

**THE MANITOBA SECURITIES COMMISSION**  
**MSC RULE 2007-21**  
(Section 149.1, *The Securities Act*)

**AMENDMENT INSTRUMENT FOR**  
**NATIONAL INSTRUMENT 81-101**  
***MUTUAL FUND PROSPECTUS DISCLOSURE***

1. *This Instrument amends National Instrument 81-101 Mutual Fund Prospectus Disclosure.*

2. *Section 1.1 is amended*

(a) *by adding the following definition before "commodity pool":*

""**business day**" means any day other than a Saturday, a Sunday or a statutory holiday;"

(b) *by adding the following definition before "financial year":*

""**executive officer**" means, for a mutual fund, a manager of a mutual fund or a promoter of a mutual fund, an individual who is

(a) a chair, vice-chair or president,

(b) a vice-president in charge of a principal business unit, division or function including sales, finance or product development, or

(c) performing a policy-making function;" **and**

(c) *by adding the following definition before "plain language":*

""**Personal Information Form and Authorization**" means the Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements*;"

3. *Section 2.1 is amended*

(a) *by striking out "and" at the end of paragraph 2.1(c);*

(b) *by striking out "form." at the end of subparagraph 2.1(d)(ii) and substituting "form; and"; and*

(c) *by adding the following paragraph 2.1(e) after paragraph 2.1(d):*

"(e) must not file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus that relates to the prospectus.".

4. *The following sections 2.2.1, 2.2.2, and 2.2.3 are added after section 2.2:*

**"Amendment to a preliminary simplified prospectus**

**2.2.1(1)** Except in Ontario, if, after a receipt for a preliminary simplified prospectus is issued but before a receipt for the simplified prospectus is issued, a material adverse change occurs, an amendment to the preliminary simplified prospectus must be filed as soon as practicable, but in any event within 10 days after the change occurs.

[**Note:** In Ontario, subsection 57(1) of the *Securities Act* (Ontario) imposes a similar requirement to file an amendment to a preliminary prospectus.]<sup>1</sup>

**2.2.1(2)** The regulator must issue a receipt for an amendment to a preliminary simplified prospectus as soon as practicable after the amendment is filed.

### **Delivery of amendments**

**2.2.2** Except in Ontario, a mutual fund must deliver an amendment to a preliminary simplified prospectus as soon as practicable to each recipient of the preliminary simplified prospectus according to the record of recipients required to be maintained under securities legislation.

[**Note:** In Ontario, subsection 57(3) of the *Securities Act* (Ontario) imposes similar requirements regarding the delivery of amendments to a preliminary prospectus.]

### **Amendment to a simplified prospectus**

**2.2.3(1)** Except in Ontario, if, after a receipt for a simplified prospectus is issued but before the completion of the distribution under the simplified prospectus, a material change occurs, a mutual fund must file an amendment to the simplified prospectus as soon as practicable, but in any event within 10 days after the day the change occurs.

[**Note:** In Ontario, subsection 57(1) of the *Securities Act* (Ontario) imposes a similar obligation to file an amendment to a final prospectus where there has been a material change.]

**2.2.3(2)** Except in Ontario, if, after a receipt for a simplified prospectus or an amendment to a simplified prospectus is issued but before the completion of the distribution under the simplified prospectus or the amendment to the simplified prospectus, securities in addition to the securities previously disclosed in the simplified prospectus or the amendment to the simplified prospectus are to be distributed, an amendment to the simplified prospectus disclosing the additional securities must be filed, as soon as practicable, but in any event within 10 days after the decision to increase the number of securities offered.

[**Note:** In Ontario, subsection 57(2) of the *Securities Act* (Ontario) imposes a similar requirement to file an amendment to a prospectus any time there is a proposed distribution of securities in addition to that disclosed under the prospectus.]

**2.2.3(3)** Except in Ontario, the regulator must issue a receipt for an amendment to a simplified prospectus filed under this section unless the regulator considers that there are grounds set out in securities legislation that would cause the regulator not to issue the receipt for a simplified prospectus.

[**Note:** In Ontario, subsection 57(2.1) of the *Securities Act* (Ontario) imposes a similar obligation for the Director to issue a receipt for an amendment to a prospectus unless there are proper grounds for refusing the receipt.]

**2.2.3(4)** Except in Ontario, the regulator must not refuse to issue a receipt under subsection (3) without giving the mutual fund that filed the simplified prospectus an opportunity to be heard."

[**Note:** In Ontario, subsections 57(2.1) and 61(3) of the *Securities Act* (Ontario) impose a similar restriction on the Director to refuse to issue a receipt for a prospectus without first giving an issuer an opportunity to be heard.]

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<sup>1</sup> In Ontario, a number of prospectus related requirements in this Instrument are set out in the *Securities Act* (Ontario). We have identified carve-outs from the Instrument where a similar requirement is set out in the *Securities Act* (Ontario). Notes included in this Instrument have been inserted for convenience of reference only and do not form part of this Instrument or have any force or effect as a rule or policy.

5. *Section 2.3 is amended*

(a) *by repealing paragraph 2.3(1)(a) and substituting the following:*

"(a) file with a preliminary simplified prospectus and a preliminary annual information form

(i) a copy of the preliminary annual information form certified in accordance with Part 5.1,

(ii) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101 *General Prospectus Requirements*, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada,

(iii) a copy of any material contract and a copy of any amendment to a material contract that have not previously been filed, other than a contract entered into in the ordinary course of business,

(iv) a copy of the following documents and a copy of any amendment to the following documents that have not previously been filed:

(A) by-laws or other corresponding instruments currently in effect,

(B) any securityholder or voting trust agreement that the mutual fund has access to and that can reasonably be regarded as material to an investor in securities of the mutual fund, and

(C) any other contract of the mutual fund that creates or can reasonably be regarded as materially affecting the rights or obligations of the mutual fund's securityholders generally, and

(v) any other supporting documents required to be filed under securities legislation; and";

(b) *by repealing subparagraphs 2.3(1)(b)(i), (ii) and (iii) and substituting the following:*

"(i) for

(A) a new mutual fund, a copy of a draft opening balance sheet of the mutual fund, and

(B) an existing mutual fund, a copy of the latest audited financial statements of the mutual fund,

(ii) personal information in the form of the Personal Information Form and Authorization for:

(A) each director and executive officer of the mutual fund,

(B) each director and executive officer of the manager of the mutual fund,

(C) each promoter of the mutual fund, and

(D) if the promoter is not an individual, each director and executive officer of the promoter,

unless

(E) a completed Personal Information Form and Authorization,

(F) before March 17, 2008, a completed authorization in

(I) the form set out in Appendix B of NI 44-101,

(II) the form set out in Ontario Form 41-501F2 *Authorization of Indirect Collection of Personal Information*, or

(III) the form set out in Appendix A of Québec Regulation Q-28 *Respecting General Prospectus Requirements*, or

(G) before March 17, 2008, a completed personal information form or authorization in a form substantially similar to a personal information form or authorization in clause (E) or (F), as permitted under securities legislation,

was previously delivered in connection with the simplified prospectus of another mutual fund managed by the manager of the mutual fund,

(iii) a signed letter to the regulator from the auditor of the mutual fund prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of the mutual fund incorporated by reference in the preliminary simplified prospectus is accompanied by an unsigned auditor's report, and

(iv) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.";

(c) by striking out "and" at the end of subparagraph 2.3(2)(a)(i) and adding the following:

"(ii) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101 *General Prospectus Requirements*, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada and if that document has not already been filed, and

(iii) any other supporting documents required to be filed under securities legislation; and";

(d) by striking out "and" at the end of subparagraph 2.3(2)(b)(iii), repealing subparagraph 2.3(2)(b)(iv) and substituting the following:

"(iv) personal information in the form of the Personal Information Form and Authorization for:

(A) each director and executive officer of the mutual fund,

(B) each director and executive officer of the manager of the mutual fund,

(C) each promoter of the mutual fund, and

(D) if the promoter is not an individual, each director and executive officer of the promoter,

unless

(E) a completed Personal Information Form and Authorization,

(F) before March 17, 2008, a completed authorization in

(I) the form set out in Appendix B of NI 44-101,

(II) the form set out in Ontario Form 41-501F2 *Authorization of Indirect Collection of Personal Information*, or

(III) the form set out in Appendix A of Québec Regulation Q-28 *Respecting General Prospectus Requirements*, or

(G) before March 17, 2008, a completed personal information form or authorization in a form substantially similar to a personal information form or authorization in clause (E) or (F), as permitted under securities legislation,

was previously delivered in connection with a simplified prospectus of the mutual fund or another mutual fund managed by the manager of the mutual fund, and

(v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.";

*(e) by striking out "and" at the end of subparagraph 2.3(3)(a)(ii), repealing subparagraph 2.3(3)(a)(iii) and substituting the following:*

"(iii) a copy of the annual information form certified in accordance with Part 5.1,

(iv) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101 *General Prospectus Requirements*, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada and if that document has not already been filed,

(v) any consents required by section 2.6,

(vi) a copy of each report or valuation referred to in the simplified prospectus, for which a consent is required to be filed under section 2.6 and that has not previously been filed, and

(vii) any other supporting documents required to be filed under securities legislation; and";

**(f) by striking out "and" at the end of subparagraph 2.3(3)(b)(ii), repealing subparagraph 2.3(3)(b)(iii) and substituting the following:**

"(iii) details of any changes to the personal information required to be delivered under subparagraph 2.3(1)(b)(ii) or 2.3(2)(b)(iv), in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager, and

(iv) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.";

*(g) by repealing subparagraphs 2.3(4)(a)(i) and (ii) and substituting the following:*

"(i) a copy of the amendment to the annual information form certified in accordance with Part 5.1,

(ii) any consents required by section 2.6,

(iii) a copy of any material contract of the mutual fund, and a copy of any amendment to a material contract of the mutual fund, not previously filed, and

(iv) any other supporting documents required to be filed under securities legislation;";

*(h) by striking out "and" at the end of subparagraph 2.3(4)(b)(ii), repealing subparagraph 2.3(4)(b)(iii) and substituting the following:*

"(iii) details of any changes to the personal information required to be delivered under subparagraph 2.3(1)(b)(ii), 2.3(2)(b)(iv) or 2.3(3)(b)(iii), in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager, and

(iv) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.";

*(i) by repealing subparagraphs 2.3(5)(a)(i) and (ii) and substituting the following:*

"(i) a copy of the amendment to the annual information form certified in accordance with Part 5.1,

(ii) any consents required by section 2.6,

(iii) a copy of any material contract of the mutual fund, and a copy of any amendment to a material contract of the mutual fund, not previously filed, and

(iv) any other supporting documents required to be filed under securities legislation; and";

*(j) by repealing paragraph 2.3(5)(b) and substituting the following:*

"(b) at the time an amendment to an annual information form is filed, deliver or send to the securities regulatory authority

(i) details of any changes to the personal information required to be delivered under subparagraph 2.3(1)(b)(ii), 2.3(2)(b)(iv) or 2.3(3)(b)(iii), in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager,

(ii) if the amendment is in the form of an amended and restated annual information form, a copy of the amended and restated annual information form blacklined to show changes and the text of deletions from the annual information form; and

(iii) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation."; and

*(k) by repealing subsection 2.3(6) and substituting the following:*

**"2.3(6)** Despite any other provision of this section, a mutual fund may

(a) omit or mark to be unreadable certain provisions of a material contract or an amendment to a material contract filed under this section

(i) if the manager of the mutual fund reasonably believes that disclosure of those provisions would be seriously prejudicial to the interests of the mutual fund or would violate confidentiality provisions, and

(ii) if a provision is omitted or marked to be unreadable under subparagraph (i), the mutual fund must include a description of the type of information that has been omitted or marked to be unreadable immediately after the provision that is omitted or marked to be unreadable in the copy of the material contract or amendment to the material contract filed by the mutual fund; and

(b) delete commercial or financial information from the copy of an agreement of the mutual fund, its manager or trustee with a portfolio adviser or portfolio advisers of the mutual fund filed under this section if the disclosure of that information could reasonably be expected to

(i) prejudice significantly the competitive position of a party to the agreement, or

(ii) interfere significantly with negotiations in which parties to the agreement are involved."

6. The following sections 2.5 through 2.8 are added after section 2.4:

**"Lapse date**

**2.5(1)** This section does not apply in Ontario.

**2.5(2)** In this section, "lapse date" means, with reference to the distribution of a security that has been qualified under a simplified prospectus, the date that is 12 months after the date of the most recent simplified prospectus relating to the security.

**2.5(3)** A mutual fund must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the mutual fund files a new simplified prospectus that complies with securities legislation and a receipt for that new simplified prospectus is issued by the regulator.

**2.5(4)** Despite subsection (3), a distribution may be continued for a further 12 months after a lapse date if,

(a) the mutual fund delivers a *pro forma* simplified prospectus not less than 30 days before the lapse date of the previous simplified prospectus;

(b) the mutual fund files a new final simplified prospectus not later than 10 days after the lapse date of the previous simplified prospectus; and

(c) a receipt for the new final simplified prospectus is issued by the regulator within 20 days after the lapse date of the previous simplified prospectus.

**2.5(4)** The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.

**2.5(6)** Subject to any extension granted under subsection (7), if a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.

**2.5(7)** The regulator may, on an application of a mutual fund, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

[**Note:** In Ontario, section 62 of the *Securities Act* (Ontario) imposes similar requirements regarding refiling of prospectuses.]

**Consents of experts**

**2.6(1)** A mutual fund must file the written consent of

(a) any solicitor, auditor, accountant, engineer, or appraiser;

(b) any notary in Québec; and

(c) any person or company whose profession or business gives authority to a statement made by that person or company

if that person or company is named in a simplified prospectus or an amendment to a simplified prospectus, directly or, if applicable, in a document incorporated by reference,

(d) as having prepared or certified any part of the simplified prospectus or the amendment;

(e) as having opined on financial statements from which selected information included in the simplified prospectus has been derived and which audit opinion is referred to in the simplified prospectus directly or in a document incorporated by reference; or

(f) as having prepared or certified a report, valuation, statement or opinion referred to in the simplified prospectus or the amendment, directly or in a document incorporated by reference.

**2.6(2)** The consent referred to in subsection (1) must

(a) be filed no later than the time the simplified prospectus or the amendment to the simplified prospectus is filed or, for the purposes of future financial statements that have been incorporated by reference in a simplified prospectus, no later than the date that those financial statements are filed;

(b) state that the person or company being named consents

(i) to being named, and

(ii) to the use of that person or company's report, valuation, statement or opinion;

(c) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion; and

(d) contain a statement that the person or company being named

(i) has read the simplified prospectus, and

(ii) has no reason to believe that there are any misrepresentations in the information contained in it that are

(A) derived from the report, valuation, statement or opinion, or

(B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.

**2.6(3)** In addition to any other requirement of this section, the consent of an auditor or accountant must also state

(a) the dates of the financial statements on which the report of the auditor or accountant is made; and

(b) that the auditor or accountant has no reason to believe that there are any misrepresentations in the information contained in the simplified prospectus that are

(i) derived from the financial statements on which the auditor or accountant has reported, or



(ii) within the knowledge of the auditor or accountant as a result of the audit of the financial statements.

**2.6(4)** Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the simplified prospectus.

#### **Language of documents**

**2.7(1)** A mutual fund must file a simplified prospectus and any other document required to be filed under this Instrument in French or in English.

**2.7(2)** In Québec, a simplified prospectus and any document required to be incorporated by reference into a simplified prospectus must be in French or in French and English.

**2.7(3)** Despite subsection (1), if a mutual fund files a document only in French or only in English but delivers to a securityholder or prospective securityholder a version of the document in the other language, the mutual fund must file that other version not later than when it is first delivered to the securityholder or prospective securityholder.

#### **Statement of rights**

**2.8** Except in Ontario, a simplified prospectus must contain a statement of the rights given to a purchaser under securities legislation in case of a failure to deliver the simplified prospectus or in case of a misrepresentation in the simplified prospectus."

[**Note:** In Ontario, section 60 of the *Securities Act* (Ontario) imposes a similar requirement for the inclusion of a statement of rights in a prospectus.]

7. *The following sections 3.1.1, 3.1.2, and 3.1.3 are added after section 3.1:*

#### **"Audit of financial statements**

**3.1.1** Any financial statements, other than interim financial statements, incorporated by reference in a simplified prospectus must meet the audit requirements in Part 2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

#### **Review of unaudited financial statements**

**3.1.2** Any unaudited financial statements incorporated by reference in a simplified prospectus at the date of filing of the simplified prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor or a review of financial statements by a public accountant.

#### **Approval of financial statements and related documents**

**3.1.3** A mutual fund must not file a simplified prospectus unless each financial statement and each management report of fund performance incorporated by reference in the simplified prospectus has been approved in accordance with the requirements in Part 2 and Part 4 of National Instrument 81-106 *Investment Fund Continuous Disclosure*."

8. *Section 3.2 is amended by adding the following subsection 3.2(3) after subsection 3.2(2):*

**"3.2(3)** Except in Ontario, any dealer distributing a security during the waiting period must

- (a) send a copy of the preliminary simplified prospectus to each prospective purchaser who indicates an interest in purchasing the security and requests a copy of such preliminary simplified prospectus; and
- (b) maintain a record of the names and addresses of all persons and companies to whom the preliminary simplified prospectus has been forwarded."

[**Note:** In Ontario, sections 66 and 67 of the *Securities Act* (Ontario) impose similar requirements regarding the distribution of a preliminary prospectus and maintaining a distribution list.]

9. The following Part 5.1 is added after Part 5:

"PART 5.1 – CERTIFICATES

**Interpretation**

**5.1.1** For the purposes of this Part,

"**manager certificate form**" means a certificate in the form set out in Item 20 of Form 81-101F2 and attached to the annual information form,

"**mutual fund certificate form**" means a certificate in the form set out in Item 19 of Form 81-101F2 and attached to the annual information form,

"**principal distributor certificate form**" means a certificate in the form set out in Item 22 of Form 81-101F2 and attached to the annual information form, and

"**promoter certificate form**" means a certificate in the form set out in Item 21 of Form 81-101F2 and attached to the annual information form.

**Date of certificates**

**5.1.2** The date of the certificates required by this Instrument must be within 3 business days before the filing of the preliminary simplified prospectus, the simplified prospectus, the amendment to the simplified prospectus or the amendment to the annual information form, as applicable.

**Certificate of the mutual fund**

**5.1.3(1)** Except in Ontario, a simplified prospectus of a mutual fund must be certified by the mutual fund.

[**Note:** In Ontario, section 58 of the *Securities Act* (Ontario) imposes a similar requirement that a prospectus contain a certificate of the issuer.]

**5.1.3(2)** A mutual fund must certify its simplified prospectus in the form of the mutual fund certificate form.

**Certificate of principal distributor**

**5.1.4** A simplified prospectus of a mutual fund must be certified by each principal distributor in the form of the principal distributor certificate form.

**Certificate of the manager**

**5.1.5** A simplified prospectus of a mutual fund must be certified by the manager of the mutual fund in the form of the manager certificate form.

**Certificate of promoter**

**5.1.6(1)** Except in Ontario, a simplified prospectus of a mutual fund must be certified by each promoter of the mutual fund.

[**Note:** In Ontario, subsection 58(1) of the *Securities Act* (Ontario) imposes a similar requirement that a prospectus contain a certificate signed by each promoter of the issuer.]

**5.1.6(2)** A prospectus certificate required under this Instrument or other securities legislation to be signed by a promoter must be in the form of the promoter certificate form.

**5.1.6(3)** Except in Ontario, the regulator may require any person or company who was a promoter of the mutual fund within the two preceding years to sign a certificate in the promoter certificate form.

[**Note:** In Ontario, subsection 58(6) of the *Securities Act* (Ontario) provides the Director with similar discretion to require a person or company who was a promoter of the issuer within the two preceding years to sign a prospectus certificate, subject to such conditions as the Director considers proper.]

**5.1.6(4)** Despite subsection (3), in British Columbia, the powers of the regulator with respect to the matters described in subsection (3) are set out in the *Securities Act* (British Columbia).

**5.1.6(5)** Except in Ontario, with the consent of the regulator, a certificate of a promoter for a simplified prospectus may be signed by an agent duly authorized in writing by the person or company required to sign the certificate.

[**Note:** In Ontario, subsection 58(7) of the *Securities Act* (Ontario) provides the Director with similar discretion to permit the certificate to be signed by an agent of a promoter.]

#### **Certificates of corporate mutual funds**

**5.1.7(1)** Except in Ontario, if the mutual fund is a company, the certificate of the mutual fund required under section 5.1.3 must be signed

- (a) by the chief executive officer and the chief financial officer of the mutual fund; and
- (b) on behalf of the board of directors of the mutual fund, by
  - (i) any two directors of the mutual fund, other than the persons referred to in paragraph (a) above, or
  - (ii) if the mutual fund has only three directors, two of whom are the persons referred to in paragraph (a) above, all the directors of the mutual fund.

**5.1.7(2)** Except in Ontario, if the regulator is satisfied that either or both of the chief executive officer or chief financial officer cannot sign a certificate in a simplified prospectus, the regulator may accept a certificate signed by another officer."

[**Note:** In Ontario, section 58 of the *Securities Act* (Ontario) imposes similar requirements regarding who must sign the issuer certificate.]

#### *10. Part 7 is amended*

*(a) by renaming Part 7 as "Effective Date"; and*

*(b) by repealing sections 7.2 and 7.3.*

11. This Instrument comes into force on March 17, 2008.

12. This Instrument may be cited as MSC Rule 2007-21.