

NOTICE OF PROPOSED CHANGES
TO
PROPOSED NATIONAL INSTRUMENT 81-104
AND COMPANION POLICY 81-104CP
COMMODITY POOLS

Substance and Purpose of Proposed National Instrument and Companion Policy

Background

On June 27, 1997, the Canadian Securities Administrators (CSA) published for comment proposed National Instrument 81-104 Commodity Pools and proposed Companion Policy 81-104CP (the 1997 Draft NI and the 1997 Draft CP or the 1997 Drafts). Manitoba did not publish at that time.

The CSA received one comment letter during the comment period for the 1997 Drafts (which ended on October 31, 1997). This comment letter focussed on one section of the 1997 Drafts and did not address any of the questions posed by the CSA in their publication of the 1997 Drafts for comment.

Since the end of the comment period, the CSA have concentrated on ensuring that the proposed National Instrument is appropriate for the regulation of commodity pools in Canada. CSA staff met with each sponsor or manager of the commodity pools managed and sold in Canada to ensure that the proposed regulatory regime addresses the regulatory issues associated with commodity pools, yet permits the continued viability of these specialized investment products. CSA staff also met with representatives of dealers who wish to be able to recommend commodity pools to their clients.

Additional written comments were received as a result of the CSA's efforts. A list of the commentators and a summary of their comments is attached as Appendix A to this Notice of Proposed Changes.

After considering these comments and continuing to assess the 1997 Drafts, the CSA are proposing amendments to the 1997 Drafts. The CSA are therefore publishing for a second time the proposed National Instrument and Companion Policy.

The proposed National Instrument and Companion Policy are a reformulation of Ontario Securities Commission Policy Statement No. 11.4 - Commodity Pools Programs (Policy 11.4), which they will replace. Through the proposed National Instrument, the CSA seek to regulate publicly offered commodity pools structured as mutual funds.

The proposed National Instrument and Companion Policy are initiatives of the CSA, and the proposed National Instrument is expected to be adopted as a rule in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia and Newfoundland, as a Commission regulation in Saskatchewan and as a policy in all the other jurisdictions represented by the CSA. The proposed

Companion Policy is expected to be implemented as a policy in all of the jurisdictions represented by the CSA.

This Notice of Proposed Changes summarizes the material changes made in the proposed National Instrument and Companion Policy from the 1997 Drafts. As described above, Appendix A to this Notice of Proposed Changes outlines the comments received in respect of the 1997 Drafts, together with the CSA responses. Further background and explanation of changes are contained in the footnotes contained in the proposed National Instrument and Companion Policy.

National Instrument 81-102 Mutual Funds and National Instrument 81-101 Mutual Fund Prospectus Disclosure

The proposed National Instrument is intended to regulate publicly offered commodity pools and is designed to act in conjunction with the mutual fund regulatory regime established by National Instrument 81-102 Mutual Funds (NI 81-102). NI 81-102 came into force on February 1, 2000. The proposed National Instrument will exempt commodity pools from provisions in NI 81-102 where deemed appropriate and will impose additional requirements on commodity pools where deemed necessary.

The new simplified prospectus disclosure regime for conventional mutual funds established by National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101), which also came into force on February 1, 2000, does not apply to commodity pools. Commodity pools must file a prospectus using the mutual fund "long form" prospectus forms in force in the jurisdictions (in Ontario, Form 15 to the Regulation made under the Act) and currently must comply with Policy 11.4. The proposed National Instrument also imposes additional disclosure requirements.

Substance and Purpose of Proposed Instrument

As was proposed by the 1997 Draft NI, the proposed National Instrument is designed to replace Policy 11.4 and will regulate all publicly offered commodity pools, which are a specialized type of mutual fund that invest in, or use, commodities and/or derivatives beyond the scope permitted in NI 81-102. Commodity pools are subject to the ordinary mutual fund rules unless those rules are specifically excluded or varied by the proposed National Instrument.

The underlying purpose for the regulation of commodity pools put forth by the proposed National Instrument and Companion Policy is discussed in the Notice published with the 1997 Drafts (the 1997 Notice). Additional background information is also provided in the 1997 Notice.

The purpose of the proposed Companion Policy is to state the views of the CSA on various matters relating to the proposed National Instrument. Terms used in the proposed Companion Policy that are defined or interpreted in the proposed National Instrument or a definition instrument in force in the jurisdiction and not otherwise defined in the proposed Companion Policy should be read in accordance with the proposed National Instrument or that definition instrument, unless the context otherwise requires.

Summary of Changes to the Proposed National Instrument from the 1997 Draft NI

This section describes changes made in the proposed National Instrument from the 1997 Draft NI. Changes of a minor nature, or those made only for purposes of clarification or drafting reasons are generally not discussed. Certain changes were made to ensure that the proposed National Instrument reflects the changes made by the CSA to NI 81-102 since that instrument's first publication for comment, also in June 1997.

For a detailed summary of the contents of the 1997 Draft NI, reference should be made to the 1997 Notice. Unless otherwise indicated, all section references in this section pertain to the proposed National Instrument.

Section 1.1

Changes to the definitions contained in section 1.1 of the proposed National Instrument reflect changes made to the operative sections.

The CSA changed the definition of "commodity pool" to better reflect and articulate the CSA's views on the nature of a commodity pool and how it differs from a conventional mutual fund. The CSA are of the view these changes are of a clarification nature only and do not change the substance of the definition or the types of investment products to which the proposed National Instrument applies.

Section 1.3

Subsection 1.3(2) is new. It excludes certain over-the-counter forwards and options from the "illiquid assets" restrictions of NI 81-102. Commodity pools are subject to the rule in NI 81-102 restricting mutual funds from investing more than 10 percent of their net assets in "illiquid assets" (as defined in NI 81-102). The term "public quotation" (used in the illiquid assets restrictions in NI 81-102) is proposed to be broadened for commodity pools. Subsection 1.3(2) of the proposed National Instrument expressly deems forwards and options traded on the interbank market for which there is a counterparty prepared to and capable of making a market to be those for which there is a "public quotation in common use" within the meaning of NI 81-102.

The change was made in response to a comment that the rules in NI 81-102 regarding "illiquid assets" might restrict the operations of a commodity pool. Commodity pools generally make extensive use of forwards and options traded on the interbank market in their investment strategies. The CSA agree, for commodity pools, derivatives that can be considered to be "liquid" in a non-technical sense in that they can be sold at any time should not be subject to the illiquid asset restrictions in NI 81-102.

Section 3.2

Section 3.2 has been modified to permit the issuance of units of a new commodity pool to those persons providing seed capital to the pool. Section 3.2 in the 1997 Draft NI technically prohibited the issuance of any units in the new pool, including units issued to the promoters or

manager of the pool, until subscriptions aggregating not less than \$500,000 were received. This was an unintended result and the modification corrects the technical prohibition.

Section 3.3

Section 3.3 is new. It imposes on new commodity pools a direct prohibition on commencing distribution until the subscriptions described in the prospectus, together with the payment for the securities subscribed for, have been received. This provision corresponds to section 3.2 of NI 81-102.

Part 4 of the 1997 Draft NI

Part 4 of the 1997 Draft NI has been deleted from the proposed National Instrument. The 1997 Draft NI incorporated the Policy 11.4 prohibition on commodity pools paying fees to their advisers and managers if those parties or their affiliates received, directly or indirectly, brokerage commissions from trades made by the commodity pools. This prohibition reflected the concern that a manager would "churn" (that is, increase asset turnover) in order to earn additional brokerage commissions. Comments were received which questioned the rationale for this prohibition, especially in the case where a manager has delegated the investment decisions to an unrelated portfolio adviser.

The CSA have reconsidered Part 4 of the 1997 Draft NI and deleted the prohibition on the basis that commodity pools should be treated in a similar manner to conventional mutual funds unless a reason exists to treat them differently. Investors in commodity pools can evaluate the performance of their investments in commodity pools and redeem those investments if the pool is not performing after all expenses and fees (including brokerage commissions) are paid.

Part 4 (formerly, Part 5 of the 1997 Draft NI)

Part 5 of the 1997 Draft NI has been renumbered as Part 4. Part 4 of the proposed National Instrument contains the proficiency and supervisory requirements for participating dealers selling commodity pools. The proficiency requirements for both salespersons and supervisors of those salespersons have been changed from the 1997 Draft NI in response to comments.

The 1997 Draft NI departed from the dual registration provisions outlined in Policy 11.4 that necessitated both the salesperson and the dealer selling a commodity pool interest to be registered under the *Commodity Futures Act* (Ontario) and the *Securities Act* (Ontario). As mentioned in the 1997 Notice, staff of the Ontario Securities Commission (OSC) currently administer Policy 11.4 to require only that the participating dealer be registered under both statutes. The 1997 Draft NI proposed increased proficiency standards for salespersons and their supervisors rather than dual registration of the participating dealer for reasons that are outlined in the 1997 Notice.

Two exams offered by the Canadian Securities Institute were proposed in the 1997 Draft NI. The 1997 Draft NI required salespersons to pass the Canadian Futures Examination and their supervisors to pass the Canadian Commodity Supervisors Examination. Since 1997, the

Canadian Futures Examination has been split into two parts: the Derivatives Fundamentals Course and the Futures Licensing Course.

In response to the comments received on Part 5 of the 1997 Draft NI and after reviewing the Derivatives Fundamentals Course, the CSA are of the view that the regulatory approach to ensure increased proficiency for salespersons selling commodity pools and their supervisors will be achieved by requiring these individuals to successfully attain a passing grade in the Derivatives Fundamentals Course.

Section 12.3 of the proposed National Instrument delays the coming into force of the new proficiency requirements until six months after the effective date of the proposed National Instrument. The Derivatives Fundamentals Course is a self-study course which is to be written within 12 months of enrollment. The CSA expect that the six month delay will allow those salespersons and supervisors affected to complete the new proficiency standard without incurring undue hardship.

Part 6 of the 1997 Draft NI

The CSA have deleted Part 6 of the 1997 Draft NI. Part 6 of the 1997 Draft NI brought forward provisions from Policy 11.4 which dealt with liability of investors in a commodity pool structured as a limited partnership. The CSA re-considered whether they need to make rules in this area and concluded that the statutory and common law applicable to limited partnerships should prevail. Accordingly Part 6 has been deleted, but the CSA have addressed the questions surrounding limited partnerships through an expanded discussion in the proposed Companion Policy and expanded disclosure requirements. Subsection 3.1 (4) of proposed Companion Policy now highlights the CSA's views that pools should be structured so as to limit the liability of securityholders to the amount initially invested. Paragraph 10.2(l) of the proposed National Instrument sets out the enhanced disclosure requirements.

Part 6

Part 6 is new and sets out the parameters for managers of commodity pools who propose to charge an incentive fee to commodity pools. Part 6 modifies the requirements in section 7.1 of NI 81-102 relating to incentive fees charged to commodity pools. An incentive fee is a fee paid by a mutual fund which is based on some measure of performance of the manager of that mutual fund.

The 1997 Draft NI required commodity pools and their managers to comply with section 7.1 of NI 81-102 without any modification. Section 7.1 of NI 81-102 permits a manager to charge a mutual fund an incentive fee, among other requirements, so long as the fee is calculated with reference to a representative benchmark or index that reflects the market sectors in which the fund invests.

Commodity pool managers commented that no benchmark or index exists in respect of commodity pools that would meet the requirements in section 7.1 of NI 81-102. The CSA noted this issue in the 1997 Notice. Also, commentators claimed that without the ability to charge an

incentive fee, managers of commodity pools would be at a significant disadvantage in attracting successful commodity futures advisers to sub-manage the assets of commodity pools. These commentators point out that, particularly, United States-based commodity futures advisers expect to be compensated based on performance.

The CSA are of the view that the performance of fund managers for the purposes of incentive fee calculations must be measured against the performance of an appropriate objective benchmark or index. However, in recognition of the difficulties in determining an appropriate benchmark or index for commodity pools, the CSA propose that commodity pool managers may levy an incentive fee in respect of commodity pools, in circumstances no other appropriate benchmark exists, where the pools' performance is benchmarked against the 90-day Canadian or United States government treasury bill rate. One rationale for permitting this benchmark is that commodity pools generally hold 60 percent to 80 percent of their assets in treasury bills (as cover for derivatives transactions).

The CSA have considered the issues of incentive fees charged to commodity pools very carefully and have determined that incentive fees charged to commodity pools should be regulated in the fashion proposed by the proposed National Instrument. However, the CSA are aware that commodity pools require specialized management that may only be available if the portfolio adviser or manager receives compensation that is based on the performance of that adviser or manager, without regard to an objective benchmark or index. The CSA are seeking specific comment on whether alternatives exist to section 6 of the proposed National Instrument.

Section 9.4

Section 9.4 is new and requires commodity pools to file and deliver a modified statement of portfolio transactions. Section 9.1 of the proposed National Instrument clarifies that commodity pools must comply with applicable securities legislation regarding financial statements except as varied by the proposed National Instrument.

Section 9.4 will require a commodity pool's statement of portfolio transactions to contain summary disclosure of all trades, through listing on an aggregate basis all purchases and sales of each contract (or investment) entered into by the pool during the applicable quarter. The CSA believe that this aggregate disclosure will help investors evaluate the level of trading activity, the trading patterns and the types of contracts traded by the pool. The statement gives information on asset turnover and can be used to analyse the liquidity of the positions traded by the pool.

The CSA propose this change in response to comments received, questioning the rationale for requiring commodity pools to prepare full statements of portfolio transactions in the form required by securities legislation. The CSA agree that the current form of a statement of portfolio transactions would not give meaningful information to an investor in a commodity pool (due to extensive use of derivatives and higher levels of asset turnover). The modified statement mandated by section 9.4 is designed to address this concern.

Section 10.2 (formerly, section 10.3 of the 1997 Draft NI)

Clause 10.2(g) of the proposed National Instrument will require a commodity pool to provide in its prospectus past performance disclosure in the format contemplated by NI 81-101 for conventional mutual funds, modified for commodity pools. Commodity pools will be required to disclose: (1) in a bar chart, the quarterly returns of the pool (conventional mutual funds show these returns on an annual basis); (2) the performance of the pool in a line graph as compared to the 90-day Canadian or US treasury bill rate (conventional mutual funds must use an "appropriate broad based securities market index"); and (3) the annual compound returns of the pool for the 10, five, three and one year periods ended on December 31. The CSA believe that these graphic and numerical presentations of past performance will help investors evaluate a pool's average returns over a period of time and the volatility of the pool's returns on a quarterly basis.

The CSA are of the view that these graphic depictions of a commodity pool's performance over time will give investors a sense of the inherent risks associated with investing in these investment vehicles. The CSA have not required at this time, that either conventional mutual funds or commodity pools provide investors with a standardized and accepted measure of risk. Since commodity pools are specialized mutual funds with a very different risk profile to conventional mutual funds, as described below, the CSA seek specific comment on whether a standardized risk measure should be disclosed by commodity pools.

Subclause 10.2(l)(ii) has been added. As outlined above, Part 6 of the 1997 Draft NI which dealt with loss of limited liability for securityholders of a commodity pool organized as a limited partnership has been deleted from the proposed National Instrument. Subclause 10.2(1)(ii) has been added to alert investors to any issues related to limited partnerships. The CSA ask commentators for their views on whether this disclosure should be included also on the front page of the prospectus for a commodity pool.

Section 10.3 of the 1997 Draft NI

Clause 10.3(e) of the 1997 Draft NI has been deleted. The 1997 Draft NI required (as did Policy 11.4) a commodity pool to disclose whether the proposed fees charged by the portfolio adviser to the pool are higher or lower than those charged to other pools that are advised by the portfolio adviser, together with any information concerning brokerage charges to those other pools that the pool considers relevant.

Similarly, clause 10.3(g) of the 1997 Draft NI has been deleted. The 1997 Draft NI required a commodity pool with a history of less than three years to disclose the total return of the portfolio adviser (or manager, as the case may be) for all other commodity pools for which the portfolio adviser has acted in that capacity for a specified time period.

The CSA believe that no continuing regulatory purpose exists to require the above disclosure, which the CSA notes is not required of conventional mutual funds. Instead, the CSA propose clause 10.2(g), which they consider more meaningful and relevant disclosure.

Section 11.2 of the 1997 Draft NI

The CSA have deleted section 11.2 of the 1997 Draft NI in order to conform the exemptive provisions to the comparable provisions contained in NI 81-102.

Summary of Changes to the Proposed Companion Policy from the 1997 Draft CP

This section describes the material changes made to the proposed Companion Policy from the 1997 Draft CP. Changes made in order to ensure that the proposed Companion Policy conforms to the proposed National Instrument are not described here. For a detailed summary of the contents of the 1997 Draft CP, reference should be made to the 1997 Notice. Unless otherwise indicated, all section references in this section of this Notice of Proposed Changes pertain to the proposed Companion Policy.

Section 2.2

Section 2.2 is new. The CSA discuss the use of derivatives by commodity pools and clarify that commodity pools are excluded from the rules of NI 81-102 governing specified derivatives, but remain subject to the other investment restrictions in NI 81-102. For example, commodity pools remain subject to the restrictions on purchasing securities on margin and the prohibition on selling securities short.

Specific Questions of the CSA

In addition to welcoming submissions on any provision of the proposed National Instrument and the proposed Companion Policy, the CSA seek comment on the three matters referred to below.

Incentive Fees

As noted above, Part 6 of the proposed National Instrument addresses the levying of incentive fees against assets of commodity pools when no benchmark or index exists that would meet the requirements in section 7.1 of NI 81-102. The CSA seek comment on whether the proposed National Instrument should completely exempt commodity pools from the operation of section 7.1 of NI 81-102 and require only disclosure of the incentive fee and the basis on which it is calculated. In responding to this issue, commentators should address whether disclosure alone would provide consumers with enough information to make informed decisions and whether market forces would be able to adequately regulate incentive fees charged by commodity pools. In other words, why should commodity pools be treated differently in this respect than conventional mutual funds? The CSA note that the primary regulatory purpose in mandating a benchmark or index is to ensure that investors will be able to properly assess whether the fees being charged in respect of their investment are appropriate having regard to the performance of the pool. The CSA have traditionally required that a manager of mutual funds inform investors that it will attempt to out-perform a specified recognized and widely used benchmark or index and if it does so, it will be entitled to fees based on that performance. Will investors be able to make informed decisions about the performance of the commodity pool's performance without any measure of performance?

Risk Measures

The CSA are proposing that commodity pools provide in their prospectuses, graphic depictions of past performance which are consistent with the requirements for conventional mutual funds set out in NI 81-101. The CSA seek specific comment on whether commodity pools are sufficiently different from conventional mutual funds in their risk profile to warrant the CSA requiring disclosure of a standardized measure of risk. Commentators believing that this disclosure would be appropriate should explain which measure would be appropriate, with a focus on whether this risk measure would be comprehensible to the average commodity pool investor. Does a common measure of risk exist in the commodity pool industry in Canada? In the United States?

Risk of Loss of Limited Liability

The proposed National Instrument requires that a commodity pool address the possibility of loss of limited liability in specialized circumstances in its prospectus. Is this risk sufficiently important and material that front page disclosure should be given?

Authority for Proposed National Instrument

In those jurisdictions in which the proposed National Instrument is to be adopted or made as a rule or regulation, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the proposed National Instrument.

In Ontario, the following provisions of the *Securities Act* (Ontario) provide the OSC with authority to make the proposed National Instrument. Paragraph 143(1)23 of the Act authorizes the OSC to make rules exempting reporting issuers from any requirement of Part XVIII (Continuous Disclosure) among other things, under circumstance that the OSC considers justify the exemption. Paragraph 143(1)34 of the Act authorizes the OSC to make rules regulating commodity pools, including certain matters specified in the paragraph. Paragraph 143(1)35 of the Act authorizes the OSC to make rules regulating or varying the Act in respect of derivatives, including prescribing requirements that apply to mutual funds and commodity pools.

Anticipated Costs and Benefits

The 1997 Notice describes the anticipated costs and benefits to commodity pools of the proposed National Instrument. The CSA are of the view that none of the proposed changes outlined in this Notice of Proposed Changes will serve to increase costs to commodity pools, and may, reduce the costs of commodity pools and industry participants. The proposed change to the proficiency requirements for sales representatives and supervisors is expected to reduce the impact of the proposed National Instrument on the distribution of commodity pools through participating dealers when compared with the rules proposed in the 1997 Draft NI.

Regulations to be Revoked or Amended

The Ontario Securities Commission will amend section 87 of the Regulation to the Act in conjunction with the making of the proposed National Instrument as a rule by adding the following subsection 87(7):

"(7) Subsections (1) to (6) do not apply to a commodity pool subject to National Instrument 81-104 Commodity Pools."

Comments

Interested parties are invited to make written submissions with respect to the proposed National Instrument and Companion Policy. Submissions received by August 7, 2000 will be considered.

Submissions should be sent to all of the Canadian securities regulatory authorities listed below in care of the Ontario Securities Commission, in duplicate, as indicated below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
The Manitoba Securities Commission
Ontario Securities Commission
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland
Securities Registry, Government of the Northwest Territories
Registrar of Securities, Government of the Yukon Territory
Registrar of Securities, Government of Nunavut

c/o John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

Submissions should also be addressed to the Commission des valeurs mobilières du Québec as follows:

Claude St. Pierre, Secretary
Commission des valeurs mobilières du Québec
800 Victoria Square
Stock Exchange Tower
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3
E-mail: claudestpierre@cvmq.com

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. As securities legislation in certain provinces requires that a summary of written comments received during the comment period be published, confidentiality of submissions cannot be maintained.

Comments may also be sent via e-mail to the above noted e-mail addresses of the respective Secretaries of the OSC and to the Commission des valeurs mobilières du Québec, and also to any of the individuals noted below at their respective e-mail addresses.

Questions may be referred to any of:

Noreen Bent
Senior Legal Counsel
British Columbia Securities Commission
(604) 899-6741
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E-mail: ann.leduc@cvmq.com

Proposed National Instrument and Companion Policy

The text of the proposed National Instrument and Companion Policy follow, together with footnotes that are not part of the proposed National Instrument or Companion Policy, but have been included to provide background and explanation.

DATED: June 7, 2000.

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Summary of Comments Received on Proposed National Instrument 81-104 Commodity Pools

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**Proposed Companion Policy 81-104CP
Commodity Pools**

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Response of the Canadian Securities Administrators

In June 1997, the Canadian Securities Administrators (CSA) released for public comment proposed National Instrument 81-104 Commodity Pools (the 1997 Draft NI) and proposed Companion Policy 81-104CP Commodity Pools (the 1997 Draft CP). During the comment period which ended on October 31, 1997, the CSA received one comment letter from Meighen Demers.

As outlined in the Notice of Proposed Changes, since no comments were received during the comment period that addressed the issues raised by the CSA in the 1997 Notice, the CSA considered it important to contact each of the existing commodity pools in Canada to ensure that the proposed regulatory regime for commodity pools is appropriate and reflects the commodity pool industry in Canada. As a result of that contact, the CSA received additional written comments from:

AGF Management Limited
The Di Tomasso Group
Dorsey & Whitney LLP on behalf of Friedberg Mercantile Group
Fogler, Rubinoff on behalf of Friedberg Mercantile Group
Merrill Lynch Canada Inc.
Mondiale Asset Management Ltd.
Russell & DuMoulin

Copies of the comment letters may be viewed at the office of Micromedia Limited, 20 Victoria Street, Toronto, Ontario (416) 312-5211 or 1- (800) 387-2689; the office of the British Columbia Securities Commission, 200-865 Hornby Street, Vancouver, British Columbia (604) 899-6660; the office of the Alberta Securities Commission, 10025 Jasper Avenue, Edmonton, Alberta (780) 427-5201; and the office of the Commission des valeurs mobilières du Québec, Stock Exchange Tower, 800 Victoria Square, 22nd floor, Montréal, Québec (514) 940-2150.

The CSA have considered the comments received on the 1997 Drafts and thank all commentators for providing their comments.

The attached Table contains a summary of all comments received, together with the response of the CSA to those comments.

Note: In this Table, "1997 Draft" means the proposed version of NI 81-104 and Companion Policy 81-104CP published for comment in June 1997; "Revised NI" means the proposed revised version of NI 81-104 and Companion Policy 81-104CP; "CSA" means the Canadian Securities Administrators.

	1997 Draft Reference	Revised NI Reference	Comment	CSA Response
1.	Definition of "illiquid asset" in NI 81-102	S. 1.3(2)	Commodity pools should be permitted to invest in inter-bank forwards and options for which there is a counterparty prepared to and capable of making a market without regard to whether these transactions are restricted by the "illiquid assets" rules provided for in NI 81-102.	Change made. Subsection 1.3(2) of the proposed National Instrument excludes interbank forwards and options for which there is a counterparty prepared to and capable of making a market from the definition of "illiquid asset" for commodity pools.
2.	Definition of "underlying market exposure" in the 1997 draft of NI 81-102	N/A	The definition of "underlying market exposure" in the June 1997 published draft of NI 81-102 does not include all derivative instruments that may be used by a commodity pool. As a result, the look-through provision used to calculate concentration in one issuer for the concentration restriction will not operate to include all derivatives that may be used by a commodity pool.	The final version of NI 81-102 addresses this discrepancy. The term "underlying market exposure" was replaced by the term "underlying interest of that specified derivative" in subsection 2.1(3) of NI 81-102.
3.	S. 1.3	DELETED	Section 1.3 of the 1997 Draft should be clarified to ensure that all references to "permitted derivatives" in NI 81-102 are read as references to "specified derivatives" for commodity pools.	The comment was addressed in the final version of NI 81-102 which only uses the term "specified derivatives". All references to "permitted derivatives" were removed from the final rule.

4.	S. 2.1	S. 2.1	<p>The 10 percent concentration restriction should not apply to commodity pools. The use of leverage will cause a commodity pool to easily exceed the 10 percent concentration restriction. This result would not be consistent with a commodity pool's ability to leverage and speculate. E.g., a commodity pool with net assets of \$1 million that purchases forward contracts with market exposure of \$300,000 (30 percent of the net assets) may only need to deposit \$12,000 margin (2 to 4 percent of underlying market exposure).</p>	<p>No change made. The 10 percent concentration restriction in s. 2.1(1) of NI 81-102 restricts commodity pools from investing in <i>any one issuer</i> more than 10 percent of the net assets of the pool. Commodity pools should not use leverage to gain more than 10 percent exposure to any one issuer. The general rules applicable to mutual funds should apply to commodity pools. The concentration restriction would not preclude a commodity pool from exposing more than 10 percent of its net assets to a <i>commodity</i> (such as gold).</p>
5.	S. 3.2(1)(a) & (b)	S. 3.2(1)(a) & (b)	<p>Clause 3.2(1)(b) forbids the issuance of any units prior to receiving subscriptions aggregating not less than \$500,000. This prohibition precludes the issuance of units for the seed capital money invested.</p>	<p>Clause 3.2(1)(b) was amended to reflect this comment.</p>
6.	S. 3.2(2)	S. 3.2(2)	<p>The prohibition on removal of the initial seed capital (until the commodity pool is terminated or dissolved) is not necessary if the commodity pool is well established and has grown very large.</p>	<p>No change made. The CSA believe that the seed capital should remain in the commodity pool for the duration of the commodity pool's existence.</p>
7.	S. 4.1	DELETED	<p>No restrictions should be placed on a commodity</p>	<p>The prohibition was removed. Commodity pools are now</p>

			<p>pool's ability to pay a management fee to parties receiving or participating, directly or indirectly, in brokerage commissions. In addition, a manager not acting as portfolio adviser to the commodity pool will not control portfolio turnover (or "churning" activities) - as a result, the conflict of interest provision should not apply to a manager that does not provide portfolio advice.</p>	<p>treated in a like manner to conventional mutual funds on this issue. Investors can evaluate the performance of the commodity pool after management and brokerage fees are paid and can redeem units if the net returns of the pool are not acceptable.</p>
8.	S. 5.1	S. 4.1	<p>The Canadian Securities Institute ("CSI") proficiency courses proposed in the 1997 Draft for salespersons and supervisors are not appropriate courses. The courses aim at proficiency requirements for those trading in individual futures accounts. Commodity pools differ from the individual futures accounts as the pools are professionally managed by advisers with the requisite proficiency and experience. Also, the qualifications suggested are rare, particularly for representatives of mutual fund dealers. Since the distribution channels will be limited, a majority of the public in Canada will be deprived of an opportunity to participate in commodity pools. Why impose additional proficiency requirements</p>	<p>Section 4.1 has been changed. The additional proficiency requirements for both the salesperson and the supervisor would be to successfully complete the Derivatives Fundamentals Course offered by the CSI. This course provides a knowledge base in derivatives that the CSA believes is appropriate for anyone seeking to sell commodity pools. This course reflects the additional knowledge required to sell a professionally managed commodity pool which uses derivatives to create leverage and to speculate. A six month transitional period is proposed in respect of this requirement.</p>

			for commodity pools, when no such additional specialized knowledge is mandated for conventional mutual funds specializing in niche markets, for example, or using derivative instruments.	
9.	S. 5.1	S. 4.1	The additional proficiency requirements for selling commodity pools should not apply to SRO members as their general requirements are higher.	Changes described above made. SRO members are not exempt at present from the requirements described above. The CSA are of the view that SRO members should also have specialized knowledge about derivatives to sell commodity pools, notwithstanding the additional courses they take.
10.	S. 5.1	S. 4.1	The proposed National Instrument should include an exemptive relief provision for proficiency requirements.	No change necessary. Applications for exemptive relief from provisions of the proposed National Instrument can be made under section 11.1.
11.	Pt 5	Pt 4	It is difficult for the mutual fund dealer to monitor whether the dealer or salesperson selling a pool is properly registered. The National Instrument should provide clear direction that the onus to ensure proper registration in on the salesperson. Clear liability for the failure to comply must be set out explicitly in the National Instrument or by reference to a stated provision.	No changes were made. The CSA do not believe that the proposed National Instrument regulating commodity pools should restate or contribute to the existing penalties for non-compliance with registration requirements.
12.	S.7.1	S. 7.1	Is it intended that a change in [redemption] policy is a material change, requiring	The proposed National Instrument permits commodity pools to set redemption policies

			a unitholder meeting if the policy is amended?	that are consistent with, if not, less restrictive than previous policy statements. Each commodity pool must determine how it will comply with the National Instrument once it comes into force and must decide for itself what approvals it must seek and obtain.
13.	S. 7.3	S. 7.3	Supports allowing commodity pools additional time to redeem units (i.e. 15 days rather than 3 days for conventional mutual funds). Is the "15 days" business days or calendar days?	The 15 days are calendar days.
14.	Pt 7 & 8	Pt 7 & 8	Rationale for reducing the time periods for redemptions (30 days to 15 days) and frequency of calculation of the NAV (once per week to daily) is clear and acceptable. However, these changes will result in significant back-office system changes; will require time and money; and may be difficult for some distributors to implement.	Commodity pools facing undue hardship should seek exemptive transitional relief once the National Instrument comes into force. However, commodity pools have been given a long period of notice of these proposed changes (since June 1997) in which to change their affairs. Any commodity pool seeking exemptive transitional relief should explain why this lengthy period of notice has not been sufficient.
15.	S. 9.2	S. 9.2	The requirement for quarterly interim financial statements is not appropriate. It is onerous and costly. A quarterly investment update should be substituted for quarterly interim financial statements.	No changes made. Due to the ability for commodity pools to use leverage and their inherent volatility, the CSA believe that semi-annual financial statements are not sufficient. Also, the quarterly interim statements are not required to be audited statements and costs associated with such audits do

				not need to be incurred on a quarterly basis.
16.	S. 9.4	S. 9.4	Preparing and filing of statements of portfolio transactions and statements of investment portfolio are of no utility to investors in a commodity pool.	Section 9.4 of the proposed National Instrument incorporates a revised statement of portfolio transactions for commodity pools. The statement will provide aggregate disclosure of the contracts purchased and sold by the commodity pool during the period. This information will allow investors to evaluate the level of leverage used, the turnover of assets and level of liquidity of the contracts being traded. The regulations applicable to mutual funds and Statements of Investment Portfolio are proposed to apply to commodity pools.
17.	(New)	S. 6.1	In requiring compliance with section 7.1 of NI 81-102, a commodity pool manager must base an incentive fee charged to a commodity pool on the pool's performance relative to a representative benchmark. There is no such representative benchmark for a highly leveraged investment fund such as a commodity pool. The current requirement would preclude the use of incentive fees by commodity pool managers in Canada. If Canadian commodity pool managers are precluded from charging incentive fees, this fact would impact on the availability of top-	Section 6.1 was added to the proposed National Instrument. Section 6.1 permits a commodity pool to pay an incentive fee based on performance, where the pool's performance is based on a 90-day Canadian or US government treasury-bill rate benchmark, if a more appropriate benchmark is not available.

			<p>ranked U.S. commodity trading advisers and the viability of commodity pools in Canada. The U.S. model allows for incentive fees to be charged without regard to a benchmark, if the fees are fully described to the investors.</p> <p>As 65 - 80 percent of a commodity pool's assets are generally invested in treasury bills, a government treasury-bill rate would be consistent with section 7.1 of NI 81-102. A treasury-bill rate benchmark is easily measurable and applicable to all types of commodity pools.</p>	
18.	S. 6.8 of NI 81-102	S. 6.8 of NI 81-102	<p>Section 6.8 of NI 81-102 is not broad enough to accommodate all types of derivatives that commodity pools might use. Section 6.8 of NI 81-102 should be broadened in the proposed National Instrument to accommodate all types of derivatives that a commodity pool might use. Commentator focussing on section 6.8 of the June 1997 version of</p>	<p>No changes made. The CSA believe that the custodial provisions do accommodate the expanded use of derivatives by commodity pools. Changes made to section 6.8 of NI 81-102 since the June 1997 publication.</p>

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