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VIA EMAIL

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Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Ontario Securities Commission
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
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Re: CSA and CCIR Joint Notice and Request for Comment – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and to Companion Policy 31-103CP and Proposed CCIR Individual Variable Insurance Contract Ongoing Disclosure Guidance Total Cost Reporting for Investment Funds and Segregated Funds (the "Proposals")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "**CAC**") appreciates the opportunity to provide the following comments on the Proposals.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment

As CFA Charterholders, we support rules that foster clear, transparent and comparable disclosure to investors about the costs of investing. We applaud the CCIR for its proposed framework with respect to individual variable insurance contracts. In our view, this framework will represent a significant step forward for investors in those products. It will empower them to make informed decisions about the products in which they invest.

We also believe total cost reporting for securities products is long overdue. We recognize the need for a reasonable transition period after the Proposals are finalized, but we do not see a need for the kind of extended transition period called for by some stakeholders. In this regard, we note that total cost reporting has been on the regulatory agenda for almost 20 years,[2] and understand that significant technological and reporting innovation has been undertaken by registrants in service to the needs of their clients that exceed minimum regulatory standards.

Given the amount of time that has been spent considering this issue, we also expected to see more leadership from the CSA in the Proposals, and that the CSA would draw a far clearer connection between available evidence and the design of the cost reporting templates included by the CSA in the Proposals. The balance of this letter outlines key principles that, if followed, would better align the scope of the Proposals and the design of the CSA's disclosure templates with the reasonable expectations and needs of retail investors.

1. Scope of the CSA Proposals

In our view, the CSA's approach to cost reporting should be guided by the same principle that guides performance disclosure under the Global Investment Performance Standards (GIPS®): information should be calculated and presented "in a *fair* and *comparable* format that provides *full disclosure*".[3]

Below, we note several missed opportunities to foster comparability across disclosures and product types. We also highlight how presenting management fees and trading expenses as a single, combined metric obscures the differences between these costs, denies investors full disclosure about their costs of investing, is not adequately

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professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 180,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on LinkedIn and Twitter at @CFAInstitute.

[2] See *The Fair Dealing Model: Concept Paper of the Ontario Securities Commission* (January 2004) at pp. 72–73, www.osc.ca/sites/default/files/pdfs/irps/cp_33-901_20040129_fdm.pdf.

[3] CFA Institute, *Global Investment Performance Standards (GIPS®) Handbook*, 3rd ed (2012) at p. 2 (emphasis added). GIPS® is a registered trademark owned by CFA Institute.

supportive of enabling value-for-money analysis by investors, and impairs comparability across different investment funds.

(a) Cost Disclosures and Point-of-Sale Disclosures Should be Considered Together

Point-of-sale disclosures and ongoing disclosures such as cost and performance reports are used by the same investors, for the same goals: to assess what they are paying for their investments and related advice, what they are getting for those payments, and what they should do if they have questions or are not satisfied with what they are getting. Accordingly, these disclosures should not be designed in isolation. Designing these disclosures with reference to one another—for example, by taking care to employ common metrics and common design features—should leave investors in a better position to use these disclosures to understand the full story behind their investments' performance, costs, and other characteristics.

Given how long the current Fund Facts point-of-sale disclosures have been in circulation, this would have a more than appropriate time to review these disclosures for effectiveness and potential refinements. We note that in the lead-up to the publication of the Proposals, we pointed CSA staff to the European Union's Key Investor Information Document ("**KIID**") as a potential model for updated point-of-sale disclosures. KIID employs standardized metrics and disclosure design to help investors compare investment products. It presents clearly defined cost elements, including broken out transaction cost disclosure, as well as clear performance presentations made using plain language.

It is unfortunate that the CSA did not use this opportunity to undertake a long overdue review of its point-of-sale disclosures and ensure comparability across point-of-sale and ongoing disclosures. In light of the concerns raised in the Proposals about regulatory burden, we add that ensuring coherence and consistency among related disclosures should also reduce unnecessary regulatory burden.

(b) Cost Disclosures Should be More Prescriptive

Following the KIID model, as well as the CSA's own point-of-sale disclosures, we expected the CSA would be more prescriptive in setting cost disclosure requirements. More prescriptive disclosures would have allowed for greater comparability for investors, both between different cost disclosures and between cost and point-of-sale disclosures. It also would promote these disclosures' ease of use by addressing the risk that service providers will act on incentives to be less than clear in disclosing fees to clients.

(c) Cost Disclosures Should be Comparable Across Products

We note one obvious missed opportunity to ensure standardized cost reporting across different types of investment products. The Proposals only relate to cost disclosure for *direct* investments in covered investment products, even though it is just as likely that certain types of investors will gain exposure to the same products through a segregated managed account. As such, the Proposals will be of no help to an investor who wants to compare (i) the total fees payable for an investment in mutual fund units

held through a segregated account with (ii) the total fees payable for a direct subscription in units of the same mutual fund.

(d) Cost Measures Should be Decision-Useful

Investors should be able to use the cost measures presented to them to ask informed questions and make informed decisions about their investments. In our view, the decision reflected in the Proposals to combine the Trading Expense Ratio ("**TER**") and Management Expense Ratio ("**MER**") into one metric, with no breakdown of these ratios, does not achieve this objective.

MER is readily useful in comparing the costs of different investment funds. It reflects what funds have agreed to pay investment fund managers for the services these managers provide, and can include embedded fees paid back to providers of advice on fund classes with embedded commissions. TER is less useful in this regard, as it represents a cost of business for the investment fund rather than a source of revenue for the fund manager or advice provider, varies by investment strategy/asset class, and can vary over time depending on asset class volatility. In our view, disclosure should allow investors to use MER to compare the compensation to investment fund managers (and providers of advice through embedded commissions where applicable) in respect of different funds while also alerting them to the impact of TER as a cost of their investments. Neither expense measure should be presented in isolation, just as in our view they should not be conflated or combined without subtotalling in disclosure materials.

In our view, it would be more useful for investors' annual cost reports and account statements include a breakdown of the management fees and other costs reflected in MER and the trading expenses reflected in TER, with clear, separate explanations of what these each of these measures and their underlying expenses represent.

(e) Performance Reporting Should Support Comparability Between Funds

We were disappointed that the Proposals did not take the opportunity to examine investment funds' and dealers' initial/point-of-sale and ongoing performance presentation and reporting requirements to better enable 'Value For Money'[4] determinations by investors for their investments, when considered alongside improved expense/cost reporting. Specifically, we would (again) urge the CSA to consider requiring the inclusion and explanation of time-weighted rates of return ("**TWRR**") alongside the existing requirement for money-weighted rates of return ("**MWRR**") (including tested and prescribed disclosure on the differences between the two performance measures and the utility of each to investors) in the annual investment performance reporting requirements of Part 14 of NI 31-103. TWRR is a critical element in enabling the comparability of investment performance, free from the effects of the timing of investor decisions and related advice (as captured in MWRR), and the utility of

[4] See CFA Society United Kingdom, "Value For Money, A Framework for Assessment" (November 2018), https://www.cfauk.org/-/media/files/pdf/pdf/5-professionalism/3-research-and-position-papers/value-for-money--a-framework-for-assessment.pdf.

its presentation is enhanced when considered alongside comparable costs of various investment funds (and more broadly, investment choices).

2. Design of the CSA Templates

Disclosures intended for retail investors should be designed with care, making use of international best practices and empirical evidence showing that the disclosure is easy to use. The evidence relied on also should be made available to stakeholders, so that they can see how that evidence connects to the design choices made by regulators, and comment on whether they believe regulators got that connection right.

We are disappointed that the CSA templates presented in the Proposals do not meet this standard. Below, we suggest ways the CSA could quickly bring the templates up to this standard.

(a) International Best Practices Should be Considered

The United Kingdom and European Union adopted their own total cost reporting regime over four years ago.[5] We are surprised that the Proposals disclose no attempt by the CSA to learn from the experience of these jurisdictions. Discussion with these jurisdictions could have yielded insights into, for example, how technology could be used to provide more effective and interactive disclosure to retail investors, as well as methods of integrating accessibility principles into the design of these disclosures.[6]

(b) Behavioural Insights Research Should Factor into Disclosure Design

We also expected to see a stronger relationship between the CSA disclosure templates included in the Proposals and published behavioural insights research on fee disclosure.

The Proposals do not explain how the templates reflect the findings of the research published by the OSC in 2019 or the MFDA in 2021, and we see little resemblance between the templates in the Proposals and the top-performing templates tested in that research. What is more, a cursory look at the templates reveals multiple potential sources of investor confusion:

- A client might erroneously assume that the new percentage figures listed under "Fund Expenses" in the template Account Statement reflect percentages of the client's entire portfolio (like the percentage figures in the column immediately to the right). The MFDA study mitigated this risk in its disclosure templates by separating these figures.

[5] See UK Financial Conduct Authority, "MiFID II costs and charges disclosures review findings" (28 February 2019), www.fca.org.uk/publications/multi-firm-reviews/mifid-ii-costs-and-charges-disclosures-review-findings.

[6] We note that technology can foster "more information and better transparency" in disclosures, "improving investor understanding and confidence in markets". *Enhancing Investors' Trust: 2022 CFA Institute Investor Trust Survey*, at p. 9, trust.cfainstitute.org/wp-content/uploads/2022/04/Enhancing-Investors-Trust-Report_2022_Online.pdf.

- Footnote 1 in both templates opens by listing three categories of fund expenses ("management fee, operating expenses and trading costs") but later reduces these categories to two, reframing fund expenses as "the sum of the fund's management expense ratio (MER) and trading expense ratio (TER)". Apparently, it is assumed that clients will know that operating expenses count toward MER, as opposed to TER or some other unmentioned ratio. We add that figures for MER and TER appear nowhere in the templates. We discuss solutions above, in section 1(d).

- Rather than depicting embedded commissions as a cost of investing, the template Annual Charges and Compensation Report presents "Your Cost of Investing" and "Our Compensation" separately, leaving the client to piece together the different meanings of these concepts from footnote disclosure. It is unclear to us why the templates do not make use of the much more direct depictions of the relationship between embedded commissions and total costs of investing tested (with success) by the MFDA.

(c) Disclosures Should be Designed Based on Publicly Available Evidence

We are not prepared to give weight to the unpublished OSC research cited in the Proposals as being reflected in the templates, as OSC staff have refused to share this research with stakeholders. If the CSA has enough confidence in this research for it to form a basis for proposed rules, it should have enough confidence to share it with stakeholders.

We note that this appears to be the first time that the OSC has proposed rules in reliance on a significant unpublished study and refused to share information about the findings of that study with stakeholders.[7] This is an unwelcome precedent. The statutory requirement to disclose reliance on unpublished studies was imposed when the OSC was granted rulemaking authority.[8] Its aim was to ensure stakeholders could gain access to the information they need to participate meaningfully in the rulemaking process.[9]

We acknowledge that in rare cases it may not be possible to fully translate study findings into publishable form at the time rule proposals are published. This was the case for proposed amendments to NI 24-101 – Institutional Trade Matching, published in 2009,

[7] We are aware of three previous instances in which rules have been proposed in reliance on unpublished studies. In each case, the OSC or CSA either published key information about these studies' findings or made this information available to stakeholders on request. See Proposed OSC Rule and Policy – Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions (1996); Proposed MI NT 33-107 – Proficiency Requirements for Registrants Holding Themselves Out as Providing Financial Planning Advice (1999); Proposed Amendments to NI 24-101 – Institutional Trade Matching and Settlement and Companion Policy 24-101CP – Institutional Trade Matching and Settlement (2009).

[8] See *Securities Amendment Act, 1994* (Ontario).

[9] See *Responsibility and Responsiveness – Final Report of the Ontario Task Force on Securities Regulation* (1994), 17 OSC Bulletin 3208 at p. 3258.

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which relied on a review of institutional trade matching data across Canadian equity and debt markets. However, these proposed amendments included extensive discussion of staff's preliminary findings from this review, and promised that full findings would be published in the near future—a promise staff delivered on.[10] We see no reason why the CSA could not at least have followed this approach with respect to the (we expect, far less complex) study referred to in the Proposals.

Accordingly, and given the long history of engagement and openness on the part of OSC and other CSA staff in their dealings with us on a range of other policy issues, we are surprised by the lack of transparency we have observed with respect to the Proposals.

Concluding Remarks

We support the CCIR's efforts to enhance cost disclosure in the insurance sector. We also believe that total cost reporting in the securities sector is long overdue. But we had expected the CSA to do more to ensure the disclosures retail investors would receive under the Proposals are easy to understand and act on. Given the importance of this issue for investor protection, and the resulting need to move swiftly with adoption and implementation, we hope the CSA corrects course sooner rather than later.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of CFA Societies Canada*

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[10] See Proposed Amendments to NI 24-101 – Institutional Trade Matching and Settlement and Companion Policy 24-101CP – Institutional Trade Matching and Settlement (2009); CSA Staff Report on Industry Compliance with NI 24-101 (2010).