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**RE: Request for Comment: Report on Charges and Compensation – Consultation Regarding Cost Reporting for Investment Funds**

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FAIR Canada is pleased to offer comments on the Mutual Fund Dealers Association (“MFDA”) Bulletin #0671-P dated December 18, 2015 Report on Charges and Compensation – Consultation Regarding Cost Reporting for Investment Funds (the “Consultation”). This Consultation solicits feedback on expanding requirements under MFDA Rule 5.3.3 to include those costs that are not paid through dealer members (such as management fees, fund operating costs, redemption fees and short term trading fees) so that investors can know the total costs of managing their money.

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit [www.faircanada.ca](http://www.faircanada.ca) for more information.

## 1. Executive Summary

- 1.1. FAIR Canada has consistently supported uniform cost disclosure and performance reporting requirements for all registrants, whether regulated by the MFDA, the Investment Industry Regulatory Organization of Canada (“IIROC”) or directly by a member of the Canadian Securities Administrators (“CSA”) so that investors can answer two basic questions about their investments: (1) What did I pay?; and (2) How did my investments perform? Research has shown that investors often do not know the answers to these two fundamental questions.<sup>1</sup>
- 1.2. Under CRM2 investors will be provided with statements that disclose the charges they have incurred related to their account and the securities transactions in their account along with disclosure of the compensation that has been received by their dealer, including the dollar amount of trailing commissions.
- 1.3. FAIR Canada sees value in improving disclosure for investors and appreciates that it may be beneficial for consumers if disclosure is expanded beyond CRM2’s requirements so that investors know the total costs of managing their investments (including costs charged by the investment fund manager rather than those that are received by the dealer such as

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<sup>1</sup> See CSA Notice (2012) 35 OSCB 5430.

management fees and fund operating costs that are associated with mutual funds). FAIR Canada believes, however, that the impetus for disclosure should always be driven by what is in the investor's best interest.

- 1.4. Any expansion of CRM2 must ensure: (i) that the expansion is not used as an excuse to delay disclosure of information required by the existing CRM2 rules, since there is a significant cost to investors if this information is withheld from them and they are left in the dark; (ii) that the expanded disclosure is tested with investors (and this testing is made public) to ensure it is meaningful, comprehensible and in their best interest; and (iii) that all registrants be subject to the same requirements so that investors can meaningfully compare the reports they may receive from various firms, regardless of which regulator oversees them.

## 2. General Comments

- 2.1. The impetus for improving disclosure should always be driven by what is in the investor's best interest. FAIR Canada is supportive of initiatives that seek to continuously review disclosure to ensure that investors are presented with meaningful and comprehensible disclosure that is in their best interest. FAIR Canada has consistently supported CRM2 so that investors are provided with performance reporting and information on charges and compensation.
- 2.2. FAIR Canada wishes to remind the MFDA that the CSA's amendments to NI 31-101 which led CRM2 began in 2011.<sup>2</sup> The purpose of CRM2 was "to ensure that clients of all dealers and advisers (registrants) receive clear and complete disclosure of all charges associated with the products and services they receive, and meaningful reporting on how their accounts perform."<sup>3</sup> While subsequent amendments have been made, the purpose of the amendments has continued to be aimed at ensuring charges and other compensation are disclosed to investors.<sup>4</sup>
- 2.3. The MFDA's members and related industry groups have reviewed and provided commentary during each step of the CSA's amendment process. FAIR Canada has reviewed these comment letters and notes numerous instances where these parties have argued that the proposed cost disclosure requirements are too onerous and are duplicative of information included in Fund Facts. However, FAIR Canada has not found any comments suggesting that: (i) other costs, such as management, fees, operating costs, redemption fees or short term trading fees be disclosed as part of the revised cost disclosure; or (ii) cost disclosure should mean the total cost paid by investors.<sup>5</sup> **FAIR Canada therefore questions why these matters are being raised by the MFDA's members now.**

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<sup>2</sup> Notice and Request for Comment on Proposed Amendments to NI 31-103 and 31-103CP: Cost Disclosure and Performance Reporting (June 22, 2011) available online at: [http://www.osc.gov.on.ca/documents/en/Securities-Category3/ni\\_20110622\\_31-103\\_rfc-pro-amd.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3/ni_20110622_31-103_rfc-pro-amd.pdf)

<sup>3</sup> *Ibid.*

<sup>4</sup> Notice and Request for Comment on Proposed Amendments to NI 31-103 and CP 31-103CP (Cost Disclosure, Performance Reporting and Client Statements) (June 14, 2012), available online at: [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_rule\\_20120614\\_31-103\\_proposed-amendments.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_rule_20120614_31-103_proposed-amendments.htm) and Notice of Amendments to NI 31-103 and CP 31-103 (Cost Disclosure, Performance Reporting and Client Statements) (March 28, 2013) available online at: [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_csa\\_20130328\\_31-103\\_notice-amendments.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20130328_31-103_notice-amendments.htm)

<sup>5</sup> We have reviewed the comments received by the OSC in response to their Notice of Amendment to NI 31-103 and CP 303CP (Cost Disclosure, Performance Reporting and Client Statements), available online at: [http://www.osc.gov.on.ca/en/SecuritiesLaw\\_31-103.htm](http://www.osc.gov.on.ca/en/SecuritiesLaw_31-103.htm)

- 2.4. FAIR Canada is concerned that MFDA members may be putting forward new questions and positions about cost disclosure at this time in an effort to further delay the implementation of CRM2.<sup>6</sup> We note that CRM2 already has been subjected to requests to delay its implementation.<sup>7</sup>
- 2.5. Even if the Consultation ultimately leads to new cost-disclosure requirements, it should not delay the implementation of CRM2. CRM2 already has taken considerable time to finalize and implement. Moreover, according to commentary from the industry itself, significant resources have been spent on technology in order to comply with the currently-formulated CRM2 disclosure requirements and timetable. But most importantly, the information that CRM2 currently is designed to disclose is vitally important to retail investors, and they need to receive it right now.<sup>8</sup> **Therefore, regardless of what comes from the Consultation, FAIR Canada believes it is imperative that the MFDA ensure CRM2, as it is currently set out in the final rules, is implemented without delay.**
- 2.6. While disclosure of total costs of managing a client's investments (both dealer and fund manager or otherwise) could be helpful to investors, FAIR Canada is strongly of the view that such additional disclosure should be considered after the existing cost-reporting requirements of CRM2 are implemented given the eleventh hour in which this proposal is being raised. We note that it is not clear whether investors' understanding of costs (including how much they have paid for their financial advisor's services) would be lessened or improved through adding these other costs to the existing cost disclosure requirements. This is a vitally important question to know before making any such changes. Therefore, potential expanded disclosure needs to be tested with investors (and this testing is made public) to ensure it is meaningful, comprehensible and in their best interest. Moreover, until the cost-reporting requirements, as currently contemplated under CRM2, are implemented we will not know what impact the

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<sup>6</sup> The CRM2 initiative began with the CSA's proposed amendments to NI 31-101 on June 22, 2011. The proposed amendments were further revised and released for comment on June 14, 2012. Final amendments were published on March 28, 2013. The amendments introduced requirements in the areas of client statements, charges and compensation disclosure which came into force on July 15, 2013. The CRM2 requirements were secluded to take effect on July 15, 2015, however, the investment industry lobbied to have them delayed until the end of 2015. The implementation deadline for cost reporting is July 2016.

<sup>7</sup> The Investment Industry Association of Canada attempted to delay the implementation of CRM2 requirements in 2015. FAIR Canada wrote to the CSA to prevent implementation delays, available online at [https://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/20150119\\_31-103\\_grossn.pdf](https://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/20150119_31-103_grossn.pdf) and the CSA provided its response on January 28, 2015, available online at [http://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/com\\_20150128\\_31-103\\_riceb.pdf](http://www.osc.gov.on.ca/documents/en/Securities-Category3-Comments/com_20150128_31-103_riceb.pdf)

<sup>8</sup> It is critical that CRM2 be implemented without delay so as to ensure that cost and performance disclosure gets into the hands of investors so that investors can have the answer to two key questions they need to know: (1) How did my investments perform? and (2) How much did it cost me? Given the asymmetry of information and resources between financial intermediaries and retail investors, a responsibility must be placed on financial intermediaries to promote the financial awareness of their clients by providing clear, complete and meaningful cost disclosure and account performance reporting. FAIR Canada reminds the MFDA that this obligation is contained in the G20's High-Level Principles on Financial Consumer Protection, endorsed by Canada's Finance Minister. We fully support the commitment that regulators have made to the provision of this crucial financial information to financial consumers. Financial intermediaries (i.e., investment dealers) have a responsibility to ensure that the cost disclosure and performance reports are produced for investors in a manner that is clear and comprehensible, and it should be delivered to investors within the existing timelines. There is a significant cost to investors if this information remains withheld from them and they are left in the dark. See FAIR Canada's letter to the CSA dated January 19, 2015 regarding delays to implementing CRM2, available online at: <http://faircanada.ca/wp-content/uploads/2011/01/150119-Final-Letter-to-CSA-Chair-CSA-Commission-Chairs-re-Response-to-IIAC-Request-to-Delay-CRM2.pdf>

existing disclosure requirements will have on investors.

- 2.7. In addition, any future changes to disclosure should be required of all registrants so that investors can meaningfully compare the reports they may receive from various firms, regardless of which regulator oversees them.

### 3. Further Reforms Beyond CRM2 Needed to Adequately Protect Consumers

- 3.1. **Finally FAIR Canada is strongly of the view that, while disclosure is necessary, it is not sufficient to ensure adequate protection of investors. Other reforms are urgently needed in order to ensure investors are protected. Such reforms include the banning of embedded third party commissions and other forms of conflicted remuneration and the implementation of a statutory best interest standard.** Such reforms would improve investor outcomes, improve effective competition for the benefit of the investing public, and simplify the required disclosure as trailing commissions would cease to exist. We urge regulators in Canada to move forward with these needed reforms to address the issues that are cited in the consultations and that we have outlined in our recent submissions<sup>9</sup>. For example, with respect to the issue of trailing commissions in mutual funds, Professor Cumming and his team have issued their report, “A Dissection of Mutual Fund Fees, Flows and Performance”<sup>10</sup> and have issued a FAQ<sup>11</sup>, and the CSA has indicated it will communicate a policy direction by the first half of 2016<sup>12</sup>. We look forward to contributing to the policy-making process in the interests of better investor outcomes.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408/neil.gross@faircanada.ca or Marian Passmore at 416-214-3441/marian.passmore@faircanada.ca.

Sincerely,



Canadian Foundation for Advancement of Investor Rights

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<sup>9</sup> See FAIR Canada’s submission on reform of mutual fund fees at <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-Mutual-Fund-Fees.pdf> and our submission on implemented a statutory best interest standard on dealers and advisers at: <http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-Submission-re-CP33-403-Statutory-Best-Interest-Duty.pdf>.

<sup>10</sup> Cumming, Johan and Zhang, “A Dissection of Mutual Fund Fees, Flows and Performance”, (February 8, 2016), available online at: [https://www.securitiesadministrators.ca/uploadedFiles/General/pdfs/Dissection%20Fund%20Fees%20Flows\\_Feb%208%2016\\_en.pdf](https://www.securitiesadministrators.ca/uploadedFiles/General/pdfs/Dissection%20Fund%20Fees%20Flows_Feb%208%2016_en.pdf)

<sup>11</sup> CSA Frequently Asked Questions about the Dissection of Mutual Fund Fees, Flows and Performance Report, (2016), available online at: [https://www.osc.gov.on.ca/documents/en/Securities-Category8/rp\\_20160209\\_81-407\\_faq-dissection-mutual-fund-fees.pdf](https://www.osc.gov.on.ca/documents/en/Securities-Category8/rp_20160209_81-407_faq-dissection-mutual-fund-fees.pdf).

<sup>12</sup> Securities Regulators Publish Mutual Fund Fees Research, (October 22, 2015) available online at: <https://www.securities-administrators.ca/aboutcsa.aspx?id=1386>.