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October 19, 2009

Delivered by E-Mail

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

Attention:
John Stevenson, Secretary
Ontario Securities Commission
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E-mail: jstevenson@osc.gov.on.ca

M[e] Anne-Marie Beaudoin, Corporate Secretary
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E-mail: consultation-en-cours@lautorite.gc.ca

Dear Mr. Stevenson and Ms. Beaudoin:

Re: Proposed Amendments to National Instrument 81-101, Forms 81-101F1 and F2, Companion Policy 81-101CP and related amendments ("Point of Sale Framework")

This is the third comment letter provided by Brandes on the Framework and subsequent documents released by the CSA. While this comment letter will address some of the specific questions raised by the CSA in their request for comments, Brandes remains extremely concerned that many of the key problems with the Point of Sale initiative as pointed out by Brandes and others have not been satisfactorily addressed by the CSA.

At the macro level, the proposals on the table currently do not address the real concern over product/regulatory arbitrage. In the course of many meetings with various securities commissions across the country, there is acknowledgement that product/regulatory arbitrage is a concern. However, despite the acknowledgement, the CSA continues to press on with carrying out onerous rules that apply specifically to mutual funds and segregated funds and not other similar competing products. Brandes is a relatively small player in the Canadian mutual fund space and is truly concerned that mutual funds will be disadvantaged by the regulatory initiative.

In our previous comment letters we have pointed out how we believe that the implications of the proposals will be to lower the operational efficiency of mutual fund processing in Canada. This will further fuel the product arbitrage concern and will increase costs to investors. The recent comment letter issued by the Investment Funds Institute of Canada (IFIC) goes into some detail on the complexity of the proposals. The CSA has an obligation to ensure that the costs incurred as a result of its regulatory efforts are justified relative to the harm that it seeks to avoid. To date no meaningful cost benefit analysis has been undertaken.

Having reviewed the materials provided by the CSA, we believe that you have not taken into account the significant impact of complying with the various components of the Framework and the amount of client confusion that could be caused by it.

When we look back at the recent history of mutual fund disclosure requirements we are very concerned that an investor will be confused by the creation of yet another “simplified document” which must be delivered to them. When National Instrument 81-101 was first published, the Simplified Prospectus contained a specific, separate Part B for each fund, containing much if not all of the information that is now to make up the Fund Facts Document. With the advent of National Instrument 81-106, much of this content was pulled out into a new disclosure document called the Management Report of Fund Performance (“MRFP”). The currently proposed Fund Facts Sheet will now require the creation of another document, individually by class of fund, providing some but not all of the information contained in both the Part B document and the MRFP for the fund. In order to ensure that the investor gets all of the information available for the fund, they will need to read all three of these documents, in addition to the Part A for the fund, the Annual Information Form, and annual and interim financial statements. When you add in complex rules about what types of trades need to get this information, at what stage during the sales process, and what time periods the information is designed to cover, we believe that investors cannot help but be confused and overwhelmed by the process.

Lastly, Brandes shares the concern of many of our industry colleagues that the proposal, perhaps unintentionally, calls into question the merits/benefits of professional financial advice. We remain perplexed that the CSA intends to mandate an unprecedented level of disclosure and delivery requirements if a Canadian investor uses a trusted financial advisor whereas a Canadian investor who goes it alone is not required to receive this disclosure. Again we see this as fundamentally unfair since there is no evidence to suggest that, in aggregate, financial advisors are doing a poor job. On the contrary, the average mutual fund investor (most use advisors) did better during the recent market turmoil than the underlying markets themselves. Study after study show that Canadians value advice and like to work with a trusted advisor. As you know, there are extensive regulatory practices in place to govern the advisor/client relationship including know your client and product suitability regulations. Given all of this, and the level of satisfaction Canadian investors have with their advisors, why does the CSA feel it is necessary to single out mutual funds sold through the advice channels?

We also have some comments on specific items outlined in the Framework:

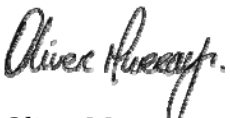
1. Complexity/confusion/compliance requirements – In order to address concerns regarding the requirement to deliver the Fund Facts document to investors prior to the initial purchase of a fund, the Framework has proposed several carve-outs based on the type of fund and whether an advisor is recommending the purchase or not. Current systems used in the industry do not have the ability to track such information and the introduction of such a complex method of determining whether a document needs to be delivered will result in enormous difficulty in obtaining and proving compliance with the Framework. This is further complicated by the requirement that the Fund Facts document be "brought to the attention of" investors, which diverges greatly from the current standard of "delivery" and will pose huge challenges in developing appropriate standards for tracking and proving compliance with the requirement.

2. Information Timing - In order to minimize the potential for investor confusion and to assist with the stated regulatory goals of simplicity and comparability, we believe that the requirements relating to the Fund Facts document should, as far as possible, be harmonized with the numerous other continuous disclosure documents that are currently produced by the industry. Allowing for discretionary timing of filing updates or failing to harmonize the time frames mandated for particular data elements would make it difficult for investors to know that they are comparing apples to apples and make it difficult for them to know that they are looking at the most up-to-date information.

3. Transition Periods – We believe that it is premature to comment on whether the proposed transition period is sufficient for the implementation of all of the requirements of the Framework, as many of the elements (i.e. systems) that would be needed in order to achieve compliance do not exist today and significant work will need to be done to assess the feasibility of developing such systems.

In closing, we would like to thank you for the opportunity to provide our comments on the Point of Sale Framework. We fully support and endorse the comments contained in the IFIC letters of August 26, 2009 and October 14, 2009. We sincerely hope that the real concerns over product/regulatory arbitrage and the cost of these proposals will be carefully considered by you and your colleagues. We know that this initiative has been on the desk of the regulators for a long time and that there is understandable fatigue on the part of many. However, you have a responsibility to bring forward the best regulations possible while creating a fair and competitive marketplace. Therefore, we urge you to take a pause and to once again look at this initiative in its entirety. You should only move forward if it produces the best regulation possible.

Yours truly,



Oliver Murray
President & CEO