, a 52% increase.

3. Australia – Future of Financial Advice

The Future of Financial Advice Reforms (**FOFA**) came into effect in Australia on July 1, 2012. Its primary objective was to improve the quality of financial advice, and access to this advice for Australian consumers. Compliance with the new rules was voluntary in the first year of operation, and became compulsory from July 1, 2013.

i. Scope of the regulation

The regulation under FOFA applies to all advice given to retail clients on any retail financial product except non-life insurance products and basic banking products.

ii. Overview of the regulation

Key changes introduced under FOFA include those listed below:

- **Prospective ban on conflicted remuneration**: Any monetary or non-monetary benefits that could reasonably be expected to influence the distribution of, and advice to clients about, retail financial products are considered to be conflicted remuneration. There is a prospective ban on upfront and trailing commissions as well as a ban on any form of volume-based payments in relation to distribution and advice given on retail investment products. Commissions paid by product providers to advisors in relation to investments in place prior to the coming into force of the FOFA reforms are not banned and can continue to be paid. The key aim of this change is to ensure the interests of advisors and retail clients are more closely aligned, improving the quality of advice provided, as well as removing the potential for providers to influence the advisor's recommendation.

- **Advisor charging regime**: Advisors are expected to agree on their fees directly with their clients, and disclose those fees in a clear manner. If an advisor is providing an ongoing service for which clients pay ongoing fees such as asset-based fees, they are required to ask clients to opt in (or renew) their advice agreement every two years. Moreover, advisors are prohibited from charging asset-based fees on borrowed amounts that are to be used to acquire financial products by or on behalf of a client. If a client has a portfolio of products purchased with a combination of borrowed and non-borrowed amounts, asset-based fees can be charged on the proportion of the portfolio purchased with non-borrowed amounts.

- **Statutory best interest duty:** Advisors are required to act in the best interests of their clients, subject to a 'reasonable steps' qualification[263], and place the best interests of their clients ahead of their own when providing personal advice to retail clients.

[262] The Investment Association, "Summary of UK Domiciled Unit Trust / OEIC Sales 2006-2016", http://www.theinvestmentassociation.org/assets/files/press/2016/stats/stats0116-02.pdf

[263] There is a safe harbour that advice providers can rely on if they can show that reasonable steps relating to know your client, know your product, suitability and proficiency are taken by the registrant.

- **Annual fee disclosure statement**: Advisors must give each client an annual statement containing information from the previous 12-month period about:
  - o the amount of fees paid by the client;
  - o the services that they were entitled to receive; and
  - o the services that they did receive.

In 2014, a newly elected Australian Government introduced a Bill proposing several amendments to the new requirements under FOFA with the aim of streamlining the regulations and reducing compliance costs. In November 2015, the Senate passed a motion regarding the Bill, effectively disallowing a number of the proposed amendments, and otherwise implementing minor and technical changes,[264]none of which eliminated or changed the above core elements of the FOFA reforms.

iii. Impacts: FOFA Post Implementation Review

On September 17, 2014, the Australian Securities and Investments Commission reported on the findings of its review of the implementation of the FOFA reforms.[265] Key findings include:

- Most dealer registrants did not change their service offerings as a result of FOFA, although some indicated an increase in scaled advice;[266]
- One-third of the registrants had changed the composition of their product shelf in light of the best interest duty and related FOFA obligations;[267]
- Advisor numbers had not changed;
- The advice industry remained concentrated,[268]and registrants were often affiliated with issuers of financial products;[269]
- Most registrants reported changes to their revenue streams, with a reduction in commissions after the ban and an increase in advice fees;
- Most registrants stated the biggest challenges they had experienced in implementing the reforms related to the requirement to provide fee disclosure statements and the related changes they needed to make to their systems; and
- Registrants considered the best interest duty to pose a relatively high risk of non-compliance in the future. To mitigate this risk, registrants had revised their advice systems and procedures, and most were relying on the “reasonable steps” safe harbour provision to demonstrate their compliance with the best interests duty and related obligations.

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264 For example, one amendment that was passed included an extension of the time for advisors to provide renewal opt-in notices and fee disclosure statements to retail clients from 30 to 60 days after the clients’ renewal notice day.

265 ASIC Report 407, Review of the financial advice industry’s implementation of the FOFA reforms, September 2014, http://download.asic.gov.au/media/1845586/rep407-published-17-september-2014.pdf. The findings in the report are based on ASIC’s review of 60 registrants accounting for close to 10,000 advisors servicing 4.6 million retail clients.

266 The FOFA reforms allowed for “scaled advice”, being a form of personal advice that is limited in scope, either by being in response to a limited range of issues or by addressing a specific area of the investor’s needs (for example, insurance needs or saving for a home). ASIC stated its view that “scaled advice” must still be of the same high quality as more comprehensive advice and is therefore subject to the same legal requirements as advice that is fully comprehensive, including ensuring that the advice provided is in the best interests of the client.

267 Of the changes to approved product lists, 14% were decreases to the types and number of products, 11% related to benchmarking and only 4% increased the number or types of products.

268 Over 90% of the retail clients of licensees in the sample were clients of the 15 largest licensees (25% of the sample), with the remaining 75% of licensees in the sample accounting for just 10% of the clients.

269 For large firms, 25% of the products on their approved product lists were issued by related parties.

4. New Zealand – Review of Financial Advisers Act 2008 and Financial Service Providers Act 2008

In July 2016, the Ministry of Business, Innovations and Employment (**MBIE**) of New Zealand published a review[270] of two acts governing the financial advice industry, namely the Financial Advisers Act 2008[271] and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

The 2016 review had four main objectives:

- Ensure consumers can access the financial advice they need;
- Improve the quality of financial advice;
- Be enabling and not impose any undue compliance costs, complexity or barriers to innovation; and
- Ensure access to redress.

The MBIE concluded that new reforms were needed to move the legislator's focus away from professionalizing advisors toward creating a level playing field of regulation for all those providing financial advice. The MBIE stated that the reforms were to be refined through consultations and would be officially introduced to the New Zealand legislative authorities at the end of 2016.

Currently the MBIE expects to make the following key changes to the legislation governing financial advice:

- **Removing some regulatory boundaries**: The requirement for advice tailored for a consumer to be provided by a natural person will be removed in order to enable robo-advisors to offer tailored advice;
- **Best-interest standard**: All individuals or robo-advisors providing financial advice will be required to place the interests of the consumer first and to only provide advice where competent to do so. All financial advice will also be subject to a Code of Conduct, where standards will be set that are consistent with those legislative obligations. In addition, a client-care obligation will also be introduced, requiring advisors to ensure that consumers are aware of the limitations of their advice, such as how many products and how many providers they have considered;
- **Professional designations**: To improve consumer understanding, current financial advisor designations will be replaced with simpler ones;
- **Disclosure**: More meaningful disclosure requirements for all types of advice will be introduced to improve consumer understanding and transparency. Disclosure will be simplified and shortened to include core information about the scope of service, remuneration (including commissions) and competence, and would be available in user-friendly formats;
- **Licensing**: Anyone (or any robo-advisor) providing financial advice will need to be licensed. Licensing will be required at the firm level. There will be flexibility, depending on the size and nature of the firm, in how prospectus licensees will be expected to meet the licensing requirements;
- **Stronger connection to New Zealand**: To maintain the reliability of the regulation of New Zealand financial markets, firms will only be able to be licensed if they are in the business of providing financial services from a place of business in New Zealand or if they are providing services to New Zealanders.

In their review, the MBIE states that they will not prohibit sales commissions because they believe banning is not a 'silver bullet' that will improve the quality of advice. They recommend focusing on the conduct of those providing financial advice, rather than imposing a ban or restriction on commissions. They believe a ban might limit access to financial advice, especially when New Zealanders are already reluctant to pay for financial advice. The MBIE states that it also believes that banning commissions would not address conflicts of interest arising from soft-commissions, bonuses and the sale of proprietary products.

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[270] Ministry of Business, Innovation & Employment – Factsheet – Review of the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 – July 2016,

http://www.mbie.govt.nz/info-services/business/business-law/financial-advisers/review-of-financial-advisers-act-2008/pdf-document-library/factsheet-review-fa-fspa-13-july-2016.pdf.

See final report here: http://www.mbie.govt.nz/publications-research/publications/business-law/Final%20report%20on%20the%20review%20of%20the%20FA%20and%20FSP%20Acts.pdf.

[271] The scope of the Financial Advisers Act encompasses advice for several financial products, including but not limited to debt securities, equity securities, managed investment products, investment-linked insurance contracts and derivative products. Section 18 of the Financial Advisers Act stipulates who is permitted to provide personalized service to retail clients in relation to certain financial products.

Nonetheless, the MBIE states that they will closely monitor the conduct of advisors, alongside the New Zealand Financial Market Authority, to determine whether their reforms will be sufficient to ensure consumers have access to quality and transparent financial advice.

5. Singapore

In March 2012, the Monetary Authority of Singapore (**MAS**) announced the launch of the Financial Advisory Industry Review (**FAIR**) with the aim of raising the standards of practice in the financial advisory industry and improving the efficiency in the distribution of life insurance and investment products in Singapore. A panel, chaired by MAS and comprising representatives from industry associations, consumer and investor bodies, academia, media, and other stakeholders (**FAIR Panel**), was formed in April 2012 to conduct the review. In January 2013, FAIR Panel released their recommendations[272] under the following key themes:

- raising the competence of financial advisors;
- raising the quality of financial advisory firms;
- making financial advising a dedicated service;
- lowering distribution costs; and
- promoting a culture of fair dealing.

In particular, the FAIR Panel recommended that financial advisory firms be prohibited from paying their financial advisors cash and non-cash incentives which are:

- tied to the sales volume of a specific investment product; and
- over and above the typical commissions paid to financial advisors for selling that investment product.

In response to the public consultation on the recommendation of the FAIR Panel, the MAS stated that they would not change the remuneration structure of financial advisors by capping or banning commissions[273] for the following reasons:

- based on an April 2012 survey conducted by the MAS, 80% of respondents said they were not willing to pay an upfront fee for advice;
- the implementation of a fee-based regime could result in consumers needing to pay more for their protection or investment needs, especially for consumers with smaller investments; and
- there could be other unintended consequences, such as a reduction in the number of financial advisors in the industry, exacerbating the lack of financial and protection planning by consumers.

The MAS stated that they will take into consideration the effectiveness of the current measures and the experience of other jurisdictions with a mandated fee-based regime.

In 2015, under the New Financial Advisers Remuneration and Incentive Regulations, the MAS introduced a cap on specified commissions that financial advisors can receive from sales of life insurance policies[274]. This rule was due to come into force in January 2016, but its implementation has been delayed until January 2017 further to the industry's request for more time to implement the changes.

6. European Union – Markets in Financial Instruments Directive II (MiFID II)

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[272] Monetary Authority of Singapore, *Consultation on Recommendations of the Financial Advisory Industry Review*, March 2013, http://www.mas.gov.sg/~/media/resource/publications/consult_papers/2013/5%20Mar%202013%20Consultation%20Paper%20on%20FAIR.pdf

[273] Monetary Authority of Singapore, *Response to Feedback Received – Public Consultation on Recommendations of the Financial Advisory Industry Review*, September 2013, page 55, http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/Response%20to%20Feedback%20Received%20on%20Public%20Consultation%20on%20Recommendations%20of%20the%20Financial%20Advisory%20Industry%20Review.pdf

[274] Additional information is available here: http://www.mas.gov.sg/news-and-publications/speeches-and-monetary-policy-statements/speeches/2015/explanatory-brief-financial-advisers-amendment-bill-2015-and-insurance-bill-2015.aspx and here: http://www.mas.gov.sg/~/media/MAS/News%20and%20Publications/Consultation%20Papers/Annex%2017%20New%20Financial%20Advisers%20Remuneration%20and%20Incentive%20Regulations.pdf.

MiFID II is designed to take into account developments in the trading environment since the implementation of MiFID in November 2007 and, in light of the financial crisis, to improve the functioning of financial markets making them more efficient, resilient and transparent. MiFID II came into force on July 2, 2014, and is required to be transposed into national law by Member States by July 3, 2017, and must generally apply within European Union Member States by January 3, 2018.[275]

i. Scope of the regulation

MiFID II introduces new investor protection measures, which include, among other changes, a ban on inducements for independent advisors and portfolio managers (discretionary investment management). The ban applies to all "financial instruments" within the scope of MiFID II that they sell to both institutional and retail clients (including, but not limited to, funds).

ii. Overview of the regulation

Some of the key investor protection measures introduced by MiFID II include those listed below:

- **Ban on inducements**: Firms providing independent advice or portfolio management may not accept and retain[276] any fees, commission, or monetary or non-monetary benefits from third parties in relation to the advice or service. Minor non-monetary benefits from third parties (such as training on the features of a product) are permitted, provided they are: (a) capable of enhancing the quality of service provided to a client; (b) of a scale and nature such that they could not be judged to impair compliance with the firm's duty to act in the best interest of the client; and (c) are clearly disclosed. Commissions on non-independent advice (e.g. in respect of in-house products) are still allowed. However, any such commissions must: (a) be designed to enhance the quality of the relevant service to the client; (b) not impair compliance with the firm's duty to act honestly, fairly and professionally in accordance with the best interest of its clients; and (c) be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service.

- **Independent vs non-independent advice**: Firms must tell clients in advance whether their advice is provided on an independent basis or a more restricted analysis of the market and, in particular, whether the range is limited to financial instruments issued or provided by related entities. Firms that provide advice on an independent basis must assess a sufficiently large number and diversity of financial instruments available on the market and should not limit the range to instruments issued by the firm or related entities.

- **Bundled services**: Firms have to inform clients whether they can buy the different components of a bundled service separately, providing information about costs and charges in respect of each component.

- **Suitability**: Existing suitability requirements applying to investment firms providing investment advice or portfolio management are enhanced with the requirement to now take into account the client's risk tolerance and ability to bear losses.[277] In addition, when an investment firm recommends a bundled package of services or products, the overall package must be suitable. And finally, firms providing investment advice must provide clients a suitability report before the transaction is made or immediately after the client becomes bound, specifying how the advice given meets the preferences, objectives, and other characteristics of the client.

- **Information on costs and charges**: Information on all costs and charges, including the cost of advice and the cost of the product must be disclosed, the method of payment stated, along with details of any third-party payments. All costs and charges should be aggregated so the client understands the overall cost as well as the cumulative effect on the return of the investment (with an itemized breakdown should a client request it). Information about costs and charges is to be provided, where applicable, at least annually post-sale.

- **Product governance**: Manufacturers of financial instruments will have to maintain a product approval process that will identify the target market for each product and assess all relevant risks. Firms that offer such products but do not manufacture them will have to understand the features of those products, including the identified target market.

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[275] For more details of the regulation, consult the website of the European Commission at: http://ec.europa.eu/finance/securities/isd/mifid2/index_en.htm.

[276] Firms may accept compensation from third parties if that compensation is passed through to the client in its entirety and hence is not retained by the firm.

[277] Current suitability requirements under MiFID include the requirement to obtain information regarding the client's knowledge and experience, their financial situation and investment objectives.

iii. Impacts

As the new requirements won't apply until 2018, the impacts of these new measures remain to be determined.

7. Netherlands – Ban on commissions (provisieverbod)

On January 1, 2013, the Netherlands Authority for the Financial Markets (**AFM**) introduced a complete ban on commissions on financial products outside the scope of the original EU Markets in Financial Instruments Directive (**MiFID**), such as mortgages and life insurance, with the aim of achieving a cultural shift from product-driven sales of financial products toward client-centered advice. On January 1, 2014, the ban was extended to all retail investment services (e.g. investment advice (whether independent or restricted), execution-only and (individual) portfolio management) in respect of financial instruments within the scope of MiFID, such as funds.

i. Scope of the regulation

The ban on commissions now applies to all financial products sold by way of (individual) portfolio management, investment advice or execution only. The products covered by the ban include mortgages, insurance (except property and casualty insurance)[278], savings products such as annuities, and investment funds.

ii. Overview of the regulation

The key elements of the reforms include those listed below:

- **Ban on inducements**: Commission payments on all financial products are banned.[279] Advisors have to set distinct prices for advice and intermediation. Fees are agreed between the intermediaries and consumers. To help consumers spread the cost of distribution over time, intermediaries and consumers can agree on the fee payment being spread over a set period (maximum 24 months).

- **'Cost price' approach**: Fees charged for advice have to cover the costs incurred in the process of giving the advice. Providers of financial products who are also advisors (direct sales) are also required to ensure that fees for advice/intermediation are cost-effective, and that they do not fall below the direct cost of providing the advice/arranging the intermediation.

- **Remuneration transparency**: Advisors must prepare a summary disclosure document which presents:

    - Information on the fees they charge (for an average customer);
    - The type and scope of their advice; and
    - The costs they incur.

  The document must be provided to investors prior to a transaction and is intended to allow investors to more easily compare costs and the scope of advice across different advisors.

- **Knowledge and experience test for execution only**: Consumers who declare their intention to purchase execution-only financial services must first pass a knowledge and experience test to show they have sufficient knowledge and experience to purchase financial services execution-only.[280]

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[278] In determining which products should be covered by the ban, the Minister of Finance considered both (i) product complexity and (ii) the intensity of competition in the market for products. If a product was found to be subject to strong competition among providers, and consumers were found to have a good understanding of these products and awareness of there being multiple providers, the product was excluded from the ban. As a result, while motor vehicle and content and liability insurance are excluded from the ban, life insurance and funeral insurance are not.

[279] The key elements of the reforms are discussed in a report by Oxera Consulting, "Regulating remuneration systems: effective distribution of financial products", January 2015, at pages 24 to 29, http://www.oxera.com/getmedia/c28539cd-c6dc-42e4-9940-a624b0ff47ea/Remuneration-systems_Final-report_Jan2015.pdf.aspx?ext=.pdf.

[280] The AFM has indicated that, while it allows consumers to purchase financial products without purchasing financial advice (execution-only), it believes that such advice should be recommended to most consumers, particularly if the financial products are complex. In response to concerns that requiring consumers to pay for advice could lead to an unwarranted increased demand for execution-only products, the AFM introduced a knowledge and experience test. It is unclear how the AFM is enforcing this requirement.

iii. Impacts

During the 2009-2013 period, various related pieces of regulation were implemented in Netherlands, which makes it challenging to separate the effects of the ban and other pieces of regulation. The market for financial advice appears to have consolidated over recent years. This development cannot however necessarily be attributed to the ban on commissions as the trend towards consolidation had already begun before implementation of the ban. A full assessment of the impact of the ban is expected to be undertaken in the first half of 2017. Anecdotal evidence to date suggests that:

- the ban may have caused a reduction in fees for advice; and
- consumers may be somewhat reluctant to pay for advice, and may be purchasing less advice. Evidence in both mortgages and annuities suggests that consumers are opting for execution-only more frequently.

8. Germany – Strengthening Investor Protection Act and Fee-Based Financial Advice Act

In the wake of the 2007-2008 financial crisis, the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*, or **BaFin**), introduced a series of reforms aimed at improving the quality of financial advice that retail consumers receive. Specifically, the Act relating to Strengthening Investor Protection and Improving the Functionality of the Capital Market (**Strengthening Investor Protection Act**) became effective in November 2012. This reform was followed by the Act on the Promotion and Regulation of Fee-Based Investment Advice regarding Financial Instruments (**Fee-Based Investment Advice Act**), which came into force in August 2014.

i. Scope of the regulation

The new rules aim to improve the quality of advice by increasing advisor monitoring and advisor qualifications, as well as increasing the transparency of fees and commissions paid for investment advice.[281]

ii. Overview of the regulation

The Strengthening Investor Protection Act contained the following three key provisions targeting financial advice:

- **Product information sheet**: Financial advisors must provide their clients with a short product information sheet for each investment product advised to purchase. The product information sheet should contain all the information required for an investor to make an informed comparison across financial instruments, including the nature of the recommended financial instrument, how it works, and its associated costs and risks;
- **Increased advisor monitoring**: Institutions must disclose to BaFin the individual employees who provide financial advice to clients and all complaints lodged against an advisor based on the advice provided. With this information, BaFin created a database to monitor and respond to abuses;
- **Increased advisor qualifications**: Financial institutions must ensure that their advisors have sufficient expertise to provide financial advice. In particular, all advisors must have expertise in contract law and securities law and be knowledgeable about the functioning, risks, and costs of the financial instruments on which they advise.

Commission-based investment advice is the predominant model in the German market. BaFin found that although advisors are legally obligated to disclose to clients any inducements received from product providers or issuers of financial instruments, many clients remain unaware of that conflict. The Fee-Based Financial Advice Act was introduced with the aim of increasing transparency about advisor compensation and promoting non-conflicted advice. The regulation introduced “fee-based investment advice” as a legally protected designation and imposed specific restrictions on those seeking to become fee-only advisors.

In order to designate their services as “fee-based investment advice”, financial institutions must register with BaFin by submitting an audit certificate establishing that their advisors meet the following requirements:

[281] Additional information is available here: https://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2014/fa_bj_1407_honorar-anlageberatung_en.html and in a report by RAND, “Financial Advice Markets: a cross-country comparison”, Jeremy Burke, Angela A. Hung, October 2015, at pages 14 to 16, http://www.rand.org/pubs/research_reports/RR1269.html.

- **Remunerated only by the client**: To promote non-conflicted financial advice, fee-only financial advisors must receive remuneration directly from their clients and may not receive inducements from third parties;[282]

- **Adequate range of offered financial products:** The range of offerings which the advisor's recommendations are based on must be sufficiently diversified with regards to providers and issuers of financial instruments. If associated with a product provider, financial advisors must ensure that their range of financial products is large enough to provide their clients with suitable recommendations. Fee-based investment advisors are prohibited from offering only financial instruments from sellers or issuers who are closely affiliated with the advisor's investment firm or with which they are otherwise economically linked. In all cases, the advice provided must be market-oriented;

- **Disclosure of manufacturer affiliation**: If affiliated with a product manufacturer, financial advisors must disclose that affiliation to their clients;

- **Functionality and organizational separation**: Financial institutions providing fee-based investment advice must segregate fee-only advisors from conventional advisors to help ensure that fee-based investment advice is not influenced by commissions-based investment advice. In addition, firms are preventing from setting sales targets for their fee-only advisors that may conflict with the interests of clients.

To promote and ensure access to the new legally protected "fee-based advisors", BaFin created a publicly available registry of certified fee-only advisors for German investors to consult.

iii. Impacts

The specific impacts of the reforms are unknown at this time.

9. Sweden – Proposal to ban commissions in the financial industry

On February 3, 2016, *Finansinspektionen,* the Swedish financial supervisory authority (**FI**), published a report on its investigations and research on how to improve the Swedish savings market.[283] FI witnessed problems on the savings market that are due to the conflicts of interests that arise when advisors and intermediaries receive payments from the product provider in the form of commissions. FI notes that the size of these commissions varies a significantly depending on the product and the firm, which gives rise to a conflict of interest that is very difficult to manage. Their investigations showed that funds that are sold through advisors have higher fees than those sold through, for example, fund trading platforms. FI states that the current rules regarding the management of conflicts of interest as well as the self-regulation initiatives of the financial advisory industry were insufficient to tackle the identified issues and proposed to impose a ban on all types of commissions.

i. Scope of the proposal

FI proposed to ban all commissions for investment advice, portfolio management, as well as for life insurance with an investment component, as a necessary step towards a better functioning savings market even if such a ban would not solve all the problems facing Swedish savers.

ii. Overview of the proposal

The Swedish authority stated its reasons behind its proposal and tackled the concerns voiced about a ban of commissions and its possible consequences. Some of its conclusions are as follows:

- **Market failure**: Consumers in the savings market are at an information disadvantage in relation to the firms that offer financial services and products. They are unable to judge the quality or price of products and services which prevents them from influencing the market. Financial advice today exacerbates consumers' information disadvantage because it is influenced by the size of commissions paid by producers instead of the needs of the consumer.

- **Harming competition**: There are concerns that a commission ban could harm competition in the advisory market by favouring large banks. On the contrary, FI finds that a ban would be a necessary step to improve

[282] When neither the recommended financial instrument nor a comparable suitable one is available free of commission, the fee-based investment advisor can make the recommendation and any commissions received must be passed on to the client in full immediately after they are received.

[283] Finansinpektionen – *A Necessary Step for a Better Savings Market*, February 3 2016, http://www.fi.se/upload/90_English/20_Publications/10_Reports/2016/battre_sparandemarknad_engNY.pdf

competition by forcing independent advisors to offer truly independent advice and to challenge the banks' dominance on the advisory market.

- **Major industry adjustments**: A commission ban would entail major adjustments and transition costs for the Swedish financial industry. With transparent pricing, firms providing financial advice will need to demonstrate what value they are adding whereas product providers that pay high commissions to get their products onto the market will instead have to compete on pricing and quality. FI believes this will lead to simplified advisory services and an increased range of lower-fee products and argues that the gains from a better functioning savings market will outweigh the transition costs on the long term.

- **Advice gap**: With respect to concerns that a commission ban would potentially cause firms to no longer offer advice and result in a shortage in the supply of advisory services to consumers with modest assets, FI finds no empirical proof that this would be the case. FI also notes that to argue against a ban on commissions on the basis that consumers won't be willing to pay a price which they have always been paying, but which is now clearly visible, is not a good argument. In FI's view, clear pricing creates possibilities for consumers to influence the supply of advisory services. If advice, as it looks today, is perceived to be expensive in relation to the value it provides, there is an opportunity for other types of advisory services to emerge – services that are more cost-efficient and adapted to consumers' willingness to pay. Accordingly, FI finds that transparent pricing for advice can lead to simplified advisory services that are more adapted to consumers' needs.

On May 24, 2016, Sweden's minister of Financial and Consumer Affairs communicated that the government will be proposing legislation in response to the EU directives such as MiFID II and the Insurance Distribution Directive, but that the government would not introduce a general ban on third party remuneration or commissions at this stage.[284]

[284] Jonathan Boyd, "Swedish government proposes not to ban commission-led sales", *Investment Europe*, (May 24, 2016), http://www.investmenteurope.net/regions/swedendenmarkfinlandnorway/swedish-government-proposes-not-ban-commission-led-sales/

APPENDIX D

SUMMARY OF CONSULTATION QUESTIONS

Part 2

1. Do you agree with the issues described in this Part? Why or why not?

2. Are there other significant issues or harms related to embedded commissions? Please provide data to support your argument where possible.

3. Are there significant benefits to embedded commissions such as access to advice, efficiency and cost effectiveness of business models, and heightened competition that may outweigh the issues or harms of embedded commissions in some or all circumstances? Please provide data to support your argument where possible.

Part 3

4. For each of the following investment products, whether sold under a prospectus or in the exempt market under a prospectus exemption:

   - mutual fund
   - non-redeemable investment fund
   - structured note

   should the product be subject to the discontinuation of embedded commissions? If not:

   a. What would be the policy rationale for excluding it?

   b. What would be the risk of regulatory arbitrage occurring in the exempt market if embedded commissions were discontinued for the product only when sold under prospectus?

5. Are there specific types of mutual funds, non-redeemable investment funds or structured notes that should not be subject to the discontinuation of embedded commissions? Why?

6. Are there other types of investment products that should be subject to the discontinuation of embedded commissions? Why?

7. Do you agree with the discontinuation of all payments made by persons or companies other than the investor in connection with the purchase or continued ownership of an investment fund security or structured note? Why or why not?

8. Are there other fees or payments that we should consider discontinuing in connection with the purchase or continued ownership of an investment fund security or structured note, including:

   a. the payment of money and the provision of non-monetary benefits by investment fund managers to dealers and representatives in connection with marketing and educational practices under Part 5 of NI 81-105;

   b. referral fees; and

   c. underwriting commissions

   Why? What is the risk and magnitude of regulatory arbitrage through these types of fees and commissions?

9. If payments and non-monetary benefits to dealers and representatives for marketing and educational practices under Part 5 of NI 81-105 are maintained further to the discontinuation of embedded commissions, should we change the scope of those payments and benefits in any way? If so, why?

10. With respect to internal transfer payments:

   a. How effective is NI 81-105 in regulating payments within integrated financial service providers such that there is a level playing field for proprietary funds and third party funds?

b. Should internal transfer payments to dealers within integrated financial service providers that are tied to an investor's purchase or continued ownership of an investment fund security or structured note be discontinued? Why or why not? To what extent do integrated financial service providers directly or indirectly provide internal transfer payments to their affiliated dealers and their representatives to incent the distribution of their products?

c. Are there types of internal transfer payments that are not tied to an investor's purchase or continued ownership of an investment fund security or structured note that should be discontinued?

11. If we were to discontinue embedded commissions, please comment on whether we should allow investment fund managers or structured note issuers to facilitate investors' payment of dealer compensation by collecting it from the investor's investment and remitting it to the dealer on the investor's behalf.

Part 4

Addressing the issues

12. Based on a consideration of the data and evidence provided in this Part, would a proposal to discontinue embedded commissions address the three key investor protection and market efficiency issues discussed in Part 2?

13. Are there other ways in which the CSA could address these issues that could be introduced in conjunction with, or separate from, the discontinuation of embedded commissions?

14. Are there other conflicts of interest that could emerge following a transition to direct pay arrangements that would not be addressed in the current securities regulation framework?

Change in investor experience and outcomes

15. What effect do you think the removal of embedded commissions will have on investor experience and outcomes? In particular:

- Will investors receive advice and financial services that are more aligned with the fees they pay?
- What effect will the proposal have on the growth of automated advice? Is this likely to be beneficial to investors?
- Is discretionary advice likely to increase in Canada as we have seen in the other markets that have transitioned away from embedded commissions and, if so, would this shift be positive or negative for investors?
- What effect will the proposal have on the growth of the online/discount brokerage channel and cost of fund products offered in this channel? Is this likely to be beneficial to investors?
- What effect will the proposal have on the cost and scope of advice provided to specific investor segments?

16. What types of payment arrangements are likely to result if this proposal is adopted? In particular:

- Would the payment arrangements offered by dealers to investors differ based on investor segment? If so, how and why?

17. Do you think this proposal will lead to an advice gap? In particular:

- Which segments of the market are likely to be affected? Please consider segmentation by wealth, geography (size and location of community e.g. remote, small, medium, large), age, technological sophistication, the level of fund ownership across households, etc.
- Do you agree with our definition of an advice gap?
- Should we differentiate between an advice gap for face-to-face advice and an advice gap generally?
- What types of advice or services currently provided today would be most affected by the proposal?

- Are there any potential interactions between this proposal, existing reforms such as CRM2 and other potential reforms such as CSA CP 33-404 that may affect the size of any potential advice gap?

- How could a potential advice gap, face-to-face advice gap or financial service gap be mitigated?

- Do you think that online advice could mitigate an advice gap? If so, how?

- Do you think that the significant market share of deposit-taker owned and insurer-owned dealers in fund distribution in Canada will affect the size or likelihood of an advice gap to develop?

Industry change independent of regulatory response to discontinue embedded commissions

18. Given some of the changes we have seen in the industry over the past few years (fee reductions, introduction of DIY series, streamlining of fund series, automatic fee reductions increasing access to fee-based options etc.), what is the likelihood that the fund industry will transition away from embedded commissions without regulatory action? In particular:

    - Will the industry continue to transition away from embedded commissions if the CSA does not move forward with the proposal?

19. How accurate is Figure 8 regarding the purchase options available to fund investors by channel, account size and firm type? In particular:

    - Do you see payment options and business models evolving at present?

    - How are they likely to change over time if the CSA were to choose not to move forward with the proposal?

20. We note that the distribution of fee-based series is still relatively limited in Canada versus other markets. Are there obstacles (structural, operational, regulatory, investor demand, etc.) specific to Canada limiting the use of fee-based series by dealers?

Potential impact on competition and market structure

21. Please describe how discontinuing embedded commissions will affect competition and market structure and whether you agree with the analysis set out in Part 4? In particular:

    - Do you think the proposal will have an impact on the level of industry consolidation or integration? What about with respect to the concentration of mass-market investor assets held in investment products managed by deposit-taker owned firms?

    - What are the likely impacts on investor outcomes and market efficiency of any potential consolidation?

    - What opportunities and what challenges do you think the proposal would introduce for specific industry stakeholder groups?

        - Independent dealers?
        - Independent fund manufacturers?
        - Integrated financial service providers?
        - Mutual fund dealers?
        - IIROC dealers?
        - Online/discount brokers?

    - What is the likelihood and magnitude of regulatory arbitrage across similar financial products such as segregated funds and deposit-taker products?

    - What would be the impact on dually-licensed mutual fund dealers and insurance agents?

    - Will the proposal lead new, lower-cost entrants to the market? Why and how?

- Does the interaction between this proposal and the proposals set out in CSA CP 33-404 change your responses to the questions above and, if so, how?

- Will a transition away from embedded commissions reduce fund series and fee complexity, as we have contemplated?

- Do integrated financial service providers have an advantage in terms of their ability to cross-sell and cross-subsidize across business lines? If so, how?

- What are the potential effects on competition of the rise in online advice? Are these effects likely to be large and positive?

22. What impact will the proposal have on back office service processes at the investment fund manager or at the fund dealer? In particular:

    - Is there any specific operational or technological impact that we should take into consideration?

23. The payment of embedded commissions requires the dealer and the investment fund manager to implement controls and oversight (with associated compliance costs) in order to mitigate the inherent conflicts of interest today.

    - Would the transition to direct pay arrangements alleviate the need for some of these controls and oversight?

    - To what extent, if any, does the use of direct pay arrangements by representatives today (e.g. when a representative provides services under a fee-based arrangement) alleviate the need for some of these controls and oversight?

24. Embedded commissions, especially trailing commissions, provide a steady source of revenue for dealers and their representatives. If embedded commissions were discontinued, would dealers be able to compensate for the loss of this revenue with direct pay arrangements?

25. Aside from commission grids and salaries, what other approaches to representative compensation might dealers use if we were to discontinue embedded commissions? How are these approaches likely to change over time?

26. What impact will the proposal have on representatives in the industry? In particular, what impact will the proposal have on the:

    - career path;

    - attractiveness of the job;

    - typical profile of individuals attracted to the career;

    - recruitment; and

    - relative attractiveness of careers in competing financial service business lines?

<u>Part 5</u>

27. How practicable are the mitigation measures discussed and how effective would these measures be at assuring:

    - access to advice for investors,

    - choice of payment arrangements for all investor segments, and

    - a level playing field amongst competing investment products?

28. What other measures should the CSA consider to mitigate the above unintended consequences?

29. Other than the potential impacts we have identified in Part 4, what other potential unintended consequences, including operational impacts and tax consequences, may arise for fund industry stakeholders and investors further to the discontinuation of embedded commissions? In particular:

- Would there be a negative tax impact to investors associated with their payment of dealer compensation under direct pay arrangements? In particular, would the investor's payment of dealer compensation through periodic fund redemptions facilitated by the investment fund manager attract tax consequences? Please explain.

- To the extent a transition to direct pay arrangements results in the rationalization of fund series, could this rationalization attract negative tax consequences for investors?

- What, if any, measures, regulatory or otherwise, could assist in mitigating potential operational and tax impacts?

30. With respect to the loss of a form of cross-subsidy from high net worth investors to lower-wealth investors in a fund further to a transition to direct pay arrangements,

    - to what extent (please quantify where possible) would the loss of this cross-subsidy increase the cost of providing advice and services to lower-wealth fund investors under direct pay arrangements?;

    - does the existence of this form of cross-subsidy suggest that high net worth fund investors may be indirectly paying fees that are not aligned with the services they are receiving (i.e. do the fees they pay exceed the actual cost of the services and advice they receive?); and

    - what measures may mitigate the potential effects on dealers, representatives and investors from the loss of the cross-subsidy?

31. What measures could fund industry participants proactively take to mitigate the unintended consequences that may stem from the discontinuation of embedded commissions?

32. For each transition option, please tell us how your business (investment fund manager or dealer) would have to operationally change or restructure in terms of systems and processes and the related cost implications. Where possible, please provide data on the estimated costs.

    - Are there unique costs or challenges to specific businesses?

    - What transition period would be appropriate?

    - Should existing redemption schedules for DSC and low-load purchase options be maintained until the redemption schedule is completed, or discontinued at the Transition Date?

33. Which transition option would you prefer? Why? Are there alternative transition options that we should consider?

34. As discussed in Appendix B, the CSA did not retain the option of capping embedded commissions, either as a stand-alone solution to the key issues discussed in Part 2 or as an interim step toward an eventual discontinuation of embedded commissions. Should the CSA further consider using a fee cap as a transition measure? Why?

Part 6

35. Please explain whether you think each of the initiatives discussed above will, either alone or in combination:

    - address the three investor protection and market efficiency issues and their sub-issues identified in Part 2; and

    - address or not address any additional harms or issues that you have identified.

36. Are there alternative options or measures, whether regulatory or market-led, that could successfully address the three investor protection and market efficiency issues and their sub-issues identified in Part 2. If so, please explain.

1.1.2 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of December 31, 2016 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
	None	

New Instruments

Instrument	Title	Status
11-737	Security Advisory Committee – Vacancies (Revised)	***Published October 20, 2016***
11-739	Policy Reformulation Table of Concordance and List of New Instruments (Revised)	***Published October 20, 2016***
11-776	Investor Office Activity Report 2015-2016	***Published November 17, 2016***
31-347	Guidance for Portfolio Managers for Service Arrangements with IIROC Dealer members	***Published November 17, 2016***
52-723	Office of the Chief Accountant Financial Reporting Bulletin	***Published November 24, 2016***
11-333	Withdrawal of Notices	***December 1, 2016***
11-316	Notice of Local Amendments –British Columbia	***Withdrawn December 1, 2016***
11-324	Extension of Comment Period – Implementation of Modernization of Investment Fund Product Regulation	***Withdrawn December 1, 2016***
12-307	Applications for a Decision that an Issuer is not a Reporting Issuer	***Withdrawn December 1, 2016***
21-309	Information Processor for Exchange Traded Securities other than Options	***Withdrawn December 1, 2016***
21-310	Information Processor for Corporate Debt Securities	***Withdrawn December 1, 2016***
21-314	Information Processor for Corporate Debt Securities	***Withdrawn December 1, 2016***
51-332	Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2010	***Withdrawn December 1, 2016***
51-334	Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2011	***Withdrawn December 1, 2016***
51-337	Continuous Disclosure Review Program Activities for the fiscal year ended March 31, 2012	***Withdrawn December 1, 2016***

New Instruments

Instrument	Title	Status
52-402	Possible Changes to Securities Rules Relating to International Financial Reporting Standards	***Withdrawn December 1, 2016***
81-302	Sales of Mutual Funds in the Upcoming RRSP Season	***Withdrawn December 1, 2016***
81-306	Disclosure by Mutual Funds of Changes in Calculation of Management Expense Ratio	***Withdrawn December 1, 2016***
81-311	Report on Consultation Paper 81-403 Rethinking Point of Sale Disclosure for Mutual Funds and Segregated Funds	***Withdrawn December 1, 2016***
81-314	Removal of Foreign Content Restrictions for Registered Plans – Eliminating Indirect Foreign Content Exposure in Certain RSP Funds	***Withdrawn December 1, 2016***
81-319	Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds	***Withdrawn December 1, 2016***
81-321	Early Use of the Fund Facts to Satisfy Prospectus Delivery Requirements	***Withdrawn December 1, 2016***
81-322	Status Report on the Implementation of the Modernization of Investment Fund Product Regulation Project and Request for Comment on Phase 2 Proposals	***Withdrawn December 1, 2016***
33-723	Fair Allocation of Investment Opportunities – Commodity Derivatives	***Withdrawn December 1, 2016***
81-706	Treatment of Sales Commissions in the Calculation of Net Asset Value of Labour Sponsored Investment Funds	***Withdrawn December 1, 2016***
13-315	Securities Regulatory Closed Dates 2017	***Published December 8, 2016***
21-319	Data Fees Methodology	***Published December 8, 2016***
81-102	Investment Funds – Amendments	***Commission approval published Dec. 8, 2016***
81-101	Mutual Fund Prospectus Disclosure – Amendments	***Commission approval published Dec. 8, 2016***
41-101	General Prospectus Requirements – Amendments	***Commission approval published Dec. 8, 2016***
81-106	Investment Fund Continuous Disclosure – Amendments	***Commission approval published Dec. 8, 2016***
33-318	Review of Practices Firms Use to Compensate and Provide Incentives to their Representatives	***Published December 15, 2016***
13-502	Fees – Amendments	***Commission approval published Dec. 15, 2016***
13-503	Fees (Commodity Futures Act) – Amendments	***Commission approval published Dec. 15, 2016***

For further information, contact:
Darlene Watson
Project Specialist
Ontario Securities Commission
416-593-8148

January 12, 2017

1.1.3 Multilateral CSA Staff Notice 45-322 Potential Concerns with the Structure of Rights Offerings

Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Multilateral CSA Staff Notice 45-322
Potential Concerns with the Structure of Rights Offerings

January 12, 2017

Purpose of the Notice

Staff of the Ontario Securities Commission, Autorité des marchés financiers, Financial and Consumer Affairs Authority of Saskatchewan, Manitoba Securities Commission and Alberta Securities Commission are issuing this notice to highlight potential concerns regarding the use of the rights offering prospectus exemption under section 2.1 of National Instrument 45-106 *Prospectus Exemptions*.

Background

The rationale of the prospectus-exempt rights offering regime is to enable reporting issuers to raise capital while allowing existing security holders to participate based on their proportionate interests in an issuer. Existing security holders should be able to make a decision regarding the exercise of their rights on a fully informed basis, free from any features of the offering designed to discourage participation or any other unfair influence.

The current rights offering regime does not require prior regulatory review. However, as part of our oversight of the exempt market, staff may review the structure of an offering, the issuer's compliance with the exemption and the disclosure provided. We may conduct reviews either before or after the completion of the distribution.

Potential Concerns

In certain cases, staff may have concerns with how the rights offering exemption is being used, notably where there may be a potential abuse of security holders. For example, we may have concerns where a rights offering is structured in such a way as to provide incentives for existing security holders not to participate, whether as a means to increase the proportionate interests of insiders, to transfer control to an unrelated third party or otherwise.

Similarly, caution should be exercised with respect to the terms and conditions of stand-by commitments. Stand-by commitments are included in the rights offering regime because they provide certainty to issuers and security holders that the issuer will be able to raise a minimum amount of proceeds. Although stand-by commitments will be subject to reasonable commercial terms and conditions, the take-up of securities by the stand-by guarantor should be reasonably assured. Conditions that decrease certainty or discourage security holder participation may frustrate the ability of security holders to make a free and informed decision regarding the rights offering. For example, a stand-by commitment that is conditional on limited security holder participation could create uncertainty for security holders and may also discourage participation.

Where a rights offering, including a stand-by commitment, does not appear to be consistent with the objective of the regime, staff may raise comments with an issuer regarding the structure of the rights offering and the disclosure provided to security holders. If we believe that a rights offering is being conducted in a manner that is contrary to the public interest, we may take steps to advance the goals of the rights offering regime and investor protection, which may include a recommendation to cease trade the offering.

Questions

Issuers proposing a rights offering with novel elements may wish to contact staff prior to filing materials. If you have any questions, please feel free to contact any of the following individuals:

Ontario Securities Commission

David Surat, Senior Legal Counsel, Corporate Finance Branch
416.593.8052
dsurat@osc.gov.on.ca

Ray Ho, Accountant, Corporate Finance Branch
416.593.8106
rho@osc.gov.on.ca

Jordan Lavi, Legal Counsel, Office of Mergers and Acquisitions
416.593.8245
jlavi@osc.gov.on.ca

Autorité des marchés financiers

Marie-Josée Lacroix, Analyste en financement des sociétés, Direction du financement des sociétés
514.395.0337, poste 4415
Marie-Josee.Lacroix@lautorite.qc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Tony Herdzik, Deputy Director, Corporate Finance
306.787.5849
tony.herdzik@gov.sk.ca

Manitoba Securities Commission

Wayne Bridgeman, Deputy Director, Corporate Finance
204.945.4905
wayne.bridgeman@gov.mb.ca

Alberta Securities Commission

Ashlyn D'Aoust, Senior Legal Counsel, Corporate Finance
403.355.4347
ashlyn.daoust@asc.ca

1.1.4 OSC Staff Notice 11-742 (Revised) – Securities Advisory Committee

REVISED ONTARIO SECURITIES COMMISSION STAFF NOTICE 11-742

SECURITIES ADVISORY COMMITTEE

In a Notice published in the OSC Bulletin on October 20, 2016, the Commission invited applications for positions on the Securities Advisory Committee ("SAC"). SAC provides advice to the Commission and staff on a variety of matters including legislative and policy initiatives and important capital markets trends and brings various issues to the attention of the Commission and staff.

The Commission was very impressed with the number of highly qualified practitioners who applied for positions on SAC. Unfortunately, there were far more applicants than there were positions available and selection from among the group was very difficult. The Commission would like to thank everyone who applied for their interest in serving on SAC.

The Commission is pleased to publish the names of the three new members who will be participating on SAC for the next three years.

– Jeff Meade — Royal Bank of Canada

– Rhonda Goldberg — IGM Financial Inc

– Ron Schwass — Wildeboer Dellelce LLP

The members of SAC have staggered terms. The continuing members of SAC are:

– Blair Cowper-Smith — OMERS Administration Corporation

– Sheldon Freeman — Goodmans LLP

– Mindy Gilbert — Davies Ward Phillips & Vineberg LLP

– Kathleen Ritchie — Gowling WLG

– Thomas Yeo — Torys LLP

– Ramandeep Grewal — Stikeman Elliott LLP

– Eric Moncik — Blake, Cassels & Graydon LLP

– Thomas Fenton — Aird & Berlis LLP

– Julie Shin — Toronto Stock Exchange

The Commission would like to take this opportunity to thank the three members of SAC, listed below, who completed their term in December 2016, having served on the Committee with great dedication over the last three years. Their advice and guidance on a range of issues has been very valuable to the Commission.

– Judy Cotte — RBC Global Asset Management

– Diana Wisner — Bank of Montreal

– Ian Michael — Bennett Jones

The Commission will publish a notice in Fall 2017 inviting applications for the next group of new SAC members, who will commence their terms in January 2018.

Reference: James Sinclair
General Counsel
Tel: 416-263- 3870
jsinclair@osc.gov.on.ca

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 BMO Nesbitt Burns Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to permit a non-redeemable investment fund to invest in American non-redeemable investment funds, relief subject to certain conditions – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a.1), 2.5(2)(c.1), 19.1.

December 21, 2016

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATIONS IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
BMO NESBITT BURNS INC.
(the "Filer")**

DECISION

Background

The securities regulatory authority or regulator in the Jurisdiction (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") exempting the Fund (defined below) from paragraphs 2.5(2)(a.1) and (c.1) of National Instrument 81-102 *Investment Funds* ("**NI 81-102**") to permit the Fund to purchase securities of certain investment funds in the United States (the "**Exemption Sought**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meaning if used in this decision, unless otherwise defined herein.

Representations

This decision is based on the following facts represented by the Filer:

1. The Filer is planning to launch a new investment fund, tentatively called RiverNorth U.S. CEF Income Fund (the "**Fund**"). The Fund will be a non-redeemable investment fund governed by the laws of the province of Ontario pursuant to a trust declaration (the "**Declaration of Trust**") to be dated on or about the date of the Fund's final prospectus. The Filer will provide all administrative services required by the Fund.

2. The Filer will be the manager of the Fund and RiverNorth Capital Management LLC (the "**Portfolio Advisor**") will be the portfolio advisor of the Fund. The Filer is not in default of any of the requirements of securities legislation applicable to it.

3. The Fund will be subject to NI 81-102, subject to any exemptions therefrom that have been or may be granted by securities regulatory authorities, and a reporting issuer under the laws of all of the provinces and territories of Canada.

4. Subject to fulfilling all of the requirements of the Toronto Stock Exchange (the "**TSX**"), the Fund will list at least one class of its securities for trading on the TSX.

5. The Portfolio Advisor will allocate the Fund's assets primarily among closed-end funds and exchange-traded mutual funds in the United States (collectively, the "**Underlying Funds**"), and business development companies in the United States.

6. The Underlying Funds will be subject to the continuous disclosure and other requirements applicable to investment funds of the Investment Company Act of 1940 (the "**1940 Act**") in the United States.

7. As with investing in United States publicly traded securities of individual companies, the Underlying Funds in the United States are highly regulated and subject to rigorous continuous disclosure obligations.

8. The 1940 Act imposes a strict regulatory regime on the Underlying Funds that is as rigorous as the regulatory regime applicable to the Fund.

9. The securities of the Underlying Funds invested in by the Fund will be exchange traded and will not be illiquid assets, as defined in NI 81-102.

10. Absent the Exemption Sought, the Fund would be prohibited from investing in Underlying Funds because the Underlying Funds are not (i) subject to NI 81-102, or (ii) reporting issuers in any province or territory of Canada.

Decision

The Decision Maker is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Exemption Sought is granted provided that:

(a) The Underlying Funds are public investment funds subject to the continuous disclosure and other requirements of the 1940 Act.

(b) The Fund's investment in any one Underlying Fund does not exceed 10% of the Fund's net asset value at the time of the investment.

(c) Securities of the Underlying Funds are purchased on a stock exchange.

(d) Other than with respect to paragraphs 2.5(2)(a.1) and (c.1), the Fund's investment in an Underlying Fund complies with section 2.5 of NI 81-102.

"Darren McKall"
Manager,
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.2 BMO Nesbitt Burns Inc. et al.

Headnote

National Policy 11-203 Process for Relief Applications in Multiple Jurisdictions – relief granted from the investment fund self-dealing restrictions in the Securities Act (Ontario) to allow pooled funds to invest indirectly through the use of derivatives entered into with related counterparties in securities of underlying funds under common management – relief subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(a), (b) and (c)(ii), 111(4), 112.

December 8, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
BMO NESBITT BURNS INC. (the Filer)

AND

IN THE MATTER OF
BMO PRIVATE PREFERRED SHARE POOLED PORTFOLIO
(the Initial Top Fund) AND
ANY OTHER POOLED FUND (as defined below)
MANAGED BY THE FILER IN THE FUTURE
(the Future Top Funds, and together with the Initial Top Fund, the Top Funds)

AND

IN THE MATTER OF
BMO PREFERRED SHARE FUND
(the Initial Underlying Fund) AND
ANY OTHER NI 81-101 FUND (as defined below) MANAGED BY THE FILER,
OR AN AFFILIATE OF THE FILER, IN THE FUTURE
(the Future Underlying Funds and, together with the Initial Underlying Fund, the Underlying Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Top Funds, for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting each Top Fund from the following restrictions under the Legislation in respect of the investment further described below by a Top Fund in an Underlying Fund directly, or indirectly through one or more derivative instruments entered into with Related Counterparties (as defined below):

(a) the restriction prohibiting an investment fund from knowingly making an investment in any person or company who is a substantial security holder of the investment fund, its management company or its distribution company;

(b) the restriction prohibiting an investment fund from knowingly making an investment in a person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder;

(c) the restriction prohibiting an investment fund from making an investment in an issuer in which any person or company who is a substantial security holder of the investment fund, its management company or its distribution company, has a significant interest;

(d) the restriction prohibiting an investment fund or its management company or its distribution company from knowingly holding an investment described in (a), (b) or (c) above;

(e) the restriction prohibiting an investment fund or its management company or its distribution company from entering into any contract or other arrangement that results in its being directly or indirectly liable or contingently liable in respect of any investment described in (a) or (b) above; and

(collectively, the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

1. the Ontario Securities Commission is the principal regulator for this application; and

2. the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta (and together with the Jurisdiction, the **Applicable Jurisdictions**).

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. In this decision, the following terms have the following meanings:

NI 81-101 Fund means an open-ended "mutual fund" for the purposes of, and that is a reporting issuer under, the securities legislation of the Applicable Jurisdictions, that is subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) and that has a current simplified prospectus prepared, filed and receipted under the securities legislation of the Applicable Jurisdictions in accordance with National Instrument 81-101 *Investment Fund Distributions*.

Pooled Fund means an open-ended "mutual fund" for the purposes of, and that is not a reporting issuer under, the securities legislation of the Applicable Jurisdictions, the securities of which are issued solely pursuant to prospectus exemptions in accordance with National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) and the Legislation.

BMO means Bank of Montreal, a Canadian chartered bank.

Related Counterparty means BMO or a Guaranteed Affiliate of BMO.

Guaranteed Affiliate of BMO means a wholly owned affiliate of BMO where BMO has assumed responsibility for the obligations of that affiliate.

Representations

This decision is based on the following facts represented by the Filer:

The Filer and Affiliates

1. The Filer is a corporation incorporated under the laws of Canada and its head office is in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, as a futures commission merchant in Ontario, as a dealer (futures commission merchant) in Manitoba, as a derivatives dealer in Quebec and as an investment dealer in all provinces and territories of Canada.

3. BMO Investments Inc. (**BMO Investments**) and BMO Asset Management Inc. (**BMO AM**), both affiliates of the Filer, are each registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador. BMO Investments is also registered as a mutual fund dealer in all provinces and territories of Canada. BMO AM is also registered as a commodity trading manager in Ontario and as a portfolio manager and exempt market dealer in all provinces and territories of Canada.

4. Each of the Filer, BMO Investments and BMO AM is a wholly-owned subsidiary of BMO, and as such BMO is a substantial securityholder of the Filer, BMO Investments and BMO AM.

5. The Filer is not a reporting issuer in any jurisdiction of Canada. Each of the Filer, BMO Investments, BMO AM and BMO PIC (as defined below) is not in default of securities legislation of any jurisdiction in Canada.

The Top Funds

6. The Initial Top Fund will be a Pooled Fund established as a trust under the laws of Ontario.

7. Each Future Top Fund will be a Pooled Fund established as a trust, corporation or limited partnership under the laws of Ontario.

8. The Filer will be the investment fund manager of the Top Funds.

9. A registered portfolio manager that is not related to the Filer or its affiliates will be the portfolio manager of the Initial Top Fund. A registered portfolio manager either affiliated with or that is not related to the Filer or its affiliates will be the portfolio manager of the Future Top Funds.

10. CIBC Mellon Trust Company will be the custodian of the Initial Top Fund. A trust company incorporated, and licensed or registered, under the laws of Canada or a jurisdiction in Canada, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada) or a qualified affiliate of such bank or trust will be the custodian of each Future Top Fund.

11. The registered portfolio manager of the Top Fund will have complete discretion to invest and reinvest all or part of a Top Fund's assets, and will be responsible for executing or arranging for the execution of all portfolio transactions in respect of a Top Fund.

12. Each Top Fund will have its own separate investment objectives, strategies and, if applicable, investment restrictions.

13. To achieve its investment objectives, each Top Fund will invest substantially all of its assets, either directly, or indirectly through one or more derivative instruments entered into with Related Counterparties (as defined below), in securities of an Underlying Fund.

Underlying Funds

14. The Initial Underlying Fund is a NI 81-101 Fund established as a trust.

15. The Initial Underlying Fund is not in default of securities legislation of any jurisdiction of Canada.

16. Each Future Underlying Fund will be a NI 81-101 Fund established as a trust, corporation or limited partnership under the laws of a province of Canada.

17. BMO Investments is the investment fund manager and BMO AM is the portfolio manager of the Initial Underlying Fund.

18. The Filer or an affiliate of the Filer may be the trustee and will be the investment fund manager of the Future Underlying Funds. A registered portfolio manager either affiliated with or that is not related to the Filer or its affiliates will be the portfolio manager of the Future Underlying Funds.

19. The Initial Underlying Fund has, and each Future Underlying Fund will have, its own separate investment objectives, strategies and investment restrictions.

20. Each of the Underlying Funds calculates and will calculate its net asset value (NAV) and offer redemptions at least at the same frequency as the applicable Top Fund.

Fund-On-Fund Structure

21. The Initial Top Fund is expected to invest substantially all of its assets indirectly through the use of derivative instruments such as options and forwards in Series I units of the Initial Underlying Fund, but may also invest directly in Series I units of the Initial Underlying Fund (the **Initial Fund-on-Fund Structure**). For Series I units of the Initial Underlying Fund, separate fee and expense arrangements are negotiated by BMO Investments with, and paid by, each Series I investor outside the Initial Underlying Fund.

22. The investment of a Future Top Fund in an Underlying Fund will be structured substantially similarly, including as to fee structure (except as described below), to the investment of the Initial Top Fund in the Initial Underlying Fund (the **Future Fund-on-Fund Structure**, and together with the Initial Fund-on-Fund Structure, the **Fund-on-Fund Structure**).

23. Each investor in a Top Fund (other than the Filer or an affiliate of the Filer as a seed capital investor) will be a client of an affiliate of the Filer (in the case of the Initial Top Fund, BMO Private Investment Counsel Inc. (**BMO PIC**)) (each an **Adviser**), who has entered into a discretionary investment management agreement (**IMA**) with the Adviser. Each Adviser is or will be registered as a portfolio manager in all applicable provinces and territories of Canada.

24. The Fund-on-Fund Structure is designed:

    (a) to provide each Top Fund with an efficient and cost-effective manner of pursuing portfolio diversification versus directly purchasing portfolio securities; and

    (b) to provide clients of an Adviser with a means of obtaining exposure to the Underlying Fund at superior pricing compared to securities of the Underlying Fund they are eligible to acquire directly, thus resulting in lower overall fees for such clients.

25. The fee structure of the Initial Fund-on-Fund Structure will be as follows:

    (a) each investor in the Initial Top Fund will pay a fee to the Adviser for the services provided by the Adviser in accordance with the terms of the IMA between the investor and the Adviser (the **Advisory Fee**). This fee is independently negotiated between the investor and the Adviser and will be paid outside the Initial Top Fund. The Adviser will pay the Filer a portion of this fee (that would otherwise be retained by the Adviser) for the management and administration of the Initial Top Fund in connection with each investment by the Adviser's clients in the Initial Top Fund;

    (b) when the Initial Top Fund invests in the Initial Underlying Fund through derivative instruments, no management fees or administration fees or other fees will be payable by the Initial Top Fund or the Initial Underlying Fund. No amounts in addition to the Advisory Fee will be paid by any client of an Adviser as a result of being invested in the Initial Top Fund. In addition, any derivative instruments used by the Initial Top Fund to invest indirectly in the Initial Underlying Fund will be acquired from a Related Counterparty at no cost. There will be no embedded fees or expenses in any derivative instruments used by the Initial Top Fund;

    (c) if the Initial Top Fund were to invest directly in Series I units of the Initial Underlying Fund, rather than indirectly through derivative instruments, the Initial Top Fund would pay BMO Investments a management and administration fee in an amount to be negotiated between the Initial Top Fund and BMO Investments; however, the aggregate cost associated with investing in the Initial Underlying Fund through the Initial Top Fund, including all fees and expenses that reduce the value of the investment, and calculated before taking into account any tax benefit if any, would be less for the client of the Adviser than the aggregate cost associated with investing directly in the series of securities of the Initial Underlying Fund with the lowest aggregate cost which the client of the Adviser would be eligible to acquire (currently, Series O units of the Initial Underlying Fund). The Initial Top Fund would only invest in Series I units of the Initial Underlying Fund directly to the extent that it was unable to invest indirectly, through the use of derivative instruments, on terms satisfactory to the portfolio manager of the Initial Top Fund; and

    (d) no incentive fees will be payable.

26. The fee structure of any Future Fund-on-Fund Structure will be substantially similar to that of the Initial Fund-on-Fund Structure except that:

    (i) the Filer may charge a fee to a Future Top Fund in addition to or in substitution for any portion of the Advisory Fee to be paid by the Adviser to the Filer; and/or

    (ii) there may be embedded fees or expenses in any derivative instruments a Future Top Fund enters into with Related Counterparties;

    provided (1) that the aggregate cost associated with investing in an Underlying Fund through the Future Fund-on-Fund Structure, including all fees and expenses that reduce the value of the investment, and calculated before taking into account any tax benefit if any, is less for the client of the Adviser than the aggregate cost associated with investing directly in the series of securities of the applicable Underlying Fund with the lowest aggregate cost which the client of the Adviser would be eligible to acquire, and (2) that no management fees or incentive fees contemplated in (i) or (ii)

above would be payable by a Future Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund.

27. The use of derivative instruments will allow the Filer to retain the fee paid to it by the Adviser (in the case of the Initial Top Fund, BMO PIC) rather than pay a portion of such fee to an affiliate of the Filer as the management fee of the Underlying Fund, and may additionally provide tax efficiency for certain investors.

28. Where a Top Fund invests indirectly in an Underlying Fund through derivative instruments entered into with a Related Counterparty, a registered portfolio manager that is not related to the Filer or its affiliates will manage and make decisions regarding the investments of the Top Fund. The unrelated registered portfolio manager of the Top Fund will only enter into a derivative instrument to gain exposure to an Underlying Fund with a Related Counterparty where such portfolio manager determines that the pricing and terms of such derivative instrument are at least as favourable as the pricing and terms which such portfolio manager could otherwise obtain from a counterparty that is not a Related Counterparty.

29. No Top Fund will invest, either directly or indirectly through derivative instruments, in more than one Underlying Fund.

30. No Top Fund will also be an Underlying Fund.

31. Any direct or indirect investment through derivative instruments made by a Top Fund in an Underlying Fund will be consistent with the investment objectives, investment strategies, investment restrictions, risk profile and other principal terms of the Top Fund.

32. Each of the Top Funds will prepare annual audited financial statements and interim unaudited financial statements in accordance with National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) and will otherwise comply with the requirements of NI 81-106 applicable to them. The holdings by a Top Fund of securities of an Underlying Fund will be disclosed in the financial statements of the Top Fund.

33. The amounts invested from time to time in an Underlying Fund by a Top Fund, alone or together with other Top Funds or other investment funds managed by an affiliate of the Filer, may exceed 20% of the outstanding voting securities of the Underlying Fund. As a result, each Top Fund could, either alone or together with other Top Funds or other investment funds managed by an affiliate of the Filer, become a substantial securityholder of an Underlying Fund. The Top Funds and investment funds managed by an affiliate of the Filer are, or will be, related mutual funds by virtue of common management by the Filer or an affiliate of the Filer.

34. BMO currently owns more than 10% of the outstanding voting units of the Initial Underlying Fund, which holding is primarily for hedging purposes. BMO and its affiliates may similarly hold more than 10% of the outstanding voting securities of a Future Underlying Fund for similar hedging or seed capital requirement purposes, or hold more than 20% of the outstanding voting securities of a Top Fund for seed capital requirement purposes. As such the Initial Fund-on-Fund Structure results, and a Future Fund-on-Fund Structure may result, in a Top Fund investing in an Underlying Fund in which a person or company who is a substantial security holder of the Top Fund, the Filer or an affiliate of the Filer has a significant interest.

35. A Top Fund using a derivative instrument to obtain exposure to an Underlying Fund could result in its being directly or indirectly liable in respect of an investment in such Underlying Fund which it would otherwise be prohibited from investing in in the circumstances described above in paragraphs 33 and 34.

36. The derivative instruments used by a Top Fund to obtain exposure to an Underlying Fund may be viewed as an investment in the Related Counterparty.

37. The Fund-on-Fund Structure complies with all the requirements of section 2.5 of NI 81-102. The Requested Relief is required because the Top Funds are not currently subject to the requirements of NI 81-102 and therefore cannot rely upon the exemptions contained in subsection 2.5(7) of NI 81-102.

38. The Fund-on-Fund Structure represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of each Top Fund.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted provided that:

(a) securities of the Top Funds are distributed in Canada solely pursuant to exemptions from the prospectus requirements in NI 45-106 and the Legislation;

(b) the Initial Underlying Fund is, and each Future Underlying Fund will be, a "mutual fund" under the securities legislation of the Applicable Jurisdictions to which NI 81-102 and NI 81-101 applies;

(c) the investment, either direct or indirect through derivative instruments entered into with Related Counterparties, by a Top Fund in an Underlying Fund is compatible with the investment objectives of the Top Fund;

(d) where a Top Fund invests indirectly in an Underlying Fund through derivative instruments entered into with a Related Counterparty, a registered portfolio manager that is not related to the Filer or its affiliates will manage and make decisions regarding the investments of the Top Fund;

(e) any derivative instrument used by a Top Fund to invest indirectly in an Underlying Fund will be acquired from a Related Counterparty;

(f) no Top Fund enters into a transaction to obtain exposure to, or purchases securities of, an Underlying Fund, unless at the time of the transaction, the Underlying Fund holds no more than 10% of its NAV in securities of other investment funds, unless:

(i) the Underlying Fund is a "clone fund" (as defined in NI 81-102);

(ii) the other investment fund is a "money market fund" (as defined in NI 81-102); or

(iii) the securities of the other investment fund are "index participation units" (as defined in NI 81-102) issued by an investment fund;

(g) no management fees or incentive fees, including any embedded fees in any derivative instruments used by a Future Top Fund to indirectly invest in an Underlying Fund, are payable by a Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Fund for the same service;

(h) no sales fees or redemption fees are payable by a Top Fund in relation to its purchases or redemptions of securities of an Underlying Fund;

(i) the aggregate cost associated with investing in the Underlying Fund through the Fund-on-Fund Structure, including all fees and expenses that reduce the value of the investment, and calculated before taking into account any tax benefit if any, is less for the client of the Adviser than the aggregate cost associated with investing directly in the series of securities of the Underlying Fund with the lowest aggregate cost which the client of the Adviser would be eligible to acquire;

(j) the Filer will cause the Top Fund to not vote the securities of an Underlying Fund held, either directly or indirectly through derivative instruments, by the Top Fund at any meeting of the securityholders of the Underlying Fund; however, a Top Fund may arrange for such securities to be voted by the beneficial holders of securities of the Top Fund;

(k) the offering memorandum, where available, or other disclosure document of a Top Fund, will be provided to investors in a Top Fund prior to the time of investment and will disclose:

(i) that the Top Fund will invest substantially all of its assets in an Underlying Fund and is expected to do so indirectly through the use of derivative instruments entered into with Related Counterparties, but may also do so by investing directly in securities of the Underlying Fund;

(ii) that the Filer or an affiliate of the Filer is the investment fund manager and/or portfolio manager of both the Top Fund and the Underlying Fund, as applicable, and the potential conflicts of interest relating to such relationships;

(iii) each substantial securityholder of the Filer, of an affiliate of the Filer or of a Top Fund that also has a significant interest in an applicable Underlying Fund, the approximate amount of the significant interest they hold, on an aggregate basis, expressed as a percentage of the applicable Underlying Fund's NAV, and the potential conflicts of interest which may arise from such relationships;

(iv) the fees and expenses payable by the Underlying Fund that the Top Fund will invest in and the embedded fees or expenses in any derivative instruments used by a Future Top Fund;

(v) that investors in the Top Fund are entitled to receive, on written request and free of charge, the following relating to the Series I securities of the Underlying Fund in which the Top Fund invests directly or indirectly through derivative instruments:

1. the most recently filed Fund Facts document;

2. the most recently filed simplified prospectus and annual information form;

3. the most recently filed annual financial statements and any interim financial statements filed after;

4. the most recently filed management report of fund performance (**MRFP**) and any interim MRFP filed after; and

5. any other continuous disclosure document that the Underlying Fund may make available to its investors.

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

2.1.3 Fidelity Investments Canada ULC

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to Fundata A+ Awards and relief from paragraphs 15.3(4)(c) to permit references to FundGrade Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the Fundata A+ Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), 19.1.

December 21, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the "Jurisdiction")

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
FIDELITY INVESTMENTS CANADA ULC
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Existing Mutual Funds and Future Mutual Funds (each defined below) (each a **Fund** and collectively, the **Funds**) of which the Filer is or becomes the investment fund manager, pursuant to section 19.1 of National Instrument 81-102 – *Investment Funds* (**NI 81-102**), for exemptive relief (**Requested Relief**) from the requirements set out in paragraphs 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and 15.3(4)(f) (in respect of the FundGrade A+ Awards only) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

(a) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund;

(b) the rating or ranking is to the same calendar month end that is

  (i) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

  (ii) not more than three months before the date of first publication of any other sales communication in which it is included;

in order to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds.

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland & Labrador, the Northwest Territories, Nunavut and Yukon (the **Other Jurisdictions**).

Interpretation

Defined terms contained in NI 81-102, National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are defined in this decision.

Representations

This Decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation duly amalgamated and validly existing under the laws of the Province of Alberta. The head office of Fidelity is in Toronto, Ontario.

2. The Filer is registered in Ontario, Québec and Newfoundland and Labrador in the category of investment fund manager. The Filer is also registered as a portfolio manager and mutual fund dealer in each of the provinces and territories of Canada and is registered under the *Commodity Futures Act* (Ontario) in the category of commodity trading manager.

3. The Filer is not in default of the securities legislation of any of the Jurisdictions.

The Funds

4. The Filer is the manager of mutual funds (the **Existing Mutual Funds**), each of which is subject to the requirements of NI 81-102. The Filer may, in the future, become the manager of additional mutual funds (the **Future Mutual Funds**) that are subject to the requirements of NI 81-102.

5. Each Fund is, or will be, a mutual fund created under the laws of either the Province of Ontario or Alberta and is, or will be, subject to NI 81-102.

6. Each Fund has, or will have, a simplified prospectus and an annual information form prepared in accordance with NI 81-101. Each Fund is, or will be, qualified for distribution in the Jurisdictions and is, or will be, a reporting issuer under the securities legislation of each Jurisdiction.

7. None of the existing Funds are in default of securities legislation in any Jurisdiction.

8. Each of the Funds is, or will be, subject to NI 81-102, including Part 15 thereof which governs sales communications.

Fundata FundGrade A+ Awards Program

9. Fundata is not a member of the Funds' organization. Fundata is a leader in supplying mutual fund information, analytical tools, and commentary. Fundata's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

10. One of Fundata's programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

11. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk-adjusted performance measured by three well-known and widely used metrics: the Sharpe Ratio, the Information Ratio, and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.

12. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a Fund must show consistently high scores for all ratios across all time periods.

13. Fundata calculates a grade using only the retail series of each Fund. Institutional series or fee-based series of any Fund are not included in the calculation. A Fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a Fund, it is then applied to all related series of that Fund.

14. At the end of each calendar year, Fundata calculates a “Fund GPA” for each Fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each Fund is divided by 12 to arrive at the Fund's GPA for the year. Any Fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

15. When a Fund is awarded a FundGrade A+ Award, Fundata will permit such Fund to make reference to the award in its sales communications.

16. The FundGrade Ratings fall within the definition of “performance data” under NI 81-102, as they constitute “a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund”, given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be “overall ratings or rankings”, given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

17. Paragraph 15.3(4)(c) of NI 81-102 imposes a “matching” requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or “match”, each period for which standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e., for one, three, five and ten year periods, as applicable).

18. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years, and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the “matching” requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.

19. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication “otherwise complies” with the requirements of subsection 15.3(4). As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the “matching” requirement in subsection 15.3(4) because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) unavailable. Relief from paragraph 15.3(4)(c) is, therefore, required in order for the Funds to reference the FundGrade A+ Awards and the FundGrade Ratings in sales communications.

20. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

21. Because the evaluation of Funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a Fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.

22. The Requested Relief is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

23. The Filer wishes to include, in sales communications of the Funds, references to the FundGrade Ratings and the FundGrade A+ Awards, where such Funds have been awarded a FundGrade A+ Award.

24. The Filer submits that the FundGrade A+ Awards and the FundGrade Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. The FundGrade A+ Awards and the FundGrade Ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of Fundata in fund analysis that alleviates any concern that references to them may be misleading and, therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Requested Relief is granted to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to a Fund provided that:

1. The sales communication that refers to the FundGrade A+ Awards and the FundGrade Ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

   (a) the name of the category for which the Fund has received the award or rating;

   (b) the number of mutual funds in the category for the applicable period;

   (c) the name of the ranking entity, i.e., Fundata;

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Awards or the FundGrade Rating is based;

   (e) a statement that FundGrade Ratings are subject to change every month;

   (f) in the case of a FundGrade A+ Award, a brief overview of the FundGrade A+ Awards;

   (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award), a brief overview of the FundGrade Rating;

   (h) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category); and

   (i) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings;

2. The FundGrade A+ Award being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. The FundGrade A+ Awards and the FundGrade Ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

"Vera Nunes"
Manager,
Investment Funds and Structured Products
Ontario Securities Commission

2.1.4 Mackenzie Financial Corporation et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval of investment fund mergers – approval required because mergers do not meet the criteria for pre-approved reorganizations and transfers in National Instrument 81-102 Investment Funds – terminating funds and continuing funds do not have substantially similar fundamental investment objectives – certain mergers are between funds that do not have the same fee structure – one merger will not be a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act – mergers to otherwise comply with pre-approval criteria, including securityholder vote, IRC approval – securityholders provided with timely and adequate disclosure regarding the mergers.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 5.7(1)(b), 19.1(2).

November 11, 2016

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)**

AND

**IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS**

AND

**IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION
(the Filer) AND
MACKENZIE REAL RETURN BOND FUND,
MACKENZIE GLOBAL BOND FUND,
MACKENZIE USD CONVERTIBLE SECURITIES FUND,
MACKENZIE GLOBAL ASSET STRATEGY FUND,
MACKENZIE CANADIAN CONCENTRATED EQUITY FUND,
MACKENZIE ALL CAP DIVIDEND CLASS,
MACKENZIE DIVERSIFIED EQUITY FUND,
MACKENZIE GLOBAL DIVERSIFIED EQUITY CLASS AND
MACKENZIE GLOBAL CONCENTRATED EQUITY CLASS
(COLLECTIVELY, THE "TERMINATING FUNDS" AND INDIVIDUALLY, A "TERMINATING FUND")**

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Funds, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) approving the proposed reorganization of each of the Terminating Funds with applicable Continuing Funds (each as defined below), pursuant to subsection 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Requested Relief**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories in Canada (the **Other Jurisdictions**, collectively with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in NI 81-102, National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

Closed and Exempt Mergers means the following Mergers, which: (i) involve Series E, J, PWX and PWX8 of the Continuing Funds which are not currently offered for purchase and are not currently qualified for distribution under a prospectus; or (ii) involve Series O, QF5 series, D5 series, D8 series, H series, H5 series, L series, L5 series, L8 series, N series, N5 series, QF series and Quadrus series of the Continuing Funds which are expected to be offered for sale under a simplified prospectus in advance of the Merger, however, the receipt for the final prospectus will not be issued in advance of the information circular mailing date:

Terminating Fund	Continuing Fund
Mackenzie Real Return Bond Fund Series J	Mackenzie Canadian Bond Fund Series J
Mackenzie Diversified Equity Fund Series J	Mackenzie Global Dividend Fund Series J
Mackenzie Global Diversified Equity Class Series E	Mackenzie Global Dividend Fund Series E
Mackenzie Global Diversified Equity Class Series J	Mackenzie Global Dividend Fund Series J
Mackenzie All Cap Dividend Class Series PWX	Mackenzie Canadian All Cap Dividend Class Series PWX
Mackenzie All Cap Dividend Class Series PWX8	Mackenzie Canadian All Cap Dividend Class Series PWX8
Mackenzie Canadian Concentrated Equity Fund Quadrus series	Mackenzie Canadian Growth Fund Quadrus series
Mackenzie Canadian Concentrated Equity Fund D5 series	Mackenzie Canadian Growth Fund D5 series
Mackenzie Canadian Concentrated Equity Fund D8 series	Mackenzie Canadian Growth Fund D8 series
Mackenzie Canadian Concentrated Equity Fund H series	Mackenzie Canadian Growth Fund H series
Mackenzie Canadian Growth Fund H5 series	Mackenzie Canadian Growth Fund H5 series
Mackenzie Canadian Concentrated Equity Fund L series	Mackenzie Canadian Growth Fund L series
Mackenzie Canadian Concentrated Equity Fund L5 series	Mackenzie Canadian Growth Fund L5 series
Mackenzie Canadian Concentrated Equity Fund L8 series	Mackenzie Canadian Growth Fund L8 series
Mackenzie Canadian Concentrated Equity Fund N series	Mackenzie Canadian Growth Fund N series
Mackenzie Canadian Concentrated Equity Fund N5 series	Mackenzie Canadian Growth Fund N5 series
Mackenzie Canadian Concentrated Equity Fund QF series	Mackenzie Canadian Growth Fund QF series
Mackenzie Canadian Concentrated Equity Fund QF5 series	Mackenzie Canadian Growth Fund QF5 series
Mackenzie All Cap Dividend Class Series O	Mackenzie Canadian All Cap Dividend Class Series O

Continuing Funds means Mackenzie Canadian Bond Fund, Mackenzie Global Tactical Bond Fund, Mackenzie USD Global Tactical Bond Fund, Mackenzie Global Strategic Income Fund, Mackenzie Canadian Growth Fund, Mackenzie Canadian All Cap Dividend Class, Mackenzie Global Dividend Fund, and Mackenzie Global Concentrated Equity Fund (collectively, the "**Continuing Funds**" and individually, a "**Continuing Fund**").

Effective Date means on or about November 25, 2016, the anticipated date of the Proposed Reorganization.

Exempt Mergers means the following Mergers, where Series M, R, S and T6 of the Continuing Funds are or will be offered only on an exempt distribution basis;

Terminating Fund	Continuing Fund
Mackenzie Real Return Bond Fund Series R	Mackenzie Canadian Bond Fund Series R
Mackenzie Global Asset Strategy Fund Series R	Mackenzie Global Strategic Income Fund Series R
Mackenzie Canadian Concentrated Equity Fund Series M	Mackenzie Canadian Growth Fund Series M
Mackenzie Canadian Concentrated Equity Fund Series R	Mackenzie Canadian Growth Fund Series R
Mackenzie Diversified Equity Fund Series S	Mackenzie Global Dividend Fund Series S
Mackenzie Global Diversified Equity Class Series S	Mackenzie Global Dividend Fund Series S

Funds means collectively, the Terminating Funds and the Continuing Funds.

Grandfathering Mergers means the following Mergers, where the series of securities of the Continuing Funds are being created solely to facilitate the Mergers, will not be qualified for distribution under a prospectus and will not be available for purchase subsequent to the Mergers:

Terminating Fund	Continuing Fund
Mackenzie Real Return Bond Fund Series A	Mackenzie Canadian Bond Fund Series B
Mackenzie Real Return Bond Fund Series G	Mackenzie Canadian Bond Fund Series C
Mackenzie Global Bond Fund Series A	Mackenzie Global Tactical Bond Fund Series B
Mackenzie Canadian Concentrated Equity Fund Series B	Mackenzie Canadian Growth Fund Series B
Mackenzie Canadian Concentrated Equity Fund Series C	Mackenzie Canadian Growth Fund Series B
Mackenzie Diversified Equity Fund Series G	Mackenzie Global Dividend Fund Series G
Mackenzie Global Concentrated Equity Class Series T8	Mackenzie Global Concentrated Equity Fund Series T6
Mackenzie Global Concentrated Equity Class Series T6	Mackenzie Global Concentrated Equity Fund Series T6
Mackenzie Global Bond Fund Series I	Mackenzie Global Tactical Bond Fund Series I
Mackenzie Global Concentrated Equity Class Series PWT8	Mackenzie Global Concentrated Equity Fund Series PWT8

Proposed Reorganizations means each of the proposed mergers of the Terminating Funds into the applicable Continuing Funds.

Taxable Mergers means the following Mergers:

a) the merger of Mackenzie USD Convertible Securities Fund into Mackenzie USD Global Tactical Bond Fund;

b) the merger of Mackenzie Global Asset Strategy Fund into Mackenzie Global Strategic Income Fund;

c) the merger of Mackenzie Global Diversified Equity Class into Mackenzie Global Dividend Fund; and

d) the merger of Mackenzie Global Concentrated Equity Class into Mackenzie Global Concentrated Equity Fund.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation governed by the laws of Ontario and is registered as follows: as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador; as a portfolio manager and exempt market dealer in Ontario and the Other Jurisdictions; and as a commodity trading manager in Ontario.

2. The Filer, with its head office in Toronto, Ontario, is the trustee and manager of the Funds.

The Funds

3. Each of Mackenzie All Cap Dividend Class, Mackenzie Global Diversified Equity Class, Mackenzie Global Concentrated Equity Class, and Mackenzie Canadian All Cap Dividend Class (collectively, the **Corporate Class Funds**) are separate classes of securities of Mackenzie Financial Capital Corporation (the **Corporation**). The remaining Funds are unit trusts (collectively, the **Trust Funds**).

4. The Funds are either unit trusts established under the laws of Ontario or separate classes of securities of the Corporation, a mutual fund corporation governed under the laws of Ontario. The Terminating Funds and Continuing Funds are each reporting issuers under the securities legislation of the Jurisdictions. Neither the Filer nor the Funds are in default of securities legislation in Jurisdiction, as applicable.

5. Other than circumstances in which the securities regulatory authority of a Jurisdiction has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under NI 81-102.

6. Securities of the Funds are currently qualified for sale under one or more of the simplified prospectus, annual information form and fund facts each dated September 29, 2016, as amended (collectively, the **Mackenzie Mutual Funds Offering Documents**), the simplified prospectus, annual information form and fund facts each dated June 29, 2016, as amended (collectively, the **Quadrus Offering Documents**) and/or the simplified prospectus, annual information form and fund facts each dated November 26, 2015, as amended (collectively, the "**Laurentian Offering Documents**", and, together with the Mackenzie Mutual Funds Offering Documents and the Quadrus Offering Documents, the **Offering Documents**). Certain securities of certain Funds are offered only on an exempt distribution basis or are no longer available for purchase; for example, Series B, C, E, G, I, J, M, OJ, R and S securities of certain Funds have never been or are no longer qualified for distribution under a prospectus.

7. The net asset value for each class or series of the Funds, as applicable, is calculated on a daily basis in accordance with the Funds' valuation policy and as described in the applicable Offering Documents.

Reasons for the Requested Relief

8. Approval of the Proposed Reorganization is required because:

(a) the fundamental investment objectives of certain Continuing Funds are not, or may be considered not to be, "substantially similar" to the investment objectives of their corresponding Terminating Funds;

(b) certain Mergers will not be completed as a "qualifying exchange" or a tax-deferred transaction under the *Income Tax Act* (Canada) (the "**Tax Act**") (collectively, the **Taxable Mergers**); and

(c) as described below, the materials to be sent to certain securityholders of the Terminating Funds in respect of certain Mergers will not include the current simplified prospectus or the most recently filed fund facts documents for the series of the Continuing Funds into which the applicable series of the Terminating Funds are merging because either:

(i) the applicable series of the Continuing Funds are being created solely to facilitate the Mergers, will not be qualified for distribution under a prospectus and will not be available for sale subsequent to the Mergers (the Grandfathering Mergers);

(ii) the applicable series of the Continuing Funds are not currently offered for sale and are not currently qualified for distribution under a prospectus (the Closed and Exempt Mergers); or

(iii) the applicable series of the Continuing Funds are or will be offered only on an exempt distribution basis, as is the case with the series of the Terminating Funds merging into these series (the Exempt Mergers).

9. Pursuant to the Proposed Reorganizations, securityholders of each of the Terminating Funds would become securityholders of the applicable Continuing Fund, as follows (each a "**Merger**" and collectively, the "**Mergers**"):

Terminating Fund	Continuing Fund
Mackenzie Real Return Bond Fund	Mackenzie Canadian Bond Fund
Mackenzie Global Bond Fund	Mackenzie Global Tactical Bond Fund
Mackenzie USD Convertible Securities Fund	Mackenzie USD Global Tactical Bond Fund
Mackenzie Global Asset Strategy Fund	Mackenzie Global Strategic Income Fund
Mackenzie Canadian Concentrated Equity Fund	Mackenzie Canadian Growth Fund
Mackenzie All Cap Dividend Class	Mackenzie Canadian All Cap Dividend Class
Mackenzie Diversified Equity Fund	Mackenzie Global Dividend Fund
Mackenzie Global Diversified Equity Class	Mackenzie Global Dividend Fund
Mackenzie Global Concentrated Equity Class	Mackenzie Global Concentrated Equity Fund

10. Except as noted above, the Proposed Reorganizations will otherwise comply with all other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

11. The Proposed Reorganizations do not require approval of securityholders of the Continuing Funds as the Filer has determined that the Proposed Reorganizations do not constitute material changes to any of the Continuing Fund.

12. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Independent Review Committee (**IRC**) has been appointed for the Funds. The Filer presented the terms of the Proposed Reorganizations to the IRC for a recommendation. The IRC reviewed the Proposed Reorganizations and provided a positive recommendation for each of the Proposed Reorganization on September 21, 2016, having determined that the Proposed Reorganizations, if implemented, would achieve a fair and reasonable result for each of the Funds and their respective securityholders.

13. In accordance with National Instrument 81-106 *Continuous Disclosure*, a press release describing the Proposed Reorganizations was issued and the press release was filed on SEDAR on September 22, 2016. An associated material change report and simplified prospectus and annual information form (including amendments thereto where applicable), as well as revised fund facts of the Terminating Funds, which give notice of the Proposed Reorganizations, were filed on SEDAR on September 30, 2016 (Mackenzie Funds), October 3, 2016 (Quadrus Group of Funds) and October 5, 2016 (Laurentian Group of Funds).

14. A notice of meeting, management information circular, proxy and fund facts of the applicable series of the Continuing Fund ("**Meeting Materials**") were mailed or otherwise made available to securityholders of the Terminating Fund on October 28, 2016 and were filed on SEDAR on October 28, 2016.

15. The Meeting Materials describe all of the relevant facts concerning the Proposed Reorganizations relevant to each securityholder, including the differences between investment objectives, strategies and fee structures of the

Terminating Funds and the Continuing Funds, the IRC's recommendations of the Proposed Reorganization, and income tax considerations so that securityholders of the Terminating Funds may consider this information before voting on the Proposed Reorganization. The Meeting Materials also describe the various ways in which securityholders can obtain a copy of the simplified prospectus and annual information form of the Continuing Funds, as well as the most recent interim and annual financial statements and management reports of fund performance for the Continuing Funds, at no cost.

16. Fund facts relating to the applicable series of each Continuing Fund were mailed to securityholders of the corresponding series of each Terminating Fund in all instances other than in respect of the Grandfathering Mergers, the Closed and Exempt Mergers and the Exempt Mergers. In order to effect the Mergers relating to these series of the Terminating Funds, securities of the applicable series of the Continuing Funds will be distributed to securityholders of the Terminating Funds in reliance on the prospectus exemption contained in section 2.11 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

17. In respect of the Grandfathering Mergers, the Closed and Exempt Mergers and the Exempt Mergers, because a current simplified prospectus and fund facts document are not available for the applicable series of the Continuing Funds, securityholders of each of the corresponding series of the Terminating Funds were sent fund facts relating to series A securities of the applicable Continuing Fund, or, where appropriate, another series of securities of the applicable Continuing Fund.

18. The Manager will pay for the costs of the proposed Mergers. These costs consist mainly of brokerage charges associated with the trades that occur both before and after the date of the proposed Mergers and legal, proxy solicitation, printing, mailing and regulatory fees. There are no charges payable by securityholders of the Terminating Funds who acquire securities of the corresponding Continuing Funds as a result of the Proposed Reorganization.

19. Securityholders of each of the Terminating Funds will be asked to approve the Proposed Reorganization associated with that Terminating Fund at a special meeting of securityholders scheduled to be held on or about November 21, 2016.

20. The Taxable Mergers will be effected on a taxable basis, which the Manager has determined will be in the overall best interests of the investors of the Terminating Funds and the Continuing Funds given the investment mandates and applicable portfolio management teams of the Continuing Funds. Effecting the Taxable Mergers on a taxable basis will preserve where applicable any unused tax losses of the Continuing Fund, which would otherwise expire upon implementation of the Taxable Merger on a tax deferred basis and therefore would not be available to shelter income and capital gains realized by the Continuing Fund in future years.

21. Following the implementation of the Proposed Reorganization, all systematic plans that were established with respect to the Terminating Funds will be re-established in the Continuing Fund, either on a series-for-series basis or into a similar series with substantially similar fees, unless securityholders advise the Filer otherwise.

22. Securityholders may change or cancel any systematic plan at any time and securityholders of the Terminating Funds who wish to establish one or more systematic plans in respect of their holdings in the Continuing Fund may do so following the implementation of the Proposed Reorganizations.

23. It is proposed that the investment objectives of Mackenzie Global Concentrated Equity Fund, a Continuing Fund, will change. These investment objective changes are subject to the approval of securityholders of Mackenzie Global Concentrated Equity Fund, to be effective immediately before the Mergers. If securityholders of Mackenzie Global Concentrated Equity Fund do not approve the investment objective change, the applicable Merger will not proceed. If securityholders of Mackenzie Global Concentrated Equity Fund approve the investment objective change and securityholders of the applicable Terminating Fund approve the Merger, the applicable Merger will proceed.

24. It is proposed that the investment objectives of Mackenzie Canadian Growth Fund, a Continuing Fund, will change. These changes are subject to the approval of securityholders of Mackenzie Canadian Growth Fund, to be effective on or about the effective date of the proposed Merger. If securityholders of Mackenzie Canadian Growth Fund do not approve the investment objective change, the applicable Merger will not proceed. If securityholders of Mackenzie Canadian Growth Fund approve the investment objective change and securityholders of the applicable Terminating Fund approve the Merger, the applicable Merger will proceed.

Proposed Reorganization Steps

25. If the necessary approvals are obtained, the Filer will carry out the following steps to complete the Proposed Reorganizations:

(a) Procedure for the Merger of a Trust Fund into another Trust Fund:

(i) Prior to effecting the Merger, if required, each Trust Fund that is a Terminating Fund (each, a "**Terminating Trust Fund**") will sell any securities in its portfolio that do not meet the investment objectives and investment strategies of the applicable Continuing Fund and purchase other securities so that, as of the effective date of the Merger, the portfolio of the Terminating Fund is substantially similar to that of the applicable Continuing Fund. As a result, some of the Terminating Trust Funds may temporarily hold cash, money market instruments or investments that are not consistent with their investment objectives, and may not be fully invested in accordance with their investment objectives for a brief period of time prior to the Merger being effected.

(ii) The value of each Terminating Trust Fund's portfolio and other assets will be determined at the close of business on the effective date of each applicable Merger in accordance with the constating documents of the applicable Terminating Trust Fund.

(iii) Each Continuing Fund that is a trust (each, a "**Continuing Trust Fund**") will acquire the investment portfolio and other assets of the applicable Terminating Trust Fund in exchange for securities of the Continuing Fund.

(iv) Each Continuing Trust Fund will not assume any liabilities of the applicable Terminating Trust Fund and the Terminating Trust Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the applicable Merger.

(v) Each Terminating Trust Fund and Continuing Trust Fund will distribute a sufficient amount of net income and net realized capital gains, if any, to securityholders to ensure that it will not be subject to tax under Part I of the Tax Act for its current tax year.

(vi) The securities of each Continuing Fund received by the applicable Terminating Trust Fund will have an aggregate net asset value equal to the value of the portfolio assets and other assets that the Continuing Fund is acquiring from the Terminating Trust Fund, and the securities of the Continuing Fund will be issued at the applicable series net asset value per security as of the close of business on the effective date of the applicable Merger.

(vii) Immediately thereafter, securities of each Continuing Fund received by the applicable Terminating Trust Fund will be distributed to securityholders of the Terminating Trust Fund, as proceeds of redemption of their securities in the Terminating Trust Fund on a dollar-for-dollar and series by series basis.

(viii) As soon as reasonably possible following each Merger, the applicable Terminating Trust Fund will be wound up.

(b) Procedure for the Merger of a Corporate Class Fund into another Corporate Class Fund:

(i) Prior to effecting the Merger, if required, the Corporation will sell any securities referable to the portfolio of each Terminating Fund (each a **Terminating Corporate Class Fund**) that do not meet the investment objectives and investment strategies of the applicable Continuing Corporate Class Fund and purchase other securities so that, as of the effective date of the Merger, the portfolio of the Terminating Corporate Class Fund is substantially similar to that of the applicable Continuing Corporate Class Fund. As a result, the portfolios of some of the Terminating Corporate Class Funds may temporarily hold cash, money market instruments or investments that are not consistent with their investment objectives, and may not be fully invested in accordance with their investment objectives for a brief period of time prior to the Merger being effected.

(ii) Each Terminating Corporate Class Fund may pay taxable dividends and/or capital gains dividends to its securityholders, but only to the extent required to manage the tax liability of the Corporation in a manner that the Board of Directors of the Corporation, in consultation with the Filer, determines to be fair and reasonable.

(iii) The value of each Terminating Corporate Class Fund's portfolio and other assets will be determined at the close of business on the effective date of each applicable Merger in accordance with the constating documents of the applicable Terminating Corporate Class Fund.

(iv) The value of each Continuing Corporate Class Fund's portfolio and other assets will be determined at the close of business on the effective date of each applicable Merger in accordance with the constating documents of the applicable Terminating Corporate Class Fund.

(v) The portfolio of assets attributable to each Terminating Corporate Class Fund will be combined with the portfolio of assets attributable to its applicable Continuing Corporate Class Fund. Together, these assets will be made referable to a new class of the Corporation (the "**New Class Fund**"). The New Class Fund will have the same name, investment objectives, investment strategies, share series and fee structure of the applicable Continuing Corporate Class Fund.

(vi) The New Class Fund will not assume any liabilities of the applicable Terminating Corporate Class Fund and the Terminating Corporate Class Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the applicable Merger.

(vii) All of the issued and outstanding securities of each Terminating Corporate Class Fund and the applicable Continuing Corporate Class Fund will be exchanged for securities of each applicable New Class Fund on a dollar-for-dollar and series-by-series basis, so that securityholders of each Terminating Corporate Class Fund and the applicable Continuing Corporate Class Fund become securityholders of each applicable New Class Fund.

(viii) As soon as reasonably possible following each Merger, the Corporation will cancel the securities of the applicable Terminating Corporate Class Fund and the applicable Continuing Corporate Class Fund.

(c) Procedure for the Merger of a Corporate Class Fund into a Trust Fund:

(i) Prior to effecting the Merger, if required, the Corporation will sell any securities in the portfolio underlying a Terminating Corporate Class Fund that do not meet the investment objectives and investment strategies of the applicable Continuing Trust Fund and purchase other securities so that, as of the effective date of the Merger, the portfolio of the Terminating Corporate Class Fund is substantially similar to that of the applicable Continuing Fund. As a result, the portfolios of some of the Terminating Corporate Class Funds may temporarily hold cash, money market instruments or investments that are not consistent with their investment objectives, and may not be fully invested in accordance with their investment objectives for a brief period of time prior to the Merger being effected.

(ii) Each Terminating Corporate Class Fund may pay taxable dividends and/or capital gains dividends to its securityholders, but only to the extent required to manage the tax liability of the Corporation in a manner that the Board of Directors of the Corporation, in consultation with the Filer, determines to be fair and reasonable.

(iii) The value of each Terminating Corporate Class Fund's portfolio and other assets will be determined at the close of business on the effective date of each applicable Merger in accordance with the constating documents of the applicable Terminating Corporate Class Fund.

(iv) Each Continuing Trust Fund will acquire the investment portfolio and other assets of the applicable Terminating Corporate Class Fund in exchange for securities of the Continuing Trust Fund.

(v) Each Continuing Trust Fund will not assume any liabilities of the applicable Terminating Corporate Class Fund and the Terminating Corporate Class Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the applicable Merger.

(vi) The securities of each Continuing Trust Fund received by the applicable Terminating Corporate Class Fund will have an aggregate net asset value equal to the value of the portfolio assets and other assets that the Continuing Trust Fund is acquiring from the Terminating Corporate Class Fund, and the securities of the Continuing Trust Fund will be issued at the applicable series net asset value per security as of the close of business on the effective date of the applicable Merger.

(vii) Immediately thereafter, securities of each Continuing Trust Fund received by the applicable Terminating Corporate Class Fund will be distributed to securityholders of the Terminating Corporate Class Fund, as proceeds of redemption of their securities in the Terminating Corporate Class Fund on a dollar-for-dollar and series by series basis.

(viii) As soon as reasonably possible following each Merger, the Corporation will cancel the securities of the applicable Terminating Corporate Class Fund.

26. Securityholders in the Terminating Funds will continue to have the right to redeem their units or exchange their units for securities of any other mutual fund of the Filer at any time up to the close of business on the business day before the Effective Date. Securityholders of the Terminating Fund that switch their units for securities of other mutual funds of the Filer will not incur any charges other than switch fees, if applicable, as described in each Terminating Fund's simplified prospectus. Securityholders who redeem units may be subject to redemption charges.

27. Following the implementation of the Proposed Reorganizations, the Continuing Funds will continue as publicly offered open-ended mutual funds offering securities in the Jurisdictions, or, in the case of Corporate Class Funds, will continue as classes of the Corporation.

28. Following the implementation of the Proposed Reorganizations, a press release and material change report announcing the results of the securityholder meetings in respect of the reorganization of the Terminating Funds will be issued and filed.

29. No sales charges will be charged by the Filer to investors or to the Terminating Fund or Continuing Fund in connection with the acquisition by a Continuing Fund of the investment portfolio of its applicable Terminating Fund.

30. The assets of each Terminating Fund to be acquired by the applicable Continuing Fund in order to effect the Mergers are currently, or will be, acceptable, on or prior to the effective date of the Mergers, to the portfolio manager(s) of the applicable Continuing Fund and are, or will be, consistent with the investment objectives of the Continuing Fund.

Proposed Reorganization Benefits

31. The Filer believes that the Proposed Reorganization is beneficial to securityholders of the Terminating Funds for the following reasons:

    (i) **Effective use of investment managers:** The Mergers are being proposed to reflect the Filer's desire to deploy its portfolio managers as effectively as possible, in order to maximize return potential for fund investors. The Mergers will also allow the Filer to make its product offering smaller and simpler, and therefore easier for investors to navigate.

    (ii) **Flexible mandate of the Continuing Fund:** In certain cases, the Continuing Funds provide a substantially similar yet broader or more flexible mandate, with consistency of management that the Filer believes provides those Continuing Funds with broader investment opportunities that can lead to increased diversification and return potential.

    (iii) **Superior performance of the Continuing Fund: I**n certain cases, the Continuing Funds have provided superior returns to investors (although past performance is not a guarantee of future returns and may not be repeated).

    (iv) **Similar or lower fees:** Terminating Fund investors will receive securities of the Continuing Fund that have a management fee that is substantially similar or lower than the management fee charged in respect of the securities of the Terminating Fund that they currently hold.

General

32. If the Proposed Reorganizations are approved, the reorganizations will be implemented after the close of business on the Effective Date. If the Proposed Reorganizations are not approved, the Terminating Fund will continue to be offered for distribution.

Decision

The Principal Regulator is satisfied that the decision meets the test set out in the Legislation for the Principal Regulator to make the decision.

The decision of the Principal Regulator under the Legislation is that the Requested Relief is granted, provided that the Filer obtains the prior approval of the securityholders of the Terminating Funds for the Proposed Reorganizations at a special meeting held for that purpose.

"Darren McKall"
Manager,
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.5 BMO Nesbitt Burns Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – fund family relief from the requirement to send a printed information circular to registered holders of the securities of an investment fund - relief subject to a number of conditions, including sending an explanatory document in lieu of the printed information circular and giving securityholders the option to request and obtain at no charge a printed information circular – notice-and-access for investment funds – National Instrument 81-106 Investment Fund Continuous Disclosure.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 12.2(2)(a).

December 8, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
BMO NESBITT BURNS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of existing and future investment funds that are or will be managed from time to time by the Filer or by an affiliate or successor of the Filer (collectively, the **Funds**, and each, a **Fund**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting an exemption from the requirement contained in paragraph 12.2(2)(a) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for a person or company that solicits proxies, by or on behalf of management of a Fund, to send an information circular to each registered holder of securities of a Fund whose proxy is solicited, and instead allow the Funds to send a Notice-and-Access Document (as defined in condition 1 of this decision) using the Notice-and-Access Procedure (as defined in condition 2 of this decision) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Nunavut, Yukon and Northwest Territories (collectively, with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer and the Funds

1. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in the following Jurisdictions: Newfoundland and Labrador, Ontario and Québec.

3. The Funds are, or will be, managed by the Filer or by an affiliate or successor of the Filer.

4. Each Fund is, or will be, an investment fund and is, or will be, a reporting issuer in one or more of the Jurisdictions.

5. Neither the Filer, nor any of the existing Funds managed by the Filer is in default of any of the requirements of securities legislation in any of the Jurisdictions.

Meetings of Securityholders of the Funds

6. Pursuant to applicable legislation, the Filer must call a meeting of securityholders of each Fund from time to time to consider and vote on matters requiring securityholder approval.

7. In connection with a meeting of securityholders, a Fund is required to comply with the requirements in NI 81-106 regarding the sending of proxies and information circulars to registered holders of its securities, which include a requirement that each person or company that solicits proxies by or on behalf of management of a Fund send, with the notice of meeting, to each registered holder of securities of a Fund whose proxy is solicited, an information circular, prepared in compliance with the requirements of Form 51-102F5 *Information Circular* of NI 51-102, to securityholders of record who are entitled to receive notice of the meeting.

8. A Fund is also required to comply with NI 51-102 for communicating with registered holders of its securities, and to comply with NI 54-101 for communicating with beneficial owners of its securities.

Notice-and-Access Procedure – Corporate Finance Issuers

9. Section 9.1.1 of NI 51-102 permits, if certain conditions are met, a reporting issuer that is not an investment fund to use the notice-and-access procedure and send, instead of an information circular, a notice to each registered holder of its securities that contains certain specific information regarding the meeting and an explanation of the notice-and-access procedure.

10. Section 2.7.1 of NI 54-101 permits a reporting issuer that is not an investment fund to use a similar procedure to communicate with each beneficial owner of its securities.

Reasons supporting the Exemption Sought

11. A meeting of investment fund securityholders is no different than a meeting of corporate finance securityholders. As a result, if the notice-and access procedure set forth in NI 51-102 and in NI 54-101 can be used by a corporate finance issuer for a meeting of its securityholders in order to send a notice-and-access document instead of an information circular, it would not be detrimental to the protection of investors to allow an investment fund to also use the Notice-and-Access Procedure to send a Notice-and-Access Document, instead of the information circular.

12. With the Exemption Sought, securityholders will maintain access to the same quality of disclosure material currently available. Without limiting the generality of the foregoing:

    (a) all securityholders of record entitled to receive an information circular will receive instructions on how to access the information circular and will be able to receive a printed copy, without charge, if they so desire; and

    (b) the conditions to the Exemption Sought mandate that the Notice-and-Access Document will be sent to securityholders sufficiently in advance of a meeting so that if a securityholder wishes to receive a printed copy of the information circular, there will be sufficient time for the Filer, directly or through the Filer’s agent, to send the information circular.

13. With the Notice-and-Access Procedure, no securityholder will be deprived of their ability to access the information circular in his/her preferred manner of communication.

14. In accordance with the Filer's standard of care owed to the relevant Fund pursuant to applicable legislation, the Filer will only use the Notice-and-Access Procedure for a particular meeting where it has concluded it is appropriate and consistent to do so, also taking into account the purpose of the meeting and whether the Fund would obtain a better participation rate by sending the information circular with the other proxy-related materials.

15. There are significant costs involved in the printing and delivery of the proxy-related materials, including information circulars, to securityholders in the Funds.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that, in respect of each Fund or the Filer soliciting proxies by or on behalf of management of a Fund:

1. The registered holders or beneficial owners, as applicable, of securities of the Fund are sent a document that contains the following information and no other information (the **Notice-and-Access Document**):

   (a) the date, time and location of the meeting for which the proxy-related materials are being sent;

   (b) a description of each matter or group of related matters identified in the form of proxy to be voted on unless that information is already included in a Form 54-101F6 *Request for Voting Instructions for Reporting Issuer* or Form 54-101F7 *Request for Voting Instructions Made by Intermediary* as applicable, that is being sent to the beneficial owner of securities of the Fund under condition (2)(c) of this decision;

   (c) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

   (d) a reminder to review the information circular before voting;

   (e) an explanation of how to obtain a paper copy of the information circular and, if applicable, the financial statements of the Fund;

   (f) a plain-language explanation of the Notice-and-Access Procedure that includes the following information:

      (i) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is to be received in order for the registered holder or beneficial owner, as applicable, to receive the paper copy in advance of any deadline for the submission of voting instructions for the meeting;

      (ii) an explanation of how the registered holders or the beneficial owners, as applicable, of securities of the Fund are to return voting instructions, including any deadline for return of those instructions;

      (iii) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the Notice-and-Access Document can be found; and

      (iv) a toll-free telephone number the registered holders or the beneficial owners, as applicable, of securities of the Fund can call to get information about the Notice-and-Access Procedure.

2. The Filer, on behalf of the Fund, sends the Notice-and-Access Document in compliance with the following procedure (the **Notice-and-Access Procedure**), in addition to any and all other applicable requirements:

   (a) the proxy-related materials are sent a minimum of 30 days before a meeting and a maximum of 50 days before a meeting;

   (b) if the Fund sends proxy-related materials:

      (i) directly to a NOBO using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements, at least 30 days before the date of the meeting; and

(ii) indirectly to a beneficial owner using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements to the proximate intermediary (A) at least 3 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent, or (B) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail;

(c) using the procedures referred to in section 2.9 or 2.12 of NI 54-101, as applicable, the beneficial owner of securities of the Fund is sent, by prepaid mail, courier or the equivalent, the Notice-and-Access Document and a Form 54-101F6 or Form 54-101F7, as applicable;

(d) the Filer, on behalf of the Fund, files on SEDAR the notification of meeting and record dates on the same date that it sends the notification of meeting date and record date pursuant to subsection 2.2(1) of NI 54-101 (as such time may be abridged);

(e) public electronic access to the information circular and the Notice-and-Access Document is provided on or before the date that the Notice-and-Access Document is sent to registered holders or to beneficial owners, as applicable, of securities of the Fund in the following manner:

(i) the information circular and the Notice-and-Access Document are filed on SEDAR; and

(ii) the information circular and the Notice-and-Access Document are posted until the date that is one year from the date that the documents are posted, on a website of the Filer or the Fund;

(f) a toll-free telephone number is provided for use by the registered holders or beneficial owners, as applicable, of securities of the Fund to request a paper copy of the information circular and, if applicable, the financial statements of the Fund, at any time from the date that the Notice-and-Access Document is sent to the registered holders or the beneficial owners, as applicable, up to and including the date of the meeting, including any adjournment or postponement;

(g) if a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is received at the toll-free telephone number provided in the Notice-and-Access Document or by any other means, a paper copy of any such document requested is sent free of charge to the registered holder or beneficial owner, as applicable, at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent; and

(ii) in the case of a request received on or after the date of the meeting, and within one year of the date the information circular is filed on SEDAR, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent;

(h) a Notice-and-Access Document is only accompanied by:

(i) a form of proxy;

(ii) if applicable, the financial statements of the Fund to be presented at the meeting; and

(iii) if the meeting is to approve a reorganization of the Fund with another investment fund, as contemplated by paragraph 5.1(1)(f) of National Instrument 81-102 *Investment Funds*, the Fund Facts document, ETF summary document or ETF Facts, as applicable, for the continuing investment fund;

(i) a Notice-and-Access Document may only be combined in a single document with a form of proxy;

(j) if the Filer, directly or through the Filer's agent, receives a request for a copy of the information circular and if applicable, the financial statements of the Fund, using the toll-free telephone number referred to in the Notice-and-Access Document or by any other means, it must not do any of the following:

(i) ask for any information about the registered holder or beneficial owner, other than the name and address to which the information circular and, if applicable, the financial statements of the Fund are to be sent; and

(ii) disclose or use the name or address of the registered holder or beneficial owner for any purpose other than sending the information circular and, if applicable, the financial statements of the Fund;

(k) the Filer, directly or through the Filer's agent, must not collect information that can be used to identify a person or company who has accessed the website address to which it posts the proxy-related materials pursuant to condition (2)(e)(ii) of this decision;

(l) in addition to the proxy-related materials posted on a website in the manner referred to in condition (2)(e)(ii) of this decision, the Filer must also post on the website the following documents:

(i) any disclosure document regarding the meeting that the Filer, on behalf of the Fund, has sent to registered holders or beneficial owners of securities of the Fund; and

(ii) any written communications the Filer, on behalf of the Fund, has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners of securities of the Fund;

(m) materials that are posted on a website pursuant to condition (2)(e)(ii) of this decision must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following easily:

(i) access, read and search the documents on the website; and

(ii) download and print the documents;

(n) despite subsection 2.1(b) of NI 54-101, if the Fund relies upon this decision, it must set a record date for notice that is no fewer than 40 days before the date of the meeting;

(o) in addition to section 2.20 of NI 54-101, the Fund may only abridge the time prescribed in subsections 2.1(b), 2.2(1) or 2.5(1) of NI 54-101 if the Fund fixes the record date for notice to be at least 40 days before the date of the meeting and sends the notification of meeting and record dates at least 3 business days before the record date for notice;

(p) the notification of meeting date and record date sent pursuant to subsection 2.2(l)(b) of NI 54-101 shall specify that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this decision;

(q) the Filer, on behalf of the Fund, provides disclosure in the information circular to the effect that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this decision; and

(r) the Filer pays for delivery of the information circular and, if applicable, the financial statements of the Fund, to registered holders or to beneficial owners, as applicable, of securities of the Fund if a copy of such material is requested following receipt of the Notice-and-Access Document.

The Exemption Sought terminates on the coming into force of any legislation or regulation allowing an investment fund to use a notice-and-access procedure.

"Raymond Chan"
Manager,
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.6 Educators Financial Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – fund family relief from the requirement to send a printed information circular to registered holders of the securities of an investment fund – relief subject to a number of conditions, including sending an explanatory document in lieu of the printed information circular and giving securityholders the option to request and obtain at no charge a printed information circular – notice-and-access for investment funds – National Instrument 81-106 Investment Fund Continuous Disclosure.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 12.2(2)(a).

December 8, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
EDUCATORS FINANCIAL GROUP INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of existing and future investment funds that are or will be managed from time to time by the Filer or by an affiliate or successor of the Filer (collectively, the **Funds**, and each, a **Fund**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting an exemption from the requirement contained in paragraph 12.2(2)(a) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for a person or company that solicits proxies, by or on behalf of management of a Fund, to send an information circular to each registered holder of securities of a Fund whose proxy is solicited, and instead allow the Funds to send a Notice-and-Access Document (as defined in condition 1 of this decision) using the Notice-and-Access Procedure (as defined in condition 2 of this decision) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Nunavut, Yukon and Northwest Territories (collectively, with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer and the Funds

1. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in the province of Ontario.

3. The Funds are, or will be, managed by the Filer or by an affiliate or successor of the Filer.

4. Each Fund is, or will be, an investment fund and is, or will be, a reporting issuer in one or more of the Jurisdictions.

5. Neither the Filer, nor any of the existing Funds managed by the Filer is in default of any of the requirements of securities legislation in any of the Jurisdictions.

Meetings of Securityholders of the Funds

6. Pursuant to applicable legislation, the Filer must call a meeting of securityholders of each Fund from time to time to consider and vote on matters requiring securityholder approval.

7. In connection with a meeting of securityholders, a Fund is required to comply with the requirements in NI 81-106 regarding the sending of proxies and information circulars to registered holders of its securities, which include a requirement that each person or company that solicits proxies by or on behalf of management of a Fund send, with the notice of meeting, to each registered holder of securities of a Fund whose proxy is solicited, an information circular, prepared in compliance with the requirements of Form 51-102F5 *Information Circular* of NI 51-102, to securityholders of record who are entitled to receive notice of the meeting.

8. A Fund is also required to comply with NI 51-102 for communicating with registered holders of its securities, and to comply with NI 54-101 for communicating with beneficial owners of its securities.

Notice-and-Access Procedure – Corporate Finance Issuers

9. Section 9.1.1 of NI 51-102 permits, if certain conditions are met, a reporting issuer that is not an investment fund to use the notice-and-access procedure and send, instead of an information circular, a notice to each registered holder of its securities that contains certain specific information regarding the meeting and an explanation of the notice-and-access procedure.

10. Section 2.7.1 of NI 54-101 permits a reporting issuer that is not an investment fund to use a similar procedure to communicate with each beneficial owner of its securities.

Reasons supporting the Exemption Sought

11. A meeting of investment fund securityholders is no different than a meeting of corporate finance securityholders. As a result, if the notice-and access procedure set forth in NI 51-102 and in NI 54-101 can be used by a corporate finance issuer for a meeting of its securityholders in order to send a notice-and-access document instead of an information circular, it would not be detrimental to the protection of investors to allow an investment fund to also use the Notice-and-Access Procedure to send a Notice-and-Access Document, instead of the information circular.

12. With the Exemption Sought, securityholders will maintain access to the same quality of disclosure material currently available. Without limiting the generality of the foregoing:

    (a) all securityholders of record entitled to receive an information circular will receive instructions on how to access the information circular and will be able to receive a printed copy, without charge, if they so desire; and

    (b) the conditions to the Exemption Sought mandate that the Notice-and-Access Document will be sent to securityholders sufficiently in advance of a meeting so that if a securityholder wishes to receive a printed copy of the information circular, there will be sufficient time for the Filer, directly or through the Filer's agent, to send the information circular.

13. With the Notice-and-Access Procedure, no securityholder will be deprived of their ability to access the information circular in his/her preferred manner of communication.

14. In accordance with the Filer's standard of care owed to the relevant Fund pursuant to applicable legislation, the Filer will only use the Notice-and-Access Procedure for a particular meeting where it has concluded it is appropriate and consistent to do so, also taking into account the purpose of the meeting and whether the Fund would obtain a better participation rate by sending the information circular with the other proxy-related materials.

15. There are significant costs involved in the printing and delivery of the proxy-related materials, including information circulars, to securityholders in the Funds.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that, in respect of each Fund or the Filer soliciting proxies by or on behalf of management of a Fund:

1. The registered holders or beneficial owners, as applicable, of securities of the Fund are sent a document that contains the following information and no other information (the **Notice-and-Access Document**):

   (a) the date, time and location of the meeting for which the proxy-related materials are being sent;

   (b) a description of each matter or group of related matters identified in the form of proxy to be voted on unless that information is already included in a Form 54-101F6 *Request for Voting Instructions for Reporting Issuer* or Form 54-101F7 *Request for Voting Instructions Made by Intermediary* as applicable, that is being sent to the beneficial owner of securities of the Fund under condition (2)(c) of this decision;

   (c) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

   (d) a reminder to review the information circular before voting;

   (e) an explanation of how to obtain a paper copy of the information circular and, if applicable, the financial statements of the Fund;

   (f) a plain-language explanation of the Notice-and-Access Procedure that includes the following information:

      (i) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is to be received in order for the registered holder or beneficial owner, as applicable, to receive the paper copy in advance of any deadline for the submission of voting instructions for the meeting;

      (ii) an explanation of how the registered holders or the beneficial owners, as applicable, of securities of the Fund are to return voting instructions, including any deadline for return of those instructions;

      (iii) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the Notice-and-Access Document can be found; and

      (iv) a toll-free telephone number the registered holders or the beneficial owners, as applicable, of securities of the Fund can call to get information about the Notice-and-Access Procedure.

2. The Filer, on behalf of the Fund, sends the Notice-and-Access Document in compliance with the following procedure (the **Notice-and-Access Procedure**), in addition to any and all other applicable requirements:

   (a) the proxy-related materials are sent a minimum of 30 days before a meeting and a maximum of 50 days before a meeting;

   (b) if the Fund sends proxy-related materials:

      (i) directly to a NOBO using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements, at least 30 days before the date of the meeting; and

      (ii) indirectly to a beneficial owner using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the

financial statements to the proximate intermediary (A) at least 3 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent, or (B) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail;

(c) using the procedures referred to in section 2.9 or 2.12 of NI 54-101, as applicable, the beneficial owner of securities of the Fund is sent, by prepaid mail, courier or the equivalent, the Notice-and-Access Document and a Form 54-101F6 or Form 54-101F7, as applicable;

(d) the Filer, on behalf of the Fund, files on SEDAR the notification of meeting and record dates on the same date that it sends the notification of meeting date and record date pursuant to subsection 2.2(1) of NI 54-101 (as such time may be abridged);

(e) public electronic access to the information circular and the Notice-and-Access Document is provided on or before the date that the Notice-and-Access Document is sent to registered holders or to beneficial owners, as applicable, of securities of the Fund in the following manner:

(i) the information circular and the Notice-and-Access Document are filed on SEDAR; and

(ii) the information circular and the Notice-and-Access Document are posted until the date that is one year from the date that the documents are posted, on a website of the Filer or the Fund;

(f) a toll-free telephone number is provided for use by the registered holders or beneficial owners, as applicable, of securities of the Fund to request a paper copy of the information circular and, if applicable, the financial statements of the Fund, at any time from the date that the Notice-and-Access Document is sent to the registered holders or the beneficial owners, as applicable, up to and including the date of the meeting, including any adjournment or postponement;

(g) if a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is received at the toll-free telephone number provided in the Notice-and-Access Document or by any other means, a paper copy of any such document requested is sent free of charge to the registered holder or beneficial owner, as applicable, at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent; and

(ii) in the case of a request received on or after the date of the meeting, and within one year of the date the information circular is filed on SEDAR, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent;

(h) a Notice-and-Access Document is only accompanied by:

(i) a form of proxy;

(ii) if applicable, the financial statements of the Fund to be presented at the meeting; and

(iii) if the meeting is to approve a reorganization of the Fund with another investment fund, as contemplated by paragraph 5.1(1)(f) of National Instrument 81-102 *Investment Funds*, the Fund Facts document, ETF summary document or ETF Facts, as applicable, for the continuing investment fund;

(i) a Notice-and-Access Document may only be combined in a single document with a form of proxy;

(j) if the Filer, directly or through the Filer's agent, receives a request for a copy of the information circular and if applicable, the financial statements of the Fund, using the toll-free telephone number referred to in the Notice-and-Access Document or by any other means, it must not do any of the following:

(i) ask for any information about the registered holder or beneficial owner, other than the name and address to which the information circular and, if applicable, the financial statements of the Fund are to be sent; and

(ii) disclose or use the name or address of the registered holder or beneficial owner for any purpose other than sending the information circular and, if applicable, the financial statements of the Fund;

(k) the Filer, directly or through the Filer's agent, must not collect information that can be used to identify a person or company who has accessed the website address to which it posts the proxy-related materials pursuant to condition (2)(e)(ii) of this decision;

(l) in addition to the proxy-related materials posted on a website in the manner referred to in condition (2)(e)(ii) of this decision, the Filer must also post on the website the following documents:

(i) any disclosure document regarding the meeting that the Filer, on behalf of the Fund, has sent to registered holders or beneficial owners of securities of the Fund; and

(ii) any written communications the Filer, on behalf of the Fund, has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners of securities of the Fund;

(m) materials that are posted on a website pursuant to condition (2)(e)(ii) of this decision must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following easily:

(i) access, read and search the documents on the website; and

(ii) download and print the documents;

(n) despite subsection 2.1(b) of NI 54-101, if the Fund relies upon this decision, it must set a record date for notice that is no fewer than 40 days before the date of the meeting;

(o) in addition to section 2.20 of NI 54-101, the Fund may only abridge the time prescribed in subsections 2.1(b), 2.2(1) or 2.5(1) of NI 54-101 if the Fund fixes the record date for notice to be at least 40 days before the date of the meeting and sends the notification of meeting and record dates at least 3 business days before the record date for notice;

(p) the notification of meeting date and record date sent pursuant to subsection 2.2(l)(b) of NI 54-101 shall specify that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this decision;

(q) the Filer, on behalf of the Fund, provides disclosure in the information circular to the effect that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this decision; and

(r) the Filer pays for delivery of the information circular and, if applicable, the financial statements of the Fund, to registered holders or to beneficial owners, as applicable, of securities of the Fund if a copy of such material is requested following receipt of the Notice-and-Access Document.

The Exemption Sought terminates on the coming into force of any legislation or regulation allowing an investment fund to use a notice-and-access procedure.

"Raymond Chan"
Manager,
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.7 Next Edge Capital Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – fund family relief from the requirement to send a printed information circular to registered holders of the securities of an investment fund – relief subject to a number of conditions, including sending an explanatory document in lieu of the printed information circular and giving securityholders the option to request and obtain at no charge a printed information circular – notice-and-access for investment funds – National Instrument 81-106 Investment Fund Continuous Disclosure.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 12.2(2)(a).

December 8, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
NEXT EDGE CAPITAL CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of existing and future investment funds that are or will be managed from time to time by the Filer or by an affiliate or successor of the Filer (collectively, the **Funds**, and each, a **Fund**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting an exemption from the requirement contained in paragraph 12.2(2)(a) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for a person or company that solicits proxies, by or on behalf of management of a Fund, to send an information circular to each registered holder of securities of a Fund whose proxy is solicited, and instead allow the Funds to send a Notice-and-Access Document (as defined in condition 1 of this decision) using the Notice-and-Access Procedure (as defined in condition 2 of this decision) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application; and

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Newfoundland and Labrador, Prince Edward Island, Nunavut, Yukon and Northwest Territories (collectively, with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) have the same meaning if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer and the Funds

1. The head office of the Filer is located in Toronto, Ontario.

2. The Filer is registered as an investment fund manager in the following Jurisdictions: Newfoundland and Labrador, Ontario and Québec.

3. The Funds are, or will be, managed by the Filer or by an affiliate or successor of the Filer.

4. Each Fund is, or will be, an investment fund and is, or will be, a reporting issuer in one or more of the Jurisdictions.

5. Neither the Filer, nor any of the existing Funds managed by the Filer is in default of any of the requirements of securities legislation in any of the Jurisdictions.

Meetings of Securityholders of the Funds

6. Pursuant to applicable legislation, the Filer must call a meeting of securityholders of each Fund from time to time to consider and vote on matters requiring securityholder approval.

7. In connection with a meeting of securityholders, a Fund is required to comply with the requirements in NI 81-106 regarding the sending of proxies and information circulars to registered holders of its securities, which include a requirement that each person or company that solicits proxies by or on behalf of management of a Fund send, with the notice of meeting, to each registered holder of securities of a Fund whose proxy is solicited, an information circular, prepared in compliance with the requirements of Form 51-102F5 Information Circular of NI 51-102, to securityholders of record who are entitled to receive notice of the meeting.

8. A Fund is also required to comply with NI 51-102 for communicating with registered holders of its securities, and to comply with NI 54-101 for communicating with beneficial owners of its securities.

Notice-and-Access Procedure – Corporate Finance Issuers

9. Section 9.1.1 of NI 51-102 permits, if certain conditions are met, a reporting issuer that is not an investment fund to use the notice-and-access procedure and send, instead of an information circular, a notice to each registered holder of its securities that contains certain specific information regarding the meeting and an explanation of the notice-and-access procedure.

10. Section 2.7.1 of NI 54-101 permits a reporting issuer that is not an investment fund to use a similar procedure to communicate with each beneficial owner of its securities.

Reasons supporting the Exemption Sought

11. A meeting of investment fund securityholders is no different than a meeting of corporate finance securityholders. As a result, if the notice-and access procedure set forth in NI 51-102 and in NI 54-101 can be used by a corporate finance issuer for a meeting of its securityholders in order to send a notice-and-access document instead of an information circular, it would not be detrimental to the protection of investors to allow an investment fund to also use the Notice-and-Access Procedure to send a Notice-and-Access Document, instead of the information circular.

12. With the Exemption Sought, securityholders will maintain access to the same quality of disclosure material currently available. Without limiting the generality of the foregoing:

    (a) all securityholders of record entitled to receive an information circular will receive instructions on how to access the information circular and will be able to receive a printed copy, without charge, if they so desire; and

    (b) the conditions to the Exemption Sought mandate that the Notice-and-Access Document will be sent to securityholders sufficiently in advance of a meeting so that if a securityholder wishes to receive a printed copy of the information circular, there will be sufficient time for the Filer, directly or through the Filer's agent, to send the information circular.

13. With the Notice-and-Access Procedure, no securityholder will be deprived of their ability to access the information circular in his/her preferred manner of communication.

14. In accordance with the Filer's standard of care owed to the relevant Fund pursuant to applicable legislation, the Filer will only use the Notice-and-Access Procedure for a particular meeting where it has concluded it is appropriate and consistent to do so, also taking into account the purpose of the meeting and whether the Fund would obtain a better participation rate by sending the information circular with the other proxy-related materials.

15. There are significant costs involved in the printing and delivery of the proxy-related materials, including information circulars, to securityholders in the Funds.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that, in respect of each Fund or the Filer soliciting proxies by or on behalf of management of a Fund:

1. The registered holders or beneficial owners, as applicable, of securities of the Fund are sent a document that contains the following information and no other information (the **Notice-and-Access Document**):

   (a) the date, time and location of the meeting for which the proxy-related materials are being sent;

   (b) a description of each matter or group of related matters identified in the form of proxy to be voted on unless that information is already included in a Form 54-101F6 *Request for Voting Instructions for Reporting Issuer* or Form 54-101F7 *Request for Voting Instructions Made by Intermediary* as applicable, that is being sent to the beneficial owner of securities of the Fund under condition (2)(c) of this decision;

   (c) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

   (d) a reminder to review the information circular before voting;

   (e) an explanation of how to obtain a paper copy of the information circular and, if applicable, the financial statements of the Fund;

   (f) a plain-language explanation of the Notice-and-Access Procedure that includes the following information:

      (i) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is to be received in order for the registered holder or beneficial owner, as applicable, to receive the paper copy in advance of any deadline for the submission of voting instructions for the meeting;

      (ii) an explanation of how the registered holders or the beneficial owners, as applicable, of securities of the Fund are to return voting instructions, including any deadline for return of those instructions;

      (iii) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the Notice-and-Access Document can be found; and

      (iv) a toll-free telephone number the registered holders or the beneficial owners, as applicable, of securities of the Fund can call to get information about the Notice-and-Access Procedure.

2. The Filer, on behalf of the Fund, sends the Notice-and-Access Document in compliance with the following procedure (the **Notice-and-Access Procedure**), in addition to any and all other applicable requirements:

   (a) the proxy-related materials are sent a minimum of 30 days before a meeting and a maximum of 50 days before a meeting;

   (b) if the Fund sends proxy-related materials:

      (i) directly to a NOBO using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements, at least 30 days before the date of the meeting; and

(ii) indirectly to a beneficial owner using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements to the proximate intermediary (A) at least 3 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent, or (B) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail;

(c) using the procedures referred to in section 2.9 or 2.12 of NI 54-101, as applicable, the beneficial owner of securities of the Fund is sent, by prepaid mail, courier or the equivalent, the Notice-and-Access Document and a Form 54-101F6 or Form 54-101F7, as applicable;

(d) the Filer, on behalf of the Fund, files on SEDAR the notification of meeting and record dates on the same date that it sends the notification of meeting date and record date pursuant to subsection 2.2(1) of NI 54-101 (as such time may be abridged);

(e) public electronic access to the information circular and the Notice-and-Access Document is provided on or before the date that the Notice-and-Access Document is sent to registered holders or to beneficial owners, as applicable, of securities of the Fund in the following manner:

(i) the information circular and the Notice-and-Access Document are filed on SEDAR; and

(ii) the information circular and the Notice-and-Access Document are posted until the date that is one year from the date that the documents are posted, on a website of the Filer or the Fund;

(f) a toll-free telephone number is provided for use by the registered holders or beneficial owners, as applicable, of securities of the Fund to request a paper copy of the information circular and, if applicable, the financial statements of the Fund, at any time from the date that the Notice-and-Access Document is sent to the registered holders or the beneficial owners, as applicable, up to and including the date of the meeting, including any adjournment or postponement;

(g) if a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is received at the toll-free telephone number provided in the Notice-and-Access Document or by any other means, a paper copy of any such document requested is sent free of charge to the registered holder or beneficial owner, as applicable, at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent; and

(ii) in the case of a request received on or after the date of the meeting, and within one year of the date the information circular is filed on SEDAR, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent;

(h) a Notice-and-Access Document is only accompanied by:

(i) a form of proxy;

(ii) if applicable, the financial statements of the Fund to be presented at the meeting; and

(iii) if the meeting is to approve a reorganization of the Fund with another investment fund, as contemplated by paragraph 5.1(1)(f) of National Instrument 81-102 *Investment Funds*, the Fund Facts document, ETF summary document or ETF Facts, as applicable, for the continuing investment fund;

(i) a Notice-and-Access Document may only be combined in a single document with a form of proxy;

(j) if the Filer, directly or through the Filer's agent, receives a request for a copy of the information circular and if applicable, the financial statements of the Fund, using the toll-free telephone number referred to in the Notice-and-Access Document or by any other means, it must not do any of the following:

(i) ask for any information about the registered holder or beneficial owner, other than the name and address to which the information circular and, if applicable, the financial statements of the Fund are to be sent; and

(ii) disclose or use the name or address of the registered holder or beneficial owner for any purpose other than sending the information circular and, if applicable, the financial statements of the Fund;

(k) the Filer, directly or through the Filer's agent, must not collect information that can be used to identify a person or company who has accessed the website address to which it posts the proxy-related materials pursuant to condition (2)(e)(ii) of this decision;

(l) in addition to the proxy-related materials posted on a website in the manner referred to in condition (2)(e)(ii) of this decision, the Filer must also post on the website the following documents:

(i) any disclosure document regarding the meeting that the Filer, on behalf of the Fund, has sent to registered holders or beneficial owners of securities of the Fund; and

(ii) any written communications the Filer, on behalf of the Fund, has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners of securities of the Fund;

(m) materials that are posted on a website pursuant to condition (2)(e)(ii) of this decision must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following easily:

(i) access, read and search the documents on the website; and

(ii) download and print the documents;

(n) despite subsection 2.1(b) of NI 54-101, if the Fund relies upon this decision, it must set a record date for notice that is no fewer than 40 days before the date of the meeting;

(o) in addition to section 2.20 of NI 54-101, the Fund may only abridge the time prescribed in subsections 2.1(b), 2.2(1) or 2.5(1) of NI 54-101 if the Fund fixes the record date for notice to be at least 40 days before the date of the meeting and sends the notification of meeting and record dates at least 3 business days before the record date for notice;

(p) the notification of meeting date and record date sent pursuant to subsection 2.2(l)(b) of NI 54-101 shall specify that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this decision;

(q) the Filer, on behalf of the Fund, provides disclosure in the information circular to the effect that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this decision; and

(r) the Filer pays for delivery of the information circular and, if applicable, the financial statements of the Fund, to registered holders or to beneficial owners, as applicable, of securities of the Fund if a copy of such material is requested following receipt of the Notice-and-Access Document.

The Exemption Sought terminates on the coming into force of any legislation or regulation allowing an investment fund to use a notice-and-access procedure.

"Raymond Chan"
Manager,
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.8 Franklin Templeton Investments Corp. and FTC Investor Services Inc.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s.3.2.01 of NI 81-101 to deliver a fund facts document to investors who purchase mutual fund securities of a high net worth series pursuant to switches from a regular retail series upon meeting certain eligibility requirements based on the amount of the investor's investments – High net worth series securities are identical to regular retail series securities except that the high net worth series have lower combined management and administration fees – Investment fund manager initiating switches on behalf of investors when their investments satisfy eligibility requirements of high net worth series – Switches between series of a fund triggering a distribution of securities attracting the requirement to deliver a fund facts – Relief granted from requirement to deliver a fund facts to investors for purchases of high net worth series securities made pursuant to such switches subject to compliance with certain notification and prospectus/fund facts disclosure requirements – National Instrument 81-101 Mutual Fund Prospectus Disclosure.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2.01, 6.1.

December 9, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS
IN MULTIPLE JURISDICTIONS

AND

IN THE MATTER OF
FRANKLIN TEMPLETON INVESTMENTS CORP.
(the Filer)

AND

IN THE MATTER OF
FTC INVESTOR SERVICES INC.
(the Dealer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of Templeton Growth Fund, Ltd. (**TGF**) and each mutual fund listed in Schedule "A" (each, a **Trust Fund** and collectively, the **Trust Funds**) and Schedule "B" (each, a **Corporate Fund** and collectively, the **Corporate Funds** and together with TGF and the Trust Funds, the **Existing Funds**) and any mutual fund for which the Filer may act as investment fund manager in the future (each, a **Future Fund** and collectively, the **Future Funds** and together with the Existing Funds, the **Funds** and each, a **Fund**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Funds from the requirement in subsection 3.2.01(1) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for a dealer to deliver or send the most recently filed fund facts documents (the **Fund Facts**) to a purchaser before the dealer accepts an instruction from the purchaser for the purchase of a security of a mutual fund (the **Fund Facts Delivery Requirement**) in respect of purchases of High Net Worth Series securities (as defined below) of the Funds that are made pursuant to the Automatic Switches (as defined below) (the **Exemption Sought**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 – *Definitions* and MI 11-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

This decision is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation amalgamated under the laws of the Province of Ontario having its head office in Toronto, Ontario.

2. The Filer is registered under securities legislation in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland & Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon as an adviser in the category of portfolio manager and as a dealer in the categories of mutual fund dealer and exempt market dealer. The Filer is registered under securities legislation in Alberta, British Columbia, Manitoba, Newfoundland & Labrador, Nova Scotia, Ontario and Québec as an investment fund manager. The Filer is also registered under the *Commodity Futures Act* (Ontario) as a commodity trading manager.

3. The Filer is the investment fund manager, promoter and portfolio manager of the Existing Funds and the trustee of the Trust Funds and may become the investment fund manager of Future Funds.

4. The Filer is not in default of securities legislation in any of the Jurisdictions.

5. The Funds are or will be available through the Dealer, which is a principal distributor and a participating dealer for certain series of the Funds, and all future dealers.

6. The Dealer is registered under securities legislation in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland & Labrador, Nova Scotia, Ontario, Prince Edward Island, Saskatchewan and Yukon as a dealer in the category of mutual fund dealer.

The Funds

7. Each Fund is, or will be, a reporting issuer in one or more of the Jurisdictions and subject to the requirements of National Instrument 81-102 – *Investment Funds*.

8. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a simplified prospectus, Fund Facts and annual information form that has been, or will be, prepared and filed in accordance with National Instrument 81-101 – *Mutual Fund Prospectus Disclosure*.

9. The securities of the Existing Funds are currently offered under a simplified prospectus dated May 27, 2016, as amended.

10. Each of the Existing Funds currently offers up to 12 series – Series A, A (Hedged), F, FT, I, O, OT, PF, PFT, T, T-USD and V.

11. The Existing Funds are not in default of securities legislation in any of the Jurisdictions.

High Net Worth Series (Series PF and PFT) and Retail Series (Series F and FT)

12. Series F, FT, PF and PFT have lower fees than Series A, A (Hedged), I, T, T-USD and V, and are only available to investors who have fee-based accounts or to any other investors for whom the Filer does not incur distribution costs. Instead of paying sales charges, investors pay their dealer a fee for investment advice and other services the dealer provides in respect of Series F, FT, PF and PFT. In addition, the Filer does not pay any commissions or trailing commissions to dealers who sell Series F, FT, PF and PFT securities.

13. Series FT is the same as Series F, except that Series FT is designed for investors seeking regular monthly distributions. Series PFT is the same as Series PF, except that Series PFT is designed for investors seeking regular monthly distributions.

14. Series PF and Series PFT (**High Net Worth Series**) have the same attributes as Series F and Series FT (**Retail Series**), except that the High Net Worth Series are only available to investors who have in total invested a minimum of $100,000 in securities of the Funds or who purchase through a discretionary managed account.

15. The High Net Worth Series have a combined management and administration fee that is lower than that of the Retail Series of the same Fund.

Automatic Switches

16. The Filer filed an amendment to the simplified prospectus of the Funds on September 9, 2016 to announce certain changes to allow Retail Series investors to more easily access the lower fees associated with the High Net Worth Series, which changes took effect on October 3, 2016.

17. Beginning on or about December 15, 2016 (the **Implementation Date**), each month, without the dealer/investor having to initiate the trade, the Filer will automatically switch Retail Series investors with $100,000 or more invested in securities of all Funds held in a single account to the corresponding High Net Worth Series securities of the same Fund (**Lower Fee Switches**). If an investor holding High Net Worth Series securities ceases to be eligible to hold that series, the Filer may switch the High Net Worth Series securities into the applicable Retail Series securities (Higher Fee Switches, and together with the Lower Fee Switches, the **Automatic Switches**).

18. The Lower Fee Switches will generally take place when the investor purchases additional securities of the Funds or when positive market movement moves the investor into High Net Worth Series eligibility.

19. The Higher Fee Switches may occur because of redemptions that decrease the amount of total investments with the Filer for purposes of calculating the investor's eligibility for High Net Worth Series securities. However, in no circumstances will market value declines lead to Higher Fee Switches. Once an account has qualified for the High Net Worth Series, the account will continue to enjoy the benefit of lower management and administration fees associated with the applicable High Net Worth Series, even if the Fund performance reduces the account value below the minimum eligibility requirement for that series.

20. As disclosed in the simplified prospectus, prior to effecting a Higher Fee Switch the Filer will give the investor 30 days' notice if their balance has fallen below the minimum requirement. The investor may increase the amount of total investments with the Filer to maintain the minimum investment balance requirement for the High Net Worth Series during this period. If an investor increases their investment with the Filer to the minimum investment balance requirement for the High Net Worth Series within the notice period then no Higher Fee Switch will occur, but if an investor fails to meet the minimum investment balance requirement then the dealer will be obligated to deliver the Fund Facts for the relevant Retail Series pursuant to the Fund Facts Delivery Requirement and, following expiration of the notice period, the Filer will effect the Higher Fee Switch.

21. Investors may access High Net Worth Series securities of a Fund by (a) initially investing in High Net Worth Series securities or (b) initially investing in Retail Series securities and then, upon meeting the eligibility requirements, having those Retail Series securities switched into High Net Worth Series securities by way of a Lower Fee Switch.

22. Investors may access Retail Series securities of a Fund by (a) initially investing in Retail Series securities, or (b) initially investing in High Net Worth Series securities and then, upon no longer meeting the eligibility requirements for the High Net Worth Series securities, having those High Net Worth Series securities switched into Retail Series securities by way of a Higher Fee Switch.

23. Further to each Lower Fee Switch, an investor's account would continue to hold securities in the same Fund(s) as before the Automatic Switch, with the only material difference to the investor being that the combined management and administration fees charged for the High Net Worth Series securities will be lower than those charged for Retail Series securities.

24. Further to each Higher Fee Switch, an investor's account would continue to hold securities in the same Fund(s) as before the Automatic Switch, with the only material difference to the investor being that the combined management and administration fees charged for the Retail Series securities will be higher than those charged for High Net Worth Series securities.

25. There are no sales charges, switch fees or other fees payable by the investor upon an Automatic Switch.

26. Implementation of the Automatic Switches will have no adverse tax consequences on investors under Canadian tax legislation.

27. Each Automatic Switch will entail (a) a redemption of the Retail Series security, immediately followed by a purchase of the corresponding High Net Worth Series security, or (b) a redemption of the High Net Worth Series security immediately followed by a purchase of the corresponding Retail Series security. Each purchase of securities done as part of an Automatic Switch will be a “distribution” under the Legislation, which triggers the Fund Facts Delivery Requirement.

Fund Facts Delivery Requirement and Rationale for Exemption Sought

28. Pursuant to the Fund Facts Delivery Requirement, a dealer is required to deliver the most recently filed Fund Facts of a series of a Fund to an investor before the dealer accepts an instruction from the investor for the purchase of securities of that series of the Fund.

29. While the Filer will initiate each trade done as part of an Automatic Switch, the Fund Facts will not be delivered to investors in connection with the purchase of High Net Worth Series securities made pursuant to a Lower Fee Switch for the following reasons:

    (a) at no time will an account that qualifies for High Net Worth Series securities pay combined management and administration fees at a rate higher than the rate of the combined management and administration fees of the Retail Series securities for which it initially subscribed; and

    (b) since Retail Series securityholders would have received a prospectus or Fund Facts disclosing the higher level of fees which applied to the Retail Series for which they initially subscribed, the investor would derive little benefit from receiving a further Fund Facts relating to the High Net Worth Series upon each Lower Fee Switch.

30. The Fund Facts for the Retail Series will be delivered to investors in connection with the purchase of Retail Series securities made pursuant to a Higher Fee Switch, as required by the Fund Facts Delivery Requirement.

31. The Filer or Dealer will deliver or will arrange for the delivery of trade confirmations to investors in connection with each trade done further to an Automatic Switch. Furthermore, details of the changes in series of securities held will be reflected in the account statements sent to investors for the quarter in which the change occurred.

32. The Filer will (a) disclose the eligibility requirements and the management and administration fees applicable to the Retail Series and the High Net Worth Series in the simplified prospectus of the Funds and (b) disclose a summary of the eligibility requirements and the fee discounts applicable to the High Net Worth Series in the Fund Facts of the Retail Series of the Funds.

33. The Filer will communicate extensively with dealers about the Automatic Switches so that they will be equipped to appropriately notify existing Retail Series investors of the changes applying to their Retail Series investments and appropriately advise new Retail Series investors about the Lower Fee Switches.

34. In the absence of the Exemption Sought, the Filer may not carry out the Lower Fee Switches without compliance with the Fund Facts Delivery Requirement.

Decision

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

1. For investors invested in Retail Series prior to the Implementation Date, the Filer will devise a notification plan for such investors regarding the Switches that addresses the following:

    (a) that their investment may be switched to a High Net Worth Series with lower fees upon meeting applicable eligibility requirements;

    (b) that, other than a difference in fees, there will be no other material difference between the Retail Series and the High Net Worth Series;

(c) that if they cease to meet the eligibility requirements for High Net Worth Series, their investment will be switched into a series with higher management and administration fees which will not exceed the management and administration fees associated with the Retail Series; and

(d) that they will not receive the Fund Facts when they purchase High Net Worth Series securities further to a Lower Fee Switch, but that:

(i) they may request the most recently filed Fund Facts for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

(ii) the most recently filed Fund Facts will be sent or delivered to them at no cost;

(iii) the most recently filed Fund Facts may be found either on the SEDAR website or on the website of the Filer; and

(iv) they will not have the right to withdraw from an agreement of purchase and sale (a **Withdrawal Right**) in respect of a purchase of series securities made pursuant to a Lower Fee Switch, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts;

2. The Filer will incorporate disclosure in the simplified prospectus for the Retail Series and the High Net Worth Series that sets out:

(a) the eligibility requirements for both the Retail Series and the High Net Worth Series;

(b) the fees applicable to investments in both the Retail Series and the High Net Worth Series; and

(c) that if investors cease to meet the eligibility requirements of a specified High Net Worth Series, their investment may be switched into a series with higher management and administration fees which will not exceed the Retail Series fees;

3. Each Fund Facts for the Retail Series will:

(a) disclose a summary of the eligibility requirements and the fee discounts applicable to the High Net Worth Series;

(b) disclose that if investors cease to meet the eligibility requirements of a specified High Net Worth Series, their investment may be switched into the corresponding Retail Series, with higher management and administration fees; and

(c) contain a cross-reference to the more detailed disclosure in the simplified prospectus;

4. The Retail Series Fund Facts containing the disclosure described in paragraph 3 above is delivered to investors at the time of first purchase of Retail Series securities in accordance with the Fund Facts Delivery Requirement;

5. For Retail Series investors, the Filer sends these investors an annual reminder notice advising that they will not receive the Fund Facts when they purchase High Net Worth Series securities further to a Lower Fee Switch, but that:

(a) they may request the most recently filed Fund Facts for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

(b) the most recently filed Fund Facts will be sent or delivered to them at no cost;

(c) the most recently filed Fund Facts may be found either on the SEDAR website or on the website of the Filer; and

(d) they will not have a Withdrawal Right in respect of a purchase of series securities made pursuant to a Lower Fee Switch, but they will have a right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts; and

6. For High Net Worth Series investors who cease to meet the eligibility requirements and who will be switched into the applicable Retail Series, the Fund Facts for the applicable Retail Series will be delivered in accordance with the Fund Fact Delivery Requirement.

"Darren McKall"
Manager,
Investment Funds and Structured Products Branch
Ontario Securities Commission

SCHEDULE "A"

TRUST FUNDS

Templeton Asian Growth Fund
Templeton EAFE Developed Markets Fund
Templeton Emerging Markets Fund
Templeton Frontier Markets Fund
Templeton Global Balanced Fund
Templeton Global Bond Fund
Templeton Global Bond Fund (Hedged)
Templeton Global Smaller Companies Fund
Templeton Growth Fund, Ltd.
Templeton International Stock Fund

Franklin Global Growth Fund (formerly Franklin World Growth Fund)
Franklin Global Small-Mid Cap Fund
Franklin High Income Fund
Franklin Strategic Income Fund
Franklin U.S. Core Equity Fund
Franklin U.S. Monthly Income Fund
Franklin U.S. Opportunities Fund (formerly Franklin Flex Cap Growth Fund)
Franklin U.S. Rising Dividends Fund

Franklin Bissett All Canadian Focus Fund
Franklin Bissett Canadian All Cap Balanced Fund
Franklin Bissett Canadian Balanced Fund
Franklin Bissett Canadian Dividend Fund
Franklin Bissett Canadian Equity Fund
Franklin Bissett Canadian Government Bond Fund
Franklin Bissett Canadian Short Term Bond Fund
Franklin Bissett Core Plus Bond Fund
Franklin Bissett Corporate Bond Fund
Franklin Bissett Dividend Income Fund
Franklin Bissett Microcap Fund
Franklin Bissett Money Market Fund
Franklin Bissett Monthly Income and Growth Fund
Franklin Bissett Small Cap Fund
Franklin Bissett U.S. Focus Fund

Franklin Mutual European Fund
Franklin Mutual Global Discovery Fund
Franklin Mutual U.S. Shares Fund

Franklin Quotential Balanced Growth Portfolio
Franklin Quotential Balanced Income Portfolio
Franklin Quotential Diversified Equity Portfolio
Franklin Quotential Diversified Income Portfolio
Franklin Quotential Fixed Income Portfolio
Franklin Quotential Growth Portfolio

Franklin Templeton Canadian Large Cap Fund

SCHEDULE "B"

CORPORATE CLASS FUNDS

Templeton Asian Growth Corporate Class
Templeton Emerging Markets Corporate Class
Templeton Frontier Markets Corporate Class
Templeton Global Smaller Companies Corporate Class
Templeton Growth Corporate Class
Templeton International Stock Corporate Class

Franklin Global Growth Corporate Class (formerly Franklin World Growth Corporate Class)
Franklin U.S. Monthly Income Corporate Class
Franklin U.S. Monthly Income Hedged Corporate Class
Franklin U.S. Opportunities Corporate Class (formerly Franklin Flex Cap Growth Corporate Class)
Franklin U.S. Rising Dividends Corporate Class
Franklin U.S. Rising Dividends Hedged Corporate Class

Franklin Bissett All Canadian Focus Corporate Class
Franklin Bissett Canadian All Cap Balanced Corporate Class
Franklin Bissett Canadian Balanced Corporate Class
Franklin Bissett Canadian Dividend Corporate Class
Franklin Bissett Canadian Equity Corporate Class
Franklin Bissett Dividend Income Corporate Class
Franklin Bissett Energy Corporate Class
Franklin Bissett Money Market Corporate Class
Franklin Bissett Small Cap Corporate Class
Franklin Bissett U.S. Focus Corporate Class

Franklin Mutual Global Discovery Corporate Class
Franklin Mutual U.S. Shares Corporate Class

Franklin Quotential Balanced Growth Corporate Class Portfolio
Franklin Quotential Balanced Income Corporate Class Portfolio
Franklin Quotential Diversified Equity Corporate Class Portfolio
Franklin Quotential Diversified Income Corporate Class Portfolio
Franklin Quotential Growth Corporate Class Portfolio

2.2 Orders

2.2.1 The Bank of Nova Scotia – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – Issuer proposes to purchase, at a discounted purchase price, up to 3,000,000 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in accordance with the TSX rules governing normal course issuer bids, in reliance on the issuer bid exemption in subsection 4.8(2) of NI 62-104 – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and no common shares have been purchased by the selling shareholder for a minimum of 30 days prior to the date of the application seeking the requested relief in anticipation or contemplation of a sale of common shares by the selling shareholder to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or other security holders – proposed purchases exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the Issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases, and that the Issuer not make any proposed purchase unless it has first obtained written confirmation from the selling shareholder that, between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer to re-establish its holdings of common shares which will have been reduced as a result of the sale of the subject shares pursuant to the proposed purchases.

Statutes Cited

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
THE BANK OF NOVA SCOTIA**

**ORDER
(Section 6.1 of National Instrument 62-104)**

UPON the application (the “**Application**”) of The Bank of Nova Scotia (the “**Issuer**”) to the Ontario Securities Commission (the “**Commission**”) for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (“**NI 62-104**”) exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the “**Issuer Bid Requirements**”) in respect of the proposed purchases by the Issuer of up to 3,000,000 of its common shares (collectively, the “**Subject Shares**”) in one or more tranches from The Toronto-Dominion Bank (the “**Selling Shareholder**”);

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 9, 10, 14, 24 and 25 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a Schedule I bank under, and is governed by, the *Bank Act* (Canada).

2. The registered and head office of the Issuer is located at 1709 Hollis Street, Halifax, Nova Scotia, B3J 1W1 and its executive offices are at 44 King Street West, Toronto, Ontario, M5H 1H1.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada and the common shares of the Issuer (the “**Common Shares**”) are listed for trading on the Toronto Stock Exchange (the “**TSX**”) and the New York Stock Exchange (the “**NYSE**”) under the symbol “BNS”. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized share capital of the Issuer consists of an unlimited number of Common Shares and an unlimited number of preferred shares, issuable in series. As of December 23, 2016: (a) 1,209,436,534 Common Shares; (b) 13,800,000 non-cumulative preferred shares series 16; (c) 9,200,000 non-cumulative preferred shares series 17; (d) 7,497,663 non-cumulative preferred shares series 18; (e) 6,302,337 non-cumulative preferred shares series 19; (f) 8,039,268 non-cumulative preferred shares series 20; (g) 5,960,732 non-cumulative preferred shares series 21; (h) 9,376,944 non-cumulative preferred shares series 22; (i) 2,623,056 non-cumulative preferred shares series 23; (j) 6,142,738 non-cumulative preferred shares series 30; (k) 4,457,262 non-cumulative preferred shares series 31; (l) 11,161,422 non-cumulative preferred shares series 32; (m) 5,184,345 non-cumulative preferred shares series 33; (n) 14,000,000 non-cumulative preferred shares series 34; (o) 20,000,000 non-cumulative preferred shares series 36; and (p) 20,000,000 non-cumulative preferred shares series 38, were issued and outstanding. To the best of the Issuer's knowledge, as of December 23, 2016, the “public float” for the Common Shares represented approximately 99.948% of all the issued and

outstanding Common Shares for the purposes of the TSX NCIB Rules (as defined below).

5. The registered and head office of the Selling Shareholder is located in the Province of Ontario.

6. The Selling Shareholder does not, directly or indirectly, own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder is the beneficial owner of at least 3,000,000 Common Shares. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after November 22, 2016, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares to the Issuer.

9. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares. Between the date of this Order and the date on which a Proposed Purchase (as defined below) is to be completed, the Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

10. The Selling Shareholder is at arm's length to the Issuer and is not an “insider” of the Issuer, an “associate” of an “insider” of the Issuer, or an “associate” or “affiliate” of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the “**Act**”). The Selling Shareholder is an “accredited investor” within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. The Issuer announced on May 31, 2016 the renewal of its normal course issuer bid (the “**Normal Course Issuer Bid**”) to purchase for cancellation, during the 12-month period beginning on June 2, 2016 and ending on June 1, 2017, up to 12,000,000 Common Shares, representing approximately 1% of the issued and outstanding Common Shares as of the date specified in the Notice of Intention to Make a Normal Course Issuer Bid (the “**Notice**”) which was accepted by the TSX. An amendment to the Notice to provide for the ability of the Issuer to purchase Common Shares under the Normal Course Issuer Bid pursuant to private agreements under issuer bid exemption orders issued by securities regulatory authorities (each, an “**Off-Exchange Block Purchase**”) was accepted by the TSX on January 4, 2017. The Notice, as amended, specifies that purchases made under the Normal Course Issuer Bid are to be conducted through the facilities of the TSX or alternative trading systems, if eligible, or by such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the “**TSX NCIB Rules**”) or a securities regulatory authority, including Off-Exchange Block Purchases. The TSX has been advised of the Issuer’s intention to enter into the Proposed Purchases and has confirmed that it has no objection to the Proposed Purchases.

12. The Issuer also announced on May 31, 2016 the renewal of its automatic share purchase plan (“**ASPP**”) to permit the Issuer to make purchases under its Normal Course Issuer Bid at such times when the Issuer would not be permitted to trade in the Common Shares, including during internal blackout periods (each such time, a “**Blackout Period**”). The ASPP was pre-cleared by the TSX and complies with the TSX NCIB Rules, applicable securities laws and this Order. Under the ASPP, at times it is not subject to blackout restrictions, the Issuer may, but is not required to, instruct the designated broker under the ASPP (the “**ASPP Broker**”) to make purchases under its Normal Course Issuer Bid in accordance with the terms of the ASPP. Such purchases will be determined by the ASPP Broker in its sole discretion based on parameters established by the Issuer prior to any Blackout Period in accordance with TSX rules, applicable securities laws (including this Order) and the terms of the agreement between the ASPP Broker and the Issuer. If the Issuer determines to instruct the ASPP Broker to make purchases under the ASPP during a particular Blackout Period, the Issuer will instruct the ASPP Broker not to conduct a block purchase (a “**Block Purchase**”) in reliance on the block purchase exception in clause 629(l)(7) of the TSX NCIB Rules in a calendar week in which either (a) the Issuer completed a Proposed Purchase, or (b) a Blackout Period ends and a new trading window of the Issuer opens.

13. As at December 22, 2016, the Issuer has not purchased any Common Shares under the Normal Course Issuer Bid, whether through the facilities of a marketplace or pursuant to Off-Exchange Block Purchases.

14. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an “**Agreement**”) pursuant to which the Issuer will agree to acquire some or all of the Subject Shares from the Selling Shareholder by way of one or more purchases each occurring before April 11, 2017 (each such purchase, a “**Proposed Purchase**”) for a purchase price (each such price, a “**Purchase**

Price" in respect of such Proposed Purchase) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will, in each case, be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase.

15. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

16. The purchase of any of the Subject Shares by the Issuer pursuant to an Agreement will constitute an "issuer bid" for the purposes of NI 62-104, to which the applicable Issuer Bid Requirements would apply.

17. Because the Purchase Price will, in each case, be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase, none of the Proposed Purchases can be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire Subject Shares from the Selling Shareholder in reliance on the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

18. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase, the Issuer could otherwise acquire the applicable Subject Shares through the facilities of the TSX as a Block Purchase in accordance with the block purchase exception in section 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

19. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

20. For each Proposed Purchase, the Issuer will be able to acquire the applicable Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

21. Management of the Issuer is of the view that: (a) the Issuer will be able to purchase the Subject Shares pursuant to Proposed Purchases at a lower price than the price at which it would otherwise be able to purchase Common Shares under the Normal Course Issuer Bid in accordance with the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104; and (b) the Proposed Purchases are an appropriate use of the Issuer's funds.

22. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders and will not materially affect control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other security holders of the Issuer to otherwise sell Common Shares in the open market at the then-prevailing market price. The Proposed Purchases will be carried out at minimal cost to the Issuer.

23. The Common Shares are "highly-liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

24. Other than the Purchase Price, no fee or other consideration will be paid by the Issuer in connection with the Proposed Purchases.

25. At the time that each Agreement is negotiated or entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Equity Derivatives group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

26. The Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of the Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

27. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under the Normal Course Issuer Bid, such one-third being equal to 4,000,000 Common Shares as of the date of this Order.

28. No Agreement will be negotiated or entered into during a time when the Issuer would not be permitted to trade in the Common Shares, including during a Blackout Period. If a Blackout Period is in effect, the Issuer will not purchase

Subject Shares pursuant to the Proposed Purchases until the later of (a) the end of such Blackout Period, and (b) the passage of two clear trading days from the date of the dissemination to the public of the Issuer's financial results and/or any and all "material changes" or any "material facts" (each as defined in the Act) in respect of the Issuer or the Common Shares relating to such Blackout Period.

29. Assuming completion of the purchase of the maximum number of Subject Shares, being 3,000,000 Common Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 3,000,000 Common Shares pursuant to Off-Exchange Block Purchases, representing approximately 25.0% of the maximum of 12,000,000 Common Shares authorized to be purchased under the Normal Course Issuer Bid.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting either a Block Purchase in accordance with the TSX NCIB Rules or another Off-Exchange Block Purchase during the calendar week in which it completes a Proposed Purchase and will not make any further purchases under the Normal Course Issuer Bid for the remainder of the calendar day on which it completes a Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in paragraph 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid in accordance with the Notice and the TSX NCIB Rules, including by means of open market transactions and by such other means as may be permitted by the TSX, and subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following each Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of such Subject Shares to the TSX;

(f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Equity Derivatives group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

(g) in advance of the first Proposed Purchase, the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases, and (ii) that information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, will be available on the System for Electronic Document Analysis and Retrieval ("SEDAR") following the completion of each Proposed Purchase;

(h) the Issuer will report information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such purchase;

(i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to, as of the date of this Order, 4,000,000 Common Shares; and

(j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been

reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

DATED at Toronto, Ontario this 6th day of January, 2017.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.2 Metro Inc. – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – Issuer proposes to purchase, at a discounted purchase price, up to 375,000 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in accordance with the TSX rules governing normal course issuer bids, in reliance on the issuer bid exemption in subsection 4.8(2) of NI 62-104 – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and no common shares have been purchased by the selling shareholder for a minimum of 30 days prior to the date of the application seeking the requested relief in anticipation or contemplation of a sale of common shares by the selling shareholder to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or other security holders – proposed purchases exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the Issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases, and that the Issuer not make any proposed purchase unless it has first obtained written confirmation from the selling shareholder that, between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer to re-establish its holdings of common shares which will have been reduced as a result of the sale of the subject shares pursuant to the proposed purchases.

Statutes Cited

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED

AND

IN THE MATTER OF
METRO INC.

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the **Application**) of Metro inc. (the **Issuer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**) exempting the Issuer from the require-

ments applicable to issuer bids in Part 2 of NI 62-104 (the **Issuer Bid Requirements**) in respect of the proposed purchases by the Issuer of up to an aggregate of 375,000 common shares of the Issuer (collectively, the **Subject Shares**) in one or more trades from The Bank of Nova Scotia (the **Selling Shareholder**);

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 9, 10, 13, 24 and 25, as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (Québec).

2. The head office and registered office of the Issuer is located at 11011 Maurice-Duplessis Boulevard, Montréal, Québec, H1C 1V6.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the common shares of the Issuer (the **Common Shares**) are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol “MRU”. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized capital stock of the Issuer consists of an unlimited number of Common Shares, and an unlimited number of preferred shares. As at December 16, 2016, there were 231,120,406 Common Shares and no preferred shares issued and outstanding.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario.

6. The Selling Shareholder does not own, directly or indirectly, more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder is the beneficial owner of at least 375,000 Common Shares. All of the Subject Shares are held by the Selling Shareholder in the Province of Ontario. The negotiation, execution and delivery of each Agreement (as defined below) and the execution and settlement of the trades contemplated thereunder will be undertaken by members of the Global Equity Derivatives and Investor Solutions group of the Selling Shareholder who are in the Province of Ontario. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after November 22, 2016, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares to the Issuer.

9. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares. Between the date of this Order and the date on which a Proposed Purchase (as defined below) is to be completed, the Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

10. The Selling Shareholder is at arm’s length to the Issuer and is not an “insider” of the Issuer, an “associate” of an “insider” of the Issuer, or an “associate” or “affiliate” of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the **Act**). The Selling Shareholder is an “accredited investor” within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. Pursuant to the terms of a “Notice of Intention to Make a Normal Course Issuer Bid” (the **Notice**) that was submitted to, and accepted by, the TSX, the Issuer is permitted to make a normal course issuer bid (the **Normal Course Issuer Bid**) to purchase, during the 12-month period beginning on September 12, 2016 and ending September 11, 2017, up to 12,000,000 Common Shares, representing approximately 6.4% of the “public float” for the Common Shares as of the date specified in the Notice. In accordance with the Notice, the Normal Course Issuer Bid will be conducted through the facilities of the TSX or by such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the **TSX NCIB Rules**) or by securities regulatory authorities, including private agreements under issuer bid exemption orders issued by securities regulatory authorities (each, an **Off-Exchange Block Purchase**). The TSX has been advised of the Issuer’s intention to enter into the Proposed Purchases and has confirmed that it has no objection to the Proposed Purchases.

12. As of December 23, 2016, the Issuer has purchased for cancellation an aggregate of 3,946,380 Common Shares under the Normal Course Issuer Bid, none of which were purchased pursuant to an Off-Exchange Block Purchase.

13. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an **Agreement**) pursuant to which the Issuer will agree to acquire some or all of the Subject Shares from the Selling Shareholder by

way of one or more purchases, each occurring on or before September 11, 2017 (each such purchase, a **Proposed Purchase**) for a purchase price (each such price, a **Purchase Price** in respect of such Proposed Purchase) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price, in each case, will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase.

14. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

15. The purchase of any of the Subject Shares by the Issuer pursuant to an Agreement will constitute an "issuer bid" for the purposes of NI 62-104 to which the applicable Issuer Bid Requirements would apply.

16. Because the Purchase Price, in each case, will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase, none of the Proposed Purchases can be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire Subject Shares from the Selling Shareholder in reliance on the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

17. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase, the Issuer could otherwise acquire the applicable Subject Shares through the facilities of the TSX as a "block purchase" (a **Block Purchase**) in reliance on the block purchase exception in clause 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

18. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

19. For each Proposed Purchase, the Issuer will be able to acquire the applicable Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

20. Management of the Issuer is of the view that (a) through the Proposed Purchases, the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would otherwise be able to purchase Common Shares under the Normal Course Issuer Bid in accordance with the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104, and (b) the Proposed Purchases are an appropriate use of the Issuer's funds on hand.

21. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders and will not materially affect control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other security holders of the Issuer to otherwise sell Common Shares in the open market at the then prevailing market price. The Proposed Purchases will be carried out at minimal cost to the Issuer.

22. To the best of the Issuer's knowledge, as of December 16, 2016, the "public float" for the Common Shares represented approximately 78.84% of all the issued and outstanding Common Shares for the purposes of the TSX NCIB Rules.

23. The Common Shares are "highly liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

24. Other than the Purchase Price, no fee or other consideration will be paid by the Issuer to the Selling Shareholder in connection with the Proposed Purchases.

25. At the time that each Agreement is negotiated or entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Global Equity Derivatives and Investor Solutions group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

26. The Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

27. The Issuer has made two other applications to the Commission for exemptive relief from the Issuer

Bid Requirements in connection with the proposed purchases by the Issuer of (a) up to 2,010,000 Common Shares from CIBC World Markets Inc., and (b) up to 225,000 Common Shares from National Bank of Canada, each pursuant to one or more private agreements (the **Concurrent Applications**).

28. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to 4,000,000 Common Shares as of the date of this Order, taking into account, for greater certainty, the Subject Shares and the Common Shares which are the subject of the Concurrent Applications.

29. No Agreement will be negotiated or entered into during a time when the Issuer would not be permitted to trade in Common Shares, including blackout periods designated and administered in accordance with the Issuer's corporate policies (each such time, a **Blackout Period**). If a Blackout Period is in effect, the Issuer will not purchase Subject Shares pursuant to the Proposed Purchases until the later of (a) the end of such Blackout Period, and (b) the passage of two clear trading days from the date of the dissemination to the public of the Issuer's financial results and/or any and all "material changes" or any "material facts" (each as defined in the Act) in respect of the Issuer or the Common Shares relating to such Blackout Period.

30. Assuming completion of the purchase of (a) the maximum number of Subject Shares, being 375,000 Common Shares, and (b) the purchase of the maximum number of Common Shares that are the subject of the Concurrent Applications, being 2,235,000 Common Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 2,610,000 Common Shares pursuant to Off-Exchange Block Purchases, representing 21.75% of the maximum of 12,000,000 Common Shares authorized to be purchased under the Normal Course Issuer Bid.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting either a Block Purchase in accordance with the TSX NCIB Rules or another Off-Exchange Block Purchase during the calendar week that it completes a Proposed Purchase and will not make any further purchases under the Normal Course Issuer Bid for the remainder of the calendar day on which it completes a Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in clause 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid in accordance with the Notice and the TSX NCIB Rules, and, subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following each Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of such Subject Shares to the TSX;

(f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Global Equity Derivatives and Investor Solutions group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

(g) in advance of the first Proposed Purchase, the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases, and (ii) that information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, will be available on the System for Electronic Document Analysis and Retrieval (SEDAR) following the completion of each Proposed Purchase;

(h) the Issuer will report information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following the completion of such Proposed Purchase;

(i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid, such one third being equal to, as of the date of this Order, 4,000,000 Common Shares; and

(j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

DATED at Toronto this 6th day of January, 2017.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.3 Metro Inc. – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – Issuer proposes to purchase, at a discounted purchase price, up to 375,000 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in accordance with the TSX rules governing normal course issuer bids, in reliance on the issuer bid exemption in subsection 4.8(2) of NI 62-104 – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and no common shares have been purchased by the selling shareholder for a minimum of 30 days prior to the date of the application seeking the requested relief in anticipation or contemplation of a sale of common shares by the selling shareholder to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or other security holders – proposed purchases exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the Issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases, and that the Issuer not make any proposed purchase unless it has first obtained written confirmation from the selling shareholder that, between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer to re-establish its holdings of common shares which will have been reduced as a result of the sale of the subject shares pursuant to the proposed purchases.

Statutes Cited

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
METRO INC.**

**ORDER
(Section 6.1 of National Instrument 62-104)**

UPON the application (the **Application**) of Metro inc. (the **Issuer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**) exempting the Issuer from the require-

ments applicable to issuer bids in Part 2 of NI 62-104 (the **Issuer Bid Requirements**) in respect of the proposed purchases by the Issuer of up to an aggregate of 2,010,000 common shares of the Issuer (collectively, the **Subject Shares**) in one or more trades from CIBC World Markets Inc. (the **Selling Shareholder**);

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 9, 10, 13, 24 and 25, as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (Québec).

2. The head office and registered office of the Issuer is located at 11011 Maurice-Duplessis Boulevard, Montréal, Québec, H1C 1V6.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the common shares of the Issuer (the **Common Shares**) are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "MRU". The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized capital stock of the Issuer consists of an unlimited number of Common Shares, and an unlimited number of preferred shares. As at December 16, 2016, there were 231,120,406 Common Shares and no preferred shares issued and outstanding.

5. The head office of the Selling Shareholder is located in the Province of Ontario.

6. The Selling Shareholder does not own, directly or indirectly, more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder is the beneficial owner of at least 2,010,000 Common Shares. All of the Subject Shares are held by the Selling Shareholder in the Province of Ontario. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after November 22, 2016, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares to the Issuer.

9. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares. Between the date of this Order and the date on which a Proposed Purchase (as defined below) is to be completed, the Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

10. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer, an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the **Act**). The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. Pursuant to the terms of a "Notice of Intention to Make a Normal Course Issuer Bid" (the **Notice**) that was submitted to, and accepted by, the TSX, the Issuer is permitted to make a normal course issuer bid (the **Normal Course Issuer Bid**) to purchase, during the 12-month period beginning on September 12, 2016 and ending September 11, 2017, up to 12,000,000 Common Shares, representing approximately 6.4% of the "public float" for the Common Shares as of the date specified in the Notice. In accordance with the Notice, the Normal Course Issuer Bid will be conducted through the facilities of the TSX or by such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the **TSX NCIB Rules**) or by securities regulatory authorities, including private agreements under issuer bid exemption orders issued by securities regulatory authorities (each, an **Off-Exchange Block Purchase**). The TSX has been advised of the Issuer's intention to enter into the Proposed Purchases and has confirmed that it has no objection to the Proposed Purchases.

12. As of December 23, 2016, the Issuer has purchased for cancellation an aggregate of 3,946,380 Common Shares under the Normal Course Issuer Bid, none of which were purchased pursuant to an Off-Exchange Block Purchase.

13. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an **Agreement**) pursuant to which the Issuer will agree to acquire some or all of the Subject Shares from the Selling Shareholder by way of one or more purchases, each occurring on or before September 11, 2017 (each such purchase, a **Proposed Purchase**) for a purchase price (each such price, a **Purchase Price** in respect of such Proposed Purchase) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price, in

each case, will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase.

14. The Subject Shares acquired under each Proposed Purchase will constitute a “block” as that term is defined in section 628 of the TSX NCIB Rules.

15. The purchase of any of the Subject Shares by the Issuer pursuant to an Agreement will constitute an “issuer bid” for the purposes of NI 62-104 to which the applicable Issuer Bid Requirements would apply.

16. Because the Purchase Price, in each case, will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase, none of the Proposed Purchases can be made through the TSX trading system and, therefore, will not occur “through the facilities” of the TSX. As a result, the Issuer will be unable to acquire Subject Shares from the Selling Shareholder in reliance on the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

17. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase, the Issuer could otherwise acquire the applicable Subject Shares through the facilities of the TSX as a “block purchase” (a **Block Purchase**) in reliance on the block purchase exception in clause 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

18. The sale of any of the Subject Shares to the Issuer will not be a “distribution” (as defined in the Act).

19. For each Proposed Purchase, the Issuer will be able to acquire the applicable Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

20. Management of the Issuer is of the view that (a) through the Proposed Purchases, the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would otherwise be able to purchase Common Shares under the Normal Course Issuer Bid in accordance with the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104, and (b) the Proposed Purchases are an appropriate use of the Issuer’s funds on hand.

21. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer’s security holders and will not materially affect control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other security holders of the Issuer to otherwise sell Common Shares in the open market at the then prevailing market price. The Proposed Purchases will be carried out at minimal cost to the Issuer.

22. To the best of the Issuer’s knowledge, as of December 16, 2016, the “public float” for the Common Shares represented approximately 78.84% of all the issued and outstanding Common Shares for the purposes of the TSX NCIB Rules.

23. The Common Shares are “highly liquid securities” within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

24. Other than the Purchase Price, no fee or other consideration will be paid by the Issuer to the Selling Shareholder in connection with the Proposed Purchases.

25. At the time that each Agreement is negotiated or entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Equity Derivatives Trading Group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any “material change” or any “material fact” (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

26. The Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

27. The Issuer has made two other applications to the Commission for exemptive relief from the Issuer Bid Requirements in connection with the proposed purchases by the Issuer of (a) up to 375,000 Common Shares from The Bank of Nova Scotia, and (b) up to 225,000 Common Shares from National Bank of Canada, each pursuant to one or

more private agreements (the **Concurrent Applications**).

28. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to 4,000,000 Common Shares as of the date of this Order, taking into account, for greater certainty, the Subject Shares and the Common Shares which are the subject of the Concurrent Applications.

29. No Agreement will be negotiated or entered into during a time when the Issuer would not be permitted to trade in Common Shares, including blackout periods designated and administered in accordance with the Issuer's corporate policies (each such time, a **Blackout Period**). If a Blackout Period is in effect, the Issuer will not purchase Subject Shares pursuant to the Proposed Purchases until the later of (a) the end of such Blackout Period, and (b) the passage of two clear trading days from the date of the dissemination to the public of the Issuer's financial results and/or any and all "material changes" or any "material facts" (each as defined in the Act) in respect of the Issuer or the Common Shares relating to such Blackout Period.

30. Assuming completion of the purchase of (a) the maximum number of Subject Shares, being 2,010,000 Common Shares, and (b) the purchase of the maximum number of Common Shares that are the subject of the Concurrent Applications, being 600,000 Common Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 2,610,000 Common Shares pursuant to Off-Exchange Block Purchases, representing 21.75% of the maximum of 12,000,000 Common Shares authorized to be purchased under the Normal Course Issuer Bid.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting either a Block Purchase in accordance with the TSX NCIB Rules or another Off-Exchange Block Purchase during the calendar week that it completes a Proposed Purchase and will not make any further purchases under the Normal Course Issuer Bid for the remainder of the calendar day on which it completes a Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in clause 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid in accordance with the Notice and the TSX NCIB Rules, and, subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following each Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of such Subject Shares to the TSX;

(f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Equity Derivatives Trading Group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

(g) in advance of the first Proposed Purchase, the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases, and (ii) that information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, will be available on the System for Electronic Document Analysis and Retrieval (SEDAR) following the completion of each Proposed Purchase;

(h) the Issuer will report information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time)

on the business day following the completion of such Proposed Purchase;

(i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid, such one third being equal to, as of the date of this Order, 4,000,000 Common Shares; and

(j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

DATED at Toronto this 6th day of January, 2017.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.4 Metro Inc. – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – Issuer proposes to purchase, at a discounted purchase price, up to 375,000 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in accordance with the TSX rules governing normal course issuer bids, in reliance on the issuer bid exemption in subsection 4.8(2) of NI 62-104 – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and no common shares have been purchased by the selling shareholder for a minimum of 30 days prior to the date of the application seeking the requested relief in anticipation or contemplation of a sale of common shares by the selling shareholder to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or other security holders – proposed purchases exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the Issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases, and that the Issuer not make any proposed purchase unless it has first obtained written confirmation from the selling shareholder that, between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer to re-establish its holdings of common shares which will have been reduced as a result of the sale of the subject shares pursuant to the proposed purchases.

Statutes Cited

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

**IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5, AS AMENDED**

AND

**IN THE MATTER OF
METRO INC.**

**ORDER
(Section 6.1 of National Instrument 62-104)**

UPON the application (the **Application**) of Metro inc. (the **Issuer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**) exempting the Issuer from the

requirements applicable to issuer bids in Part 2 of NI 62-104 (the **Issuer Bid Requirements**) in respect of the proposed purchases by the Issuer of up to an aggregate of 225,000 common shares of the Issuer (collectively, the **Subject Shares**) in one or more trades from National Bank of Canada (the **Selling Shareholder**);

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 9, 10, 13, 24 and 25, as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (Québec).

2. The head office and registered office of the Issuer is located at 11011 Maurice-Duplessis Boulevard, Montréal, Québec, H1C 1V6.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the common shares of the Issuer (the **Common Shares**) are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol “MRU”. The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized capital stock of the Issuer consists of an unlimited number of Common Shares, and an unlimited number of preferred shares. As at December 16, 2016, there were 231,120,406 Common Shares and no preferred shares issued and outstanding.

5. The corporate headquarters of the Selling Shareholder are located in the Province of Québec.

6. The Selling Shareholder does not own, directly or indirectly, more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder is the beneficial owner of at least 225,000 Common Shares. All of the Subject Shares are held by the Selling Shareholder in the Province of Ontario. The negotiation, execution and delivery of each Agreement (as defined below) and the execution and settlement of the trades contemplated thereunder will be undertaken by members of the Global Equity Derivatives group of the Selling Shareholder who are in the Province of Ontario. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after November 22, 2016, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares to the Issuer.

9. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares and index arbitrage trading strategy. Between the date of this Order and the date on which a Proposed Purchase (as defined below) is to be completed, the Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

10. The Selling Shareholder is at arm’s length to the Issuer and is not an “insider” of the Issuer, an “associate” of an “insider” of the Issuer, or an “associate” or “affiliate” of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the **Act**). The Selling Shareholder is an “accredited investor” within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. Pursuant to the terms of a “Notice of Intention to Make a Normal Course Issuer Bid” (the **Notice**) that was submitted to, and accepted by, the TSX, the Issuer is permitted to make a normal course issuer bid (the **Normal Course Issuer Bid**) to purchase, during the 12-month period beginning on September 12, 2016 and ending September 11, 2017, up to 12,000,000 Common Shares, representing approximately 6.4% of the “public float” for the Common Shares as of the date specified in the Notice. In accordance with the Notice, the Normal Course Issuer Bid will be conducted through the facilities of the TSX or by such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the **TSX NCIB Rules**) or by securities regulatory authorities, including private agreements under issuer bid exemption orders issued by securities regulatory authorities (each, an **Off-Exchange Block Purchase**). The TSX has been advised of the Issuer’s intention to enter into the Proposed Purchases and has confirmed that it has no objection to the Proposed Purchases.

12. As of December 23, 2016, the Issuer has purchased for cancellation an aggregate of 3,946,380 Common Shares under the Normal Course Issuer Bid, none of which were purchased pursuant to an Off-Exchange Block Purchase.

13. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an **Agreement**) pursuant to which the Issuer will agree to acquire some or all of the Subject Shares from the Selling Shareholder by

way of one or more purchases, each occurring on or before September 11, 2017 (each such purchase, a **Proposed Purchase**) for a purchase price (each such price, a **Purchase Price** in respect of such Proposed Purchase) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price, in each case, will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase.

14. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

15. The purchase of any of the Subject Shares by the Issuer pursuant to an Agreement will constitute an "issuer bid" for the purposes of NI 62-104 to which the applicable Issuer Bid Requirements would apply.

16. Because the Purchase Price, in each case, will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase, none of the Proposed Purchases can be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire Subject Shares from the Selling Shareholder in reliance on the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

17. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of the relevant Proposed Purchase, the Issuer could otherwise acquire the applicable Subject Shares through the facilities of the TSX as a "block purchase" (a **Block Purchase**) in reliance on the block purchase exception in clause 629(l)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104.

18. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

19. For each Proposed Purchase, the Issuer will be able to acquire the applicable Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

20. Management of the Issuer is of the view that (a) through the Proposed Purchases, the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would otherwise be able to purchase Common Shares under the Normal Course Issuer Bid in accordance with the TSX NCIB Rules and the exemption from the Issuer Bid Requirements in subsection 4.8(2) of NI 62-104, and (b) the Proposed Purchases are an appropriate use of the Issuer's funds on hand.

21. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders and will not materially affect control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other security holders of the Issuer to otherwise sell Common Shares in the open market at the then prevailing market price. The Proposed Purchases will be carried out at minimal cost to the Issuer.

22. To the best of the Issuer's knowledge, as of December 16, 2016, the "public float" for the Common Shares represented approximately 78.84% of all the issued and outstanding Common Shares for the purposes of the TSX NCIB Rules.

23. The Common Shares are "highly liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

24. Other than the Purchase Price, no fee or other consideration will be paid by the Issuer to the Selling Shareholder in connection with the Proposed Purchases.

25. At the time that each Agreement is negotiated or entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Global Equity Derivatives group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

26. The Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

27. The Issuer has made two other applications to the Commission for exemptive relief from the Issuer

Bid Requirements in connection with the proposed purchases by the Issuer of (a) up to 2,010,000 Common Shares from CIBC World Markets Inc., and (b) up to 375,000 Common Shares from The Bank of Nova Scotia, each pursuant to one or more private agreements (the **Concurrent Applications**).

28. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under its Normal Course Issuer Bid, such one-third being equal to 4,000,000 Common Shares as of the date of this Order, taking into account, for greater certainty, the Subject Shares and the Common Shares which are the subject of the Concurrent Applications.

29. No Agreement will be negotiated or entered into during a time when the Issuer would not be permitted to trade in Common Shares, including blackout periods designated and administered in accordance with the Issuer's corporate policies (each such time, a **Blackout Period**). If a Blackout Period is in effect, the Issuer will not purchase Subject Shares pursuant to the Proposed Purchases until the later of (a) the end of such Blackout Period, and (b) the passage of two clear trading days from the date of the dissemination to the public of the Issuer's financial results and/or any and all "material changes" or any "material facts" (each as defined in the Act) in respect of the Issuer or the Common Shares relating to such Blackout Period.

30. Assuming completion of the purchase of (a) the maximum number of Subject Shares, being 225,000 Common Shares, and (b) the purchase of the maximum number of Common Shares that are the subject of the Concurrent Applications, being 2,385,000 Common Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 2,610,000 Common Shares pursuant to Off-Exchange Block Purchases, representing 21.75% of the maximum of 12,000,000 Common Shares authorized to be purchased under the Normal Course Issuer Bid.

AND UPON the Commission being satisfied that to do so would not be prejudicial to the public interest;

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting either a Block Purchase in accordance with the TSX NCIB Rules or another Off-Exchange Block Purchase during the calendar week that it completes a Proposed Purchase and will not make any further purchases under the Normal Course Issuer Bid for the remainder of the calendar day on which it completes a Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in clause 629(l)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Normal Course Issuer Bid in accordance with the Notice and the TSX NCIB Rules, and, subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following each Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of such Subject Shares to the TSX;

(f) at the time that each Agreement is entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Global Equity Derivatives group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or any "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

(g) in advance of the first Proposed Purchase, the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases, and (ii) that information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, will be available on the System for Electronic Document Analysis and Retrieval (SEDAR) following the completion of each Proposed Purchase;

(h) the Issuer will report information regarding each Proposed Purchase, including

the number of Subject Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following the completion of such Proposed Purchase;

(i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares the Issuer can purchase under the Normal Course Issuer Bid, such one third being equal to, as of the date of this Order, 4,000,000 Common Shares; and

(j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

DATED at Toronto this 6th day of January, 2017.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.5 Mutual Fund Dealers Association of Canada/Association Canadienne des Courtiers de Fonds Mutuels – s. 147

Headnote

Application under section 147 of the Securities Act (Ontario) for an exemption from the requirement of subsection 21.9(4) of the Securities Act whereas the MFDA is required to select a panel of auditing firms for its members and cause each member to appoint an auditor from the panel with the proviso that each appointed auditor has practiced as an auditor in the securities industry in Canada for at least five years.

Applicative Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 147.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(Act)

AND

IN THE MATTER OF
MUTUAL FUND DEALERS ASSOCIATION OF CANADA/
ASSOCIATION CANADIENNE DES COURTIERS DE FONDS MUTUELS
(MFDA)

EXEMPTION ORDER
(Section 147)

WHEREAS the Commission recognized the MFDA as a self-regulatory organization for mutual fund dealers on February 6, 2001, subject to terms and conditions;

AND WHEREAS the MFDA is required to select a panel of auditing firms for its members and cause each member to appoint an auditor from the panel selected by the SRO pursuant to section 21.9 of the Act;

AND WHEREAS no person shall be appointed as an auditor to such a panel unless they have practised as an auditor in the securities industry in Canada for five years or more pursuant to subsection 21.9(4) of the Act;

AND WHEREAS the MFDA requested in an application dated December 20, 2016 (Application) that an exemption be granted to the MFDA from the requirement of subsection 21.9(4) of the Act;

AND WHEREAS the MFDA has represented to the Commission that:

1. The operations of MFDA members are less complex and subject to less risk than those of IIROC member firms. For example, MFDA members deal in a more limited range of securities; do not engage in principal or proprietary trading activities; do not engage in underwriting; do not deal in derivatives; and do not engage in securities lending and repurchase arrangements, or use client free credits or allow clients to purchase securities on margin.

2. The MFDA requires the auditor of a MFDA member to sign an Acknowledgement and Agreement to the MFDA. The Acknowledgement and Agreement requires the audit engagement partner to attest to the fact that he or she has read and understood certain sections of the MFDA's Rules, Policies and Forms and agrees to comply with such Rules, Policies and Forms.

3. The MFDA does not approve audit firms to act on behalf of MFDA members. The requirements of MFDA Rule 3.6.8 Qualification are specific to the individual engagement partner. The MFDA reviews the qualification of an audit engagement partner on a member-by-member basis, even if the audit engagement partner has previously signed an Acknowledgement and Agreement for another MFDA member. As a result, the acceptance by the MFDA of an audit engagement partner to sign an audited MFDA Form 1 does not mean that other partners of the same firm would automatically be accepted. Auditors are required to be in good standing with the Chartered Professional Accountants of Canada or another professional accounting body.

4. MFDA staff assesses the quality and reliability of the work done by the MFDA member auditors on an ongoing basis through dialogue with the auditors in respect of the audited MFDA Form 1 and MFDA staff's audit working paper reviews. In addition, MFDA staff communicates with MFDA member auditors generally by using auditor forums to

present audit working paper findings and Bulletins that are directed to auditors. MFDA staff has also used Bulletins to respond to requests from auditors for guidance/clarification.

AND WHEREAS based on the Application and the representations of the MFDA the Commission has determined that it is not prejudicial to the public interest to issue an order that provides such exemption;

IT IS HEREBY ORDERED by the Commission pursuant to section 147 of the Act that the MFDA be exempted from the requirement of subsection 21.9(4) of the Act.

PROVIDED THAT the MFDA shall cause each of its members that is a Level 4 Dealer as defined in MFDA Rule 3.1.1, as amended from time to time, to appoint an auditor that meets the requirement under subsection 21.9(4) of the Act.

DATED December 23, 2016.

"AnneMarie Ryan"
Commissioner

"Janet Leiper"
Commissioner

2.2.6 Pacific Safety Products Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

January 6, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(The "Jurisdiction")

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
PACIFIC SAFETY PRODUCTS INC.
(The "Filer")

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be reporting issuers in all jurisdictions of Canada in which the Filer is a reporting issuer (the "**Order Sought**").

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia and Alberta.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Sonny Randhawa"
Deputy Director,
Corporate Finance Branch
Ontario Securities Commission

2.2.7 U.S. Tactical Allocation Fund

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceased to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

December 19, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
U.S. TACTICAL ALLOCATION FUND
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (for a passport application):

(a) the Ontario Securities Commission is the principal regulator for this application, and

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories, and Nunavut.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

This order is based on the following facts represented by the Filer:

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publically reported;

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

The principal regulator is satisfied that the order meets the test set out in the Legislation for the principal regulator to make the order.

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Raymond Chan"
Manager
Ontario Securities Commission

2.2.8 Canadian Imperial Venture Corp. – s. 144

Headnote

Application by an issuer for a full revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5, AS AMENDED
(the Act)

AND

IN THE MATTER OF
CANADIAN IMPERIAL VENTURE CORP.

ORDER
(Section 144)

WHEREAS the securities of Canadian Imperial Venture Corp. (the **Applicant**) are subject to a temporary cease trade order dated August 12, 2015 issued by the Director of the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the Act, as extended by a further cease trade order dated August 24, 2015 issued by the Director, pursuant to paragraph 2 of subsection 127(1) of the Act (collectively, the **Ontario Cease Trade Order**), ordering that all trading in the securities of the Applicant, whether direct or indirect, shall cease until further order by the Director;

AND WHEREAS the Ontario Cease Trade Order was made on the basis that the Applicant was in default of certain filing requirements under Ontario securities law as described in the Ontario Cease Trade Order;

AND WHEREAS the Applicant has applied to the Commission pursuant to section 144 of the Act for a full revocation of the Ontario Cease Trade Order;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated on September 4, 1986 pursuant to the *Company Act* (British Columbia) under the name American Girl Resources Inc. The Applicant changed its name to T.K.O. Resources Inc. on March 28, 1991; and subsequently changed its name to Canadian Imperial Venture Corp. on June 1, 1999. On November 29, 2011, the Applicant amalgamated with each of 0926357 B.C. Ltd. and 0926362 B.C. Ltd., whereby Canadian Imperial Venture Corp. was the surviving amalgamated company.

2. The Applicant's head office is located at Suite 205, 233 Duckworth Street, St. John's, Newfoundland A1C 1G8.

3. The Applicant is a reporting issuer under the securities legislation of the provinces of British Columbia, Alberta and Ontario and is not a reporting issuer or the equivalent in any other jurisdiction in Canada. The Applicant's principal regulator is the British Columbia Securities Commission (**BCSC**).

4. The Applicant has 62,596,238 common shares issued and outstanding; which are listed for trading on the NEX board of the TSX Venture Exchange, but which have been suspended from trading since May 15, 2015.

5. The Applicant is not in default of the Ontario Cease Trade Order.

6. The Ontario Cease Trade Order was issued as a result of the Applicant's failure to file, within the timeframe stipulated by the applicable legislation, its interim financial statements, as well as the corresponding management's discussion and analysis (**MD&A**) and certifications of such interim filings as required by National Instrument 52-109 – *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) for the six-month period ended May 31, 2015 (collectively, the **Required Filings**).

7. The Applicant failed to file the Required Filings due to the Applicant having insufficient funds to pay for the completion of such documents.

8. Subsequent to the issuance of the Ontario Cease Trade Order, the Applicant also failed to file the following continuous disclosure documents within the timeframe stipulated by the applicable securities legislation:

   a) interim financial statements for the nine-month period ended August 31, 2015;

   b) audited annual financial statements for the year ended November 30, 2015;

   c) interim financial statements for the three-month period ended February 29, 2016;

   d) interim financial statements for the six-month period ended May 31, 2016;

   e) interim financial statements for the nine-month period ended August 31, 2016; and

f) related MD&A and NI 52-109 certificates for the forgoing financial statements,

(collectively, and together with the Required Filings, the **Outstanding Filings**).

9. On November 9, 2016, the Applicant filed the Outstanding Filings on the System for Electronic document Analysis and Retrieval (**SEDAR**).

10. The Applicant is also subject to a cease trade order dated August 5, 2015 issued by the BCSC (the **B.C. Cease Trade Order**) as a result of the failure to file the Required Filings.

11. The Applicant has also applied to the BCSC for a full revocation of the B.C. Cease Trade Order.

12. The Applicant has paid all outstanding activity, participation and late filing fees that are required to be paid and has filed all forms associated with such payments.

13. Other than the Ontario Cease Trade Order, the Applicant is not in default of any requirements under Ontario securities law.

14. Since the issuance of the Ontario Cease Trade Order, there have not been any material changes in the business, operations or affairs of the Applicant that have not been disclosed via news release and/or material change report and filed on SEDAR.

15. The Applicant is not considering nor is it involved in any discussions related to, a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

16. The Applicant's profiles on SEDAR and the System for Electronic Disclosure by Insiders (**SEDI**) are current and accurate.

17. Upon issuance of this revocation order, the Applicant will issue a news release announcing the revocation of the Ontario Cease Trade Order, and will concurrently file such news release on SEDAR.

AND UPON considering the application and the recommendation of the staff of the Commission;

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Ontario Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Ontario Cease Trade Order is revoked.

DATED at Toronto this 4th day of January, 2017.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Canadian Imperial Venture Corp.	12 October 2015	24 October 2015	24 October 2015	04 January 2017

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Alliance Growers Corp	05 January 2017	
EA Education Group Inc.	05 January 2017	
Intelligent Content Enterprises Inc.	09 January 2017	
Magor Corporation	06 January 2017	
Millstream Mines Ltd.	05 January 2017	
Namaste Technologies Inc.	05 January 2017	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
AlarmForce Industries Inc.	19 September 2016	30 September 2016	30 September 2016		
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		
Starrex International Ltd.	30 December 2015	11 January 2016	11 January 2016		

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Avanco Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated January 6, 2017
NP 11-202 Preliminary Receipt dated January 9, 2017
Offering Price and Description:
$400,000.00 - 4,000,000 Common Shares
Price: $0.10 Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Joanne Yan
Project #2572108

Issuer Name:
Blue Nordic Partners Inc.
Type and Date:
Preliminary Long Form Prospectus dated December 30, 2016
(Preliminary) Receipted on January 3, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2570796

Issuer Name:
Horizons Auspice Managed Futures Index ETF
Horizons Gold Yield ETF
Horizons Natural Gas Yield ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated February 22, 2016
Received on January 9, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
AlphaPro Management Inc.
Project #2437188

Issuer Name:
Uranium Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary MJDS Prospectus dated January 5, 2017
NP 11-202 Preliminary Receipt dated January 6, 2017
Offering Price and Description:
$100,000,000.00.00 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2571895

Issuer Name:
Avnel Gold Mining Limited
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 29, 2016 to Final Shelf Prospectus dated October 7, 2016
NP 11-202 Receipt dated January 5, 2017
Offering Price and Description:
$325,000,000.00 - Debt Securities (unsecured), Ordinary Shares, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2506443

Issuer Name:
BMO Asian Growth and Income Class
BMO Balanced ETF Portfolio Class
BMO Canadian Equity Class
BMO Dividend Class
BMO Equity Growth ETF Portfolio Class
BMO Global Dividend Class
BMO Global Energy Class
BMO Global Equity Class
BMO Global Low Volatility ETF Class (formerly, BMO Global Tactical ETF Class)
BMO Greater China Class
BMO Growth ETF Portfolio Class
BMO Income ETF Portfolio Class
BMO International Value Class
BMO SelectClass Balanced Portfolio
BMO SelectClass Equity Growth Portfolio
BMO SelectClass Growth Portfolio
BMO SelectClass Income Portfolio
BMO Short-Term Income Class
BMO U.S. Equity Class
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated December 23, 2016 to Final Simplified Prospectus dated April 19, 2016
NP 11-202 Receipt dated January 3, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
BMO Investments Inc.
BMO Investments Inc.
Guardian Group of Funds Ltd.
Promoter(s):
BMO Investments Inc.
BMO Global Tax Advantage Funds Inc.
Project #2453803

Issuer Name:
Canadian Banc Corp.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 4, 2017
NP 11-202 Receipt dated January 4, 2017
Offering Price and Description:
$4,073,781
393,602 Preferred Shares
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Promoter(s):
-
Project #2568853

Issuer Name:
Fairfax India Holdings Corporation
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 4, 2017
NP 11-202 Receipt dated January 5, 2017
Offering Price and Description:
US$150,000,500.00 - 12,766,000 Subordinate Voting Shares at a price of US$11.75 per Offered Share
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Cormark Securities Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Promoter(s):
-
Project #2566259

Issuer Name:
Fidelity American Balanced Currency Neutral Fund
Fidelity American Balanced Fund
Fidelity American Disciplined Equity Currency Neutral Fund
Fidelity American Disciplined Equity Fund
Fidelity American Equity Fund
Fidelity American High Yield Currency Neutral Fund
Fidelity American High Yield Fund
Fidelity AsiaStar Fund
Fidelity Balanced Portfolio
Fidelity Canadian Asset Allocation Fund
Fidelity Canadian Balanced Fund
Fidelity Canadian Bond Fund
Fidelity Canadian Disciplined Equity Fund
Fidelity Canadian Focused Equity Investment Trust
Fidelity Canadian Growth Company Fund
Fidelity Canadian Large Cap Fund
Fidelity Canadian Money Market Fund
Fidelity Canadian Opportunities Fund
Fidelity Canadian Short Term Bond Fund
Fidelity China Fund
Fidelity ClearPath 2005 Portfolio
Fidelity ClearPath 2010 Portfolio
Fidelity ClearPath 2015 Portfolio
Fidelity ClearPath 2020 Portfolio
Fidelity ClearPath 2025 Portfolio
Fidelity ClearPath 2030 Portfolio
Fidelity ClearPath 2035 Portfolio
Fidelity ClearPath 2040 Portfolio
Fidelity ClearPath 2045 Portfolio
Fidelity ClearPath 2050 Portfolio
Fidelity ClearPath 2055 Portfolio
Fidelity ClearPath Income Portfolio
Fidelity Conservative Income Fund
Fidelity Corporate Bond Fund
Fidelity Dividend Fund
Fidelity Dividend Investment Trust
Fidelity Dividend Plus Fund (formerly Fidelity Income Trust Fund)
Fidelity Emerging Markets Fund
Fidelity Europe Fund
Fidelity Event Driven Opportunities Fund
Fidelity Far East Fund
Fidelity Floating Rate High Income Currency Neutral Fund
Fidelity Floating Rate High Income Fund
Fidelity Frontier Emerging Markets Fund (formerly Fidelity Latin America Fund)
Fidelity Global Asset Allocation Fund
Fidelity Global Balanced Portfolio
Fidelity Global Bond Currency Neutral Fund
Fidelity Global Bond Fund
Fidelity Global Concentrated Equity Fund (formerly Fidelity Global Opportunities Fund)
Fidelity Global Consumer Industries Fund
Fidelity Global Disciplined Equity Currency Neutral Fund
Fidelity Global Disciplined Equity Fund
Fidelity Global Dividend Fund
Fidelity Global Dividend Investment Trust
Fidelity Global Financial Services Fund
Fidelity Global Fund
Fidelity Global Growth Portfolio
Fidelity Global Health Care Fund
Fidelity Global Income Portfolio
Fidelity Global Intrinsic Value Investment Trust
Fidelity Global Large Cap Fund
Fidelity Global Monthly Income Currency Neutral Fund
Fidelity Global Monthly Income Fund
Fidelity Global Natural Resources Fund
Fidelity Global Real Estate Fund
Fidelity Global Small Cap Fund
Fidelity Global Technology Fund
Fidelity Global Telecommunications Fund
Fidelity Greater Canada Fund
Fidelity Growth Portfolio
Fidelity Income Allocation Fund
Fidelity Income Portfolio
Fidelity International Concentrated Equity Fund (formerly Fidelity International Value Fund)
Fidelity International Disciplined Equity Currency Neutral Fund
Fidelity International Disciplined Equity Fund
Fidelity International Growth Fund (formerly Fidelity Overseas Fund)
Fidelity Japan Fund
Fidelity Monthly Income Fund
Fidelity Balanced Managed Risk Portfolio
Fidelity Conservative Managed Risk Portfolio
Fidelity North American Equity Investment Trust
Fidelity NorthStar Balanced Currency Neutral Fund
Fidelity NorthStar Balanced Fund
Fidelity NorthStar Fund
Fidelity Small Cap America Fund
Fidelity Special Situations Fund
Fidelity Strategic Income Currency Neutral Fund
Fidelity Strategic Income Fund
Fidelity Tactical Fixed Income Fund
Fidelity Tactical High Income Currency Neutral Fund
Fidelity Tactical High Income Fund
Fidelity Tactical Strategies Fund
Fidelity True North Fund
Fidelity U.S. All Cap Fund
Fidelity U.S. Dividend Currency Neutral Fund
Fidelity U.S. Dividend Fund
Fidelity U.S. Dividend Investment Trust
Fidelity U.S. Dividend Registered Fund
Fidelity U.S. Focused Stock Fund (formerly Fidelity Growth America Fund)
Fidelity U.S. Money Market Fund
Fidelity U.S. Monthly Income Currency Neutral Fund
Fidelity U.S. Monthly Income Fund
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated December 20, 2016 to Final Simplified Prospectus dated October 28, 2016
NP 11-202 Receipt dated January 4, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canadaz ULC
Fidelity Investments Canada Limited
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #2535350

Issuer Name:
Fidelity American Equity Class
Fidelity American Equity Currency Neutral Class
Fidelity Canadian Large Cap Class
Fidelity Corporate Bond Class
Fidelity Global Concentrated Equity Class
Fidelity Global Intrinsic Value Currency Neutral Class
Fidelity Global Technology Class
Fidelity International Growth Class
Fidelity Japan Class
Fidelity Monthly Income Class
Fidelity North American Equity Class
Fidelity Small Cap America Class
Fidelity Special Situations Class
Principal Regulator - Ontario
Type and Date:
Amendment #5 dated December 20, 2016 to Final Simplified Prospectus dated March 28, 2016
NP 11-202 Receipt dated January 4, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
FIDELITY INVESTMENTS CANADA ULC
Project #2446109

Issuer Name:
Fidelity Canadian Short Term Fixed Income Investment Trust
Fidelity Insights Class
Fidelity Insights Currency Neutral Class
Fidelity Insights Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 3, 2017
NP 11-202 Receipt dated January 4, 2017
Offering Price and Description:
Series A, B, T5, T8, S5, S8, F, F5, F8, E1, E1T5, P1 and P1T5 shares; and Series O units @ net asset value
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #2549749

Issuer Name:
Fiera Capital International Equity Fund
Principal Regulator - Quebec
Type and Date:
Final Simplified Prospectus dated January 3, 2017
NP 11-202 Receipt dated January 5, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Fiera Capital Corporation
Project #2544390

Issuer Name:
Greystone Canadian Equity Income & Growth Fund
Morningstar Strategic Canadian Equity Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 16, 2016 to Final Simplified Prospectus dated September 14, 2016
NP 11-202 Receipt dated January 5, 2017
Offering Price and Description:
Series A securities, Series F securities, Series K securities, Series M securities, and Series I securities @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brandes Investment Partners & Co.
Project #2517821

Issuer Name:
Manulife Global Dividend Growth Class (formerly Standard Life Global Dividend Growth Class)
Manulife Global Dividend Growth Fund (formerly Standard Life Global Dividend Growth Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 23, 2016 to Final Simplified Prospectus dated August 2, 2016
NP 11-202 Receipt dated January 3, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Manulife Asset Management Investments Inc.
Manulife Asset Management Investments Inc.
Manulife AssetManagement Investments Inc.
Promoter(s):
Manulife Asset Management Limited
Project #2496519

Issuer Name:
Orbite Technologies Inc.
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated January 6, 2017
NP 11-202 Receipt dated January 6, 2017
Offering Price and Description:
$60,000,000.00 - Class A Shares (Common Shares), Debt Securities, Convertible Securities, Warrants, Rights, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2569616

Issuer Name:
PowerShares 1-3 Year Laddered Floating Rate Note Index ETF
PowerShares 1-5 Year Laddered Investment Grade Corporate Bond Index ETF
PowerShares Canadian Dividend Index ETF
PowerShares Canadian Preferred Share Index ETF
PowerShares DWA Global Momentum Index ETF
PowerShares FTSE RAFI Canadian Fundamental Index ETF
PowerShares FTSE RAFI Canadian Small-Mid Fundamental Index ETF
PowerShares FTSE RAFI Global+ Fundamental Index ETF
PowerShares FTSE RAFI U.S. Fundamental (CAD Hedged) Index ETF
PowerShares FTSE RAFI U.S. Fundamental Index ETF
PowerShares Fundamental High Yield Corporate Bond (CAD Hedged) Index ETF
PowerShares LadderRite U.S. 0-5 Year Corporate Bond Index ETF
PowerShares QQQ (CAD Hedged) Index ETF
PowerShares S&P 500 Low Volatility (CAD Hedged) Index ETF
PowerShares S&P Emerging Markets Low Volatility Index ETF
PowerShares S&P International Developed Low Volatility Index ETF
PowerShares S&P/TSX Composite Low Volatility Index ETF
PowerShares Senior Loan (CAD Hedged) Index ETF
PowerShares Ultra Liquid Long Term Government Bond Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated December 16, 2016 to Final Long Form Prospectus dated March 3, 2016
NP 11-202 Receipt dated January 6, 2017
Offering Price and Description:
CAD Hedged Units, CAD Units and USD Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Invesco Canada Ltd.
Project #2437898

Issuer Name:
Tidewater Midstream and Infrastructure Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated January 4, 2017
NP 11-202 Receipt dated January 4, 2017
Offering Price and Description:
$60,000,720.00 - 38,462,000 Common Shares, Price: $1.56 per Common Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
MacQuarie Capital Markets Canada Ltd.
Beacon Securities Limited
Cormark Securities Inc.
Acumen Capital Finance Partners Limited
GMP Securities L.P.
Scotia Capital Inc.
Altacorp Capital Inc.
Desjardins Securities Inc.
Paradigm Capital Inc.
Canaccord Genuity Corp.
Industrial Alliance Securities Inc.
Promoter(s):
Joel A. MacLeod
Tobias (Toby) J. McKenna
Project #2567569

Issuer Name:
WisdomTree International Quality Dividend Growth Index ETF
WisdomTree U.S. Quality Dividend Growth Dynamic Hedged Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 4, 2017 to Final Long Form Prospectus dated July 6, 2016
NP 11-202 Receipt dated January 9, 2017
Offering Price and Description:
Dynamic Hedge Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
WisdomTree Asset Management Canada, Inc.
Project #2472242, 2489463

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Suspension (Non-Renewal of Registration Pending Surrender)	Di Tomasso Group Incorporated	Commodity Trading Manager	January 1, 2017
Suspension (Non-Renewal of Registration Pending Surrender)	Full Cycle Energy Investment Management Limited	Commodity Trading Manager	January 1, 2017
Suspension (Non-Renewal of Registration Pending Surrender)	Van Eck Absolute Return Advisers Corporation	Commodity Trading Manager	January 1, 2017
Suspension (Non-Renewal of Registration Pending Surrender)	HR Strategies Inc.	Commodity Trading Manager	January 1, 2017
Suspension (Non-Renewal of Registration Pending Surrender)	HRS Liquid Strategies LP	Commodity Trading Manager	January 1, 2017
Suspension (Non-Renewal of Registration Pending Surrender)	RP Investment Advisors	Commodity Trading Manager	January 1, 2017
Voluntary Surrender	AQR Capital Management, LLC	Exempt Market Dealer	January 3, 2017
New Registration	AQR Capital Management (Canada), LLC	Exempt Market Dealer	January 3, 2017
New Registration	Deetken Asset Management Inc.	Exempt Market Dealer, and Investment Fund Manager	January 3, 2017
New Registration	CMLS Asset Management Ltd.	Exempt Market Dealer, Restricted Portfolio Manager and Investment Fund Manager	January 3, 2017
Consent to suspension (pending surrender)	FIAM LLC	Portfolio Manager	January 3, 2017
Suspension (Non-Renewal of Registration Pending Surrender)	FIAM LLC	Commodity Trading Manager	January 1, 2017
New Registration	XIB Asset Management Inc.	Portfolio Manager, Exempt Market Dealer, and Investment Fund Manager	January 5, 2017
New Registration	Fundscraper Capital Inc.	Exempt Market Dealer	January 5, 2017
New Registration	Palos Wealth Management Inc.	Portfolio Manager	January 6, 2017

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Sevenoaks Capital Inc.	Portfolio Manager, Exempt Market Dealer, and Investment Fund Manager	January 6, 2017
Name Change	From: Brookfield Soundvest Capital Management Ltd. To: Soundvest Capital Management Ltd.	Portfolio Manager, Exempt Market Dealer, and Investment Fund Manager	December 31, 2016

Chapter 25

Other Information

25.1 Approvals

25.1.1 Algonquin Capital Corporation – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – Application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L. 25, as am., clause 213(3)(b).

December 23, 2016

AUM Law Professional Corporation
175 Bloor St E., Suite 303, South Tower
Toronto, Ontario M4W 3R8

Attention: Christopher Tooley

Dear Sirs/Mesdames:

Re: Algonquin Capital Corporation (the "Applicant")

Application pursuant to clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario) for Approval to act as trustee

Application No. 2016/0665

Further to your application dated November 21, 2016 (the **Application**) filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that assets of Algonquin Trust (the **Original Fund**) and any other mutual fund trusts that the Applicant may establish and manage from time to time (together with the Original Fund, the **Funds**), will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II, or III of the *Bank Act* (Canada), or a qualified affiliate of such bank or trust company, the Ontario Securities Commission (the **Commission**) makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of the Original Fund and any other future mutual fund trusts which may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Anne Marie Ryan"
Commissioner

"Janet Leiper"
Commissioner

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