



INVESTMENT INDUSTRY ASSOCIATION OF CANADA  
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

## **IIAC Update on Framework 81-406 Point of sale disclosure for mutual funds and segregated funds**

On October 24, 2008 the Joint Forum of Market Regulators released its final paper, “Framework 81-406; Point of sale disclosure for mutual funds and segregated funds” (the Final Framework). The Joint Forum reviewed comments from stakeholders on the June 2007 proposed framework as well as follow-up consultations with investors, representatives from the mutual fund and insurance industries and service providers.

The Joint Forum has turned the Final Framework over to the Canadian Council of Insurance Regulators (CCIR) and the Canadian Securities Administrators (CSA) who have issued a request for comments to stakeholders to inform them on issues related to implementation of the Final Framework and its principles in advance of publishing proposed changes to existing securities laws for first comment. The CSA will consider these comments, prepare and publish the proposed changes and then follow with their usual rule-making process to seek input from, and work collaboratively with, all stakeholders. The comment period expires on December 23, 2008.

The Joint Forum stated that it will continue to adhere to three main principles:

- 1) providing investors with key information about a fund;
- 2) providing the information in a simple, accessible and comparable format; and
- 3) providing the information before investors make their decision to buy.

The Joint Forum indicated that revisions were made to three main areas of the Final Framework; specifically, the delivery options, the cooling-off right and the content of the Fund Facts document relating to costs and adviser compensation.

### **DELIVERY**

1) **Time of Delivery** - The delivery options have been revised to recognize the differences between trades recommended by the advisor and trades initiated by the investor. There also has been recognition of differences relating to initial and subsequent purchases.

#### **Recommended by Adviser for Initial Purchase**

There is a continuation of the requirement to deliver the Fund Facts prior to or at the point of sale and the adviser must bring the document to the attention of the investor.

#### **Recommended Money Market Fund – Initial or Subsequent Purchase**

The Joint Forum has recognized that often people purchase money market funds in order to park money during the RRSP season. Investors can waive receipt of Fund Facts as long as the adviser makes the investor aware of its availability. The Investor has the option to receive it at or before point of sale or with the trade confirmation.

### Investor Initiated Purchase

Investors can waive receipt of the Fund Facts. This waiver must be meaningful. The investor has the option to receive the Fund Facts at or before point of sale or with their trade confirmation.

### Discount Brokerage or Execution-Only Account Initial Purchase

The requirement to deliver a Fund Facts will not apply to discount brokerage firms. The investor will receive the Fund Facts with the trade confirm.

### All Subsequent Purchases

There will be no requirement to deliver a Fund Facts for subsequent purchases of the same fund. Investors will have the option to receive the Fund Facts for all the funds they hold on an annual basis. Fund Facts must be continuously available to investors on the websites of fund managers and insurers and by request in print without charge.

2) **Method of Delivery** – Advisers have a wide range of delivery option before or at the point of sale including: in person, by mail, by fax and electronically.

#### Electronic Delivery

Electronic delivery, as before, can include sending directly to the investor an e-mail with an electronic copy of the Fund Facts. However, there is now an option for electronic delivery of a link to the Fund Facts or directing the investor to the relevant Fund Facts on the fund manager's or insurer's website. Simply making the document available on the website or stating generally that it is available on the website without specifically directing the investor the relevant Fund Facts will not satisfy the delivery requirement.

### **COOLING-OFF RIGHT**

The trigger for the cooling-off right will occur at the receipt of the trade confirmation and not when the investor makes a decision to purchase a fund. This provides more clarity and certainty. Investors have two business days after receiving the trade confirmation to cancel a purchase in writing.

The investors will be refunded the lesser of: (i) the amount they invested and (ii) the value of the fund on the day they exercised the cooling-off right, plus any fees or charges associated with the purchase.

### **FUND FACTS CONTENT**

The Joint Forum stated that they attempted to balance the degree of prescription with flexibility to ensure that the content of the Fund Facts is relevant and clear.

There have been some changes to the content of the Fund Facts, specifically to improve the clarity of information and amending the cost and compensation information. For example, the addition of the series to the fund name will help investors distinguish between different series they may be considering. Also, the Joint Forum has added the minimum initial and additional investments to the Quick Facts. A statement about the effect of tax on returns has been added to the performance section.

With respect to costs, the Joint Forum has removed the adviser compensation section to only show compensation paid at the firm level. The information as previously proposed was misleading to clients as it left the impression that a client or in some cases, an individual adviser, has a say in the cost to buy a fund with respect to sales charges. Such decisions are determined at the dealer level. This also addresses our point that for order execution-only accounts, the investor does not have an adviser.

The sales charge table has been revised for clarity. For example, the previous table did not include sales charge options such as low load or no-load. A new section on ongoing fund expenses (trailing commissions) has been included.

## **UNCHANGED PROVISIONS FROM PREVIOUS FRAMEWORK**

### **Proving Receipt of Fund Facts**

Dealers will not be required to have the investor acknowledge receipt of the Fund Facts. Dealers may impose their own requirements as part of their compliance policies and procedures for delivery obligations. Written acknowledgment from investors confirming their receipt of Fund Facts is not expected.

### **Current Delivery Requirements**

The existing delivery requirements will be amended to allow dealers to meet their delivery obligation for the simplified prospectus by delivering only the Fund Facts. Dealers will have to deliver the simplified prospectus to investors only on request.

### **Investor Rights - Misrepresentation**

The Fund Facts will be incorporated by reference into the simplified prospectus. This means that under existing securities legislation any misrepresentation in the Fund Facts will result in the investor having a statutory right to take action against the mutual fund for rescission or damages.

### **Investor Rights - Failure to Deliver**

A right of action for failure to deliver the simplified prospectus currently exists under securities legislation. Investors continue to have this right if the Fund Facts is not delivered when required.

## **NEXT STEPS**

The Final Framework has been turned over to the CCIR and CSA to begin making the necessary changes to their regulatory rules and legislation.

The CSA will seek input from and will work with the industry to identify and resolve implementation issues and formulate necessary changes.

The Joint Forum expects that there will be a transition period to allow sufficient time for the industry to produce and file Fund Facts. The transition period will also give the industry sufficient time to develop procedures to meet their delivery obligations under the new regime.

The IIAC is in the process of reviewing the Framework and will be providing a comment letter to the CSA.