

HEDGE FUNDS & STRUCTURED PRODUCTS BULLETIN

June 2007

“FUND FACTS” – NEW PROPOSED POINT OF SALE DOCUMENT FOR MUTUAL FUNDS AND SEGREGATED FUNDS

The Joint Forum of Financial Market Regulators (an umbrella group comprising the provincial and territorial securities, insurance and pension regulators) recently released Proposed Framework 81-406 - Point of Sale Disclosure for Mutual Funds and Segregated Funds. If adopted, this much anticipated proposal would mandate the delivery of a new plain-language document entitled “Fund Facts” to investors in conventional mutual funds and segregated funds before any investment in a fund is made. The Proposal would only apply to mutual funds offered under the simplified prospectus regime. The following is a brief description of the Proposal as it relates to such mutual funds.

Fund Manager Impact - Form and Content of the Fund Facts

Under the Proposal, the Joint Forum suggests that the current mutual fund disclosure regime is too complicated for most investors who cannot find the information they require in the simplified prospectus and annual information form. Moreover, investors may not receive such documents before a purchase decision is made. The purpose of the Fund Facts is to provide investors with key information about a fund in a simple, accessible format, prior to making their investment decision.

The Fund Facts is envisioned as a two-page document, containing basic, mandatory information about a fund. The first page will include items such as a fund’s total value, portfolio manager, MER, list of investments, performance information, and a statement of the fund’s risk level. The second page of the Fund Facts would contain information about costs, adviser compensation and an investor’s right to cancel the purchase (described in more detail below). A mock up of the proposed disclosure sheet can be found on the Joint Forum’s website at www.jointforum.ca. The format of the document will be mandated (including items and their order and minimum font size), and is intended to be written at a grade level of 5.0, as measured by the Flesch-Kincaid grade level score (which analyzes and rates text based on the average number of syllables per word and words per sentence).

The Fund Facts would be incorporated by reference into the fund’s simplified prospectus, providing investors with a statutory right for any misrepresentation in the document. The Fund Facts would need to be filed annually for receipt by the regulators, amended if there was a material change to the information, and updated at the time of filing a fund’s annual and interim continuous disclosure documents.

Dealer Impact - Delivery Requirements

The Proposal recognizes the important role played by advisers in the mutual fund sales process and presumes that they will use the document with their clients. Dealers, through their licensed salespeople, would be required to deliver the Fund Facts for all initial purchases, subsequent purchases (except under pre-authorized payment plans), and switches (except under asset allocation services). Under the Proposal, investors would not be able to waive receipt of the Fund Facts and it would not be sufficient to provide oral delivery of the Fund Facts over the telephone, nor to simply post them on a fund’s or dealer’s website, as it must actually be delivered to prospective investors. The required delivery method will depend on whether the document is delivered at the point of sale, or earlier. Delivery of the Fund Facts would satisfy a dealer’s obligation under applicable securities laws to deliver the simplified prospectus, which would only need to be sent out upon request.

Investor Impact - "Cooling Off Rights"

The Proposal would simplify an investor's right to cancel the purchase of mutual fund securities. This new "cooling-off" period would run for two days, starting with when the investor provides instructions to buy securities of the fund, and would be exercised by providing written notice to a dealer. If exercised, an investor would receive an amount equal to the lesser of: (i) the original investment; and (ii) the value of the fund on the date the right is exercised. An investor would also be refunded any sales charges or other fees paid to invest in the fund, and no redemption fees would be payable. If for any reason the Fund Facts were not delivered to the purchaser before or at the point of sale, an investor would be entitled to cancel his or her purchase at any time.

We expect the mutual fund and segregated fund industries to watch developments closely, especially with respect to the time and method of delivery of the Fund Facts. Comments may be submitted to the Joint Forum until October 15, 2007.

Written by Kimberly J. Poster and Mark Pratt

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

© Copyright 2007 McMillan Binch Mendelsohn LLP

For more information about the new proposals, please contact your McMillan Binch Mendelsohn lawyer or one of the lawyers in our structured products practice listed below:

H. Stewart Ash	416.865.7165	stewart.ash@mcmbm.com
Michael A. Burns	416.865.7261	michael.burns@mcmbm.com
Michael Friedman	416.865.7914	michael.friedman@mcmbm.com
Barbara Hendrickson	416.865.7903	barabara.hendrickson@mcmbm.com
Margaret C. McNee	416.865.7284	margaret.mcnee@mcmbm.com
Shahen A. Mirakian	416.865.7238	shahen.mirakian@mcmbm.com
Kimberly J. Poster	416.865.7890	kimberly.poster@mcmbm.com
Mark Pratt	416.865.7141	mark.pratt@mcmbm.com
Cindy Wan	416.865.7190	cindy.wan@mcmbm.com
David Wentzell	416.865.7036	david.wentzell@mcmbm.com