

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2021-27
(Section 149.1, The Securities Act)

AMENDMENTS TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS*
REQUIREMENTS

1. *National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.*
2. *Part 3C is amended by adding the following sections:*

3C.2.2 Delivery of ETF facts documents for subsequent purchases under a pre-authorized purchase plan or a portfolio rebalancing plan

(1) In this section:

“portfolio rebalancing plan” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“pre-authorized purchase plan” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

(2) Despite subsection 3C.2(2), a dealer is not required to deliver or send to the purchaser the most recently filed ETF facts document for the applicable class or series of securities of the ETF in connection with a purchase of a security of an ETF made pursuant to a pre-authorized purchase plan or a portfolio rebalancing plan if all of the following apply:

(a) the purchase is not the first purchase under the plan;

(b) the dealer has provided a notice to the purchaser that states

(i) that the purchaser will not receive an ETF facts document after the date of the notice, unless the purchaser specifically requests the document,

(ii) that the purchaser is entitled to receive upon request, at no cost to the purchaser, the most recently filed ETF facts document by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address,

(iii) how to access the ETF facts document electronically,

(iv) that the purchaser will not have a right of withdrawal under securities legislation for subsequent purchases of a security of an ETF under the plan, but will continue to have a right of action if there is a misrepresentation in the prospectus or any document incorporated by reference into the prospectus, and

(v) that the purchaser may terminate the plan at any time;

(c) at least annually during the term of the plan, the dealer notifies the purchaser in writing of how the purchaser can request the most recently filed ETF facts document;

(d) the dealer delivers or sends the most recently filed ETF facts document to the purchaser if the purchaser requests the document.

3C.2.3 Delivery of ETF facts documents for managed accounts and permitted clients

(1) In this section:

“managed account” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“permitted client” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

(2) Despite subsection 3C.2(2), a dealer is not required to deliver or send to the purchaser the most recently filed ETF facts document for the applicable class or series of securities of the ETF in connection with the purchase of a security of the ETF if either of the following apply:

- (a) the purchase is made in a managed account;
- (b) the purchaser is a permitted client that is not an individual.

3C.2.4 Delivery of ETF facts documents for automatic switch programs

(1) In this section:

“automatic switch” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“automatic switch program” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

(2) Despite subsection 3C.2(2), a dealer is not required to deliver or send to the purchaser the most recently filed ETF facts document for the applicable class or series of securities of the ETF in connection with the purchase of a security of the ETF made as an automatic switch pursuant to an automatic switch program if all of the following apply:

- (a) the purchase is not the first purchase under the automatic switch program;
- (b) the dealer has provided a notice to the purchaser that states
 - (i) that the purchaser will not receive an ETF facts document after the date of the notice, unless the purchaser specifically requests the document,
 - (ii) that the purchaser is entitled to receive upon request, at no cost to the purchaser, the most recently filed ETF facts document by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address,
 - (iii) how to access the ETF facts document electronically, and
 - (iv) that the purchaser will not have a right of withdrawal under securities legislation for subsequent purchases of a security of an ETF under the automatic purchase program, but will continue to have a right of action if there is a misrepresentation in the prospectus or any document incorporated by reference into the prospectus;

(c) at least annually, the dealer notifies the purchaser in writing of how the purchaser can request the most recently filed ETF facts document;

(d) the dealer delivers or sends the most recently filed ETF facts document to the purchaser if the purchaser requests the document;

(e) with respect to the first purchase under the automatic switch program, the ETF facts document delivered or sent to the purchaser included the ETF facts automatic switch program information as defined in Appendix F..

3. *Subsection 3C.3(1) is amended by replacing “3C.2” with “3C.2, 3C.2.2 or 3C.2.4”.*

4. *The following appendix is added:*

APPENDIX F

ETF Facts Automatic Switch Program Information for Section 3C.2.4

For the purposes of paragraph 3C.2.4(2)(e), “ETF facts automatic switch program information” means a completed Form 41-101F4 *Information Required in an ETF Facts Document* modified as follows:

(a) the heading under item 1(d) of Part I includes the name of each class or series of securities of the ETF in the automatic switch program;

(b) the brief introduction to the ETF facts document under item 1(h) of Part I includes the name of each class or series of securities of the ETF in the automatic switch program;

(c) item 2(1) of Part I includes, for each class or series of securities of the ETF in the automatic switch program, the date the securities of the class or series first became available to the public;

(d) item 2(1) of Part I includes the management expense ratio of only the class or series of securities of the ETF in the automatic switch program with the highest management fee;

(e) the “Quick Facts” table referred to in item 2(1) of Part 1 includes a footnote that states all of the following:

(i) that the ETF facts document pertains to all of the classes or series of securities of the ETF in the automatic switch program;

(ii) that further details about the automatic switch program are disclosed in the “How much does it cost?” section of the ETF facts document;

(iii) that further details, about the minimum investment amount applicable to each of the classes or series of securities of the ETF in the automatic switch program, are disclosed in the fee decrease table under the sub-heading “ETF expenses” of the ETF facts document ;

(iv) that the management expense ratio of each of the classes or series of securities of the ETF in the automatic switch program is disclosed in the “ETF expenses” section of the ETF facts document;

(f) item 2(2) of Part I includes the ticker symbols of each of class or series of securities of the ETF in the automatic switch program;

(g) item 2(2) of Part I includes the average daily volume of only the class or series of securities of the ETF in the automatic switch program with the highest management fee;

(h) item 2(2) of Part I includes the number of days traded of only the class or series of securities of the ETF in the automatic switch program with the highest management fee;

(i) item 2(3) of Part I includes the market price of only the class or series of securities of the ETF in the automatic switch program with the highest management fee;

(j) item 2(3) of Part I includes the net asset value of only the class or series of securities of the ETF in the automatic switch program with the highest management fee;

(k) item 2(3) of Part I includes the average bid-ask spread of only the class or series of securities of the ETF in the automatic switch program with the highest management fee;

(l) item 5(1) of Part I includes all of the following as part of the introduction:

(i) under the heading “How has the ETF performed?”, the name of only the class or series of securities of the ETF with the highest management fees;

(ii) a statement explaining that the performance for each of the classes or series of securities of the ETF in the automatic switch program will be similar to the performance of the class or series of securities of the ETF with the highest management fee, but will vary as a result of the difference in fees, as set out in the fee decrease table under the sub-heading “ETF expenses”;

(m) item 5(3), (4) and (5) of Part I, under the sub-headings “Year-by-year returns,” “Best and worst 3-month returns,” and “Average return”, includes the required performance data relating only to the class or series of securities of the ETF with the highest management fee;

(n) item 1(1.1) of Part II includes all of the following:

(i) under the heading “How much does it cost?”, in the introductory statement, the name of each class or series of securities of the ETF in the automatic switch program;

(ii) as a part of the introductory statement, a summary of the automatic switch program that includes all of the following:

(A) an explanation that the automatic switch program offers separate classes or series of securities of the ETF that charge progressively lower management fees;

(B) an explanation of the scenarios in which the automatic switches will be made, including, for greater certainty, the scenario in which automatic switches will be made due to the purchaser no longer meeting the minimum investment amount for a particular class or series of securities of the ETF;

(C) a statement that a purchaser will not pay higher management fees as a result of the automatic switches than those charged to the class or series of securities of the ETF with the highest management fee;

(D) a statement that information about the progressively lower management fees for the classes or series of securities of the ETF in the automatic switch program is available in the fee decrease table under the sub-heading “ETF expenses” of the ETF facts document;

(E) a statement that further details about the automatic switch program are disclosed in specific sections of the prospectus of the ETF;

(F) a statement that purchasers should speak to their representative for more information about the automatic switch program;

(o) if the ETF is not newly established, item 1(1.3)(2) of Part II includes all of the following:

(i) the management expense ratio and ETF expenses of each of the classes or series of securities of the ETF in the automatic switch program or, if certain expense information is not available for a particular class or series of securities, the words “not available” in the corresponding part of the table;

(ii) a row in the “Annual rate” table

(A) in which the first column states “For every \$1,000 invested, this equals:”, and

(B) that discloses the respective equivalent dollar amounts of the ETF expenses of each class or series of securities of the ETF in the automatic switch program included in the table for every \$1,000 invested;

(p) item 1(1.3)(2) of Part II includes, at the end of the disclosure under the sub-heading “ETF expenses”, all of the following:

(i) a table that includes

(A) the name of, and minimum investment amounts associated with, each class or series of securities of the ETF in the automatic switch program, and

(B) the combined management and administration fee decrease of each class or series of securities of the ETF in the automatic switch program from the management fee of the class or series of securities of the ETF with the highest management fee, disclosed as a percentage;

(ii) an introduction to the table referred to in subparagraph (i) stating that the table sets out the combined management and administration fee decrease of each class or series of securities the ETF in the automatic switch program from the management fee of the class or series of securities of the ETF with the highest management fee;

(q) if all the classes or series of securities of the ETF in the automatic switch program are not newly established, item 1(1.3)(3) of Part II includes all of the following:

(i) a statement that the class or series of securities of the ETF with the highest management fee has the highest management fee among all of the classes or series of securities of the ETF in the automatic switch program;

(ii) a statement above the “Annual rate” table required under item 1(1.3)(2) of Part II stating “As of [the date of the most recently filed management report of fund performance], the ETF expenses were as follows.”;

(r) if some of the classes or series of securities of the ETF in the automatic switch program are newly established, item 1(1.3)(3) of Part II includes all of the following:

- (i) a statement that the class or series of securities of the ETF with the highest management fee has the highest management fee among all of the classes or series of securities of the ETF in the automatic switch program;
 - (ii) a statement disclosing that the ETF expenses information is not available for certain classes or series of securities of the ETF in the automatic switch program because they are new;
 - (iii) a statement above the “Annual rate” table required under item 1(1.3)(2) of Part II stating “As of [the date of the most recently filed management report of fund performance], the ETF expenses were as follows:”;
- (s) if the ETF is newly established, item 1(1.3)(4) of Part II includes all of the following:
- (i) a statement that the class or series of securities of the ETF with the highest management fee has the highest management fee among all of the classes or series of securities of the ETF in the automatic switch program;
 - (ii) the rate of the management fee of only the class or series of securities of the ETF with the highest management fee;
 - (iii) a statement that the operating expenses and trading costs are not yet available because the ETF is new.
5. *Subsection (11) of the General Instructions of Form 41-101F4 Information Required in an ETF Facts Document is replaced with the following:*
- (11) *Unless the exception in section 3C.2.4 of National Instrument 41-101 General Prospectus Requirements applies, an ETF facts document must disclose information about only one class or series of securities of an ETF. ETFs that have more than one class or series that are referable to the same portfolio of assets must prepare a separate ETF facts document for each class or series..*

Expiration of exemptions and waivers

6.(1) Any exemption from or waiver of a provision of National Instrument 41-101 *General Prospectus Requirements* in relation to ETF facts document delivery requirements in section 3C.2(2) for ETFs in a pre-authorized purchase plan, portfolio rebalancing plan or an automatic switch program expires on January 5, 2022.

6.(2) In British Columbia, subsection (1) does not apply.

Transition for pre-authorized purchase plans, portfolio rebalancing plans and automatic switch programs

7.(1) In this section,

“**automatic switch**” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“**automatic switch program**” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“**portfolio rebalancing plan**” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“pre-authorized purchase plan” has the same meaning as in section 1.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

7.(2) For the purposes of section 3C.2.2 and 3C.2.4 of National Instrument 41-101 *General Prospectus Requirements*, as enacted by section 2 of this Instrument, the first purchase of a security of an ETF made pursuant to a pre-authorized purchase plan, portfolio rebalancing plan or an automatic switch program on or after January 5, 2022 is considered to be the first purchase under the plan or program, as applicable.

7.(3) Subsection (1) does not apply to a pre-authorized purchase plan, portfolio rebalancing plan or an automatic switch program established before January 5, 2022 if a notice providing information substantially similar to the notice referred to in paragraph 3C.2.2(2)(c) or 3C.2.4(2)(c) of National Instrument 41-101 *General Prospectus Requirements*, as enacted by section 2 of this Instrument, was delivered or sent to the purchaser between January 5, 2021 and January 5, 2022.

Effective Date

8.(1) This Instrument comes into force on January 5, 2022.

8.(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after January 5, 2022, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

8.(3) This Instrument may be cited as MSC Rule 2021-27.