investment in the fund on the basis that the payment is not coming directly from the investor and therefore no "commission is being charged in respect of the trade".

The same situation applies in the case of funds that describe themselves (or are described) as being "no load funds" despite the fact that the managers of these funds pay commissions in the form of trailing commissions to intermediaries on an ongoing basis with respect to the investment in question.[146]

In these circumstances, it is no wonder that consumer/investors have no idea of the cost of investing or of the impact that this cost has on their total return because no information is given to them about the cost of investing.[147]

Recommendations Relating to Confirmation/Point of Sale Disclosure

Although it has not been customary to regard them as such, confirmation statements are truly a "point-of-sale" disclosure document. It is here that the cost of investing needs to be highlighted.

It is my recommendation that priority should be given to updating the disclosure requirements for confirmation statements and to making these confirmation statements an integral part of the disclosure system.

The intermediary's compensation in all its dimensions[148] needs to be clearly disclosed together with the impact of this compensation on the investor's total return over a period of years. In addition, all charges that may be payable by the investor need to be clearly disclosed.[149] This is essential information for consumer/investors to have to assist them in making effective investment decisions.

The practice in the last eleven years or so (which has been based on a literal interpretation of disclosure requirements that were designed with a different compensation structure in mind) has resulted in the industry's compensation structure becoming less than transparent. This situation should no longer be allowed to prevail over the interests of consumer/investors in knowing what it is costing them, directly and indirectly, to invest.

The confirmation statement/point-of-sale disclosure document[150] should also include other key information such as:

[146] I am not aware of any regulator having focused on or having taken issue with the industry's interpretation of the statutory requirements for confirmation statements.

[147] Many investors think that they are not paying any sales commissions or charges. One industry participant with whom I talked told me that there are "financial planners" going into high schools and telling the students that there are no fees or sales charges for investment funds. Several firms that sell mutual funds on a waived or zero front-end sales commission basis leave the impression in their advertisements that because there are no immediate sales commissions payable by the investor there is no cost to the investor notwithstanding the substantial sales commissions that are payable by the manager of the fund to the intermediaries in the form of trailing commissions relating to the investment.

[148] This would include wrap fees, transaction fees and account maintenance fees as well as sales commissions paid by the investor or by the manager and trailing commissions.

[149] This would include early redemption fees, deferred sales commissions or charges, administration fees charged on sales transactions or withdrawals, and termination fees.

[150] Some intermediaries currently use variations of a point-of-sale disclosure form. Joe Killoran, a consumer advocate, for several years has urged the adoption of a mutual fund checklist for consumers. He urges consumers "[not to] buy or be sold

- whether the investment fund is a proprietary fund or a third party fund;
- whether the investment is insured by the CDIC;
- whether the investment is covered by customer protection funds such as CIPF, CompCorp or other such funds;
- the period during which withdrawal rights may be exercised;
- the period during which an action may be brought for damages based on misrepresentation in the prospectus;
- the manner in which redemption instructions may be given (e.g. in writing, by fax or by phone or by e-mail) and the time by which such instructions must be received for same day processing;
- the importance of retaining the confirmation statement for the investor's records.

The suggestions in this subsection 17.8 apply to all forms of investment funds with the necessary modifications to reflect the different types of investment funds. They also apply to wrap accounts of whatever nature and kind.

17.9. Consumer/Investor Checklist

A useful tool for consumer/investors would be to develop a consumer/investor checklist based on the suggestions made in subsection 17.8 of this Review for confirmation statements/point of sale disclosure documents plus some additional information, such as management expenses, the fund category and the relevant benchmark(s) for the fund category. This checklist would be a companion piece to the generic educational and information document referred to in subsection 17.7 of this Review. It would be designed to be used by consumer/investors as a type of self-help worksheet as opposed to being a form required to be provided by an intermediary.

This checklist would be used to highlight the implications of the information given. For example, it would highlight that there are some "buyer beware" considerations to take into account when a proprietary fund or an intermediary's wrap program is recommended. These considerations include:

(i) whether there are internal requirements that sales representatives have a certain proportion of clients' assets invested in these funds or programs; and

(ii) whether it will make a difference to the amount of future income on retirement that the sales representative will receive.

Requirements of this nature raise the question of whether the advice given to the consumer/investor is the best advice for the consumer/investor or the best advice for the sales representative whose immediate and deferred compensation may be affected by the amount of assets under administration that are invested in such funds or programs.

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a mutual fund without it!" His checklist includes many of the items suggested in subsections 17.8 and 17.9 of this Review for inclusion in a confirmation/point-of-sale disclosure form and in a consumer/investor checklist.

There is also the question of whether it will be more difficult, take longer and/or be more costly for consumer/investors to withdraw their assets if they wish to transfer their accounts to other intermediaries.

17.10. Account Statements

Another key dimension to disclosure is the account statement. Again, it has not been customary to view account statements as being part of the disclosure system. However, they are an essential part of it. Account statements provide an important opportunity to give investors the information that will answer their most basic question which in this context is “just tell me how am I doing”.

Consumer/investors should be able to use their account statements both to check the accuracy of the recorded transactions and to monitor whether their portfolio allocation is appropriate to what their goals are. In this respect, there is a need to develop some measures that will help consumer/investors understand how they are doing. The information provided by these measures will help them to evaluate how their investment objectives are being met and whether modifications are needed.

Performance information by itself is insufficient for this purpose. This is particularly so when performance information is given at the fund level and without any analysis of the risk that the fund is exposed to in order to achieve its results.

All too often the information that is necessary to enable consumer/investors to monitor how they are doing against their plans and whether their portfolio allocation is appropriate for what their goals are is missing from account statements. In addition, many investors find their account statements difficult to read.

Intermediaries are increasingly recognizing the need to make account statements more readily understandable and some are trying to make them more useful for their clients. These efforts should be encouraged. In addition, the voluntary efforts should be supported by minimum regulatory requirements.

The present requirements for account statements[151] are primarily transaction-oriented rather than advisory-oriented. They do not reflect the shift by intermediaries from a transaction-based relationship with their clients (with the advice being ancillary) to an advisory-based relationship with their clients (with the transactions being ancillary). They do not reflect the substantial bundling of services that is occurring through wrap accounts, pooling and asset allocation services, and fund-of-fund arrangements.

In particular, the exemption that is provided in the present securities legislation requirements for account statements that allows mutual fund dealers to send account statements only once a year needs to be reviewed. Several industry participants have commented on the inadequacy of this provision from the perspective of the consumer/investor.

The subject of account statements, what should be in them, how frequently they should be sent and who should send them is a complex one. This is an area where substantially more work needs to be done.[152]

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[151] See for example Section 123 of the Regulation made under the Securities Act (Ontario).

[152] One industry participant described the issue of account statements as being a critical issue. This person described account statements as being a crucial tool to enable self-reliant people to be responsible for their own affairs and as being