

## **NOTICE AND REQUEST FOR COMMENT IMPLEMENTATION OF POINT OF SALE DISCLOSURE FOR MUTUAL FUNDS**

### **PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*, FORMS 81-101F1 AND 81-101F2 AND COMPANION POLICY 81-101CP *MUTUAL FUND PROSPECTUS DISCLOSURE* AND RELATED AMENDMENTS**

#### **Introduction**

We, the members of the Canadian Securities Administrators (the CSA), are publishing for a comment period of 120 days proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the Proposed Rule), Forms 81-101F1 *Contents of Simplified Prospectus* and 81-101F2 *Contents of Annual Information Form* (the Forms), and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* (the Companion Policy). New Form 81-101F3 *Contents of Fund Facts Document* is part of the Proposed Rule. We refer to the Proposed Rule, the Forms and Companion Policy as the Instrument.

The Instrument, together with related amendments, sets out the first phase of the CSA's proposed approach to implement the shared vision of securities and insurance regulators to provide investors with more meaningful and effective prospectus disclosure of mutual funds and segregated funds, as described in Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds* published by the Joint Forum of Financial Market Regulators (Joint Forum)<sup>1</sup> on October 24, 2008.

This is a significant investor protection initiative. We think the disclosure required by the Instrument would provide investors with the opportunity to make more informed investment decisions by giving investors key information about a mutual fund, in a language they can easily understand, at a time that is relevant to their investment decision. Central to the new prospectus disclosure regime is the Fund Facts document. It is in plain language, generally fits on both sides of one page and highlights the potential benefits, risks and the costs of investing in a mutual fund.

We are requesting feedback on the Instrument and related amendments, in particular, on implementation issues. We anticipate, and are committed to, continuing to consult with investors, representatives from the mutual fund industry, dealers, sales representatives and service providers to reach appropriate solutions.

As a second phase of the CSA's implementation, we intend to review the overall disclosure regime for mutual funds to reduce unnecessary duplication.

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<sup>1</sup> The goal of the Joint Forum is to continuously improve the financial services regulatory system through greater harmonization, simplification and co-ordination of regulatory activities.

For ease of readability, we are publishing an unofficial consolidation of the Instrument that incorporates the proposed amendments. We are also publishing a blacklined version of the Instrument that identifies the proposed changes to the Proposed Rule and Companion Policy. The proposed amendments to the Instrument are set out in Appendix C.

We are also publishing the following related, consequential amendments for a comment period of 120 days:

- proposed amendments to National Instrument 81-102 *Mutual Funds* and Companion Policy 81-102CP *Mutual Funds*;
- proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Companion Policy 81-106CP *Investment Fund Continuous Disclosure*;
- proposed amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*; and
- in some jurisdictions, certain local amendments.

We expect the Proposed Rule and related rule amendments to be adopted as rules in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut, as commission regulations in Saskatchewan, and as regulations in Québec. The Companion Policy and related policy amendments are expected to be adopted as policies in each of the CSA jurisdictions.

In some jurisdictions, legislative amendments may need to be sought and enacted if delivery of the Fund Facts document is to take the place of delivery of the simplified prospectus for mutual funds subject to the Instrument.

## **Background**

The Joint Forum released a *Comparative Study of Individual Variable Insurance Contracts (Segregated Funds) and Mutual Funds* in May 1999. Later that year, the Joint Forum published its *Recommendations for Changes in the Regulation of Mutual Funds and Individual Variable Insurance Contracts*. In that report, the Joint Forum recommended that work be done to further harmonize segregated fund and mutual fund disclosure.

On February 13, 2003, the CSA and Canadian Council of Insurance Regulators, as members of the Joint Forum, published Consultation Paper 81-403 *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds* (the Consultation Paper). The Consultation Paper identified that the current disclosure regime for mutual funds and segregated funds does not meet the objective of providing investors with the information necessary to make informed investment decisions. It set out proposals to bring key information to investors at the right time, in the right form and in a cost-effective and practical way.

On April 30, 2004, the Joint Forum published its report on the Consultation Paper, which summarized the comments received and set out the Joint Forum's responses to those comments.

It was recognized in the Consultation Paper that the concepts described by the Joint Forum for a point of sale disclosure regime for mutual funds and segregated funds could be relevant to other publicly offered investment funds. We will continue to consider the applicability of the new prospectus disclosure regime set out in the Instrument to other investment funds as follow-on work to this initiative.

On June 15, 2007, the Joint Forum published for comment Proposed Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds* (the initial Framework). The initial Framework described the elements of a proposed point of sale disclosure regime, including a new fund summary document called “Fund Facts”, delivery options, cancellation rights and the regulatory requirements for preparing, filing and delivering the Fund Facts document. Under the initial Framework, the Fund Facts was required to be delivered before the investor made the decision to buy any mutual fund.

Prior to its publication, we reviewed many research studies and academic papers from around the world to understand how investors make investment decisions and what information they want to make a decision. We determined that we needed to develop a short and simple point of sale disclosure document to help investors make an informed decision. In the fall of 2006, we tested two versions of the Fund Facts with investors and sales representatives, one for mutual funds and one for segregated funds.<sup>2</sup> The research indicated that the Fund Facts was very well received by the investors and the sales representatives who participated in the testing. After reviewing the results of the testing, some changes were made to clarify or expand the information in the Fund Facts. These changes were reflected in the initial Framework.

On October 24, 2008, the Joint Forum published a revised framework, Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds* (the Framework). The changes made from the initial Framework were the result of comments received on the initial Framework and a series of follow-up consultations conducted to better understand and clarify some of the issues raised in the comment letters.

In response to comments that requiring the Fund Facts to be delivered before every purchase would impede the sales process for both investors and their advisers, the approach to delivery was modified. The Fund Facts document remained central to the Framework. However, in response to comments, some changes were made to Fund Facts content, particularly in the areas of the costs of investing in a mutual fund and dealer compensation. In response to comments, the frequency of updating and filing the Fund Facts was also modified.

For additional background information on all of these documents, please refer to the website of the Joint Forum at [www.jointforum.ca](http://www.jointforum.ca) and on the websites of members of the CSA.

## **Summary of Feedback Received on the Framework**

Concurrently with the publication of the Framework, we published CSA Notice 81-318 seeking feedback from all stakeholders on issues related to implementation of the Framework and its

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<sup>2</sup> You can find the *Fund Facts Document Research Report* prepared by Research Strategy Group in Appendix 5 to the initial Framework on the Joint Forum website and on the websites of members of the CSA.

principles, in advance of publishing proposed changes to existing securities legislation for first comment.

We received 46 comment letters on the Framework. Copies of the comment letters have been posted on the Ontario Securities Commission website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca). Copies are also available from any CSA member. You can find the names of the commenters and a summary of the comments we received on the Framework and our responses in Appendix A to this Notice.

We have considered all comments received and have made some changes in response to the comments. In text boxes throughout the Proposed Rule (including new Form 81-101F3), we have identified the key changes and specific issues that we would like feedback on. We have also asked for feedback under Anticipated Costs and Benefits in this Notice.

## **Summary and Purpose**

### **Purpose of the Instrument**

The Instrument proposes to address the shortcomings of the current regime by focusing on three key principles:

- providing investors with key information about a fund;
- providing the information in a simple, accessible and comparable format; and
- providing the information before investors make their decision to buy.

We know that the current prospectus disclosure regime for mutual funds does not give investors meaningful information when they need it most. Mutual funds are required to disclose a great deal of information to investors in various documents. While these documents are intended to provide critical information to investors who are considering whether to buy a fund, research indicates that many investors do not use this information when making purchase decisions.<sup>3</sup>

Many investors have trouble finding and understanding the information they need because it is buried in the simplified prospectus for mutual funds. These documents tend to be long and complex. Investors also find it difficult to compare information about different funds. In addition, investors may not receive the documents before they make their purchase decision.

We expect that the Instrument and related amendments would enhance investor protection by providing investors with disclosure that gives them a basic understanding of the potential benefits, risks and costs of investing in a mutual fund, and allows them to meaningfully compare one fund to another. By making disclosure more effective, we are giving investors the opportunity to make more informed decisions. We are also enhancing transparency in the marketplace. We think current market conditions highlight the importance for investors to have the opportunity to understand what they are buying.

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<sup>3</sup> You can find the list of the research, studies and other sources that the Joint Forum reviewed and relied on in developing the Framework in Appendix 4 to the initial Framework on the Joint Forum website and on the websites of members of the CSA.

The Instrument and related amendments are also expected to contribute to more efficient Canadian capital markets by harmonizing the disclosure regimes for mutual funds and segregated funds. These are similar products that are often sold by a dually licensed dealer. The Instrument also keeps pace with developing global standards on point of sale delivery, which we consider essential to the continued success of the Canadian mutual fund industry.<sup>4</sup> Improving the disclosure of mutual funds may also contribute to more efficient Canadian capital markets by reinforcing investor confidence in this product and the financial services marketplace.

## **Summary of the Instrument**

### ***Application***

The Instrument and related amendments apply only to mutual funds subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

### ***Fund Facts***

The Fund Facts document set out in new Form 81-101F3 is central to the Instrument and largely follows the proposals in the Framework.

It is in plain language, generally fits on both sides of one page and highlights key information that is important to investors, including past performance, risks and the costs of investing in a mutual fund. It is designed using a question-and-answer format that makes it easy for investors to find information. It also contains a number of statements that help investors understand the risks of investing in a mutual fund.

To promote comparability and simplicity, many aspects of the Fund Facts document are prescribed, but it is also flexible enough to accommodate different kinds of mutual funds and to enable managers to describe their mutual funds accurately. To reduce the complexity of the document for investors and make it easier for investors to link the Fund Facts to a particular purchase, a separate Fund Facts document is required for each class or series of a mutual fund. To ensure ease of readability, the reading level of the Fund Facts is required to be at a grade level of 6.0 or less on the Flesch-Kincaid grade level score.

### ***Filing Requirements***

As under the Framework, the Instrument requires the Fund Facts document to be filed concurrently with the mutual fund's simplified prospectus and annual information form. The certificate for the mutual fund applies to the Fund Facts, just as it applies to all documents incorporated by reference into the simplified prospectus.

If managers want to provide more current information in the Fund Facts, they may choose to periodically update the disclosure in a Fund Facts by filing on SEDAR an updated Fund Facts. Any Fund Facts document filed after the date of the simplified prospectus is intended to supersede the Fund Facts previously filed.

The Instrument contemplates that if a material change to the mutual fund relates to a matter that requires a change to the disclosure in the Fund Facts, an amendment to the Fund Facts will be filed.

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<sup>4</sup> Under MiFID in Europe, the focus is on ensuring investors receive information 'in good time before' carrying on the relevant business, so that the information can inform their investment decision. Similarly, in the UK, Australia and Japan disclosure documents must generally be provided before a product is purchased.

## ***Delivery***

The delivery requirements follow the approach set out in the Framework. The obligations are designed to give investors an opportunity to review the information in the Fund Facts and ask questions before they make a purchase.

A key element of delivery of the Fund Facts is that it be at a time and in a way that allows an investor to easily link the information they receive about a mutual fund to the purchase they are considering. A distinction is made in the Instrument between investors who rely on a dealer's recommendation and those who do their own research and simply want to execute a trade.

The Instrument requires delivery of the Fund Facts document for all initial purchases before or at the point of sale that are recommended to an investor. For initial purchases of money market mutual funds recommended by the dealer or purchases that are initiated by the investor, the Instrument allows investors to choose to receive the Fund Facts document before they buy the mutual fund or with the confirmation of trade for the purchase. In these instances, the dealer is required to inform the investor of the existence and purpose of the Fund Facts and explain that the investor may choose to receive it before the purchase. Investors who make initial purchases through an order execution-only account will receive the Fund Facts document with the confirmation of trade.

The Fund Facts document is not required to be delivered for subsequent purchases of a mutual fund currently held in the investor's account. Dealers will have to give investors the option to receive annually the Fund Facts for each mutual fund in their account. The most recently filed Fund Facts document will also have to be posted to the website of the mutual fund, mutual fund family or manager.

The Instrument allows flexibility in delivery options. It can be in person, by mail, by fax, electronically or by other means (excluding oral delivery or availability to the Fund Facts alone). To make it easy for investors to review and refer to the Fund Facts document for the mutual funds that they have bought, the Instrument limits the number of Fund Facts that may be consolidated into a fund family document or other grouping when delivered.

## ***Investor rights***

### **Right for misrepresentation**

The Instrument contemplates that the Fund Facts document will be incorporated by reference into the simplified prospectus. This means that the existing statutory rights of investors that apply for misrepresentations in a prospectus will apply to misrepresentations in the Fund Facts.

### **Right for failure to deliver the Fund Facts**

The Instrument contemplates delivery of the Fund Facts document to satisfy delivery of the simplified prospectus under securities legislation. If delivery of the Fund Facts is to take the place of delivery of the simplified prospectus, some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or to rescind the purchase if the investor fails to receive the Fund Facts. An alternative approach may be to require the simplified prospectus to be delivered with the Fund Facts document, or for the Fund Facts document to become the simplified prospectus. We are considering these alternative approaches.

## **Cancellation right**

As under the Framework, the Instrument contemplates replacing the current withdrawal and rescission rights under securities legislation with a single, harmonized two-day cancellation right for investors that applies to all mutual fund purchases. The purpose of the right is to give investors the reasonable opportunity to change their minds if they have been sold a mutual fund they really do not want. It is not intended to protect investors from a short-term decline in market value.

The right starts when the investor receives, or is deemed to receive, the confirmation of trade for the purchase. The content of the cancellation right generally differs from the current withdrawal and rescission rights. Under the Instrument, the investor will get back the lesser of:

- the amount of the investor's original investment in the mutual fund; and
- the value of the mutual fund on the day the investor exercises the cancellation right.

This means, that if the value of the mutual fund goes down within two business days of the investor receiving the confirmation of trade, the investor would get back less than the amount they invested. The investor would also get back any sales charges or other fees paid to buy the mutual fund, and will not pay any redemption or short-term trading fees. We think this approach is appropriate in combination with delivery of the Fund Facts document, which provides investors with awareness and clear information on how to exercise the cancellation right.

## ***Transition***

The Instrument contemplates a staged implementation, with the requirement to prepare and file a the Fund Facts document becoming effective earlier than the new delivery requirements. We currently propose a two-year transition period for delivery of the Fund Facts following the effective date of the Instrument. During this period, the Fund Facts document would be required to be prepared, filed concurrently with the mutual fund's next filed simplified prospectus and annual information form, and posted on the website of the mutual fund, mutual fund family or the manager. This would allow investors and dealers to start using the Fund Facts as soon as possible.

Subject to any legislative amendments needed to preserve investor rights for delivery of the Fund Facts, the Instrument contemplates that during this two-year transition period, delivery of the simplified prospectus may be satisfied by delivery of the Fund Facts document under the securities legislation in effect before the effective date of the Instrument.

Depending on the feedback we receive, the Instrument and related amendments may be implemented in stages. This could occur by adopting the Instrument in its entirety and varying the transition periods for various aspects of the Instrument, as currently contemplated, or by adopting the Instrument in part, to allow for a longer consultative process on implementation issues related to delivery.

## **Alternatives Considered**

The earlier publications by the Joint Forum identified under Background in this Notice outlined the alternatives we considered, as members of the Joint Forum, in developing the disclosure regime for mutual funds set out in the Instrument. They also set out the pros and cons to each

alternative. You can find these documents on the Joint Forum website and on the websites of members of the CSA.

## Anticipated Costs and Benefits

We think the disclosure regime set out in the Instrument would benefit both investors and the capital markets by helping address the “information asymmetry” that exists between participants in the mutual fund industry and investors. Unlike industry participants, investors often do not have key information about a mutual fund before they make their investment decision, and may not know where to find the information. Providing more effective disclosure would help bridge this information gap.

However, the extent to which investors and the mutual fund industry would be affected in terms of benefits and costs is difficult to quantify.

### *Benefits*

The benefits of a more effective disclosure regime can be subtle and difficult to measure. For example, it can be a challenge to quantify the value of investors having the opportunity to make more informed investment decisions. In addition, research suggests that certain behavioral biases of investors may impact the effectiveness of policy initiatives that are designed to encourage better choices about financial products.<sup>5</sup> However, research on investor preferences for mutual fund information, including our own testing of the Fund Facts, indicates investors prefer a concise summary of the information to be offered before the sale so that they can use the information to make a decision.<sup>6</sup>

Some anticipated benefits of a more effective disclosure regime for mutual funds include:

- less risk of investors buying inappropriate products or not fully benefitting from the advice services they pay for;
- investors being in a position to better understand and compare the one mutual fund to another, particularly the costs of investing in the mutual funds;
- greater transparency in areas such as charges or commissions, which may enhance the overall efficiency of the market; and
- comparability and ease of readability reinforcing investor confidence in mutual funds.

We seek feedback on whether you agree or disagree with our perspective on the benefits of the Instrument. We particularly seek feedback from investors.

<sup>5</sup> FSA, July 2008 *Financial Capability A Behavioural Economics Perspective* – Consumer Research 69.

<sup>6</sup> OSC, October 2006 *Fund Facts Document Research Report*; Investment Company Institute, August 2006 *Understanding Investor Preferences for Mutual fund Information*; SEC, April 2004 *Results of Focus Groups with Individual Investors to Test Proposed Rules 15c2-2 and 15c2-3*.



### *Costs*

We think the costs of a new disclosure regime fall into two main categories: the one-time costs of change in moving to the new regime and the ongoing costs of maintaining the new system, in comparison with the cost of the existing disclosure regime.

We anticipate that costs to industry stakeholders will fall into the following general categories:

- preparation of the Fund Facts;
- reprogramming and updating information delivery systems;
- regulatory filings; and
- compliance costs and staff costs in overseeing and maintaining the delivery regime.

Yet, we also anticipate there will be reductions in preparation and delivery costs for industry stakeholders with the change from delivery of the simplified prospectus to delivery of the Fund Facts document. We think the potential costs could also be reduced to the extent that the new point of sale disclosure regime can be incorporated into the current delivery system. Some dealers may already disclose this type of information at point of sale even though securities legislation does not require this. As a second phase of the CSA's implementation, we intend to review the overall disclosure regime for mutual funds to reduce unnecessary duplication. This could further reduce the cost burden of the Instrument.

In response to industry concerns about the potential preparation and delivery costs of a separate Fund Facts document for each class or series of a mutual fund, the Instrument contemplates some degree of consolidation or grouping of Fund Facts for delivery. We are also seeking submissions of sample Fund Facts documents that demonstrate multiple series or class information presented in a manner consistent with the principles of the Framework to further consider ways to respond to the concerns raised about potential preparation and delivery costs.

The changes in the delivery proposals in the Framework were in response to industry concerns about the potential costs and disruptions that could be caused by an unduly rigid application of point of sale delivery. We will continue to consider other ways to respond to the implementation issues related to delivery. We have identified in Appendix B to this Notice specific aspects of the delivery requirements we are seeking specific feedback on.

Overall, we believe the potential benefits of the changes to the disclosure regime for mutual funds are proportionate to the costs of making them. We are committed to reviewing the impact of point of sale delivery, and the Instrument generally, following its implementation.

We seek feedback on whether you agree or disagree with our perspective on the cost burden of the Instrument. Specifically, we request specific data from the mutual fund industry and service providers on the anticipated costs and savings of complying with the Instrument for the mutual fund industry.

## **Related Amendments**

### **National Amendments**

Proposed amendments to National Instrument 81-102 *Mutual Funds* and Companion Policy 81-102CP *Mutual Funds* are set out in Appendix D;

Proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Companion Policy 81-106CP *Investment Fund Continuous Disclosure* are set out in Appendix E; and

Proposed amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* are set out in Appendix F.

### **Local Rule Amendments**

If necessary, we propose to amend elements of local securities legislation, in conjunction with the implementation of the Instrument. The provincial and territorial securities regulatory authorities may publish these proposed local changes separately in their jurisdictions. These local changes may be to rules or to statutes. If statutory amendments are necessary in a jurisdiction, these changes will be initiated and published by the local provincial government.

Proposed consequential amendments to rules or regulations in a particular jurisdiction or publication requirements of a particular jurisdiction are in Appendix G to this Notice published in that particular jurisdiction.

Some jurisdictions may need to modify the application of the Instrument using a local implementing rule. Jurisdictions that must do so will separately publish the implementing rule.

### **Unpublished Materials**

In developing the Instrument and related amendments, we have not relied on any significant unpublished study, report or other written materials.

### **Request for Comments**

We would like your input on the Instrument and related amendments. We need to continue our open dialogue with all stakeholders if we are to achieve our regulatory objectives while balancing the interests of investors and market participants. To allow for sufficient review, we are providing you with 120 days to comment.

We have raised specific issues for comment in text boxes like this throughout the Proposed Rule (including new Form 81-101F3) and in this Notice. You can also find a list of these issues in Appendix B to this Notice. We also welcome your comments on other aspects of the Instrument, including our general approach and any changes we should make.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments will be posted on the OSC website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

Thank you in advance for your comments.

## **Deadline for Comments**

Your comments must be submitted in writing by **October 17, 2009**.

If you are not sending your comments by fax, mail or hand delivery, please forward an electronic file containing the submission in Word, Windows format.

## **Where to Send Your Comments**

Please address your comments to all CSA members, as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Registrar of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Superintendent of Securities, Yukon Territory  
Registrar of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

John Stevenson, Secretary  
Ontario Securities Commission  
20 Queen Street West, Suite 1903, Box 55  
Toronto, ON M5H 3S8  
Fax: 416-593-2318  
E-mail: [jstevenson@osc.gov.on.ca](mailto:jstevenson@osc.gov.on.ca)

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22e étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
Fax : 514-864-6381  
E-mail: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

## Questions

Please refer your questions to any of,

Noreen Bent,  
Manager and Senior Legal Counsel  
Legal Services, Corporate Finance  
British Columbia Securities Commission  
Phone: 604-899-6741  
E-mail: [nbent@bcsc.bc.ca](mailto:nbent@bcsc.bc.ca)

Christopher Birchall  
Senior Securities Analyst  
Corporate Finance  
British Columbia Securities Commission  
Phone: 604-899-6722  
E-mail: [cbirchall@bcsc.bc.ca](mailto:cbirchall@bcsc.bc.ca)

Bob Bouchard  
Director and Chief Administration Officer  
Manitoba Securities Commission  
Phone: 204-945-2555  
E-mail: [Bob.Bouchard@gov.mb.ca](mailto:Bob.Bouchard@gov.mb.ca)

Rhonda Goldberg  
Manager, Investment Funds Branch  
Ontario Securities Commission  
Phone: 416-593-3682  
E-mail: [rgoldberg@osc.gov.on.ca](mailto:rgoldberg@osc.gov.on.ca)

Ian Kerr  
Senior Legal Counsel, Corporate Finance  
Alberta Securities Commission  
Phone: 403-297-4225  
E-mail: [Ian.Kerr@asc.ca](mailto:Ian.Kerr@asc.ca)

Éric Lapierre  
Manager, Investment Funds  
Autorité des marchés financiers  
Phone: 514-395-0337 ext. 4471  
E-mail: [eric.lapierre@lautorite.qc.ca](mailto:eric.lapierre@lautorite.qc.ca)

Fernand Lavigne  
Financial Analyst  
Autorité des marchés financiers  
Phone: 514-395-0337 ext. 4818  
E-mail: [fernand.lavigne@lautorite.qc.ca](mailto:fernand.lavigne@lautorite.qc.ca)

Stephen Paglia  
Legal Counsel, Investment Funds Branch  
Ontario Securities Commission  
Phone: 416-593-2393  
E-mail: [spaglia@osc.gov.on.ca](mailto:spaglia@osc.gov.on.ca)

Melissa Schofield  
Senior Legal Counsel, Investment Funds Branch  
Ontario Securities Commission  
Phone: 416-595-8777  
E-mail: [mschofield@osc.gov.on.ca](mailto:mschofield@osc.gov.on.ca)

Susan Swayze  
Senior Plain Language Editor  
Ontario Securities Commission  
Phone: 416-593-2338  
E-mail: [sswayze@osc.gov.on.ca](mailto:sswayze@osc.gov.on.ca)

The text of the Instrument and Related Amendments follows or can be found elsewhere on a CSA member website.

June 19, 2009



### Quick facts

<b>Date fund created:</b>	January 1, 1996	<b>Portfolio manager:</b>	Capital Asset Management Ltd.
<b>Total value on June 1, 2009:</b>	\$1 billion	<b>Distributions:</b>	Annually, on December 15
<b>Management expense ratio (MER):</b>	2.25%	<b>Minimum investment:</b>	\$500 initial, \$50 additional

### What does the fund invest in?

The fund invests in Canadian companies. They can be of any size and from any industry. The charts below give you a snapshot of the fund's investments on June 1, 2009. The fund's investments will change.

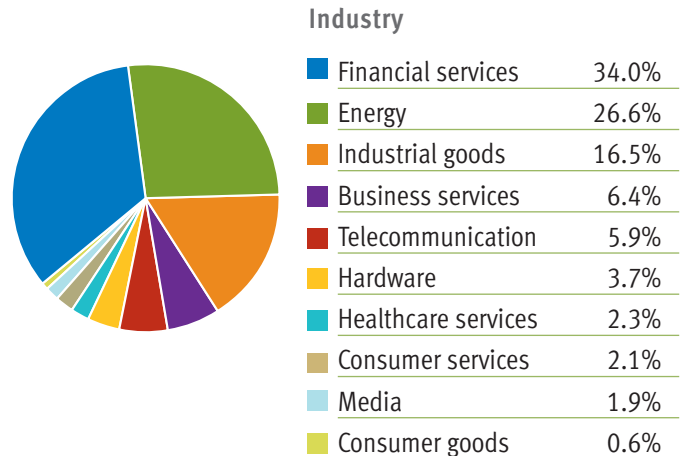
#### Top 10 investments (June 1, 2009)

1. Royal Bank of Canada
2. Encana Corp.
3. Petro-Canada
4. Alcan Inc.
5. Canadian National Railway Company
6. Goldcorp Inc.
7. Extencicare Inc.
8. Husky Energy
9. Open Text
10. Thomson Corp.

**Total investments** 126

**The top 10 investments make up 32% of the fund.**

#### Investment mix (June 1, 2009)



### How has the fund performed?

This section tells you how the fund has performed over the past 10 years. Returns are after the MER has been deducted. These expenses reduce the returns you get on your investment.

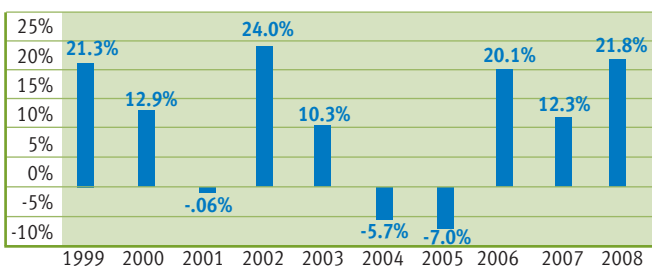
It's important to note that this doesn't tell you how the fund will perform in the future. Also, your actual return will depend on your personal tax situation.

#### Average return

A person who invested \$1,000 in the fund 10 years ago now has \$2,705. This works out to an annual compound return of 10.5%.

#### Year-by-year returns

This chart shows how the fund has performed in each of the past 10 years. The fund dropped in value in three of the 10 years.



### How risky is it?

When you invest in a fund, the value of your investment can go down as well as up. XYZ Mutual Funds has rated this fund's risk as medium.



### Are there any guarantees?

Like most mutual funds, this fund doesn't have any guarantees. You may not get back the amount of money you invest.

### Who is this fund for?

#### Investors who:

- are looking for a long-term investment
- want to invest in a broad range of Canadian companies
- can handle the ups and downs of the stock market.

**! Don't buy this fund if you need a steady source of income from your investment.**

## How much does it cost?

The following tables show the fees and expenses you could pay to buy, own and sell Series A units of the fund. The fees and expenses are different for each series. Ask about other series that may be suitable for you.

### 1. Sales charges

You have to choose a sales charge option when you buy the fund. Ask about the pros and cons of each option.

Sales charge option	What you pay	How it works
<b>Initial sales charge</b>	Up to 4% of the amount you buy	<ul style="list-style-type: none"> <li>You and your adviser decide on the rate.</li> <li>The initial sales charge is deducted from the amount you buy. It goes to your investment firm as a commission.</li> </ul>
<b>Deferred sales charge</b>	<b>If you sell within:</b> 1 year of buying 6.0% 2 years of buying 5.0% 3 years of buying 4.0% 4 years of buying 3.0% 5 years of buying 2.0% 6 years of buying 1.0% After 6 years nothing	<ul style="list-style-type: none"> <li>The deferred sales charge is a set rate. It is deducted from the amount you sell.</li> <li>When you buy the fund, XYZ Mutual Funds pays your investment firm a commission of 4.9%. Any deferred sales charge you pay goes to XYZ Mutual Funds.</li> <li>You can sell up to 10% of your units each year without paying a deferred sales charge.</li> <li>You can switch to Series A units of other XYZ Mutual Funds at any time without paying a deferred sales charge. The deferred sales charge schedule will be based on the date you bought the first fund.</li> </ul>

### 2. Ongoing fund expenses

You don't pay these expenses directly. They affect you because they reduce the return you get on your investment.

	Annual rate (as a % of the fund's value)
<b>Management fee</b> The fund pays a management fee to XYZ Mutual Funds.	2.00%
<b>Operating expenses</b> These are the costs of the fund, other than trading costs.	0.25%
<b>Management expense ratio (MER)</b> This is the total of the management fee and operating expenses.	<b>2.25%</b>

### Trailing commission

XYZ Mutual Funds pays your investment firm a trailing commission for as long as you own the fund. It is for the services and advice your investment firm provides to you. Investment firms may pay part of the trailing commission to their advisers.

The trailing commission is paid out of the management fee. The rate depends on the sales charge option you choose:

- **Initial sales charge** – up to 1.0% of the value of your investment each year
- **Deferred sales charge** – up to 0.50% of the value of your investment each year

### 3. Other fees

You may have to pay other fees when you sell or switch units of the fund.

Fee	What you pay
<b>Short-term trading fee</b>	1% of the value of units you sell or switch within 90 days of buying them. This fee goes to the fund.
<b>Switch fee</b>	Your investment firm may charge you up to 2% of the value of units you switch to another XYZ Mutual Fund.
<b>Change fee</b>	Your investment firm may charge you up to 2% of the value of units you switch to another series of the fund.

## What if I change my mind?

- You can cancel most investments up to two days after you receive the trade confirmation.
- You have to tell your investment firm in writing that you want to cancel.
- You'll get back the amount you invested, or less if the value of the fund has gone down.
- You'll also get back any sales charges and fees you paid.

## For more information

This Fund Facts may not have all the information you want. You can ask for the fund's simplified prospectus and other disclosure documents, which have more detailed information. These documents and the Fund Facts make up the fund's legal documents.

XYZ Mutual Funds  
 123 Asset Allocation St.  
 Toronto, ON M1A 2B3

Phone: (416) 555-5555  
 Toll-free: 1-800-555-5556  
 Email: [investing@xyzfunds.com](mailto:investing@xyzfunds.com)  
[www.xyzfunds.com](http://www.xyzfunds.com)

## APPENDIX A

### SUMMARY OF PUBLIC COMMENTS ON FRAMEWORK 81-406

<b>Table of Contents</b>	
<b>PART</b>	<b>Title</b>
<b>Part I</b>	<b>Background</b>
<b>Part II</b>	<b>Comments on delivery</b>
<b>Part III</b>	<b>Comments on fund facts</b>
<b>Part IV</b>	<b>Investor rights comments</b>
<b>Part V</b>	<b>Other comments</b>
<b>Part VI</b>	<b>List of commenters</b>

#### **Part I – Background**

##### **Summary of Comments**

On October 24, 2008, the Canadian Securities Administrators (CSA) published a notice seeking comment on *Framework 81-406: Point of Sale Disclosure for Mutual Funds and Segregated Funds* (Framework). The comment period expired December 23, 2008. We received submissions from 46 commenters, which are listed in Part VI.

The CSA sought feedback from all stakeholders on issues related to implementation of the Framework and its principles in advance of publishing proposed changes to existing securities laws for first comment. We have considered all comments received and have made some changes in response to the comments.

We wish to thank all those who took the time to comment. The comments we received are summarized below.



<b>Part II - Comments on delivery</b>			
<b><u>Issue</u></b>	<b><u>Sub-Issue</u></b>	<b><u>Comments</u></b>	<b><u>Responses</u></b>
<b>General comments on delivery</b>	<i>General comments</i>	<p>Support for the Framework’s proposal for delivery of the fund facts before or at the point of sale (POS) was divided almost unanimously among industry and investor commenters.</p> <p>Most industry commenters continued to express concerns with POS delivery. Some even questioned why we propose to take away the choice that exists today for investors of receiving information before or after the point of sale.</p> <p>However, we also heard from two investor advocate commenters who expressed strong support for providing investors with clear, meaningful and simplified information before or at the time they make their decision to invest in a mutual fund. One of these commenters remarked that professional advisers should welcome the opportunity to educate and inform their clients, and regretted seeing the fund industry’s resistance to meaningful, timely disclosure. Any advisory firm that is unable or unwilling to provide</p>	<p>We remain committed to the principles set out in the Framework for providing investors with meaningful information about a mutual fund when they need it most – typically before they make their decision to invest.</p> <p>We know that investors are generally not reading, understanding or using the disclosure that is currently required to be delivered to them. We believe the Framework’s proposals will give investors the opportunity to make more informed decisions.</p> <p>We think the revisions to delivery in the Framework still achieve our vision, while better meeting the needs of investors and accommodating various business models of dealers. We are, however, continuing to consider other ways to improve the delivery proposals and are seeking specific feedback on various aspects of the delivery requirements.</p>

		<p>fundamental fund information at the time of sale, we were told, should be excluded from providing advice to trusting retail fund investors.</p> <p>Yet, this same commenter stated that the proposals contained in the Framework are far off what was originally contemplated. Unless substantive investor-protection changes are made, it was suggested the existing prospectus system would be a better alternative for investors.</p>	
	<p><b><i>Disruption of the sales process</i></b></p>	<p>Some commenters told us the delivery requirements will disrupt the sales process, particularly in situations where the transaction is time-sensitive (i.e. at the end of the day or the last day of RRSP season).</p> <p>We were told purchases could be negatively impacted due to price fluctuations over the days it takes to receive the fund facts.</p> <p>If timing was a constraint, one commenter remarked investors will choose to invest in a fund for which the adviser has the fund facts on hand, rather than delay the trade.</p> <p>Commenters further stated the approach to delivery does not accommodate the variety</p>	<p>In response to comments, we are seeking specific feedback on what ‘time-sensitive’ circumstances may be appropriate for allowing an investor to waive delivery of the fund facts before the purchase is completed, and under what terms.</p>

		<p>of investor types and investment styles that exist. We were told the added step of delivery is likely to disrupt, annoy and even confuse the investor.</p> <p>One commenter stated an investor may simply want to conclude a trade and not agree that additional information would be helpful or necessary.</p> <p>This commenter further remarked that the approach to delivery does not take into account investors who are out of the country and who may not have access to fax machines or computers. These investors will be severely constrained in how they can trade or manage their mutual fund investment portfolios at potentially important times.</p>	
	<p><b><i>Regulatory arbitrage</i></b></p>	<p>We were also told by many commenters that the delivery requirements would disadvantage mutual funds in relation to other investment products that are less regulated and do not have pre-sale disclosure obligations, which may in turn result in fewer funds and fewer fund families for investors to chose from.</p> <p>However, one commenter did acknowledge that its business model would</p>	<p>It is outside of the scope of this project to consider point of sale disclosure for other types of investment funds.</p> <p>We do not disagree, however, with the commenters who told us that the principles set out in the Framework for point of sale disclosure could apply to other types of investment products. We would welcome additional feedback on this.</p>

		<p>prevent its agents from selling products other than mutual funds.</p> <p>A couple of commenters noted that some members of the CSA have indicated an intention to address product arbitrage concerns by implementing a similar “point of sale” regime for other types of securities. One of these commenters urged the CSA to provide a firm commitment to address competitive concerns in the near term.</p> <p>One commenter asked us to consider expanding the fund facts concept to cover higher-risk products, like hedge funds, limited partnerships, universal life insurance policies and asset-backed commercial paper (ABCP).</p> <p>Another commenter remarked POS disclosure might make mutual funds look worse in the eyes of consumers, who may think a product without POS disclosure has less risk.</p>	<p>However, we disagree with the commenters who indicated that POS delivery for mutual funds will result in investors being sold alternative products. We think mutual funds are a suitable investment product for many investors, and we would expect dealers to continue to recommend mutual funds to these investors.</p> <p>We expect disclosure for all types of investment funds will evolve with time, and we anticipate that point of sale disclosure for mutual funds and segregated funds may provide a platform for future regulatory reform.</p> <p>We note that POS delivery already exists for principal protected notes, and there is a trend internationally toward POS disclosure for investment fund products.</p>
	<p><b><i>Reduced product choice</i></b></p>	<p>A few commenters suggested that the delivery requirements would cause dealers to narrow their product shelf in order to ensure that they have sufficient copies of fund facts to be able to effect transactions</p>	<p>We think the wide range of options available for delivering the fund facts provides dealers with sufficient flexibility to accommodate existing business models. We were encouraged</p>

		<p>on a timely basis for their clients. This would especially be the case for smaller dealers, or firms who mostly deal with their clients in person.</p> <p>Another commenter remarked dealers may have less incentive to place new funds on their list of approved products if it requires producing and distributing additional fund facts.</p> <p>It was further suggested that advisers may attempt to reduce the potential burdens of the Framework by limiting the number and variety of funds that they offer.</p>	<p>to hear from a service provider to the mutual fund industry that the technology is available to assist in the production, distribution and delivery of the fund facts.</p>
	<p><b><i>Impact on independent fund companies</i></b></p>	<p>A number of commenters strongly stated that the delivery requirement will put independent fund companies that rely on third party distribution at a competitive disadvantage.</p> <p>These commenters told us that bank branch distribution would be advantaged because the compliance systems for bank-owned distributors, coupled with the often face-to-face in person meetings between bank personnel and investors, means that these distributors would be able to comply with POS delivery without undue difficulty as compared to third party distributors who</p>	<p>In response to comments, we will be continuing to consider ways of addressing specific implementation issues related to POS delivery, while still achieving the principles set out in the Framework.</p> <p>We have specifically asked for feedback on certain aspects of the delivery requirements.</p>

		<p>may deal with their clients by telephone or other non-face-to-face means.</p> <p>A few commenters also noted dealers may not want to manage such a large volume of documents and therefore may reduce the number of funds or series they offer from independent fund companies.</p>	
	<b><i>Failure to recognize the role of advisers</i></b>	<p>Some commenters remarked that the Framework does not recognize the unique relationships that exist between advisers and clients, and that it casts doubt on their role, since an investor dealing “direct” is not required to receive the fund facts, whereas a client relying on advice must.</p> <p>One commenter additionally noted that while written information about a particular fund or funds is important, a continued regulatory focus on, and recognition of, the importance of the “know-your-client”, “know-your-product” and suitability rules in the context of mutual fund investing through registered dealers is equally, if not more, important.</p>	<p>Nothing in the Framework or the amendments to NI 81-101 is intended to detract from the central role of the adviser. The focus of this initiative is to develop a harmonized, more effective disclosure regime for mutual funds and segregated funds.</p> <p>We think POS delivery builds on an adviser’s existing obligation to determine suitability of all purchases of a mutual fund. We anticipate that the fund facts will become a tool used by advisers to assist in the sales process.</p>
	<b><i>Impact on telephone and mobile sales</i></b>	<p>We were asked to remain mindful of the multiple channels of sales distribution that exist. One commenter stressed the importance of regulatory policy not</p>	<p>As noted above, in response to comments we will be continuing to consider ways of addressing specific implementation issues related to POS</p>

		<p>inadvertently disadvantaging one sales channel over another since this could result in reduced competition and choice for consumers.</p> <p>A number of commenters told us that the delivery requirements will have a substantial impact on investors and the firms who choose to transact by phone, since there will be situations where the investor does not have easy access to a fax or e-mail and will not be able to complete the transaction until the fund facts is received.</p> <p>We were told by some of these commenters that a significant proportion of mutual fund sales are conducted by telephone. For example, approximately 85%-90% of full-service dealer mutual fund transactions and approximately 10%-15% of mutual fund dealer transactions are completed by telephone.</p> <p>Two commenters stated a two-step sales process, where the investor first speaks to a salesperson by phone, then obtains the fund facts and finally calls the salesperson a second time to complete the transaction, is incompatible with the expectations of many investors who expect to have their</p>	<p>delivery.</p> <p>In particular, we are seeking specific feedback on what circumstances would be appropriate for allowing an investor to waive delivery of the fund facts before the purchase is completed, and under what terms. We are interested in understanding how such a waiver is envisaged for telephone and mobile sales.</p>
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		<p>order carried out immediately when providing instructions over the phone.</p> <p>We were also told a similar challenge may face investors serviced by mobile salespeople who travel to clients and who may not be able to carry or print the fund facts for every mutual fund offered, or that an investor might ultimately purchase.</p>	
<b>Compliance</b>	<b><i>Cost and complexity of compliance</i></b>	<p>We were told that the delivery requirements are cumbersome and impractical, and that they will result in increased compliance costs, particularly for small dealers.</p> <p>These costs, we were reminded by a number of commenters, can be expected to ultimately impact investors through either a) reductions in service and access to mutual funds, especially for investors of more modest means, or b) an increase in costs borne by investors.</p> <p>Some commenters stated that the Framework will effectively require dealers to track, at a minimum: (i) the delivery and receipt of the fund facts, (ii) whether a trade was “adviser recommended” or “investor initiated”, (iii) whether the trade was an initial or subsequent trade in a</p>	<p>It is not intended that the audit trail for delivery of the fund facts be more onerous than a dealer’s existing compliance mechanisms to record and maintain evidence of required disclosure and client trade instructions.</p> <p>We currently contemplate a two-year transition period for delivery of the fund facts following the effective date of the amendments. This is to provide sufficient time for implementation of compliance systems. We are seeking specific feedback on the appropriateness of this transition period, as well as on the anticipated costs of implementation.</p> <p>We have met regularly with the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of</p>



		<p>fund, (iv) whether the trade was for a money market fund, and (v) whether a client has opted to receive annual delivery of the fund facts.</p> <p>Other commenters remarked that POS delivery will place a tremendous administrative burden on advisers, who now will be required to fulfil the regulatory delivery requirement previously fulfilled by the dealer's back offices.</p> <p>A number of commenters expressed concern that it would be time-consuming and expensive to develop and implement compliance and audit systems to accommodate the various exemptions and waivers around delivery.</p> <p>The burden and challenges will likely be similar, stated one commenter, to those currently facing dealers with respect to the new Principal Protected Notes (PPN) legislation, which came into force on July 1, 2008.</p> <p>A few commenters stated that although the Framework says that dealers are not expected to obtain acknowledgement of receipt of the fund facts from investors, in the event of a dispute, it would be difficult</p>	<p>Canada (MFDA) to discuss compliance issues and to identify implementation issues.</p>
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		<p>to confirm compliance without obtaining some form of written acknowledgment from the investor. This would be particularly onerous for advisers over brokers who do not currently obtain client signatures evidencing delivery, remarked one commenter.</p> <p>Another commenter, however, stated that investor acknowledgement is not necessary or warranted and should not even be addressed in any legislative amendments, national instruments rules or regulations, or in any companion policies or staff notices. This commenter suggested that delivery of a fund facts should be analogous to delivery of prospectuses, which do not require an investor acknowledgement since, if sent by mail, they are deemed to be received after a certain period of time.</p> <p>Finally, a commenter warned that unmanageable delivery requirements could give rise to trends of non-compliance.</p>	
	<p><b><i>Availability of technology solutions</i></b></p>	<p>Yet, despite the nuances to the delivery requirements, we were told by one commenter, a service provider to the mutual fund industry, that the technology is available for the creation, production,</p>	<p>We are encouraged to hear that technological solutions are available to address possible implementation challenges related to POS delivery. We are hopeful that the detail set out in the</p>

		distribution, delivery, tracking and auditing of the fund facts.	amendments to NI 81-101 will promote additional feedback on solutions to the implementation issues that have been raised.
	<b><i>Need for CSA guidance and SRO consistency in approach</i></b>	One commenter requested that we provide guidance as to what would constitute best industry practices to track delivery. Still other commenters noted that without knowing what proof of delivery requirements will be imposed on dealers by self-regulatory organizations (SROs), it is difficult to understand what the implications of proving delivery of the fund facts will be on operational systems and compliance procedures. We were urged to engage with the SROs to ensure consistent expectations on proof of delivery.	As noted above, we do not intend the audit trail for delivery of the fund facts to be more onerous than a dealer's existing compliance mechanisms to record and maintain evidence of disclosure and client trade instructions. The amendments to NI 81-101 are flexible to allow a dealer to establish internal policies and procedures based upon the dealer's particular business model.  We agree that a consistent regulatory approach toward evidence of delivery is important. We have met regularly with IROC and the MFDA since the publication of the Framework to discuss implementation and oversight issues. We expect to continue to meet with the SROs to ensure a consistent approach to monitoring delivery.
	<b><i>Need for a long implementation</i></b>	A few commenters remarked that an extended transition period for industry stakeholders to integrate fund facts delivery into the sales process would have	The amendments to NI 81-101 contemplate a staged implementation, with some aspects of the Framework coming into force sooner. We currently

		<p>the benefit of allowing enough time to develop sufficient compliance tracking systems.</p>	<p>propose a two-year transition period for delivery of the fund facts following the effective date of the amendments to NI 81-101. During this period, we anticipate the fund facts will be prepared and filed, posted onto the websites of the manager and/or mutual fund and possibly delivered under current securities legislation in satisfaction of delivery of the simplified prospectus.</p> <p>We are seeking specific feedback on the appropriateness of the transition period.</p>
<p><b>Specific aspects of the delivery proposal</b></p>	<p><i>Flexibility in the delivery requirements</i></p>	<p>While some industry commenters recognized the efforts of the Joint Forum to make the Framework more accommodating and efficient, one commenter remarked that delivery requirements based on the variables outlined in the Framework (i.e., adviser recommended or not, money market fund or other, etc.) are likely to be confusing to both investors and advisers.</p> <p>Another commenter expressed concern that these allowances were simply amendments to a regulatory initiative that, from the outset, prioritized the physical delivery of documents over the principle of providing meaningful and effective disclosure.</p>	<p>We propose no change at this time. The revisions to delivery in the Framework are in response to comments from both industry and investor advocates that a ‘one-size-fits-all’ delivery model does not reflect the types of relationships dealers have with their clients or the various business models of dealers.</p> <p>We are seeking specific feedback on how to address various aspects of this approach while still accommodating the needs of investors and dealers.</p> <p>The Companion Policy (CP) to NI 81-101 clarifies that in instances where an investor has the option to waive delivery</p>

		<p>For greater certainty, one commenter requested that firms be provided with the option to require delivery of the fund facts at POS, rather than permit waivers and delivery with the trade confirmation.</p> <p>Another commenter asked for clarification of whether we expect the choice of delivery (when available) to be sought on a per trade basis from the investor or in the form of standing instructions for the investor's account.</p> <p>One commenter stated that where the fund facts is sent with the trade confirmation, the requirement to send the fund facts must apply not only to dealers but also to fund managers for accounts opened in client name. This would be in compliance with sections 5.4.1 of the MFDA Rules and section 36 (7) of the <i>Ontario Securities Act</i>.</p>	<p>of the fund facts before or at POS, this will occur on a per trade basis.</p> <p>Where the manager sends the trade confirmation in accordance with securities legislation, we agree with the comment that the manager should also be permitted to deliver the fund facts when its delivery is required to accompany the confirmation. The amendments to NI 81-101 clarify this.</p> <p>Finally, nothing in the Framework or the amendments to NI 81-101 prevents a dealer from choosing in all instances to deliver the fund facts before or at the POS.</p>
	<p><b><i>Delivery for subsequent purchases of a fund</i></b></p>	<p>A number of commenters were pleased with the elimination of the requirement to deliver a fund facts before or at the POS for subsequent purchases of, or switches into, a fund currently held in the investor's account.</p>	<p>We are reconsidering the requirement to deliver the fund facts before a subsequent purchase – either in instances where there has been a more recently filed fund facts, or in each instance with the confirmation of trade. We are seeking specific feedback on</p>

		<p>We also received support to not require delivery of a fund facts for subsequent purchases of the same fund if there have not been any material changes.</p> <p>One commenter, however, remarked that if there is no requirement to deliver an amended fund facts for a subsequent purchase, this would not be consistent with the principle of providing investors with the most up-to-date information in connection with a purchase of fund securities. This commenter recommended delivery of the fund facts for subsequent purchases, but allowing such delivery to be suppressed based on whether an investor has previously received the current fund facts - as is presently done for the delivery of simplified prospectuses.</p>	<p>this.</p>
	<p><b><i>Delivery for money market funds</i></b></p>	<p>While most commenters were pleased to see that the Framework no longer requires delivery of a fund facts before or at the POS for purchases of a money market fund, an investor advocate stated the fund facts should be delivered for all categories of funds, including money market funds, noting the recent issues related to money market fund exposure to ABCP.</p> <p>One commenter suggested we should go</p>	<p>We do not propose any change. We think the flexibility on delivery of the fund facts for purchases of money market mutual funds appropriately responds to commenters who asked for a mechanism for investors who may want immediate execution of a trade, particularly during RRSP season.</p>

		<p>even further, making the fund facts for money market funds delivered with the trade confirmation in all cases.</p> <p>Another commenter expressed concern that a waiver would introduce a two-step process which may not always be in the investor’s best interest. This could actually increase their costs if the intent is to invest the money in a different investment vehicle shortly after the initial money market purchase.</p>	
	<p><b><i>Delivery for order execution-only accounts</i></b></p>	<p>While a few commenters agreed with exempting trades made through “order execution-only” accounts (such as accounts held with discount brokers) from the requirement to deliver a fund facts before or at the POS, one commenter remarked it failed to understand the underlying principles behind the decision to exempt order execution brokers from the pre-trade delivery requirement.</p> <p>We were told the lesser delivery burden imposed upon execution-only dealers will put full-service dealers at a competitive disadvantage, and may drive some investors away from advice and risk management and more to a do-it-yourself model.</p>	<p>The delivery requirements in the Framework recognize that investors have differing needs in receiving fund disclosure. A key element is the distinction between investors who rely on a dealer’s recommendation and those who rely on their own research and judgement when making their purchase decision before contacting their dealer.</p> <p>Delivery of the fund facts before or at POS builds on the existing obligations of full-service dealers to ‘know your client’ and determine suitability, regardless of who initiates the transaction. The same suitability obligation does not apply to order execution-only accounts. For purchases</p>

			<p>through these accounts, investors have no expectation of receiving advice or having someone assess the suitability of a product since they rely on their own research and judgement when making investment decisions.</p> <p>Investors who initiate purchases through a full-service dealer may choose to receive the fund facts with the trade confirmation. In this way, we do not think that full-service dealers will be at a competitive disadvantage.</p>
	<p><b><i>Adviser recommended vs. investor-initiated trades</i></b></p>	<p>We were told by a commenter that the inclusion of a distinction between “adviser-recommended” and “investor-initiated” transactions was a noteworthy improvement to the Framework.</p> <p>Yet, another commenter remarked that basing delivery on whether the salesperson recommended the fund or the investor initiated the purchase will likely lead to a number of disputes, creating a new risk for investors and the industry and exposing retail investors to abuse.</p> <p>This commenter stated that in cases where an adviser asserts the sale is “investor-initiated”, clients should, in principle, be</p>	<p>The delivery requirements build on existing rules and policies that apply to dealers. Dealers that provide advice currently have an obligation to ensure that the advisers who work for them assess the suitability of all purchases of a fund by a client, regardless of who initiates the transaction. We consider SRO guidance on this topic to be very helpful, and we will continue to discuss with IROC and the MFDA what, if any, additional guidance is warranted.</p> <p>We reiterate that we do not intend the audit trail for delivery of the fund facts to be more onerous than a dealer’s existing compliance mechanisms to</p>



		<p>sold low cost F–class funds due to adviser disengagement.</p> <p>A few commenters indicated that, in the absence of clear definitions and guidance as to the meaning of “investor-initiated” and “adviser-recommended” trades, dealers would likely find it difficult to classify a trade. One commenter suggested substituting the terms “adviser-recommended” and “investor-initiated” with industry-used terms “solicited” and “unsolicited” orders.</p> <p>Some of these commenters asked for further clarification on who would make the determination of whether a solicited or unsolicited trade resulted in advice being given and how advisers would keep track of such determinations.</p> <p>A number of commenters remarked that, in order to avoid any doubts and potential repercussions for non-compliance, firms may choose to avoid the risk of misclassifying a trade by either setting an impossibly high threshold for a trade to be considered investor-initiated, or simply opt to ensure their advisers deliver the fund facts in every instance.</p>	<p>record and maintain evidence of disclosure and client trade instructions. As noted above, nothing in the Framework or the amendments to NI 81-101 prevents a dealer from choosing in all instances to deliver the fund facts before or at the POS.</p> <p>It is outside the scope of this project to mandate the sale of specific classes of a mutual fund for an investor-initiated trade.</p>
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		One commenter suggested that where an investor completes an investor-initiated on-line web-based transaction, there should only be an obligation to deliver the fund facts with the trade confirmation, similar to an order-execution account.	
	<b><i>Fund facts previously delivered</i></b>	A few commenters asked us to clarify the Framework proposal that delivery may be satisfied by “referring an investor to a particular fund facts previously delivered, as long as it is current and the investor can easily find and link the information to the particular purchase they are considering”.	The amendments to NI 81-101 clarify that delivery of the fund facts for initial purchases of a mutual fund recommended by a dealer must occur <i>before</i> or at the POS. We have purposefully left the point in time before the sale that delivery must occur flexible. The CP to NI 81-101 specifies that we expect that for delivery to be satisfied, the fund facts delivered will be current and delivery will have taken place within a reasonable timeframe of the investor making the investment decision, so that the investor is able to make the connection between the information and the particular purchase they are considering.
	<b><i>Annual delivery of fund facts</i></b>	We were told by some commenters that requiring dealers to give investors the annual option to receive the fund facts for all funds held would be onerous and very difficult for dealers to implement and track. Most of these commenters	The annual delivery option for investors was intended as an alternative to commenters who asked that we eliminate the requirement for delivery of the fund facts for all subsequent purchases.

		<p>suggested that the availability of Fund facts on websites is a viable alternative to the annual option delivery requirement.</p> <p>Alternatively, if we pursue an annual delivery option, one of these commenters told us dealers should be allowed to ask investors for instructions at the same time as the initial purchase is being made. This could be supplemented by dealers providing investors with an annual notice regarding the availability of fund facts similar to what fund managers currently do for Management Reports of Fund Performance (MRFPs) and financial statements.</p> <p>Three commenters suggested that mutual fund managers be required to give investors the option to annually receive a fund facts for each of their holdings, particularly fund managers that have opened accounts in client name. This option would make it operationally easier to satisfy delivery because mutual fund managers already deliver to investors other documents such as MRFPs and prospectuses.</p> <p>Two commenters stated that giving investors the option to receive the fund</p>	<p>We do not prescribe in the amendments to NI 81-101 how dealers must solicit delivery instructions from clients. A dealer may obtain annual instructions, standing instructions or use any means to obtain instructions. We also do not prescribe the timing of the annual delivery.</p> <p>In response to comments, we are reconsidering the usefulness of an annual delivery option in comparison with requiring delivery of the fund facts for some or all subsequent purchases. We are seeking specific feedback on this.</p>
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		<p>facts annually would not be worthwhile since investors can already access continuous disclosure documents which are updated semi-annually and the fund facts would be made continuously available on a fund manager and insurer's website and by request in print without charge. One of these commenters noted that annual delivery of fund facts is inconsistent with the notion that fund facts need not be delivered for subsequent purchases.</p>	
	<p><b><i>Delivery of simplified prospectus</i></b></p>	<p>We were asked to clarify that when an investor requests a prospectus, the investor need not repeat the request each year since negative option delivery doesn't work.</p> <p>Another commenter stated that, although the fund facts provides useful information, the Simplified Prospectus provides additional important information and should continue to be provided to investors either at the point of sale or with the trade confirmation. Since this is a current requirement, there would be no additional burden placed on the mutual fund industry.</p>	<p>NI 81-101 will continue to require the mutual fund to deliver the simplified prospectus on request. As noted above, there is nothing in the amendments to NI 81-101 that restrict a dealer from providing information in addition to the fund facts at any time, including adopting a practice of routinely providing investors with the simplified prospectus.</p> <p>We do not propose to require delivery of the simplified prospectus with the fund facts. Although we agree with the commenter that the simplified prospectus contains useful information, we know that investors have trouble finding and understanding the</p>

			<p>information because it is a long and complex document. We think the fund facts provides meaningful information about the mutual fund in a simple, accessible and comparable format for investors to use to inform their investment decision.</p> <p>In response to comments, we have revised the disclosure in the fund facts to give greater emphasis that the fund facts may not have all the information an investor wants, and that more detailed information about the mutual fund is available in the simplified prospectus and other disclosure documents.</p>
<b>Electronic delivery</b>	<i>Use of e-mail</i>	<p>We were told by a few commenters that there are a number of operational concerns related to e-mail delivery (e.g., wrong e-mail address, firewalls, privacy of information, uncertainty of receipt, etc.) which likely will prevent dealers from using e-mail to deliver the fund facts. A trade association remarked that a number of its members have indicated that they have internal policies that prohibit the distribution of client documents via e-mail or fax for security reasons.</p>	<p>We have been surprised by the comments that operational concerns may prevent electronic delivery. We continue to think electronic delivery provides dealers with flexibility to accommodate the needs of investors and their business models.</p> <p>We disagree with the comments that proof of electronic delivery will impede its use. We further disagree with the comment that electronic delivery negates the value of POS delivery.</p>

		<p>One of these commenters suggested the resolution may be to allow electronic or paper delivery of the fund facts without attempting to prescribe in detail how this is to be achieved.</p> <p>Another commenter asked us to undertake a study of the percentage of the investing population that has access to e-mail by geographic location across Canada.</p> <p>One commenter suggested that the technological inability to prove that a document or notice delivered electronically to a client was received by that client may be a reason why dealers have been reluctant to embrace electronic delivery under <i>National Policy 11-201 – Delivery of Documents by Electronic Means</i>. In order to make electronic delivery viable, this commenter suggested the following:</p> <ul style="list-style-type: none"> <li>• dealers should not have the option of denying electronic delivery of documents contemplated by NP 11-201 to their clients</li> <li>• dealers should be under no obligation to establish receipt by their clients of electronically delivered documents, rather they should simply have to be able to demonstrate that the documents</li> </ul>	<p>As previously noted, we do not intend the audit trail for delivery of the fund facts to be more onerous than a dealer’s existing compliance mechanisms to record and maintain evidence of disclosure and client trade instructions. We also remind commenters that National Policy 11-201 – <i>Delivery of Documents by Electronic Means</i> (NP 11-201) and, in Quebec, Quebec Staff Notice 11-201 <i>The Delivery of Documents by Electronic Means</i> set out additional guidance for evidencing delivery.</p>
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		<p>have been sent</p> <ul style="list-style-type: none"> <li>• delivery of documents should be deemed to have occurred following a set period of time after they have been sent by the dealer (e.g. 12 hours).</li> </ul> <p>Yet, one investor advocate commenter objected to allowing electronic delivery to be met by merely providing an e-mail link to the document or by e-mailing the document itself without requiring any client-adviser discussion on costs, risks or suitability. We were told this was effectively “access equals disclosure” and would negate the value of POS delivery.</p>	
	<p><b><i>Directing the investor to the fund’s or fund manager’s website</i></b></p>	<p>We did, however, hear from another investor advocate who told us electronic delivery should only be permitted by sending an electronic copy of the fund facts, or at the very least, sending an email with a direct link to the relevant fund facts. This commenter was not supportive of the proposal in the Framework to allow delivery to be met by directing an investor to the relevant fund facts on a website.</p> <p>While other commenters generally expressed approval for this proposal, we were asked for clarification on a number of</p>	<p>We do not propose a change. As noted above, we think the flexibility afforded by electronic delivery, particularly the ability to direct an investor to the relevant fund facts on a website, will facilitate the needs of investors and various business models of dealers.</p> <p>The CP to NI 81-101 clarifies that simply making the fund facts available on a website or referring an investor to a website address with the fund facts will not constitute delivery.</p>

		<p>points.</p> <p>A few commenters asked us to clarify how “directing the investor to the relevant fund facts on the ... website” is satisfied. We were asked if the following would suffice:</p> <ul style="list-style-type: none"> <li>• providing an internet ‘link’ that takes the investor to the fund facts</li> <li>• providing a series of instructions to the investor to access the fund facts</li> <li>• providing the website address to a client and, following a designated time for the client to access the fund facts and reply, proceeding to execute the trade</li> <li>• providing a verbal reference on a per transaction basis to a specific link.</li> </ul> <p>One commenter noted providing verbal instructions to a website could spare clients who choose to transact over the telephone from having their transaction delayed while they wait for delivery of the fund facts.</p> <p>However, we were also told that expecting the adviser to have all of the links to each particular fund facts readily available is not practical, and a verbal reference may not</p>	<p>We think ‘directing’ an investor would generally involve the dealer providing real-time instruction to the investor on how to locate the fund facts, or providing an internet link that takes the investor to the specific fund facts. In all instances, a dealer must ensure the investor can view it.</p>
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		<p>be a sufficient audit or compliance trail, unless the conversation is taped.</p> <p>One commenter suggested allowing dealers to refer the client to the location of the website once when transactions are in the same fund.</p>	
	<i>Access-equals delivery</i>	<p>A number of commenters asked us to continue to explore ‘access equals delivery’ for investors who are willing and able to access disclosure electronically at their own convenience. We were told this approach would be the most efficient way to ensure the goals of the Framework are met.</p> <p>One of these commenters urged us to recognize the validity of website postings and recommended that, at the very least, investors be given a choice on how (or whether) they wish to receive a disclosure document, including the choice to access the document on a website. This could be done, noted another commenter, at account opening. This commenter called to our attention that the SEC has recently adopted a similar protocol with respect to delivery of proxy materials.</p> <p>Still another commenter proposed that we</p>	<p>We disagree with the comments and propose no change. We do not consider ‘access equals delivery’ to meet the principles set out in the Framework.</p>

		<p>permit dealers to alert clients as to the location of fund facts documents posted on a manager or dealer website with no requirement for subsequent notifications as notification each time might be seen as repetitive by some investors.</p>	
<b>Approach to implementation</b>	<i>Need for consistency between mutual funds and segregated funds</i>	<p>We were asked by a few commenters to make efforts to ensure that the process of implementation by the CSA, the Canadian Council of Insurance Regulators (CCIR) and the provinces and territories occurs in a coordinated, harmonized and streamlined fashion.</p>	<p>Every effort will be made to ensure a coordinated and harmonized implementation of the principles and concepts set out in the Framework. It is expected that the Joint Forum will monitor the progress of the CSA and CCIR, particularly to ensure harmonization.</p>
	<i>Support for staged implementation</i>	<p>Most commenters expressed support for the alternative implementation approach proposed by the Investment Funds Institute of Canada (IFIC).</p> <p>In response to what IFIC anticipates will be at least two or more years before completion of the rulemaking process, it proposed the following to make the fund facts available sooner to investors:</p> <ul style="list-style-type: none"> <li>• the CSA first issue a rule that deals only with the fund facts and requires it be available on websites</li> <li>• next industry will work with regulators on an accelerated</li> </ul>	<p>After much consideration, we have decided to proceed with publication of detailed amendments to NI 81-101 mandating all aspects of the Framework - the fund facts and its delivery. We think the publication of detailed requirements will elicit the specific feedback we need to properly consider and address implementation issues.</p> <p>Based on this feedback, we will be in a better position to assess what aspects of the Framework require further consideration, and whether it's appropriate to implement the</p>

		<p>process for substituting the delivery of the fund facts in place of the existing delivery of the prospectus</p> <ul style="list-style-type: none"> <li>the industry will then work with the CSA on the development of a final rule on POS disclosure.</li> </ul> <p>One commenter remarked that once the fund facts is available online, there might be reason to conclude that the Framework will have achieved its main objectives.</p>	Framework in stages.
<b>Alternatives</b>	<p><i>Make POS delivery optional</i></p> <p><i>Require POS as soon as practicable</i></p>	<p>A few commenters strongly encouraged us to consider a more flexible approach to delivery.</p> <p>It was suggested investors could receive the fund facts with the trade confirmation, and be provided with the choice of whether or not to receive the fund facts before or at the POS. One commenter told us that research and industry data indicate the majority of investors would likely choose to waive delivery of the fund facts until after the sale, particularly where they have a relationship with a financial adviser.</p> <p>One commenter suggested that, where practicable, the fund facts be delivered at POS and where it is not practicable, the fund facts be delivered as soon as possible</p>	<p>We strongly believe that a disclosure regime focused on providing investors with meaningful information when they need it most will be more effective for investors because it will give them the opportunity to make more informed decisions. As a result, we are not considering moving away from this vision.</p> <p>As noted above, however, we will continue to consider ways of addressing specific implementation issues related to POS delivery, while still achieving the principles set out in the Framework.</p> <p>We have specifically asked for feedback on certain aspects of the delivery requirements, including what ‘time</p>

	<p><b><i>Waivers</i></b></p>	<p>after POS but no later than the mailing of the related trade confirmation to the investor.</p> <p>We were asked to consider an additional waiver for clients who wish to conduct a trade from a remote location, such as a cottage without internet access. Such a waiver could be available for limited time periods to deal with specific situations.</p> <p>Another commenter suggested that the first time an investor transacts with their adviser for the purchase of a mutual fund, the investor should be given the fund facts and the option to waive delivery of the fund facts for all future purchases of any fund. This commenter suggested investors be required to take the proactive step of providing their dealer with written confirmation waiving receipt of future fund facts.</p>	<p>sensitive' circumstances would be appropriate for allowing an investor to waive delivery of the fund facts before the purchase is completed, and under what terms.</p>
	<p><b><i>Deemed delivery</i></b></p>	<p>To avoid substantial modifications to the sales process, one commenter suggested allowing the following sequence of events to satisfy delivery:</p> <ul style="list-style-type: none"> <li>• the adviser recommends a particular fund to a client;</li> <li>• the client agrees to place a specific order for the fund;</li> </ul>	<p>Consistent with existing securities legislation for delivery of the simplified prospectus, the amendments to NI 81-101 state that a fund facts will be deemed received within a specified time when sent by prepaid or registered mail.</p> <p>The deemed receipt of the fund facts in</p>

		<ul style="list-style-type: none"> <li>• the adviser arranges for the fund facts to be delivered electronically to the client; and</li> <li>• after delivery has deemed to occur, the trade is processed unless the client has otherwise informed the adviser.</li> </ul> <p>This commenter stated such an approach would ensure that the sales process is not significantly altered or delayed. This commenter also noted that, as a mutual fund manager, it viewed mutual fund investments as long-term investments and, therefore, would not be terribly concerned by the limited loss of market exposure (e.g. 1 day) that the client might be subject to under such an approach.</p>	<p>no way circumvents the obligations on a dealer when delivery of the fund facts is required before or at POS. Dealers must deliver the fund facts before entering into an agreement with the purchaser, and once delivered must bring the fund facts to the attention of the investor. Accordingly, the sequence of events proposed by the commenter would not satisfy delivery.</p>
	<p><b><i>Fund manager delivers fund facts</i></b></p>	<p>One commenter submitted that we allow mutual fund managers to deliver the fund facts document on behalf of dealers where appropriate.</p>	<p>We agree. We are not opposed to allowing the manager to deliver the fund facts in accordance with existing practices under securities legislation. As noted above, in instances where the manager sends the trade confirmation in accordance with securities legislation, we agree the manager should also be permitted to deliver the fund facts when its delivery is required to accompany the confirmation.</p>

<p><b>Binding of fund facts</b></p>		<p>One commenter suggested that funds should be permitted to bind their fund facts with those of other funds under common management.</p> <p>Another commenter agreed with this suggestion, remarking investors may consider that they are better served by having access to a document that compares and contrasts different mutual funds in a fund family in order to understand the full range of investment options.</p> <p>Still another commenter suggested we allow all the fund facts for all the funds purchased by an investor on a given day to be bound or packaged with the trade confirmation with respect to those purchases. This, we were told, would allow investors to receive a relevant personalized package of all their transactions on a single day, and have the potential to reduce the cost of printing and postage for dealers.</p>	<p>The amendments to NI 81-101 provide some flexibility for a fund facts to be attached to, or bound with, one or more fund facts of other mutual funds for the purposes of delivery.</p>
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<p><b>Part III – Fund facts comments</b></p>			
<p><u>Issue</u></p>	<p><u>Sub-Issue</u></p>	<p><u>Comments</u></p>	<p><u>Responses</u></p>

<b>General support for fund facts</b>		Most industry and investor commenters indicated their support of the aim to improve disclosure for mutual fund investors and to make it easier for investors to have an appropriate level of understanding of the potential benefits, risks and costs of investing in a fund and to be able to meaningfully compare one fund with another.	We appreciate the support for the fund facts document.
<b>Part 1 of fund facts</b>			
<b>Quick facts</b>	<i>Date fund created</i>	Two commenters sought clarification on whether the section Date Fund Created is intended to show the date the fund was created, the date the fund was first offered under a simplified prospectus, or the date the specific series or class of the fund was created.	We have clarified in the Instructions to Form 81-101F3 (the FF Form) that Date Fund Created is the date the securities of the class or series first became available to the public.
	<i>Total value</i>	One commenter asked us to clarify whether the section Total Value is intended to show the value of the fund or the value of the specific series of the fund.	The FF Form clarifies that Total Value should include all classes or series referable to the same portfolio, as at a date within 30 days before the date of the fund facts.
	<i>MER</i>	One commenter suggested defining MER on the first page of the fund facts, while another commenter suggested removing MER from the Quick Facts section since it also appears under the Ongoing fund expenses section.	We do not propose any change to the placement of MER in the fund facts. We continue to think it is appropriate to show the MER in the Quick Facts table and describe it in more detail under

		To minimize the need to update the fund facts, a commenter suggested the MER and the costs of a fund be derived from year-end financial statements.	Ongoing Fund Expenses.  We agree with the commenter that the MER disclosed should be as current as possible. The Instructions to the FF Form specify that the MER be derived from the most recently filed MRFP for the mutual fund.
	<b><i>Portfolio manager</i></b>	It was recommended by a commenter to reserve space in the Quick Facts section to accommodate funds with multiple portfolio managers or sub-advisers.	We have provided sufficient flexibility in the FF Form to accommodate the disclosure of required information, including the disclosure of multiple portfolio managers or sub-advisers.
	<b><i>Distributions</i></b>	One commenter stated the section Distributions could be misleading, since distributions are not guaranteed. This commenter suggested additional wording such as “aim or intend to distribute annually, monthly or quarterly...” be added or, alternatively, disclosure that distributions and their frequency are not guaranteed be added.	The Instructions to the FF Form specify that the disclosure of the frequency and timing of distributions should only be included if distributions are a fundamental feature of the mutual fund.  We think that the disclosure under Distributions, when read together with the disclosure under Are There Any Guarantees?, will give investors an accurate description of the mutual fund.
	<b><i>Minimum investment</i></b>	We were also asked to clarify whether the Minimum Investment section would need to include the minimums for (a) preauthorized contributions; (b) systematic withdrawal	The FF Form provides sufficient flexibility to permit the inclusion of minimums for preauthorized contributions under Minimum



		plans; and (c) account balances.	Investment if desired.
<b>What does the fund invest in?</b>	<i>What does the fund invest in?</i>	<p>We received strong feedback from several commenters that the fundamental investment objectives as well as investment strategies of the fund should be included under the section “What Does The Fund Invest In?”.</p> <p>One of these commenters said that without this information, it would be difficult for investors to assess the reasonableness of the fees and expenses charged.</p> <p>Another of these commenters added that there could be liability for failure to provide a concise description of the investment objective, as it is the most important information an investor should have before making an informed investment decision.</p>	<p>We do not agree that it is necessary to disclose verbatim in the fund facts the investment objectives and strategies set out in the mutual fund’s simplified prospectus.</p> <p>The FF Form requires the disclosure under What Does The Fund Invest In? to be a brief description of the fundamental investment objectives and strategies of the mutual fund. In this regard, the Instructions to the FF Form mirror Item 6 of Form 81-101F1 <i>Contents of Simplified Prospectus</i> (Form 81-101F1), Part B. While the FF Form does not specifically preclude repeating the investment objectives and strategies set out in the simplified prospectus, the Instructions to the FF Form specify required information must be presented concisely and in plain language, with an overall Flesch-Kincaid grade level score of 6.0 or less.</p>
	<i>Top 10 investments, Total investments &amp; Investment mix -Date of information</i>	We were asked to clarify any restrictions for the ‘as of’ date of the information under the Top 10 Investments and Investment Mix section.	The disclosure under these sections is intended to provide investors with a snapshot of the mutual fund’s investments at a particular point in time.

		<p>One commenter suggested that funds be allowed to use the most recent quarterly portfolio breakdown prepared in accordance with section 6.2 of NI 81-106 for Top 10 Investments to eliminate fund managers preparing this information at different times. This commenter noted that if the fund facts is dated as of the annual prospectus filing date, neither the information under Top 10 Investments or Investment Mix could be provided as of that same date.</p>	<p>The Instructions to the FF Form clarify that the information under Top 10 Investments and Investment Mix be disclosed as at a date within 30 days before the date of the fund facts.</p>
	<p><b><i>Top 10 investments, Total investments &amp; Investment mix - Content</i></b></p>	<p>One commenter requested we mandate percentages accompany the investments under the section Top 10 Holdings.</p> <p>Two other commenters suggested adding disclosure under Top 10 Holdings to indicate that the list is subject to change.</p> <p>We were also asked to clarify whether the Top 10 Investments and Total Investments would be prepared on a consolidated issuer basis or by issue.</p> <p>One commenter suggested that any guidance or instructions for the Top 10 Investments and Investment Mix sections be in line with the instructions in Item 5 of Form 81-106F1.</p> <p>Another commenter said disclosure about</p>	<p>We are satisfied that the disclosure meets its stated purpose to provide a snapshot of the composition of the mutual fund's investment portfolio. Accordingly, we propose no change.</p> <p>The FF Form requires each position in the Top 10 to be calculated in a manner that is consistent with the Summary of Investment Portfolio in the MRFP.</p> <p>The FF Form provides flexibility in the use of subgroups in the Investment Mix charts or tables. In this regard, the Instructions to the FF Form mirror Item 5 of Form 81-106F1. The FF Form further requires a statement indicating that the information is subject to change.</p>

		Investment Mix should not be mandated, as different categories may be more appropriate for some funds than others.	
<b>How has the fund performed?</b>	<i>General feedback</i>	<p>One commenter asked why the fund facts contains performance disclosure when the information is available in other sources, including a fund’s MRFP and in reports readily available to dealers and sales representatives, such as Morningstar.</p> <p>Another commenter asked if there would be flexibility to describe fund performance. This commenter noted that certain types of funds have objectives other than total returns (e.g., to generate regular, tax efficient distributions) and providing only performance disclosure may not give investors sufficient information to properly compare their options.</p>	<p>We have included performance disclosure in the fund facts in response to research which indicates investors want this information before making a decision to buy.</p> <p>The bar graph under How Has The Fund Performed? is intended to highlight potential volatility and variability in the returns of the mutual fund. To meet the Framework principle of comparability, we do not propose to allow flexibility in the presentation of this information.</p>
	<i>Content</i>	<p>One commenter suggested including a general statement regarding price volatility, and that the price of funds is subject to change and is not guaranteed.</p> <p>One commenter suggested adding a table showing compounded annual returns for the previous 1, 3, 5 and 10 year periods in comparison with the fund’s benchmark.</p>	<p>The disclosure under How Has The Fund Performed must be shown for the specific series or class being described in the fund facts.</p> <p>The FF Form requires a general statement on price volatility and guarantees, including that actual return will depend on an individual’s tax situation.</p>

		<p>Another commenter asked for clarification on how the section applies to classes and series which have not been issued to the public at all.</p> <p>Finally, one commenter urged us to include a performance comparison to an index benchmark, which this commenter considers a key assessment tool to validate if the active fund manager adds value.</p> <p>This same commenter also suggested that after-tax returns be shown, since fund turnover and total expense ratio (TER) information will not be provided.</p>	<p>After much consideration, we have concluded not to require additional comparative performance information. We are concerned that this would undermine our goal of a simple and concise summary of key information. This information, however, is available to investors in the mutual fund's MRFP.</p> <p>We are, however, considering the inclusion in the fund facts of the Total Expense Ratio that a mutual fund must disclose in its MRFP and are seeking specific feedback on this point.</p>
	<b><i>Date of information</i></b>	<p>We were asked to clarify whether the information under How has the Fund Performed? is intended to be presented annually based on a calendar year-end or on the fund's year-end. One commenter strongly recommended that for information to be comparable, performance information should be displayed on a calendar basis even if other information (Top 10 Investments, Investment Mix) is reported as at the date of the fund facts.</p>	<p>We agree that past performance information in the fund facts should be comparable. The Instructions to the FF Form clarifies that this information must be displayed on a calendar basis.</p>
	<b><i>Average return - Content</i></b>	<p>A commenter who supports the Average Return section made a number of comments on its content. The commenter recommended</p>	<p>We propose no change to the disclosure. We continue to think that the bar graph is sufficient to illustrate to</p>

		<p>the section should be in the form of a graph that shows not only the “end amount after 10 years” but also the path followed to arrive at the end result. Additionally, the wording in the section should be altered to: “This works out to an average annual compound return of 10.5% per year” to avoid any confusion that \$1,705 divided by 10 equals 17.05%.</p> <p>This commenter also suggested the information be re-introduced in a fund’s MRFP, since it seems inconsistent to have information in a “summary document” that is not contained in the more detailed legal document.</p>	<p>investors potential volatility and variability in the returns of the mutual fund. The FF Form clarifies that the annual compounded rate of return is to be disclosed. No specific wording is mandated</p> <p>It is outside of the scope of this project to reconsider MRFP disclosure.</p>
	<p><b><i>Year-by-year returns - Content</i></b></p>	<p>Several commenters stated they did not think the wording under the Year-By-Year Returns section about investor loss of money is a fair representation. These commenters told us there needs to be a distinction made between paper losses and realized losses.</p> <p>One of these commenters suggested alternative wording: “Three out of ten calendar years, the value of the fund declined over the course of a calendar year”. Another of these commenters asked if the wording would be prescribed or left to funds to craft.</p>	<p>The FF Form clarifies that the statement under Year-By-Year Returns must indicate the number of years in which the value of the mutual fund dropped. No specific wording is mandated.</p>

<p><b>How risky is it?</b></p>	<p><i>Content</i></p>	<p>One commenter stated that the risk table seems simplistic and capable of a wide range of interpretation by fund managers, such that it will be of very little use for an investor. The commenter also noted that risk is limited to risk of loss of principal, yet this is not the only form of risk. For example, for funds that are likely to be held for longer periods, purchasing power risk can be an equal or greater concern. This was echoed by another commenter, who remarked that a number of risks such as political risk, securities lending risk currency risk and even governance risk are not captured.</p> <p>Another commenter stated that the IFIC risk scale is solely a function of the variability in fund returns. This commenter recommended that fund specific risks be included under the “How Risky Is It?” section.</p> <p>An investor advocate expressed concern about allowing fund companies to rate the relative riskiness of their funds on a sliding scale based on a volatility metric created by a fund industry lobbyist. Investors will be left in the dark, we were told, about the fund's true risks. As alternatives, the commenter recommended using the worst 12-month return if the fund has been around for at least 10 years, using Beta or</p>	<p>In response to the commenters, including concerns raised by investors and IFIC of the use of its risk scale, we have revised How Risky Is It? from the Framework to no longer mandate the use by the mutual fund manager of the IFIC Fund Risk Classification Model.</p> <p>The FF Form requires the manager of the mutual fund to provide a risk rating for each mutual fund based upon the risk classification methodology adopted by the manager. The manager must then identify the mutual fund’s risk level on a scale prescribed in the FF Form made up of five categories ranging from low to high.</p> <p>It is our view that the use of a prescribed scale will promote comparability of risk across mutual funds. The consequential amendments require a description in the simplified prospectus of the methodology used by the manager of the mutual fund in arriving at its determination of the mutual fund’s investment risk level.</p> <p>Since this is a departure from the Framework, we are seeking specific feedback on this proposed approach,</p>
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		<p>alternatively, a return to the use of the fund categories.</p> <p>This commenter also suggested reinstating the <i>Statement of Portfolio Transactions</i> as it provided tremendous insight into the portfolio managers' behaviour.</p>	<p>including whether a description of key risks should be included under this section.</p> <p>It is outside the scope of this project to reconsider MRFP disclosure.</p>
<b>Are there any guarantees?</b>		<p>One commenter expressed concern that the disclosure under the section Are There Any Guarantees? could give investors a negative perception of funds. This commenter suggested replacing the wording with the disclosure set out under item 4(3) of Form 81-101F1 Part A. The commenter remarked that the reference to guarantees should relate to an investor's investments in a fund rather than to the fund itself.</p>	<p>We do not agree with this comment. We think the existence (or not) of a guarantee by the mutual fund is important information for investors before they make their decision to buy. Accordingly, we propose no change.</p>
<b>Who is this fund for?</b>	<i>General feedback</i>	<p>One commenter cautioned against the use of broad explicit warning statements in the section "Who Is This Fund For?". This commenter noted suitability is the obligation of the adviser and suitability language in the simplified prospectus is designed as a guide for both the adviser and the client. Accordingly, the commenter recommended any suitability disclosure be balanced in tone and take into account the role of the adviser.</p>	<p>We propose no change to the disclosure. This information is consistent with the disclosure currently required in the mutual fund's simplified prospectus. In this regard, the Instructions to the FF Form mirror Item 10 of Form 81-101F1, Part B.</p>

	<i>Content</i>	<p>Two commenters expressed concern that encapsulating the most significant risks associated with a fund within one warning statement is very challenging and overly simplistic. One of these commenters asked us to provide guidance on the length of any warning statements and the types of risks that we expect addressed. The other commenter suggested the inclusion of a table with the “risk spectrum” that categorizes mutual funds from the safest (money market funds) to those with the highest risk (sector or foreign funds) and shows where this particular mutual fund fits on this spectrum.</p> <p>Another commenter suggested moving away from the statements “Don’t buy this fund if you need a steady source of income from your investment” to a more factual approach by adding a bullet to the section Investors Who: that says “● Seek growth in capital more so than a regular stream of income”.</p>	<p>We propose no change to the disclosure. As noted above, the disclosure under Who Is This Fund For? is substantially similar to the current disclosure in the mutual fund’s simplified prospectus.</p>
<b>Part 2 of fund facts</b>			
<b>Fee disclosure</b>	<i>Content</i>	<p>One commenter suggested we include a simple metric, for example, dollars and cents for a mutual fund if held for 10 years in order to better convey the impact of fees. The sheer size of this number would stimulate constructive dialogue remarked</p>	<p>We are considering the inclusion of fee disclosure in dollars and cents and have asked for feedback on this approach.</p>



		this commenter, which is the root purpose of disclosure.	
<b>Sales charges</b>	<i>Deferred sales charges</i>	We were told DSC costs and the annual 10% free redemption may be different amongst fund managers. Accordingly, we should allot space to allow a brief description of calculation methods.	The Instructions to the FF Form requires a description of how a deferred sales charge is calculated. We have provided sufficient flexibility in the FF Form to accommodate this required information.
<b>Ongoing fund expenses</b>	<i>Operating expenses</i>	<p>We were told that for the vast majority of funds, operating expenses are not fixed and fund managers should be permitted to explain the types of expenses a fund can incur.</p> <p>This commenter also asked for confirmation that independent review committee (IRC) services and its associated costs are not required to be in the fund facts.</p> <p>One commenter recommended disclosure of the long term impact of costs on portfolio performance.</p>	We propose no change to the disclosure. The information required under Ongoing Fund Expenses is intended to provide investors with a general overview of the components of the MER, and illustrate that operating expenses will reduce their investment return. A more detailed explanation of the operating expenses of the mutual fund is available in other disclosure documents.
<b>Other fees</b>	<i>Content</i>	One commenter recommended that we not limit the “Other fees” section to exclude such fees as performance fees, maintenance fees, trustee fees, registered plan fees, NSF charges, wiring fees and other specialty fees as these may also be relevant to investors in	We propose no change to the disclosure. The intention of Other Fees is to highlight to investors before they buy the other fees payable when they sell or purchase units of the mutual fund. Investors can ascertain the other

		deciding to purchase a fund. We were told by this commenter to give fund managers the flexibility to determine what other fees are relevant.	fees associated with the mutual fund in the disclosure under Ongoing Fund Expenses.
<b>For more information</b>	<i>Content</i>	<p>We received feedback from several commenters that the fund facts contain a stronger statement as to the summary nature of the disclosure and the availability of other documents, in addition to the simplified prospectus, that contain more detailed disclosure about the investment. Some of these commenters suggested alternative wording to this effect.</p> <p>One commenter stated that the current text is disingenuous, as it implies that the fund facts <i>may</i> not be adequate when in fact it leaves out significant details found only in the prospectus.</p> <p>A few of these commenters recommended readers should be specifically referred to the websites where this information is posted, or the internet address. Although one commenter didn't recommend referring the reader to the SEDAR website because of the difficulty in accessing documents on it, another of these commenters did suggest referring to the availability of other</p>	We have revised the disclosure under For More Information to give greater emphasis that the fund facts may not have all the information they want, and that more detailed information about the mutual fund is available in the simplified prospectus and other disclosure documents.

		disclosure documents on the SEDAR website, in addition to being able to obtain a copy from the dealer.	
<b>French version of fund facts</b>	<i>Use of term “société de placement”</i>	One commenter suggested using the term “ <i>firme de courtage</i> ” rather than the term “ <i>société de placement</i> ” as the French equivalent of “investment firm on page 2 of the fund facts because it is a commonly used term.	In response to comments, we suggest the French version of the fund facts use the term “ <i>maison de courtage</i> ”.
<b>Other fund facts comments</b>			
<b>Overall content of fund facts</b>	<i>Revisiting fund facts upon implementation</i>	One investor advocate suggested that the fund facts document be reviewed by the Joint Forum or CSA upon implementation with a view to amending it and improving the disclosure to investors.	We think the content of the fund facts is a good place to start, and expect the disclosure will evolve with time.
<b>Preparation of fund facts</b>	<i>Level of prescription</i>	While some commenters expressed the need to balance the degree of prescription with flexibility to ensure that the content of the fund facts is relevant and clear, one commenter remarked the greater degree of flexibility in the fund facts content was an improvement that would help benefit its accuracy.  One of these commenters suggested fund managers have the flexibility to include items from page 1 on page 2, and vice-versa, as long	We think the FF Form and its Instructions strike the right balance of flexibility and prescription, to allow investors to easily compare funds and to allow fund managers to describe their funds accurately.

		<p>as they follow the prescribed order for each item.</p> <p>Another suggested we give guidance on the information to be covered in the fund facts while leaving the specific wording to be developed by industry.</p> <p>One of the commenters remarked that excessive prescription will run the risk of making all fund facts appear the same (which would not help inspire investors to read them) and of requiring disclosure a fund manager believes is inappropriate or misleading.</p>	
	<p><b><i>Providing additional information in the fund facts</i></b></p>	<p>One commenter asked whether funds with no sales charges or other fees could provide other information about the fund or the fund manager on Page 2.</p> <p>Another commenter suggested allowing an optional section for fund managers to provide additional information that they feel is relevant disclosure for investors.</p> <p>Still another commenter – an investor advocate - suggested allowing fund companies some leeway in what they include in the document. This would allow fund companies to include additional factual information that they consider relevant, such</p>	<p>After much consideration, we have concluded that the FF Form should contain only the information that is specifically mandated or permitted. We think this approach is necessary to ensure comparability across mutual funds.</p> <p>We remind commenters that neither the Framework nor the amendments to NI 81-101 restrict dealers from providing information in addition to the fund facts, at account opening or at any other time.</p> <p>As noted above, we are seeking</p>

		as risk factors that can affect performance, benchmarks, worst 12 months performance, management style, and anything else that would allow investors to make an informed analysis.	specific feedback on the approach to risk disclosure in the fund facts.
	<b><i>Tone of document</i></b>	It was noted by one commenter that the disclosure under the sections How Risky Is It?, Are There Any Guarantees?, Who Is This Fund For and How Has The Fund Performed? is curiously negative about mutual funds and appears to be quite prescriptive.	We think the FF Form provides sufficient flexibility in the disclosure that accompanies the required information, including the tone and writing style.
	<b><i>Readability of fund facts</i></b>	<p>One commenter expressed concern with compliance with the Flesch-Kincaid readability test. We were told the rule should clearly allow the use of tests built into commonly used word processing programs to ensure that no additional costs are imposed.</p> <p>This same commenter questioned the appropriateness of the less than grade 6.0 writing level, stating the vast majority of Canadians are literate and writing to this level will not allow for an adequate level of information or discussion. It was remarked considerable time for transition will be needed given the current standards of disclosure in the industry.</p> <p>Yet one commenter, supportive of the Flesch-</p>	<p>We disagree with the commenter who questioned the appropriateness of requiring the fund facts be written at a 6.0 or less Flesch-Kincaid grade level.</p> <p>Literacy research indicates that a significant proportion of Canadian adults have serious problems dealing with printed materials or are able to deal only with simple reading tasks. Low literacy levels are a major barrier to communication, and we are mindful that the investor base for mutual funds is a large and widely diverse portion of the Canadian population.</p> <p>Research also indicates that levels of investment knowledge and financial</p>

		<p>Kincaid readability test, further suggested that a minimum font size be specified to satisfy the reading requirements of seniors. This commenter also remarked that when a print document is converted to pdf, care should be taken to ensure that it is still reader friendly.</p>	<p>capability are generally very low.</p> <p>This research reinforces the need for clear and simple disclosure. In June 2007, we published an extensive list of the research, studies and other sources that staff reviewed and relied on in developing the Framework.</p> <p>Currently there is a requirement to use plain language in many of the mutual fund's disclosure documents. To ensure ease of readability, we think it is appropriate to impose a grade 6.0 or less grade level for the fund facts. We do not think the level of information or discussion will be compromised by adherence to a Flesch-Kincaid grade level. Rather, the information will be presented absent complex legal jargon, providing the disclosure in a simple, accessible and comparable format consistent with the principles of the Framework.</p> <p>Companion Policy 81-101CP to National Instrument 81-101 <i>Mutual Fund Distributions</i> (NI 81-101) clarifies that the use of Flesch-Kincaid tests built into commonly used word processing programs to measure the</p>
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			<p>Flesch-Kincaid grade level score of a fund facts may be relied upon.</p> <p>While a minimum font size for the fund facts is not mandated, the Instructions to the FF Form requires that the font be legible, and that where available online, the fund facts must be presented in a way that is capable of being printed in a readable format on paper. We have also provided sufficient flexibility in the FF Form to accommodate a larger font size.</p>
	<b><i>Dealer information vs. fund information</i></b>	Two commenters seemed to imply that the CSA should be careful to avoid duplication between the information to be provided in the fund facts (information related to the fund and its management and administration) and the information in the relationship disclosure document in proposed National Instrument 31-103 (distribution information and dealer-specific information, including specific information about the forms of compensation the dealer and adviser are receiving or will receive in respect of fund sales).	We are satisfied that the product specific disclosure in the fund facts does not duplicate information required in other regulatory disclosure documents.
	<b><i>Filing requirements</i></b>	One commenter welcomed the change in the Framework to only require the fund facts to be produced once a year (unless there are material changes) on the same cycle as the	We think the disclosure in the fund facts makes it appropriate for it to be reviewed in conjunction with the mutual fund's filing of its simplified

		<p>simplified prospectus renewal.</p> <p>Another commenter asked, however, that we clarify whether the fund facts will have to be filed initially with the preliminary and/or pro forma prospectus and whether, in such circumstances, the fund facts will be reviewed and commented on by the regulators.</p> <p>One commenter recommended that fund managers be given the flexibility to prepare the fund facts at any point in time in the year because the level of work and resources required to prepare prospectuses and other continuous disclosure documents would make it extremely difficult to simultaneously prepare the fund facts within already compressed timelines and might jeopardize the manager’s ability to file and deliver these documents within the required time period. This commenter acknowledged that, should a prospectus amendment be made that would impact the fund facts, the fund facts would have to be amended as well.</p>	<p>prospectus (SP) and annual information form (AIF). The amendments to NI 81-101 specify that the fund facts be filed at the same time as the mutual fund’s SP and AIF and reviewed as part of the mutual fund’s prospectus receipt process.</p> <p>The amendments to NI 81-101 also contemplate fund managers having the flexibility to update the information in the fund facts by periodically filing an updated fund facts on SEDAR. The amendments to NI 81-101 further set out when amendments to a fund facts must be filed and reviewed.</p>
	<p><b><i>Length of document</i></b></p>	<p>Two commenters observed that the fund facts template leaves no room to address any other relevant information. Both these commenters requested that the CSA reconsider its position to limit the number of pages of a fund facts and only provide flexibility to those</p>	<p>As noted above, we have concluded that the FF Form should contain only the information that is specifically mandated or permitted. We think this approach is necessary to ensure comparability across mutual funds.</p>



		<p>circumstances in which there are multiple sales charge options available.</p> <p>One commenter noted that in November 2008, the SEC announced its own disclosure initiative for mutual funds which provides for a simplified disclosure document which can run 3 or 4 pages and which provides greater disclosure than the fund facts.</p>	<p>In response to comments, the Instructions to the FF Form specifies that if the responses to the required information in each section cause the disclosure to exceed the 2 page limit, the required information may extend to 3 pages in length.</p>
	<p><i>Production and distribution of fund facts in colour vs. black and white</i></p>	<p>One commenter recommended that dealers be given the choice to deliver the fund facts in colour or in black and white since it would be difficult to deliver colour fund facts in all contemplated delivery methods (e.g. facsimile).</p>	<p>We agree. The fund facts may be produced in colour or in black and white.</p>
<p><b>Liability for incomplete or inaccurate information</b></p>		<p>One commenter asked us to clarify how the completeness of the information contained in the fund facts would be measured, in order to avoid recourse by an investor.</p> <p>Another commenter suggested the “For More Information” section refer investors to the prospectus to help address the danger that both a client and their adviser rely on the fund facts to the exclusion of the prospectus.</p> <p>One commenter recommended further consultation on the liability of funds and fund managers for the disclosure in the fund facts.</p>	<p>We disagree with those commenters who expressed concern that delivery of the fund facts creates a lack of certainty regarding the liability of mutual funds and fund managers.</p> <p>The fund facts is incorporated by reference into the simplified prospectus. This means that the existing securities laws apply and any misrepresentation in the fund facts will result in the investor having a statutory right to take action against the mutual fund for rescission or</p>

		<p>We were told the theory behind giving investors a simple two-page document should be that the document is deemed to incorporate by reference all of the other permanent disclosure documents, so that, in effect, investors are deemed to receive the other documents when they receive the fund facts.</p>	<p>damages.</p> <p>As noted above, we have revised the disclosure under For More Information to give greater emphasis that the fund facts may not have all the information an investor wants, and that more detailed information about the mutual fund is available in the simplified prospectus and other disclosure documents.</p>
<p><b>Rationalization of disclosure requirements</b></p>		<p>Three industry commenters remarked that the fund facts should not simply be an add-on to today's disclosure documents. Yet, we also heard from an investor advocate that the Simplified Prospectus provides additional important information that should continue to be provided to investors either at the point of sale or with the trade confirmation. Since this is a current requirement, there would be no additional burden placed on the mutual fund industry.</p> <p>Two of the industry commenters urged the CSA to complete the task of reviewing the entire disclosure regime for mutual funds to determine whether it can be streamlined at the same time as the fund facts legislation is ready for implementation, so that the costs associated with preparing the current</p>	<p>We expect to undertake a review of the current disclosure regime for conventional mutual funds as a second stage of this project. The purpose of that review will be to determine whether unnecessary duplication exists between the SP, AIF and the existing continuous disclosure regime. In particular, we will explore the development of a single foundation document to replace the current SP &amp; AIF in order to provide disclosure that better integrates with the fund facts document.</p> <p>We agree with the commenter who remarked that the SP provides important information. We consider the availability of the SP upon request</p>

		<p>disclosure documents would be reduced, resulting in savings to the fund investors. The other commenter questioned the need for a fund facts at all, given the current complexities of the mutual fund regulation and the additional costs of preparing a fund facts. This commenter noted the current widespread availability of short web-based outlines of funds.</p> <p>One of the commenters further asked us to consider allowing funds in a fund family to combine disclosure into one central foundation document. This foundation document would include a simple and complete discussion of the important material facts about the operations, management, structure and administration of a fund that would not repeat information contained in the continuous disclosure documents. The combination of the foundation document and the continuous disclosure information would allow a fund to disclose all material facts so that disclosure would be ‘full, true and plain’ as required by securities laws.</p> <p>Another commenter asked that we consider creating a companion user document to provide additional context and meaning for each element of fund facts information. The document could also explain the pros and</p>	<p>to be sufficient in conjunction with delivery of the fund facts before an investor makes a decision to purchase.</p>
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		<p>cons of different sales charges, and whether such charges can be negotiated. It was suggested this companion document be available free in hard copy and on-line upon request.</p> <p>We were also urged by this commenter to beef up educational materials to enable investors to better understand this complex product and confusing distribution system.</p>	
<b>Scope of Framework</b>	<i>Application to accredited investors, institutional investors and discretionary managed accounts</i>	<p>Several commenters told us that they think the fund facts is only appropriate for retail investors, not institutional or accredited investors and investors with discretionary managed accounts. Most of these commenters asked that these investors and, hence, those series/classes of funds sold to them, be excluded from the scope of the rule.</p> <p>One of these commenters suggested fund managers have the flexibility of deciding whether or not to prepare a fund facts for institutional class/series funds or any class/series funds offered only through discretionary investment managers.</p>	We do not propose to reconsider the current application of the prospectus delivery requirements under securities legislation. Where there exists an obligation today to deliver the mutual fund's SP, the amendments to NI 81-101 requires delivery of the fund facts as prescribed.
	<i>Application to fund of funds</i>	Two commenters asked us to clarify whether a fund of funds would be treated as an individual mutual fund for which only one fund facts document would be delivered, or	We do not propose to treat fund of funds disclosure differently than exists today. We expect a fund of funds that discloses top fund specific information

		whether a Fund Fact for each of the underlying funds would need to be provided.	under a single Part B to have a single fund facts for each series or class of the top fund.
	<b><i>Application to wrap products and asset allocation services</i></b>	One commenter, noting that the Framework no longer precludes the grouping of fund facts into a consolidated document, asked us to clarify if this could be interpreted to allow dealers to deliver a single consolidated document containing the fund facts for each wrap program or asset allocation service.	In response to comments, the amendments to NI 81-101 provide some flexibility to bind one or more fund facts of mutual funds in the same mutual fund family.
	<b><i>Application to other types of investment products</i></b>	<p>One commenter asked us to confirm if the Framework applies to all investment funds, including those that are required to file a long-form prospectus under National Instrument 41-101. This commenter remarked that the principles in the Framework are equally important for investors in other types of investment funds, including LSVCCs, as they are for investors in mutual funds that use a simplified prospectus.</p> <p>Three commenters expressed the view that the POS delivery requirement should be simultaneously imposed on other products such as exchange traded funds, closed-end-funds, hedge funds, principal protected notes and securities listed on exchanges. Two of these commenters noted that some of these other investment products can be even more</p>	<p>As previously noted, it is outside the scope of this project to consider a point of sale disclosure for other types of investment funds.</p> <p>We do not disagree, however, with those commenters who told us that the principles set out in the Framework for point of sale disclosure may have applicability for other types of investment products. We expect disclosure for all types of investment funds will evolve with time, and we anticipate point of sale disclosure for mutual funds may provide a platform for future regulatory reform.</p>

		<p>complex than some mutual funds or segregated funds.</p> <p>We were also urged by another commenter to consider including scholarship plans in the draft rules being developed to implement the Framework.</p>	
<b>One fund facts per series/class</b>	<b><i>Cost and logistical implications</i></b>	<p>Many commenters remarked on the logistical and cost implications for the dealer, as well as to the fund manager to prepare a fund facts for each series or class of units of a fund at least once a year in English and also in French.</p> <p>One of these commenters noted the costs will likely to be passed onto investors in the form of higher management expense ratios.</p> <p>Several of them emphasized the sheer volume of documents will lead to administrative difficulties at the fund manager, dealer and salesperson level, and could potentially lead to errors in delivering the correct fund facts.</p> <p>Two of these commenters noted the increased risk that a dealer may not have all the fund facts at hand when meeting with a client, or have the incorrect fund facts, which would frustrate the sales transaction.</p> <p>We were told advisers typically sell</p>	<p>We do not propose to make any change at this time. To date, we have not seen a sample fund facts that contains multiple series or class disclosure that meets the Framework principle of providing investors with information in a simple, accessible and comparable format.</p> <p>As discussed above, in response to comments, we have provided some flexibility in the amendments to NI 81-101 for a fund facts to be attached to, or bound with, one or more fund facts of other mutual funds in the same mutual fund family for the purposes of delivery.</p> <p>We have specifically asked for submissions of sample fund facts that demonstrate multiple series or class information presented in a manner consistent with the principles in the</p>

	<p><i>Reducing product choice and product arbitrage</i></p> <p><i>Improving informed decision making for</i></p>	<p>approximately 20 mutual funds from a variety of mutual fund companies. This could result in the adviser needing sufficient inventory of 10 or more separate fund facts for a single fund, representing each series it offers.</p> <p>Finally, one commenter remarked that the mutual fund industry has made significant strides in reducing paper and increasing the use of electronic means. A fund facts per series will be a significant step backwards and will result in more, not less paper being produced in an era when investors want less paper and more electronic access at their convenience.</p> <p>Three commenters remarked that the logistical challenges for dealers and advisers could result in them distributing fewer mutual funds, to better manage the administrative burden. This could reduce investment alternatives, which could have negative price implications for investors. It could also result in advisers and their clients favouring other similarly-regulated products that are less cumbersome to purchase. All of this, we were told, will put mutual funds at a competitive disadvantage relative to these other products.</p> <p>A number of commenters expressed that a single fund facts document per fund with</p>	<p>Framework.</p>
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	<p><i>Alternative to one fund facts per series/class - Specific content</i></p>	<p>together where it is reasonable to do so.</p> <p>Two commenters stated that since often only sales charges or compensation is different between series or classes, provided the differences can be clearly and concisely summarized in a single fund facts, it should be allowed.</p> <p>One commenter remarked that the investment objectives, strategy and structure of a fund are set at the fund level and where there is no material difference between series or classes, it should be allowed to combine series and classes. Alternatively, another commenter suggested material terms which are not the same between funds could be highlighted in a combined fund facts.</p> <p>Finally, one commenter suggested that an exemption should be given in situations where the fees are negotiable by the client.</p> <p>In support of accommodating multiple series/class information in a single fund facts, commenters provided us with specific examples of how it could work.</p> <p>One commenter suggested the graph showing the year-by-year returns in the “How has the fund performed?” section could present the</p>	
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	<p><i>Alternative to One fund facts per series/class - binding</i></p>	<p>returns of different series with different bars in the same graph.</p> <p>One commenter suggested increasing the number of pages of the fund facts to allow for a description of each series.</p> <p>Another commenter suggested that a table could be constructed (as is now done in many Simplified Prospectuses) outlining each series and other purchase options and costs without overly complicating or lengthening the fund facts.</p> <p>This commenter suggested another alternative of providing "representative" information about the performance of the series with the highest MER, for example, and directing investors to review the MRFP for that fund to see detailed performance information by series if they choose.</p> <p>Still another commenter recommended the CSA allow all series aimed at a particular type of investor (e.g. non-high net worth retail investors) to be grouped in one document.</p> <p>One commenter suggested that funds should be permitted to bind their fund facts with those of other funds under common management.</p>	
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<b>Part IV – Investor rights comments</b>			
<u>Issue</u>	<u>Sub-Issue</u>	<u>Comments</u>	<u>Responses</u>
<b>Investor rights</b>	<i>Harmonized cancellation right</i>	<p>Most commenters expressed general agreement with the Framework’s proposal to create a single, harmonized cooling-off right for investors.</p> <p>For greater certainty, we were asked to be clear in any rule that this cooling-off period supersedes any other withdrawal rights in securities legislation.</p> <p>A few commenters remarked that the inclusion of a 48 hour cooling-off period addresses any concerns regarding “buyer’s remorse” by investors, making it less crucial for the fund facts to be delivered</p>	<p>We propose no change. We think the proposed cancellation right in the amendments to NI 81-101 provides investors with a reasonable opportunity to change their mind after buying a mutual fund.</p> <p>We do not perceive the change from the existing regulatory framework to be a reduction of investor rights. Rather, we consider the remedy under the right to be appropriate in combination with delivery of the fund facts before or at the point of sale, which we anticipate will increase investor awareness of the</p>

		<p>before a purchase.</p> <p>However, an investor advocate told us the proposal is unfair to investors, since unlike the present regulatory framework, an investor will now be exposed to downside risk but will not have the benefit of any increase in the value of the fund on the day that right is exercised. This commenter considered the change a reduction in investor rights. We were asked to retain the existing cooling-off right.</p>	<p>existence of a cooling-off right.</p>
	<b><i>Trigger for cancellation right</i></b>	<p>One commenter remarked that the Framework provides greater clarity and certainty for both investors and member firms with the trigger point for the cooling-off right at the receipt of the trade confirmation. Another commenter, however, asked us to clarify the existence of any deeming provisions for the receipt of the trade confirmation, and whether there is any case law concerning the interpretation of deemed receipt.</p>	<p>The trigger for the proposed cancellation right remains the receipt of the trade confirmation. The deeming provision for the delivery of a trade confirmation is consistent with existing securities legislation.</p>
	<b><i>Notice of cancellation</i></b>	<p>We were asked to clarify whether the requirement for the client to provide notification of cancellation in writing would include e-mail, and whether the dealer would be required to confirm receipt of the notice for the cancellation. This</p>	<p>The notification provision for cancelling the purchase has been drafted consistent with existing securities legislation. We do not propose to prescribe dealer policies and procedures for dealing with such notices.</p>

		commenter remarked that without dealer confirmation, there is a possibility that a client may claim to have alerted the dealer without the dealer having received the notification.	
	<b><i>Responsibility for reimbursement of fees in event of cancellation</i></b>	We were asked to confirm that where an investor cancels a mutual fund purchase, the repayment of any early redemption/short term trading fees levied by a mutual fund are reimbursed by the manager and not the dealer.	We do not think it is appropriate to prescribe responsibility for reimbursement of fees in the event of cancellation.
	<b><i>Treating cancellation as a redemption</i></b>	<p>We were also asked by a commenter to clarify the treatment of a cancellation as a redemption. This commenter questioned what would happen in the event of a distribution of revenue during the cooling off period and suggested it be treated as a correction.</p> <p>This commenter also proposed that when an investor exercises their cancellation right in respect of Fund B after a switch from Fund A to Fund B, the investor should not be switched back into Fund A since they may no longer want to be invested in Fund A.</p>	<p>We consider a cancellation to be subject to different considerations from those associated with a redemption request.</p> <p>We agree with the commenter that it would not be appropriate to automatically switch an investor to another mutual fund after the investor exercises the cancellation right.</p>
	<b><i>Liability for failure to deliver fund facts</i></b>	While one commenter expressed agreement with the proposal to amend the	If delivery of the fund facts is to satisfy the prospectus delivery requirements

		<p>current right of action for failure to deliver a simplified prospectus and have it apply only to delivery of a fund facts document, other commenters told us that the Framework exposes mutual funds and their managers to increased risk.</p> <p>A few commenters remarked on the unfairness to the fund manager and the fund of a perpetual right of rescission by the investor in the event of non-delivery of the fund facts, which is completely out of the hands of the fund manager and the fund. We were also told this right will create challenges for dealers in developing a suitable compliance framework, audit trail and adequate record keeping.</p> <p>We were asked to confirm that the obligation to deliver the fund facts lies with the dealer, irrespective of whether the dealer or fund manager is delivering the confirmations, and to include a feature which enables dealers to cure a failure to deliver the fund facts.</p> <p>Another commenter suggested specifying a reasonable standardized limitation period for an investor to be able to claim a remedy for failure to deliver the fund facts.</p>	<p>under securities legislation, some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or rescission in the event that the investor fails to receive a fund facts.</p> <p>We do not agree with those commenters who expressed concern that mutual funds and mutual fund managers will be exposed to increased risks, particularly a perpetual right of rescission. We intend for existing statutory remedies and limitation periods to apply to the failure to deliver the fund facts. Failure to deliver the fund facts at the appropriate time, however, will be a breach of securities legislation, whether or not delivery is cured after the fact.</p> <p>We acknowledge that there may be challenges in developing new compliance mechanisms to adequately audit and ensure compliance with delivery of the fund facts before or at the point of sale. We have asked for specific feedback on the appropriateness of the transition period we propose in the amendments to NI 81-101.</p>
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<b>Part V – Other comments</b>			
<b><u>Issue</u></b>	<b><u>Sub-Issue</u></b>	<b><u>Comments</u></b>	<b><u>Responses</u></b>
<b>Principles-based regulation</b>		<p>We were asked by a couple of commenters to consider adopting a principles-based approach in implementing the Framework. One of these commenters suggested that the benefits of such a form of regulation would include increased regulatory scope, adaptability, and predictability; as well as a reduction in unnecessary regulatory duplication and redundancy.</p>	<p>We think the FF Form and amendments to NI 81-101 strike the right mix of ‘principles’ and ‘prescriptive’ regulation.</p>
<b>Cost-benefit analysis</b>	<b><i>Benefits marginal</i></b>	<p>A few commenters remarked that the marginal value to individual investors of requiring that the fund facts be delivered before or at POS, rather than with the trade confirmation, appears small relative to the practical challenges, costs and impairment to service that such a requirement would create.</p> <p>Still other commenters stated that it wasn’t clear what regulatory deficiency would be resolved by the delivery requirements or how it would enhance investor protection in an industry in which most fund</p>	<p>We think delivery of the fund facts before or at the point of sale will address the problem that the current disclosure regime for mutual funds is not effective for investors. Investors are not using the information provided in the SP, and they do not have the information at the time they are making their investment decision. By making disclosure more effective, we will give investors the opportunity to make more informed decisions.</p> <p>In June 2007, we published an extensive</p>

		<p>purchases are made with the assistance of a registered financial adviser. This sentiment was echoed by another commenter, who remarked the Joint Forum has not presented any substantive evidence to support the proposition that delivery of the fund facts is likely to either enhance consumers' decisions, or help them avert bad decisions.</p> <p>One commenter stated that the costs of preparing, filing, and printing the fund facts will far outweigh the cost savings associated with reduced printing of the prospectuses. We were urged by another commenter to rationalize the filing fees payable in respect of all disclosure documents.</p> <p>We were also told that the research conducted by the Joint Forum into investor sentiment about the fund facts must be supplemented by focused cost-benefit analysis and further research into delivery. Some commenters expressed a desire to work with the Joint Forum and the CSA to conduct additional independent research to explore both the information and delivery components of the Framework and to identify the root concern that the Framework is seeking to address in order</p>	<p>list of the research, studies and other sources that staff reviewed and relied on in identifying the problems with the current disclosure regime and in developing the Framework. We will consider conducting further research on investor attitudes towards presale delivery.</p> <p>The extent to which investors and industry are affected in terms of benefits and costs is difficult to determine. We anticipate that costs for industry stakeholders will fall into the following categories: preparation of the fund facts, regulatory filings and compliance. We also anticipate that there will be reduction in costs because we expect that the number of SPs that will actually have to be delivered will decrease significantly.</p> <p>We have asked for specific feedback on the anticipated costs and savings associated with implementation of point of sale delivery.</p>
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		to determine a range of workable solutions.	
<b>Other</b>	<i>Use of Term “adviser” in Framework</i>	Given that the prospectus delivery requirement is currently an obligation of a dealer and not an adviser, one commenter asked us to clarify that the term "adviser" was used generically in the Framework simply to refer to salespersons rather than the adviser category of registration.	We can confirm that the term “adviser” was used generically in the Framework, and was not intended to refer to the adviser category of registration.

<b>Part VI – List of commenters</b>
<b><u>Commenters</u></b>
<ul style="list-style-type: none"> <li>• Advocis</li> <li>• AGF Funds Inc., Brandes Investment Partners, CI investments, Fidelity Investments Canada ULC, Franklin Templeton investments Corp, Invesco Trimark Ltd., and Mackenzie Investments</li> <li>• AGF Management Limited</li> <li>• Assante Wealth Management</li> <li>• Bick Financial Security Corporation</li> <li>• Blackmont Capital Inc.</li> <li>• BMO Investments Inc.</li> <li>• Board of Governors for Investment Funds managed by CI Investments Inc. and United Financial Corporation</li> <li>• Borden Ladner Gervais LLP</li> <li>• Brandes Investment Partners &amp; Co.</li> <li>• Broadridge Financial Solutions Inc.</li> </ul>

- Brownstone Investment Planning Inc.
- Canadian Bankers Association
- Canadian Foundation for Advancement of Investor Rights
- Canfin Magellan Investments Inc.
- Capital International Asset Management (Canada), Inc.
- CIBC
- CI Investments Inc.
- Connor Financial Corporation
- Edward Jones
- Federation des caisses Desjardins du Quebec
- Franklin Templeton Investments Corp.
- Fidelity Investments Canada ULC
- Independent Financial Brokers of Canada
- Independent Planning Group Inc.
- International Capital Management
- Invesco Trimark
- Investment Funds Institute of Canada
- Investment Industry Association of Canada
- Investment Planning Counsel
- Investors Group Inc.
- Irwin, White & Jennings on behalf of Growth Works Funds
- John De Goey
- Keybase Financial Group Inc.
- Mackenzie Financial Corporation
- Manulife Securities Incorporated, Manulife Securities Investment Services Inc. and Manulife Mutual Funds (a division of Elliott & Page Limited)
- MD Funds Management Inc.
- PFSL Investments Canada Ltd.
- Professional Investments (Kingston) Inc.

- RBC Asset Management Inc.
- RBC Dominion Securities Inc., Royal Mutual Funds Inc., and Phillips, Hager & North Investment Funds Ltd.
- RESP Dealers Association of Canada
- Scotia Securities Inc.
- Small Investor Protection Association
- TD Bank Financial Group
- Tradex Management Inc.

## **APPENDIX B**

### **Issues for Comment**

#### **I) Issues for Comment on the Notice and Request for Comment**

- 1.** We seek feedback on whether you agree or disagree with our perspective on the benefits of the Instrument. We particularly seek feedback from investors.
- 2.** We seek feedback on whether you agree or disagree with our perspective on the cost burden of the Instrument. Specifically, we request specific data from the mutual fund industry and service providers on the anticipated costs and savings of complying with the Instrument for the mutual fund industry.

#### **II) Issues for Comment on the Instrument**

- 1.** We are considering allowing fund managers greater flexibility to provide more current information to investors, by not restricting how frequently a fund manager may file an updated fund facts document. What are your views? How would this impact compliance with the requirement to deliver the most recently filed fund facts document?
- 2.** The intention of the requirement to ‘bring the fund facts document to the attention of the purchaser’ is to link for the investor the information in the fund facts document to a particular purchase. In subsection 7.3(3) of the Companion Policy we have provided guidance on this requirement. Is this guidance sufficient?
- 3.** In response to comments, we are considering requiring delivery of the fund facts document for subsequent purchases – either in instances where the investor does not have the most recently filed fund facts document, or in all instances with the confirmation of trade. What are your views? Would this approach make it easier to comply with the delivery requirements?

What if this could result in the removal of the annual option to receive a fund facts document? Would this approach be more useful for investors? More practical for dealers?

- 4.** In response to comments, we are considering allowing delivery of the fund facts document with the confirmation of trade in instances where the investor expressly communicates they want the purchase to be completed immediately, and it is not reasonably practicable for the dealer to deliver or send the fund facts document before the purchase is completed. We request comment on this approach.

If we made this change, what information should an investor receive before the purchase? In addition to delivery of the fund facts document with the trade confirmation, we think that at least some type of oral communication about the fund facts document would be necessary. What specific information should be conveyed in each instance to satisfy this aspect of delivery?

Are there alternatives to this approach?

5. In response to comments, we are proposing some limited binding of fund facts documents. In section 4.1.5 of the Companion Policy we have provided guidance on this provision. Is this guidance sufficient? Do you agree with this approach?
6. Is the transitional period for delivery of the fund facts document appropriate? If not, what period would be appropriate and why?
7. Depending on the comments we receive, we may decide to proceed with finalizing some parts of the Instrument while continuing to consult on other parts. For example, we may be able to move forward sooner with the requirement to prepare and file a fund facts document and have it posted to the website. If this were to occur, we would provide a reasonable transition period before anyone has to comply with the fund facts document requirements and we would consider a shorter transitional period for delivery. What are your views on this approach? What period would be appropriate?

### **III) Issues for Comment on Form 81-101F3 *Contents of Fund Facts Document***

1. In response to comments, we have provided some flexibility in the proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* for a fund facts document to be attached to, or bound with, one or more fund facts documents of other mutual funds. To date, however, we have not seen a sample fund facts document that contains multiple class or series disclosure that meets the principle of providing investors with information in a simple, accessible and comparable format as set out in *Framework 81-406: Point of Sale Disclosure for Mutual Funds and Segregated Funds* (Framework).

For us to consider allowing flexibility to permit a single fund facts document per mutual fund, we request sample fund facts documents that demonstrate multiple class or series information presented in a manner consistent with the principles of the Framework.

2. We are considering whether it is more appropriate to require disclosure of the MER without any waivers or absorptions, since there is no guarantee such waivers or absorptions will continue. Do you agree with this approach?
3. In response to comments, including concerns raised by investors and the Investment Funds Institute of Canada (IFIC) of the use of its risk scale, we are proposing for the manager to identify the mutual fund's risk level on a prescribed scale set out in the fund facts document, based upon the risk classification methodology adopted by the manager.

We request comment on whether this approach achieves our objective to provide investors with a simple and comparable presentation of the level of investment risk associated with the mutual fund. Are there alternatives to achieve this objective?

- 4.** We would like feedback on whether the band we've prescribed for the scale is appropriate. Are there better ways to describe the range of investment risk for a mutual fund?
- 5.** We recognize that managers with similar type mutual funds may adopt different methodologies to identify the mutual fund's risk level on the scale prescribed. We would like your view on whether this will detract from our objective to provide a simple and comparable presentation of the level of investment risk. Should we consider requiring a particular type of risk classification methodology be used? If so, what methodology would be appropriate?
- 6.** In response to comments, we are considering allowing the disclosure in this section to be supplemented with a brief description of the key risks associated with an investment in the mutual fund. We request feedback on this approach. Should we limit this risk disclosure? If so, how?
- 7.** To better convey the impact on the investor of sales charges and ongoing fund expenses, we are considering requiring an illustration of the amounts payable in dollars and cents. What are your views?
- 8.** We are also considering whether to require disclosure in the fund facts document of the trading expense ratio (TER), to provide investors with a more complete picture of the costs associated with an investment in a mutual fund. We request feedback on this proposal.

## APPENDIX C

### Schedule 1

#### National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

#### AMENDMENT INSTRUMENT

This is an unofficial consolidation of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. The proposed amendments are shown by blackline. No part of this document represents an official statement of law.

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.

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**National Instrument 81-101**  
***Mutual Fund Prospectus Disclosure***

**PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION**

**1.1 Definitions** - In this Instrument

“business day” means any day other than a Saturday, a Sunday or a statutory holiday;

“commodity pool” means a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to use

(a) specified derivatives other than as permitted by National Instrument 81-102 *Mutual Funds*, or

(b) physical commodities other than as permitted by ~~National Instrument 81-102~~ National Instrument 81-102;

“educational material” means material containing general information about one or more of investing in general, mutual funds, portfolio management, capital markets, retirement savings, income or education saving plans and financial planning, if the material does not promote a particular mutual fund or mutual fund family or the products or services offered by a particular mutual fund or mutual fund family;

“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;

“financial year” includes the first completed financial period of a mutual fund beginning with the inception of the mutual fund and ending on the date of its first financial year end;

“fund facts document” means a completed Form 81-101F3 *Contents of Fund Facts Document*;

“independent review committee” means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“material contract” means, for a mutual fund, a contract listed in the annual information form of the mutual fund in response to Item 16 of Form 81-101F2 *Contents of Annual Information Form*;

“multiple AIF” means a document containing two or more annual information forms that have been consolidated in accordance with section ~~5.45.3~~;

“multiple SP” means a document containing two or more simplified prospectuses that have been consolidated in accordance with subsection 5.1(1);

~~“NI 81-107” means National Instrument 81-107 *Independent Review Committee for Investment Funds*;~~

“Part A section” means the section of a simplified prospectus that contains the disclosure required by Part A of Form 81-101F1 *Contents of Simplified Prospectus*;

“Part B section” means the section of a simplified prospectus that contains the disclosure required by Part B of Form 81-101F1; *Contents of Simplified Prospectus*;

“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*;

“plain language” means language that can be understood by a reasonable person, applying a reasonable effort;

“precious metals fund” means a mutual fund that has adopted fundamental investment objectives; and received all required regulatory approvals, that permit it to invest in precious metals or in entities that invest in precious metals and that otherwise complies with National Instrument 81-102 *Mutual Funds*;

“single AIF” means an annual information form that has not been consolidated with another annual information form under section ~~5.45.3~~; and

“single SP” means a simplified prospectus that has not been consolidated with another simplified prospectus under subsection 5.1(1).

**1.2 Interpretation** - Terms defined in National Instrument 81-102 *Mutual Fund* or National Instrument 81-105 *Mutual Fund Sales Practices* and used in this Instrument have the respective meanings ascribed to them in those Instruments.

**1.3 Application** - This Instrument does not apply to mutual funds that are

(a) labour-sponsored venture capital corporations;

(b) commodity pools; or

(c) listed and posted for trading on a stock exchange or quoted on an over-the-counter market.

## PART 2 DISCLOSURE DOCUMENTS

### 2.1 Filing of Disclosure Documents ~~—(1)~~ A mutual fund

(a) that files a preliminary prospectus ~~shall~~must file the preliminary prospectus in the form of a preliminary simplified prospectus prepared in accordance with Form 81-101F~~1~~1, ~~and shall~~ concurrently file

(i) a preliminary annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a preliminary fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(b) that files a *pro forma* prospectus ~~shall~~must file the *pro forma* prospectus in the form of a *pro forma* simplified prospectus prepared in accordance with Form 81-101F~~1~~1 and ~~shall~~ concurrently file

(i) a *pro forma* annual information form prepared in accordance with Form 81-101F2; and

(ii) a *pro forma* fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(c) that files a prospectus ~~shall~~must file the prospectus in the form of a simplified prospectus prepared in accordance with Form 81-101F~~1~~1 and ~~shall~~ concurrently file

(i) an annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(d) that files an amendment to a prospectus

(i) ~~shall~~must either

(A) file an amendment to a ~~the~~ simplified prospectus and ~~shall~~ concurrently file an amendment to the related annual information form, or

(B) in circumstances in which changes are made only to an annual

information form, ~~shall~~ file an amendment to the annual information form;

(ii) must, if the amendment relates to a matter that requires a change to the disclosure in the fund facts document, concurrently file an amendment to the fund facts document; and;

(iii) must, if the amendment relates to a new class or series of securities of the mutual fund that is referable to the same portfolio of assets, concurrently file a preliminary fund facts document for the new class or series; and

(e) must file an amendment to a fund facts document if a material change occurs that requires a change to the disclosure in the fund facts document.

(2) A mutual fund must not file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus that relates to the prospectus.

## **2.2 Amendments to Disclosure Documents**

(1) An amendment to a simplified prospectus or to an annual information form may consist of either

(a) an amendment that does not fully restate the text of the simplified prospectus or annual information form; or

(b) an amended and restated simplified prospectus or annual information form.

(2) Despite subsection (1), an amendment to the Part B section that is separately bound from the Part A section of a simplified prospectus ~~shall~~must be effected only by way of an amended and restated Part B section.

(2.1) An amendment to a fund facts document must be effected only by way of an amended and restated fund facts document.

(3) An amendment to a simplified prospectus or to an annual information form ~~shall~~must be identified and dated as follows:

1. For an amendment that does not restate the text of a simplified prospectus or annual information form:

“Amendment No. [insert amendment number] dated [insert date of amendment] to [identify document] dated [insert date of document being amended].”

2. For an amended and restated simplified prospectus, other than an amendment to which subsection (2) applies, or annual information form:

“Amended and Restated [identify document] dated [insert date of amendment],

amending and restating [identify document] dated [insert date of document being amended].”

(4) An amendment to a fund facts document must be prepared in accordance with Form 81-101F3 without any further identification and dated as of the date the fund facts document is being amended.

**2.2.1 Amendment to a Preliminary Simplified Prospectus** – (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 S.57(1) of the Securities Act (Ontario) imposes a similar requirement to file an amendment to a preliminary prospectus]<sup>1</sup>*

(1.1) If the amendment to the preliminary simplified prospectus referred to in subsection (1) relates to a matter that is disclosed in the preliminary fund facts document, an amendment to the preliminary fund facts document must be filed concurrently with the amendment to the preliminary simplified prospectus.

#### **Note to Reader**

**In Ontario, consideration will be given to recommending amendments to the *Securities Act* (Ontario) that would implement, or facilitate the implementation of, this and other fund facts document related requirements in this Part.**

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

**2.2.2 Delivery of Amendments** — (1) 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]*

(2) If, under subsection 2.2.1(1.1), an amendment to a preliminary fund facts document is required to be filed concurrently with an amendment to the preliminary simplified prospectus,

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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.

the requirement in securities legislation to deliver an amendment to the preliminary simplified prospectus must be satisfied by delivering the amended and restated fund facts document.

**2.2.3 Amendment to a Simplified Prospectus** – (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]

(1.1) If the amendment to the simplified prospectus referred to in subsection (1) relates to a matter that is disclosed in the fund facts document, an amendment to the fund facts document must be filed concurrently with the amendment to the simplified prospectus.

(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 at any time there is a proposed distribution of securities in addition to that disclosed under the prospectus.]

(2.1) If the amendment to the simplified prospectus referred to in subsection (2) relates to a matter that is disclosed in the fund facts document, an amendment to the fund facts document must be filed concurrently with the amendment to the simplified prospectus.

(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.]

(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.]

## 2.3 Supporting Documents

(1) A mutual fund ~~shall~~must

(a) (a)-file with a preliminary simplified prospectus and, a preliminary annual information form and a preliminary fund facts document

(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) at the time a preliminary simplified prospectus and, preliminary annual information form and preliminary fund facts document are filed, deliver or send to the securities regulatory authority

(i) for

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

~~(B)~~ ~~(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)~~ ~~(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) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and

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

(2) A mutual fund ~~shall~~must

(a) file with a *pro forma* simplified prospectus ~~and~~, a *pro forma* annual information form and a *pro forma* fund facts document

(i) 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,

(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

(b) at the time a *pro forma* simplified prospectus ~~and~~, *pro forma* annual information form and *pro forma* fund facts document are filed, deliver or send to the securities regulatory authority

(i) a copy of the *pro forma* simplified prospectus, blacklined to show changes and the text of deletions from the latest simplified prospectus previously filed,

(ii) a copy of the *pro forma* annual information form, blacklined to show changes and the text of deletions from the latest annual information form previously filed,

(ii.1) a copy of the *pro forma* fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document.

(iii) a copy of a draft of each material contract of the mutual fund, and a copy of each draft amendment to a material contract of the mutual fund, in either case not yet executed but proposed to be executed by the time of filing of the simplified prospectus,

(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) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and

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

(3) A mutual fund ~~shall~~must

(a) file with a simplified prospectus ~~and~~, an annual information form and a fund facts document

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

(ii) for a new mutual fund, a copy of the audited balance sheet of the mutual fund,

- (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

(b) at the time a simplified prospectus is filed, deliver or send to the securities regulatory authority

- (i) a copy of the simplified prospectus, blacklined to show changes and the text of  
~~(i) a copy of the simplified prospectus, blacklined to show changes and the text of~~ deletions from the preliminary or *pro forma* simplified prospectus,
- (ii) a copy of the annual information form, blacklined to show changes and the text of deletions from the preliminary or *pro forma* annual information form,
- (ii.1) a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document,
- (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) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and
- (v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(4) A mutual fund ~~shall~~must

(a) file with an amendment to a simplified prospectus and an amendment to the annual information form

(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,

(iii.1) if the amendment relates to a matter that requires a change to the disclosure in the fund facts document, an amendment to the fund facts document, and

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

(b) at the time an amendment to a simplified prospectus is filed, deliver or send to the securities regulatory authority

(i) if the amendment to the simplified prospectus is in the form of an amended and restated simplified prospectus, a copy of that document blacklined to show changes and the text of deletions from the simplified prospectus,

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

(ii.1) if an amendment to the fund facts document is filed, a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document,

(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.

(5) A mutual fund ~~shall~~must

(a) file with an amendment to an annual information form in circumstances in which the corresponding simplified prospectus is not amended

(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,

(iii.1) if the amendment relates to a matter that requires changes to the disclosure in the fund facts document, an amendment to the fund facts document, and

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

(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~~ form.

(ii.1) if an amendment to a fund facts document is filed, a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document, and

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

(5.1) A mutual fund must

(a) in circumstances in which the corresponding simplified prospectus is not amended, file with an amendment to a fund facts document

(i) an amendment to the corresponding annual information form, certified in accordance with Part 5.1, and

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

(b) at the time an amendment to a fund facts document 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 (1)(b)(ii), (2)(b)(iv) or (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) a copy of the amended and restated fund facts document blacklined to show changes and the text of deletions from the most recently filed fund facts document; and

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

(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.

### **2.3.1 Voluntary Updating of Fund Facts Document**

(1) A mutual fund may file an updated fund facts document that brings up to date the disclosure in the fund facts document at regular intervals of either six months or three months following the

date of the fund facts document that is filed with the simplified prospectus.

(2) If a mutual fund files an updated fund facts document under subsection (1), the mutual fund must file a fund facts document for each class or series of securities of the mutual fund.

(3) A fund facts document filed in accordance with this section must be filed by the mutual fund within 30 days of the end of the period for which the updated fund facts document was prepared.

#### **Issues for Comment**

**1. We are considering allowing fund managers greater flexibility to provide more current information to investors, by not restricting how frequently a fund manager may file an updated fund facts document. What are your views? How would this impact compliance with the requirement to deliver the most recently filed fund facts document?**

**2.3.2 Websites** – If a mutual fund, the mutual fund’s family, or the manager has a website, the mutual fund must post to the website of the mutual fund, the mutual fund’s family or the manager a fund facts document filed under this Part no later than the date that the document is filed.

**2.4 Simplified Prospectus** - A simplified prospectus is a prospectus for the purposes of securities legislation.

#### **2.5 Lapse Date**

(1) This section does not apply in Ontario.

(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.

(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.

(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.

(5) 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.

(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.

(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.

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

## **2.6 Consents of Experts**

(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) 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.

(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.

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

## **2.7 Language of Documents**

(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) 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.

(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.

**2.8 Statement of Rights** – 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.]*

## **2.9 Cancellation Right**

(1) The rights described in this subsection do not apply to a purchase of a security of a mutual fund:

(a) the right given under securities legislation other than in this Instrument to withdraw from a purchase within a specified time following receipt of the prospectus by the purchaser; and

(b) except in Ontario, the right given under securities legislation other than in this Instrument to rescind a purchase within a specified time following receipt of the confirmation of trade for the purchase by the purchaser.

*[Note : In Québec, the right to withdraw a purchase will be facilitated by the coming into force of proposed changes to section 30 of the Securities Act (Québec) as proposed by the Targeted Act Amendments.]*

(2) Except in Ontario, a purchaser of a security of a mutual fund may cancel a purchase by giving notice to the dealer from whom the purchase was made within two business days of receipt of the confirmation of trade for the purchase.

(3) A purchaser who cancels a purchase under subsection (2) is entitled to receive the lesser of the net asset value of the securities at the time of purchase and the net asset value of the securities at the time the right is exercised.

*[Note: In Ontario, the Securities Act (Ontario) provides a similar right that allows a purchase of a mutual fund security to be rescinded for purchases not exceeding \$50,000.]*

(4) The notice required by subsection (2) must be in writing, and may be given in person, by prepaid mail, by fax, electronically or other means.

[Note: In Ontario, the Securities Act (Ontario) imposes similar requirements regarding the notice of rescission.]

(5) Except in British Columbia, a trade confirmation sent by prepaid or registered mail shall be deemed conclusively to have been received 7 business days after being sent by the person or company to whom it was addressed.

[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia), respectively, impose a similar deemed receipt provision.]

(6) Every dealer from whom a purchase of a security of a mutual fund was made must within a reasonable period reimburse the purchaser who has exercised the cancellation right under this section for all sales charges and fees arising from the purchase that was cancelled.

[Note: In Ontario, the Securities Act (Ontario) imposes a similar obligation on the dealer to reimburse to the purchaser any costs associated with the transaction.]

(7) Except in British Columbia and Québec, no action may be commenced to enforce the right to cancel a purchase created by this section more than 180 days after the date of the transaction that gave rise to the cancellation right.

[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia), respectively, set out a similar limitation to rescind a purchase. In Québec, the Securities Act (Québec) provides no authority to include a limitation period regarding a civil action in a regulation.]

#### **Note to Reader**

**We intend to recommend the harmonization of cancellation rights in all jurisdictions. Some jurisdictions may require legislative amendments in order to achieve this harmonization.**

### **PART 3 DOCUMENTS INCORPORATED BY REFERENCE AND DELIVERY TO SECURITYHOLDERS**

**3.1 Documents Incorporated by Reference** - The following documents ~~shall~~must, by means of a statement to that effect, be incorporated by reference into, and ~~shall~~ form part of, a simplified prospectus:

1. The most recently filed fund facts document for the mutual fund, filed either concurrently with or after the date of the simplified prospectus.

2. The annual information form that is filed concurrently with the simplified prospectus.

~~2. The most recently filed comparative annual financial statements of the mutual fund, together with the accompanying report of the auditor, filed either before or after the date of the simplified prospectus.~~

3. The most recently filed interim comparative annual financial statements of the mutual fund ~~that were, together with the accompanying report of the auditor, filed either before or after the date of the simplified prospectus and that pertain to a period after the period to which the annual financial statements then incorporated by reference in the simplified prospectus pertain.~~

4. The most recently filed annual management report of fund performance interim financial statements of the mutual fund that ~~was~~were filed before or after the date of the simplified prospectus and that pertain to a period after the period to which the annual financial statements then incorporated by reference in the simplified prospectus pertain.

5. The most recently filed annual management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus.

6. The most recently filed interim management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus and that pertains to a period after the period to which the annual management report of fund performance then incorporated by reference in the simplified prospectus pertain.

**3.1.1 Audit of Financial Statements** – 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*.

**3.1.2 Review of Unaudited Financial Statements** – 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.

**3.1.3 Approval of Financial Statements and Related Documents** – 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*.

### **3.2 Delivery of Preliminary Simplified Prospectus and Simplified Prospectus Fund Facts Document**

(1) The requirement under securities legislation other than in this Instrument to deliver or send a

preliminary prospectus of a mutual fund to a person or company ~~is~~ must be satisfied by delivering or sending a preliminary simplified prospectus fund facts document for the mutual fund filed under this Instrument, prepared in accordance with Form 81-101F1, either with or without the documents incorporated by reference Part 3A.

(2) The requirement under securities legislation other than in this Instrument to deliver or send a prospectus of a mutual fund to a person or company ~~is~~ must be satisfied by delivering or sending a simplified prospectus for the mutual fund filed under this Instrument, prepared in accordance with Form 81-101F1, either with or without the documents incorporated by reference the most recently filed fund facts document for the mutual fund in accordance with Part 3A.

#### **Note to Reader**

**Some jurisdictions may require legislative amendments if the delivery of the fund facts document is to take the place of delivery of the simplified prospectus. An alternative approach may be to require the simplified prospectus to be delivered with the fund facts document, or for the fund facts document to become the simplified prospectus.**

(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.]*

(3.1) If a dealer is required to send a copy of the preliminary simplified prospectus during the waiting period as described in subsection (3), delivery of the preliminary simplified prospectus must be satisfied by delivering the preliminary fund facts document for the mutual fund in accordance with Part 3A.

**3.2.1 Liability of Dealer** – (1) Except in Ontario, the right of rescission or damages against a dealer given to a purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with securities legislation does not apply to a purchase of a security of a mutual fund.

*[Note: In Ontario, the Securities Act (Ontario) imposes a similar requirement regarding the liability for failure to deliver or send a prospectus.]*

(2) Except in Ontario, a purchaser of a security to whom a fund facts document was required to be sent or delivered but was not sent or delivered in compliance with securities legislation has a right of rescission or damages against the dealer who failed to comply with the requirement.

(3) In the case of an action for rescission under subsection (2),

(a) a purchaser of a security of a mutual fund may rescind a purchase by giving notice to the dealer from whom the purchase was made;

(b) the notice required by paragraph (a) must be in writing, and may be given in person, by prepaid mail, by fax, electronically or other means; and

(c) every dealer from whom a purchase of a security of a mutual fund was made must within a reasonable period reimburse the purchaser who has exercised the rescission right under this section for all sales charges and fees arising from the purchase that was rescinded.

(4) Except in British Columbia and Québec, no action may be commenced to enforce a right under this section more than,

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action for damages, the earlier of

(i) 180 days after the purchaser first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action.

[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia) set out a similar limitation to commence an action for rescission or damages for failure to deliver or send a prospectus. In Québec, the Securities Act (Québec) provides no authority to include a limitation period regarding a civil action in a regulation.]

#### **Note to Reader**

**If delivery of the fund facts document is to satisfy the prospectus delivery requirements under securities legislation, some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or to rescind a purchase, in the event that the fund facts document is not sent or delivered.**

**In Ontario, consideration will be given to recommending changes to the *Securities Act* (Ontario) to implement, or facilitate the implementation of, the new fund facts document related requirements under this Part.**

### **3.3 Documents to be Delivered or Sent upon Request**

(1) A mutual fund ~~shall~~must deliver or send to any person or company that requests the fund facts document or simplified prospectus of the mutual fund or any of the documents incorporated by reference into the simplified prospectus, a copy of the fund facts document, simplified prospectus or requested document.

(2) A mutual fund ~~shall~~must deliver or send, to any person or company that requests the annual information form of the mutual fund, the most recently filed fund facts document and the current simplified prospectus of the mutual fund with the annual information form, unless the mutual fund has previously delivered or sent that fund facts document and simplified prospectus to that person or company.

(3) A mutual fund ~~shall~~must deliver or send all documents requested under this section within three business days of receipt of the request and free of charge.

**3.4 Toll-Free Telephone Number or Collect Telephone Calls** - A mutual fund ~~shall~~must have a toll-free telephone number for, or accept collect telephone calls from, persons or companies that want to receive a copy of the simplified prospectus of the mutual fund and any or all documents incorporated by reference into the simplified prospectus.

**3.5 Soliciting Expressions of Interest Prohibited** - Neither a multiple SP that includes both a *pro forma* simplified prospectus and a preliminary simplified prospectus nor a multiple AIF that includes both a *pro forma* annual information form and a preliminary annual information form shall be used to solicit expressions of interest.

## **PART 3A DELIVERY OF FUND FACTS DOCUMENT**

### **3A.1 Definitions – In this Part,**

“initial purchase” means an order or subscription for a security of a class or series of securities of a mutual fund if, immediately before the purchase, that class or series of securities of the mutual fund is not held by the purchaser; and

“order execution-only service” means the acceptance and execution by a dealer of an order to purchase or subscribe for a security that the dealer has not recommended and that the dealer has made no determination as to the appropriateness or suitability of such purchase for the purchaser.

**3A.2 Delivery of Fund Facts Document** – (1) A dealer who receives an order or subscription for an initial purchase of a security of a mutual fund must, before entering into an agreement with the purchaser resulting from the order or subscription,

(a) deliver or send to the purchaser the most recently filed fund facts document for the

mutual fund; and

(b) bring the fund facts document to the attention of the purchaser.

(2) For greater certainty, a dealer who receives an order or subscription for a purchase of a security of a mutual fund that is not an initial purchase is not required to deliver or send a fund facts document before entering into an agreement with the purchaser resulting from the order or subscription.

#### **Issues for Comment**

**2. The intention of the requirement to ‘bring the fund facts document to the attention of the purchaser’ is to link for the investor the information in the fund facts document to a particular purchase. In subsection 7.3(3) of the Companion Policy we have provided guidance on this requirement. Is this guidance sufficient?**

**3. In response to comments, we are considering requiring delivery of the fund facts document for subsequent purchases – either in instances where the investor does not have the most recently filed fund facts document, or in all instances with the confirmation of trade. What are your views? Would this approach make it easier to comply with the delivery requirements?**

**What if this could result in the removal of the annual option to receive a fund facts document? Would this approach be more useful for investors? More practical for dealers?**

**3A.3 Timing of Delivery** – (1) Subsection 3A.2(1) does not apply to an initial purchase if

(a) the purchase is through an order execution-only service; or

(b) the conditions in subsection (2) are satisfied in respect of the purchase and the purchaser has expressly communicated to the dealer that the purchaser does not want to receive the fund facts document before entering into the agreement to purchase.

(2) The conditions in this subsection are satisfied in respect of a purchase if

(a) the purchase

(i) is of a security of a money market fund; or

(ii) is not recommended by the dealer; and

(b) prior to the communication referred to in paragraph (1)(b), the dealer has informed the purchaser of the existence and purpose of the fund facts document and has explained that the purchaser may choose to receive it before entering into the agreement to purchase.



(3) If a fund facts document is not delivered or sent to the purchaser before an initial purchase, the dealer must deliver or send to the purchaser the most recently filed fund facts document for the mutual fund with the confirmation of trade for the purchase.

#### **Issues for Comment**

**4. In response to comments, we are considering allowing delivery of the fund facts document with the confirmation of trade in instances where the investor expressly communicates they want the purchase to be completed immediately, and it is not reasonably practicable for the dealer to deliver or send the fund facts document before the purchase is completed. We request comment on this approach.**

**If we made this change, what information should an investor receive before the purchase? In addition to delivery of the fund facts document with the trade confirmation, we think that at least some type of oral communication about the fund facts document would be necessary. What specific information should be conveyed in each instance to satisfy this aspect of delivery?**

**Are there alternatives to this approach?**

**3A.4 Methods of Delivery** – (1) The requirement under this Part to deliver or send a fund facts document is satisfied by a dealer by giving the fund facts document in person or delivering or sending the fund facts document by prepaid or registered mail, by fax, electronically or other means.

(2) In subsection (1) “other means” does not include oral delivery.

(3) For the purpose of this section, except in British Columbia, if the fund facts document is sent by prepaid or registered mail, the fund facts document is deemed conclusively to have been received 7 business days after being sent by the dealer to whom it was addressed.

**3A.5 Annual Option to Receive Fund Facts Document** – (1) A dealer must obtain instructions from each of the dealer’s clients as to whether the client wants to receive a copy of the most recently filed fund facts document for each class or series of securities of the mutual fund held in the client’s account with the dealer.

(2) A dealer must deliver or send on an annual basis to a client the most recently filed fund facts document for each security of a mutual fund held in the client’s account with the dealer in accordance with the instructions referred to in subsection (1).

(3) A dealer must not charge a fee for delivering or sending the fund facts document under this section and must ensure that clients can respond without cost to any solicitations of instruction.

(4) Despite section 5.4, for the purposes of delivery under this section, a dealer may bind a fund

facts document of a mutual fund with one or more fund facts document of other mutual funds if the client holds each of those mutual funds.

#### **Note to Reader**

**If we move to requiring delivery of the fund facts document for some or all subsequent purchases, as canvassed in Issue for Comment 2, we would consider removing the requirement of the annual option to receive the fund facts document.**

## **PART 4 PLAIN LANGUAGE AND PRESENTATION**

### **4.1 Plain Language and Presentation**

(1) A simplified prospectus ~~and~~, annual information form ~~shall~~ and fund facts document must be prepared using plain language and in a format that assists in readability and comprehension.

(2) A simplified prospectus

(a) ~~shall~~ must present all information briefly and concisely;

(b) ~~shall~~ must present the items listed in the Part A section of Form 81-101F1 and the items listed in the Part B section of Form 81-101F1 in the order stipulated in those parts;

(c) may, unless the Part B section is being bound separately from the Part A section as permitted by subsection ~~5-35.2~~(1), place the Part B section of the simplified prospectus in any location in the simplified prospectus;

(d) ~~shall~~ must use the headings and sub-headings stipulated in Form 81-101F1, and may use sub-headings in items for which no sub-headings are stipulated;

(e) ~~shall~~ must contain only educational material or the information that is specifically mandated or permitted by Form 81-101F1; and

(f) ~~shall~~ must not incorporate by reference into the simplified prospectus, from any other document, information that is required to be included in a simplified prospectus.

(3) A fund facts document must

(a) be prepared for each class and each series of securities of a mutual fund;

(b) present the items listed in the Part I section of Form 81-101F3 and the items listed in the Part II section of Form 81-101F3 in the order stipulated in those parts;

(c) use the headings and sub-headings stipulated in Form 81-101F3;

(d) contain only the information that is specifically required or permitted to be in Form 81-101F3;

(e) not incorporate by reference information that is required to be included in a fund facts document;

(f) present the information required by Form 81-101F3 at a grade level of 6.0 or less on the Flesch-Kincaid grade level scale; and

(g) not exceed three pages in length.

**4.2 Preparation in the Required Form** - Despite provisions in securities legislation relating to the presentation of the content of a prospectus, ~~the~~ simplified prospectus and annual information form ~~shall~~ and fund facts document must be prepared in accordance with this Instrument.

## **PART 5 PACKAGING**

### **5.1 Combinations of Documents**

(1) A simplified prospectus ~~shall~~ must not be consolidated with one or more other simplified prospectuses to form a multiple SP unless the Part A sections of each simplified prospectus are substantially similar.

(2) A multiple SP ~~shall~~ must be prepared in accordance with the applicable requirements of Form 81-101F1.

(3) ~~A simplified prospectus or a multiple SP may only be~~ If materials or documents are attached to, or bound with, one or more of the following documents: a simplified prospectus or a multiple SP

~~1. Documents incorporated by reference.~~

~~2. Educational material.~~

~~3. Account application documents.~~

~~4. Registered tax plan applications and documents.~~

~~5. Any point of sale disclosure documents required by securities legislation.~~

(a) the simplified prospectus or multiple SP must be the first document contained in the package; and

(b) no pages must come before the simplified prospectus or multiple SP in the package other than, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.

## **5.2 Order of Contents of Bound Documents**

~~(1) If the material or documents referred to in paragraphs 1 to 5 of subsection 5.1(3) are attached to, or bound with, a single SP or multiple SP~~

~~(a) the single SP or multiple SP shall be the first document contained in the package; and~~

~~(b) no pages shall come before the single SP or multiple SP in the package other than, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.~~

~~(2) The general front cover referred to in paragraph 1(b) may contain only the names of the mutual funds to which the package relates, trademark or tradenames identifying those mutual funds or other members of the organization of those mutual funds, and artwork.~~

### **5.3 Separate Binding of Part B Sections of a Multiple SP**

(1) The Part B sections of a multiple SP may be bound separately from the Part A section of that document.

(2) If a Part B section of a multiple SP is bound separately from the Part A section of the multiple SP

(a) all of the Part B sections of the multiple SP ~~shall~~must be bound separately from the Part A section; and

(b) all or some of the Part B sections may be bound together with each other or separately.

### **5.45.3 Annual Information Forms**

(1) An annual information form ~~shall~~must be consolidated with one or more other annual information forms into a multiple AIF if the related simplified prospectuses are consolidated into a multiple SP.

(2) A multiple AIF ~~shall~~must be prepared in accordance with the applicable requirements of Form 81-101F2.

## **5.4 Combinations of Fund Facts Documents**

(1) For the purposes of delivering a fund facts document under securities legislation, a fund facts document of a mutual fund may only be attached to or bound with one or more fund facts

documents of other mutual funds if the binding is not so extensive as to cause a reasonable person to question whether the binding prevents the information from being presented in a simple, accessible and comparable format.

**Issue for Comment**

**5. In response to comments, we are proposing some limited binding of fund facts documents. In section 4.1.5 of the Companion Policy we have provided guidance on this provision. Is this guidance sufficient? Do you agree with this approach?**

(2) Despite subsection (1), if a fund facts document is delivered electronically, a fund facts document must not be attached to or bound with another fund facts document.

(3) If delivered with the confirmation of trade, a fund facts document of a mutual fund may be attached to, or bound with, one or more of the following documents:

(a) Confirmation of trade.

(b) Simplified prospectus.

(c) Documents incorporated by reference in the simplified prospectus.

(d) Educational material.

(e) Account application documents.

(f) Registered tax plan applications and documents.

(g) One or more fund facts.

(4) If any of the material or documents referred to in subsection (3) is attached to, or bound with, one or more fund facts documents

(a) the fund facts document for the mutual fund or mutual funds purchased must be the first document or documents contained in the package; and

(b) no pages must come before the fund facts documents in the package other than the confirmation of trade and, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.

(5) For the purposes of filing a fund facts document under securities legislation, a fund facts document may only be attached to, or bound with, other fund facts documents of a mutual fund in a simplified prospectus, or, if a multiple SP, other fund facts documents of mutual funds combined in the multiple SP.

## **PART 5.1 CERTIFICATES**

### **5.1.1 Interpretation** – 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.

**5.1.2 Date of Certificates** – 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, the amendment to the annual information form or the amendment to the ~~annual information form~~ fund facts document, as applicable.

### **5.1.3 Certificate of the Mutual Fund**

(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.]*

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

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

**5.1.5 Certificate of the Manager** – 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.

### **5.1.6 Certificate of Promoter**

(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.]*

(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.

(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.]*

(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) 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.]*

### **5.1.7 Certificates of Corporate Mutual Funds**

(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.

(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.]*

## PART 6 EXEMPTION

### 6.1 Grant of Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as that may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

**6.2 Evidence of Exemption by Securities Regulatory Authority** - ~~Without~~(1) subject to subsection (2) and without limiting the manner in which the granting of an exemption under section 6.1 may be evidenced, an exemption from a provision of this Instrument other than from subsection 2.7(2) is evidenced by the issuance by the regulator of a receipt for a simplified final prospectus and annual information form, or an amendment to a simplified prospectus and annual information form, is evidence of the granting of the exemption from any form or content requirements relating to a simplified prospectus or annual information form if, a final fund facts document or an amendment to a final prospectus.

(2) The issuance of a receipt for a final prospectus or an amendment to a final prospectus is not evidence that an exemption has been granted unless

(a) the person or company that sought the exemption sent to the regulator, with the filing of a pro forma or preliminary simplified prospectus, fund facts document and annual information form, or at least 10 days before the issuance of the receipt in the case of an amendment, a letter or memorandum describing the matters relating to the exemption and indicating why consideration should be given to the granting of the exemption; and

(b) the regulator has not ~~sent written notice to the contrary to the person or company that sought the exemption before, or concurrent~~concurrently with, the issuance of the receipt; notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

**6.3 Existing Exemptions** – (1) Except in British Columbia, any exemption or waiver from, or approval under, securities legislation relating to the prospectus delivery requirements under securities legislation expires two years after the date that this Instrument comes into force.

(2) For greater certainty, subsection (1) applies only in relation to the prospectus delivery of mutual funds to which this Instrument applies.

#### Note to Reader

**In British Columbia, it is anticipated that any existing exemptions or waivers from, or approvals under, securities legislation relating to the prospectus delivery of mutual funds to which this Instrument applies will be revoked by order.**



## **PART 7 EFFECTIVE DATE AND TRANSITION**

**7.1 Effective Date** – This Instrument comes into force on ●.

**7.2 Transition** – (1) A mutual fund for which a preliminary simplified prospectus or *pro forma* simplified prospectus is filed, or for which a receipt is obtained, before the date that this Instrument comes into force is exempt from the filing requirements of this Instrument if it complies with the filing requirements under securities legislation in effect

(a) at the date of the issuance of a receipt for a preliminary simplified prospectus or the date of filing the *pro forma* simplified prospectus, as applicable, or

(b) at the date of issuance of a receipt for the final prospectus.

(2) For greater clarity, subsection (1) applies only in relation to the one time filing and receipt for a security of a mutual fund which occurs before the date that this Instrument comes into force.

(3) Despite section 7.1, the prospectus delivery requirements under securities legislation in effect before the date that this Instrument comes into force continue to apply to the distribution of a security of a mutual fund until two years after the date this Instrument comes into force.

(4) A simplified prospectus that is delivered or sent under subsection (3) must comply with the packaging requirements under Part 5 of the Instrument in effect before the date that this Instrument comes into force.

(5) Despite section 7.1, the withdrawal and rescission rights under securities legislation in effect before the date that this Instrument comes into force continue to apply to the distribution of a security of a mutual fund until two years after the date this Instrument comes into force.

(6) Despite section 7.1, the cancellation right under section 2.9 does not apply until two years after the date this Instrument comes into force.

### **Issues for Comment**

**6. Is the transitional period for delivery of the fund facts document appropriate? If not, what period would be appropriate and why?**

**7. Depending on the comments we receive, we may decide to proceed with finalizing some parts of the Instrument while continuing to consult on other parts. For example, we may be able to move forward sooner with the requirement to prepare and file a fund facts document and have it posted to the website. If this were to occur, we would provide a reasonable transition period before anyone has to comply with the fund facts document requirements and we would consider a shorter transitional period for delivery. What are your views on this approach? What period would be appropriate?**

**7.3 Transitional Delivery of Fund Facts Document** - (1) The prospectus delivery requirements under securities legislation that apply for a period of two years after the date that this Instrument comes into force may be satisfied by delivering or sending the most recently filed fund facts document prepared in accordance with Form 81-101F3 in the time prescribed under securities legislation.

(2) The withdrawal and rescission rights in effect before the date that this Instrument comes into force continue to apply to a fund facts document delivered or sent under subsection (1) until two years after the date this Instrument comes into force.

(3) For greater certainty, a fund facts document that is delivered or sent under subsection (1) must comply with the packaging requirements under subsection 5.4(3) of this Instrument.

**Note to Reader**

**If the necessary legislative amendments in some jurisdictions to preserve investor rights for delivery of the fund facts document are not in place for this transitional period, an alternative transitional approach may be to allow the fund facts document to be delivered with the simplified prospectus.**

**7.4 Initial Delivery of Fund Facts Document** - Despite Part 3A, a dealer must deliver or send the most recently filed fund facts document to a purchaser of a security of a mutual fund with the confirmation of trade for the first purchase of the class or series of securities of the mutual fund following the date the prospectus delivery requirements under the Instrument come into force.

**Note to Reader**

**If we decide to require delivery of the fund facts document for subsequent purchases with the confirmation of trade, this section will be removed.**

2. This Instrument comes into force on ●.

## APPENDIX C

### Schedule 2

#### **National Instrument 81-101 *Mutual Fund Prospectus Disclosure* AMENDMENT INSTRUMENT**

This is an unofficial consolidation of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. No part of this document represents an official statement of law.

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.

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**National Instrument 81-101**  
***Mutual Fund Prospectus Disclosure***

**PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION**

**1.1 Definitions** - In this Instrument

“business day” means any day other than a Saturday, a Sunday or a statutory holiday;

“commodity pool” means a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to use

(a) specified derivatives other than as permitted by National Instrument 81-102 *Mutual Funds*, or

(b) physical commodities other than as permitted by that Instrument;

“educational material” means material containing general information about one or more of investing in general, mutual funds, portfolio management, capital markets, retirement savings, income or education saving plans and financial planning, if the material does not promote a particular mutual fund or mutual fund family or the products or services offered by a particular mutual fund or mutual fund family;

“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;

“financial year” includes the first completed financial period of a mutual fund beginning with the inception of the mutual fund and ending on the date of its first financial year end;

“fund facts document” means a completed Form 81-101F3 *Contents of Fund Facts Document*;

“independent review committee” means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“material contract” means, for a mutual fund, a contract listed in the annual information

form of the mutual fund in response to Item 16 of Form 81-101F2 *Contents of Annual Information Form*;

“multiple AIF” means a document containing two or more annual information forms that have been consolidated in accordance with section 5.3;

“multiple SP” means a document containing two or more simplified prospectuses that have been consolidated in accordance with subsection 5.1(1);

“Part A section” means the section of a simplified prospectus that contains the disclosure required by Part A of Form 81-101F1 *Contents of Simplified Prospectus*;

“Part B section” means the section of a simplified prospectus that contains the disclosure required by Part B of Form 81-101F1 *Contents of Simplified Prospectus*;

“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*;

“plain language” means language that can be understood by a reasonable person, applying a reasonable effort;

“precious metals fund” means a mutual fund that has adopted fundamental investment objectives and received all required regulatory approvals, that permit it to invest in precious metals or in entities that invest in precious metals and that otherwise complies with National Instrument 81-102 *Mutual Funds*;

“single AIF” means an annual information form that has not been consolidated with another annual information form under section 5.3; and

“single SP” means a simplified prospectus that has not been consolidated with another simplified prospectus under subsection 5.1(1).

**1.2 Interpretation** - Terms defined in National Instrument 81-102 *Mutual Funds* or National Instrument 81-105 *Mutual Fund Sales Practices* and used in this Instrument have the respective meanings ascribed to them in those Instruments.

**1.3 Application** - This Instrument does not apply to mutual funds that are

- (a) labour-sponsored venture capital corporations;
- (b) commodity pools; or
- (c) listed and posted for trading on a stock exchange or quoted on an over-the-counter market.

## PART 2 DISCLOSURE DOCUMENTS

### 2.1 Filing of Disclosure Documents –(1) A mutual fund

(a) that files a preliminary prospectus must file the preliminary prospectus in the form of a preliminary simplified prospectus prepared in accordance with Form 81-101F1 and concurrently file

(i) a preliminary annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a preliminary fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(b) that files a *pro forma* prospectus must file the *pro forma* prospectus in the form of a *pro forma* simplified prospectus prepared in accordance with Form 81-101F1 and concurrently file

(i) a *pro forma* annual information form prepared in accordance with Form 81-101F2; and

(ii) a *pro forma* fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(c) that files a prospectus must file the prospectus in the form of a simplified prospectus prepared in accordance with Form 81-101F1 and concurrently file

(i) an annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(d) that files an amendment to a prospectus

(i) must either

(A) file an amendment to the simplified prospectus and concurrently file an amendment to the related annual information form, or

(B) in circumstances in which changes are made only to an annual information form, file an amendment to the annual information form;

(ii) must, if the amendment relates to a matter that requires a change to the disclosure in the fund facts document, concurrently file an amendment to the fund facts document; and

(iii) must, if the amendment relates to a new class or series of securities of the mutual fund that is referable to the same portfolio of assets, concurrently file a preliminary fund facts document for the new class or series; and

(e) must file an amendment to a fund facts document if a material change occurs that requires a change to the disclosure in the fund facts document.

(2) A mutual fund must not file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus that relates to the prospectus.

## **2.2 Amendments to Disclosure Documents**

(1) An amendment to a simplified prospectus or to an annual information form may consist of either

(a) an amendment that does not fully restate the text of the simplified prospectus or annual information form; or

(b) an amended and restated simplified prospectus or annual information form.

(2) Despite subsection (1), an amendment to the Part B section that is separately bound from the Part A section of a simplified prospectus must be effected only by way of an amended and restated Part B section.

(2.1) An amendment to a fund facts document must be effected only by way of an amended and restated fund facts document.

(3) An amendment to a simplified prospectus or to an annual information form must be identified and dated as follows:

1. For an amendment that does not restate the text of a simplified prospectus or annual information form:

“Amendment No. [insert amendment number] dated [insert date of amendment] to [identify document] dated [insert date of document being amended].”

2. For an amended and restated simplified prospectus, other than an amendment to which subsection (2) applies, or annual information form:

“Amended and Restated [identify document] dated [insert date of amendment], amending and restating [identify document] dated [insert date of document being amended].”

(4) An amendment to a fund facts document must be prepared in accordance with Form 81-101F3 without any further identification and dated as of the date the fund facts document is being amended.



**2.2.1 Amendment to a Preliminary Simplified Prospectus** – (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 S.57(1) of the Securities Act (Ontario) imposes a similar requirement to file an amendment to a preliminary prospectus]<sup>1</sup>*

(1.1) If the amendment to the preliminary simplified prospectus referred to in subsection (1) relates to a matter that is disclosed in the preliminary fund facts document, an amendment to the preliminary fund facts document must be filed concurrently with the amendment to the preliminary simplified prospectus.

#### **Note to Reader**

**In Ontario, consideration will be given to recommending amendments to the *Securities Act* (Ontario) that would implement, or facilitate the implementation of, this and other fund facts document related requirements in this Part.**

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

**2.2.2 Delivery of Amendments** – (1) 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]*

(2) If, under subsection 2.2.1(1.1), an amendment to a preliminary fund facts document is required to be filed concurrently with an amendment to the preliminary simplified prospectus, the requirement in securities legislation to deliver an amendment to the preliminary simplified prospectus must be satisfied by delivering the amended and restated fund facts document.

**2.2.3 Amendment to a Simplified Prospectus** – (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

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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.

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]*

(1.1) If the amendment to the simplified prospectus referred to in subsection (1) relates to a matter that is disclosed in the fund facts document, an amendment to the fund facts document must be filed concurrently with the amendment to the simplified prospectus.

(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 at any time there is a proposed distribution of securities in addition to that disclosed under the prospectus.]*

(2.1) If the amendment to the simplified prospectus referred to in subsection (2) relates to a matter that is disclosed in the fund facts document, an amendment to the fund facts document must be filed concurrently with the amendment to the simplified prospectus.

(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.]*

(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.]*

## **2.3 Supporting Documents**

(1) A mutual fund must

(a) file with a preliminary simplified prospectus, a preliminary annual information form and a preliminary fund facts document

(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) at the time a preliminary simplified prospectus, preliminary annual information form and preliminary fund facts document are filed, deliver or send to the securities regulatory authority

(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,
- (iv) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and
- (v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(2) A mutual fund must

- (a) file with a *pro forma* simplified prospectus, a *pro forma* annual information form and a *pro forma* fund facts document

(i) 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,

(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

(b) at the time a *pro forma* simplified prospectus, *pro forma* annual information form and *pro forma* fund facts document are filed, deliver or send to the securities regulatory authority

(i) a copy of the *pro forma* simplified prospectus, blacklined to show changes and the text of deletions from the latest simplified prospectus previously filed,

(ii) a copy of the *pro forma* annual information form, blacklined to show changes and the text of deletions from the latest annual information form previously filed,

(ii.1) a copy of the *pro forma* fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document,

(iii) a copy of a draft of each material contract of the mutual fund, and a copy of each draft amendment to a material contract of the mutual fund, in either case not yet executed but proposed to be executed by the time of filing of the simplified prospectus,

(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,

(v) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and

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

(3) A mutual fund must

(a) file with a simplified prospectus, an annual information form and a fund facts document

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

(ii) for a new mutual fund, a copy of the audited balance sheet of the mutual fund,

(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

(b) at the time a simplified prospectus is filed, deliver or send to the securities regulatory authority

(i) a copy of the simplified prospectus, blacklined to show changes and the text of deletions from the preliminary or *pro forma* simplified prospectus,

(ii) a copy of the annual information form, blacklined to show changes and the text of deletions from the preliminary or *pro forma* annual information form,

(ii.1) a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document,

(iii) details of any changes to the personal information required to be delivered under subparagraph (1)(b)(ii) or (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,

(iv) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and

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

(4) A mutual fund must

(a) file with an amendment to a simplified prospectus and an amendment to the annual information form

(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,

(iii.1) if the amendment relates to a matter that requires a change to the disclosure in the fund facts document, an amendment to the fund facts document, and

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

(b) at the time an amendment to a simplified prospectus is filed, deliver or send to the securities regulatory authority

(i) if the amendment to the simplified prospectus is in the form of an amended and restated simplified prospectus, a copy of that document blacklined to show changes and the text of deletions from the simplified prospectus,

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

(ii.1) if an amendment to the fund facts document is filed, a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document,

(iii) details of any changes to the personal information required to be delivered under subparagraph (1)(b)(ii), (2)(b)(iv) or (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.

(5) A mutual fund must

(a) file with an amendment to an annual information form in circumstances in which the corresponding simplified prospectus is not amended

(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,

(iii.1) if the amendment relates to a matter that requires changes to the disclosure in the fund facts document, an amendment to the fund facts document, and

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



(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 (1)(b)(ii), (2)(b)(iv) or (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,

(ii.1) if an amendment to a fund facts document is filed, a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document, and

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

(5.1) A mutual fund must

(a) in circumstances in which the corresponding simplified prospectus is not amended, file with an amendment to a fund facts document

(i) an amendment to the corresponding annual information form, certified in accordance with Part 5.1, and

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

(b) at the time an amendment to a fund facts document 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 (1)(b)(ii), (2)(b)(iv) or (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) a copy of the amended and restated fund facts document blacklined to show changes and the text of deletions from the most recently filed fund facts document; and

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

(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.

### **2.3.1 Voluntary Updating of Fund Facts Document**

(1) A mutual fund may file an updated fund facts document that brings up to date the disclosure in the fund facts document at regular intervals of either six months or three months following the date of the fund facts document that is filed with the simplified prospectus.

(2) If a mutual fund files an updated fund facts document under subsection (1), the mutual fund must file a fund facts document for each class or series of securities of the mutual fund.

(3) A fund facts document filed in accordance with this section must be filed by the mutual fund within 30 days of the end of the period for which the updated fund facts document was prepared.

#### **Issues for Comment**

**1. We are considering allowing fund managers greater flexibility to provide more current information to investors, by not restricting how frequently a fund manager may file an updated fund facts document. What are your views? How would this impact compliance with the requirement to deliver the most recently filed fund facts document?**

**2.3.2 Websites** – If a mutual fund, the mutual fund’s family, or the manager has a website, the mutual fund must post to the website of the mutual fund, the mutual fund’s family or the manager a fund facts document filed under this Part no later than the date that the document is filed.

**2.4 Simplified Prospectus** - A simplified prospectus is a prospectus for the purposes of securities legislation.

## **2.5 Lapse Date**

(1) This section does not apply in Ontario.

(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.

(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.

(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.

(5) 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.

(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.

(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.

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

## **2.6 Consents of Experts**

(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) 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.

(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.

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

## **2.7 Language of Documents**

(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) 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.

(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.

**2.8 Statement of Rights** – 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.]*

## **2.9 Cancellation Right**

(1) The rights described in this subsection do not apply to a purchase of a security of a mutual fund:

(a) the right given under securities legislation other than in this Instrument to withdraw from a purchase within a specified time following receipt of the prospectus by the purchaser; and

(b) except in Ontario, the right given under securities legislation other than in this Instrument to rescind a purchase within a specified time following receipt of the confirmation of trade for the purchase by the purchaser.

*[Note : In Québec, the right to withdraw a purchase will be facilitated by the coming into force of proposed changes to section 30 of the Securities Act (Québec) as proposed by the Targeted Act Amendments.]*

(2) Except in Ontario, a purchaser of a security of a mutual fund may cancel a purchase by giving notice to the dealer from whom the purchase was made within two business days of receipt of the confirmation of trade for the purchase.

(3) A purchaser who cancels a purchase under subsection (2) is entitled to receive the lesser of the net asset value of the securities at the time of purchase and the net asset value of the securities at the time the right is exercised.

*[Note: In Ontario, the Securities Act (Ontario) provides a similar right that allows a purchase of a mutual fund security to be rescinded for purchases not exceeding \$50,000.]*

(4) The notice required by subsection (2) must be in writing, and may be given in person, by prepaid mail, by fax, electronically or other means.

*[Note: In Ontario, the Securities Act (Ontario) imposes similar requirements regarding the notice of rescission.]*

(5) Except in British Columbia, a trade confirmation sent by prepaid or registered mail shall be deemed conclusively to have been received 7 business days after being sent by the person or company to whom it was addressed.

*[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia), respectively, impose a similar deemed receipt provision.]*

(6) Every dealer from whom a purchase of a security of a mutual fund was made must within a reasonable period reimburse the purchaser who has exercised the cancellation right under this section for all sales charges and fees arising from the purchase that was cancelled.

*[Note: In Ontario, the Securities Act (Ontario) imposes a similar obligation on the dealer to reimburse to the purchaser any costs associated with the transaction.]*

(7) Except in British Columbia and Québec, no action may be commenced to enforce the right to cancel a purchase created by this section more than 180 days after the date of the transaction that gave rise to the cancellation right.

*[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia), respectively, set out a similar limitation to rescind a purchase. In Québec, the Securities Act (Québec) provides no authority to include a limitation period regarding a civil action in a regulation.]*

#### **Note to Reader**

**We intend to recommend the harmonization of cancellation rights in all jurisdictions. Some jurisdictions may require legislative amendments in order to achieve this harmonization.**

### **PART 3 DOCUMENTS INCORPORATED BY REFERENCE AND DELIVERY TO SECURITYHOLDERS**

**3.1 Documents Incorporated by Reference** - The following documents must, by means of a statement to that effect, be incorporated by reference into, and form part of, a simplified prospectus:

1. The most recently filed fund facts document for the mutual fund, filed either concurrently with or after the date of the simplified prospectus.
2. The annual information form that is filed concurrently with the simplified prospectus.
3. The most recently filed comparative annual financial statements of the mutual fund, together with the accompanying report of the auditor, filed either before or after the date of the simplified prospectus.
4. The most recently filed interim financial statements of the mutual fund that were filed before or after the date of the simplified prospectus and that pertain to a period after the period to which the annual financial statements then incorporated by reference in the simplified prospectus pertain.
5. The most recently filed annual management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus.
6. The most recently filed interim management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus and that pertains

to a period after the period to which the annual management report of fund performance then incorporated by reference in the simplified prospectus pertain.

**3.1.1 Audit of Financial Statements** – 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*.

**3.1.2 Review of Unaudited Financial Statements** – 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.

**3.1.3 Approval of Financial Statements and Related Documents** – 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*.

### **3.2 Delivery of Fund Facts Document**

(1) The requirement under securities legislation other than in this Instrument to deliver or send a preliminary prospectus of a mutual fund to a person or company must be satisfied by delivering or sending the preliminary fund facts document for the mutual fund in accordance with Part 3A.

(2) The requirement under securities legislation other than in this Instrument to deliver or send a prospectus of a mutual fund to a person or company must be satisfied by delivering or sending the most recently filed fund facts document for the mutual fund in accordance with Part 3A.

#### **Note to Reader**

**Some jurisdictions may require legislative amendments if the delivery of the fund facts document is to take the place of delivery of the simplified prospectus. An alternative approach may be to require the simplified prospectus to be delivered with the fund facts document, or for the fund facts document to become the simplified prospectus.**

(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.]*

(3.1) If a dealer is required to send a copy of the preliminary simplified prospectus during the waiting period as described in subsection (3), delivery of the preliminary simplified prospectus must be satisfied by delivering the preliminary fund facts document for the mutual fund in accordance with Part 3A.

**3.2.1 Liability of Dealer** – (1) Except in Ontario, the right of rescission or damages against a dealer given to a purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with securities legislation does not apply to a purchase of a security of a mutual fund.

*[Note: In Ontario, the Securities Act (Ontario) imposes a similar requirement regarding the liability for failure to deliver or send a prospectus.]*

(2) Except in Ontario, a purchaser of a security to whom a fund facts document was required to be sent or delivered but was not sent or delivered in compliance with securities legislation has a right of rescission or damages against the dealer who failed to comply with the requirement.

(3) In the case of an action for rescission under subsection (2),

(a) a purchaser of a security of a mutual fund may rescind a purchase by giving notice to the dealer from whom the purchase was made;

(b) the notice required by paragraph (a) must be in writing, and may be given in person, by prepaid mail, by fax, electronically or other means; and

(c) every dealer from whom a purchase of a security of a mutual fund was made must within a reasonable period reimburse the purchaser who has exercised the rescission right under this section for all sales charges and fees arising from the purchase that was rescinded.

(4) Except in British Columbia and Québec, no action may be commenced to enforce a right under this section more than,

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action for damages, the earlier of

(i) 180 days after the purchaser first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action.

[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia) set out a similar limitation to commence an action for rescission or damages for failure to deliver or send a prospectus. In Québec, the Securities Act (Québec) provides no authority to include a limitation period regarding a civil action in a regulation.]

#### **Note to Reader**

**If delivery of the fund facts document is to satisfy the prospectus delivery requirements under securities legislation, some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or to rescind a purchase, in the event that the fund facts document is not sent or delivered.**

**In Ontario, consideration will be given to recommending changes to the *Securities Act* (Ontario) to implement, or facilitate the implementation of, the new fund facts document related requirements under this Part.**

### **3.3 Documents to be Delivered or Sent upon Request**

(1) A mutual fund must deliver or send to any person or company that requests the fund facts document or simplified prospectus of the mutual fund or any of the documents incorporated by reference into the simplified prospectus, a copy of the fund facts document, simplified prospectus or requested document.

(2) A mutual fund must deliver or send, to any person or company that requests the annual information form of the mutual fund, the most recently filed fund facts document and the current simplified prospectus of the mutual fund with the annual information form, unless the mutual fund has previously delivered or sent that fund facts document and simplified prospectus to that person or company.

(3) A mutual fund must deliver or send all documents requested under this section within three business days of receipt of the request and free of charge.

**3.4 Toll-Free Telephone Number or Collect Telephone Calls** - A mutual fund must have a toll-free telephone number for, or accept collect telephone calls from, persons or companies that want to receive a copy of the simplified prospectus of the mutual fund and any or all documents incorporated by reference into the simplified prospectus.

**3.5 Soliciting Expressions of Interest Prohibited** - Neither a multiple SP that includes both a *pro forma* simplified prospectus and a preliminary simplified prospectus nor a multiple AIF that includes both a *pro forma* annual information form and a preliminary annual information form shall be used to solicit expressions of interest.

## **PART 3A DELIVERY OF FUND FACTS DOCUMENT**

### **3A.1 Definitions** – In this Part,

“initial purchase” means an order or subscription for a security of a class or series of securities of a mutual fund if, immediately before the purchase, that class or series of securities of the mutual fund is not held by the purchaser; and

“order execution-only service” means the acceptance and execution by a dealer of an order to purchase or subscribe for a security that the dealer has not recommended and that the dealer has made no determination as to the appropriateness or suitability of such purchase for the purchaser.

**3A.2 Delivery of Fund Facts Document** – (1) A dealer who receives an order or subscription for an initial purchase of a security of a mutual fund must, before entering into an agreement with the purchaser resulting from the order or subscription,

(a) deliver or send to the purchaser the most recently filed fund facts document for the mutual fund; and

(b) bring the fund facts document to the attention of the purchaser.

(2) For greater certainty, a dealer who receives an order or subscription for a purchase of a security of a mutual fund that is not an initial purchase is not required to deliver or send a fund facts document before entering into an agreement with the purchaser resulting from the order or subscription.

### **Issues for Comment**

**2. The intention of the requirement to ‘bring the fund facts document to the attention of the purchaser’ is to link for the investor the information in the fund facts document to a particular purchase. In subsection 7.3(3) of the Companion Policy we have provided guidance on this requirement. Is this guidance sufficient?**

**3. In response to comments, we are considering requiring delivery of the fund facts document for subsequent purchases – either in instances where the investor does not have the most recently filed fund facts document, or in all instances with the confirmation of trade. What are your views? Would this approach make it easier to comply with the delivery requirements?**

**What if this could result in the removal of the annual option to receive a fund facts document? Would this approach be more useful for investors? More practical for dealers?**

**3A.3 Timing of Delivery** – (1) Subsection 3A.2(1) does not apply to an initial purchase if

(a) the purchase is through an order execution-only service; or

(b) the conditions in subsection (2) are satisfied in respect of the purchase and the purchaser has expressly communicated to the dealer that the purchaser does not want to receive the fund facts document before entering into the agreement to purchase.

(2) The conditions in this subsection are satisfied in respect of a purchase if

(a) the purchase

(i) is of a security of a money market fund; or

(ii) is not recommended by the dealer; and

(b) prior to the communication referred to in paragraph (1)(b), the dealer has informed the purchaser of the existence and purpose of the fund facts document and has explained that the purchaser may choose to receive it before entering into the agreement to purchase.

(3) If a fund facts document is not delivered or sent to the purchaser before an initial purchase, the dealer must deliver or send to the purchaser the most recently filed fund facts document for the mutual fund with the confirmation of trade for the purchase.

#### **Issues for Comment**

**4. In response to comments, we are considering allowing delivery of the fund facts document with the confirmation of trade in instances where the investor expressly communicates they want the purchase to be completed immediately, and it is not reasonably practicable for the dealer to deliver or send the fund facts document before the purchase is completed. We request comment on this approach.**

**If we made this change, what information should an investor receive before the purchase? In addition to delivery of the fund facts document with the trade confirmation, we think that at least some type of oral communication about the fund facts document would be necessary. What specific information should be conveyed in each instance to satisfy this aspect of delivery?**

**Are there alternatives to this approach?**

**3A.4 Methods of Delivery** – (1) The requirement under this Part to deliver or send a fund facts document is satisfied by a dealer by giving the fund facts document in person or delivering or sending the fund facts document by prepaid or registered mail, by fax, electronically or other means.

(2) In subsection (1) “other means” does not include oral delivery.

(3) For the purpose of this section, except in British Columbia, if the fund facts document is sent by prepaid or registered mail, the fund facts document is deemed conclusively to have been received 7 business days after being sent by the dealer to whom it was addressed.

**3A.5 Annual Option to Receive Fund Facts Document** – (1) A dealer must obtain instructions from each of the dealer’s clients as to whether the client wants to receive a copy of the most recently filed fund facts document for each class or series of securities of the mutual fund held in the client’s account with the dealer.

(2) A dealer must deliver or send on an annual basis to a client the most recently filed fund facts document for each security of a mutual fund held in the client’s account with the dealer in accordance with the instructions referred to in subsection (1).

(3) A dealer must not charge a fee for delivering or sending the fund facts document under this section and must ensure that clients can respond without cost to any solicitations of instruction.

(4) Despite section 5.4, for the purposes of delivery under this section, a dealer may bind a fund facts document of a mutual fund with one or more fund facts document of other mutual funds if the client holds each of those mutual funds.

#### **Note to Reader**

**If we move to requiring delivery of the fund facts document for some or all subsequent purchases, as canvassed in Issue for Comment 2, we would consider removing the requirement of the annual option to receive the fund facts document.**

## **PART 4 PLAIN LANGUAGE AND PRESENTATION**

### **4.1 Plain Language and Presentation**

(1) A simplified prospectus, annual information form and fund facts document must be prepared using plain language and in a format that assists in readability and comprehension.

(2) A simplified prospectus

(a) must present all information briefly and concisely;

(b) must present the items listed in the Part A section of Form 81-101F1 and the items listed in the Part B section of Form 81-101F1 in the order stipulated in those parts;

(c) may, unless the Part B section is being bound separately from the Part A section as

permitted by subsection 5.2(1), place the Part B section of the simplified prospectus in any location in the simplified prospectus;

(d) must use the headings and sub-headings stipulated in Form 81-101F1, and may use sub-headings in items for which no sub-headings are stipulated;

(e) must contain only educational material or the information that is specifically mandated or permitted by Form 81-101F1; and

(f) must not incorporate by reference into the simplified prospectus, from any other document, information that is required to be included in a simplified prospectus.

(3) A fund facts document must

(a) be prepared for each class and each series of securities of a mutual fund;

(b) present the items listed in the Part I section of Form 81-101F3 and the items listed in the Part II section of Form 81-101F3 in the order stipulated in those parts;

(c) use the headings and sub-headings stipulated in Form 81-101F3;

(d) contain only the information that is specifically required or permitted to be in Form 81-101F3;

(e) not incorporate by reference information that is required to be included in a fund facts document;

(f) present the information required by Form 81-101F3 at a grade level of 6.0 or less on the Flesch-Kincaid grade level scale; and

(g) not exceed three pages in length.

**4.2 Preparation in the Required Form** - Despite provisions in securities legislation relating to the presentation of the content of a prospectus, a simplified prospectus, annual information form and fund facts document must be prepared in accordance with this Instrument.

## **PART 5 PACKAGING**

### **5.1 Combinations of Documents**

(1) A simplified prospectus must not be consolidated with one or more other simplified prospectuses to form a multiple SP unless the Part A sections of each simplified prospectus are substantially similar.

(2) A multiple SP must be prepared in accordance with the applicable requirements of Form 81-101F1.

(3) If materials or documents are attached to, or bound with, a simplified prospectus or a multiple SP

(a) the simplified prospectus or multiple SP must be the first document contained in the package; and

(b) no pages must come before the simplified prospectus or multiple SP in the package other than, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.

### **5.2 Separate Binding of Part B Sections of a Multiple SP**

(1) The Part B sections of a multiple SP may be bound separately from the Part A section of that document.

(2) If a Part B section of a multiple SP is bound separately from the Part A section of the multiple SP

(a) all of the Part B sections of the multiple SP must be bound separately from the Part A section; and

(b) all or some of the Part B sections may be bound together with each other or separately.

### **5.3 Annual Information Forms**

(1) An annual information form must be consolidated with one or more other annual information forms into a multiple AIF if the related simplified prospectuses are consolidated into a multiple SP.

(2) A multiple AIF must be prepared in accordance with the applicable requirements of Form 81-101F2.

### **5.4 Combinations of Fund Facts Documents**

(1) For the purposes of delivering a fund facts document under securities legislation, a fund facts document of a mutual fund may only be attached to or bound with one or more fund facts documents of other mutual funds if the binding is not so extensive as to cause a reasonable person to question whether the binding prevents the information from being presented in a simple, accessible and comparable format.

**Issue for Comment**

**5. In response to comments, we are proposing some limited binding of fund facts documents. In section 4.1.5 of the Companion Policy we have provided guidance on this provision. Is this guidance sufficient? Do you agree with this approach?**

(2) Despite subsection (1), if a fund facts document is delivered electronically, a fund facts document must not be attached to or bound with another fund facts document.

(3) If delivered with the confirmation of trade, a fund facts document of a mutual fund may be attached to, or bound with, one or more of the following documents:

- (a) Confirmation of trade.
- (b) Simplified prospectus.
- (c) Documents incorporated by reference in the simplified prospectus.
- (d) Educational material.
- (e) Account application documents.
- (f) Registered tax plan applications and documents.
- (g) One or more fund facts.

(4) If any of the material or documents referred to in subsection (3) is attached to, or bound with, one or more fund facts documents

- (a) the fund facts document for the mutual fund or mutual funds purchased must be the first document or documents contained in the package; and
- (b) no pages must come before the fund facts documents in the package other than the confirmation of trade and, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.

(5) For the purposes of filing a fund facts document under securities legislation, a fund facts document may only be attached to, or bound with, other fund facts documents of a mutual fund in a simplified prospectus, or, if a multiple SP, other fund facts documents of mutual funds combined in the multiple SP.



## **PART 5.1 CERTIFICATES**

### **5.1.1 Interpretation** – 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.

**5.1.2 Date of Certificates** – 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, the amendment to the annual information form or the amendment to the fund facts document, as applicable.

### **5.1.3 Certificate of the Mutual Fund**

(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.]*

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

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

**5.1.5 Certificate of the Manager** – 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.

### **5.1.6 Certificate of Promoter**

(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.]*

(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.

(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.]*

(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) 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.]*

### **5.1.7 Certificates of Corporate Mutual Funds**

(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.

(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.]*

## **PART 6 EXEMPTION**

### **6.1 Grant of Exemption**

(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions that may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

**6.2 Evidence of Exemption by Securities Regulatory Authority** - (1) subject to subsection (2) and without limiting the manner in which the granting of an exemption may be evidenced, an exemption from a provision of this Instrument other than from subsection 2.7(2) is evidenced by the issuance of a receipt for a final prospectus, a final fund facts document or an amendment to a final prospectus.

(2) The issuance of a receipt for a final prospectus or an amendment to a final prospectus is not evidence that an exemption has been granted unless

(a) the person or company that sought the exemption sent to the regulator with the filing of a *pro forma* or preliminary simplified prospectus, fund facts document and annual information form, or at least 10 days before the issuance of the receipt in the case of an amendment, a letter or memorandum describing the matters relating to the exemption and indicating why consideration should be given to the granting of the exemption, and

(b) the regulator has not before, or concurrently with, the issuance of the receipt sent notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

**6.3 Existing Exemptions** – (1) Except in British Columbia, any exemption or waiver from, or approval under, securities legislation relating to the prospectus delivery requirements under securities legislation expires two years after the date that this Instrument comes into force.

(2) For greater certainty, subsection (1) applies only in relation to the prospectus delivery of mutual funds to which this Instrument applies.

#### **Note to Reader**

**In British Columbia, it is anticipated that any existing exemptions or waivers from, or approvals under, securities legislation relating to the prospectus delivery of mutual funds to which this Instrument applies will be revoked by order.**

## **PART 7 EFFECTIVE DATE AND TRANSITION**

**7.1 Effective Date** – This Instrument comes into force on ●.

**7.2 Transition** – (1) A mutual fund for which a preliminary simplified prospectus or *pro forma* simplified prospectus is filed, or for which a receipt is obtained, before the date that this Instrument comes into force is exempt from the filing requirements of this Instrument if it complies with the filing requirements under securities legislation in effect

(a) at the date of the issuance of a receipt for a preliminary simplified prospectus or the date of filing the *pro forma* simplified prospectus, as applicable, or

(b) at the date of issuance of a receipt for the final prospectus.

(2) For greater clarity, subsection (1) applies only in relation to the one time filing and receipt for a security of a mutual fund which occurs before the date that this Instrument comes into force.

(3) Despite section 7.1, the prospectus delivery requirements under securities legislation in effect before the date that this Instrument comes into force continue to apply to the distribution of a security of a mutual fund until two years after the date this Instrument comes into force.

(4) A simplified prospectus that is delivered or sent under subsection (3) must comply with the packaging requirements under Part 5 of the Instrument in effect before the date that this Instrument comes into force.

(5) Despite section 7.1, the withdrawal and rescission rights under securities legislation in effect before the date that this Instrument comes into force continue to apply to the distribution of a security of a mutual fund until two years after the date this Instrument comes into force.

(6) Despite section 7.1, the cancellation right under section 2.9 does not apply until two years after the date this Instrument comes into force.

### **Issues for Comment**

**6. Is the transitional period for delivery of the fund facts document appropriate? If not, what period would be appropriate and why?**

**7. Depending on the comments we receive, we may decide to proceed with finalizing some parts of the Instrument while continuing to consult on other parts. For example, we may be able to move forward sooner with the requirement to prepare and file a fund facts document and have it posted to the website. If this were to occur, we would provide a reasonable transition period before anyone has to comply with the fund facts document requirements and we would consider a shorter transitional period for delivery. What are your views on this approach? What period would be appropriate?**

**7.3 Transitional Delivery of Fund Facts Document** - (1) The prospectus delivery requirements under securities legislation that apply for a period of two years after the date that this Instrument comes into force may be satisfied by delivering or sending the most recently filed fund facts document prepared in accordance with Form 81-101F3 in the time prescribed under securities legislation.

(2) The withdrawal and rescission rights in effect before the date that this Instrument comes into force continue to apply to a fund facts document delivered or sent under subsection (1) until two years after the date this Instrument comes into force.

(3) For greater certainty, a fund facts document that is delivered or sent under subsection (1) must comply with the packaging requirements under subsection 5.4(3) of this Instrument.

**Note to Reader**

**If the necessary legislative amendments in some jurisdictions to preserve investor rights for delivery of the fund facts document are not in place for this transitional period, an alternative transitional approach may be to allow the fund facts document to be delivered with the simplified prospectus.**

**7.4 Initial Delivery of Fund Facts Document** - Despite Part 3A, a dealer must deliver or send the most recently filed fund facts document to a purchaser of a security of a mutual fund with the confirmation of trade for the first purchase of the class or series of securities of the mutual fund following the date the prospectus delivery requirements under the Instrument come into force.

**Note to Reader**

**If we decide to require delivery of the fund facts document for subsequent purchases with the confirmation of trade, this section will be removed.**

2. This Instrument comes into force on ●.

## APPENDIX C

### Schedule 3

**FORM 81-101F1 CONTENTS OF SIMPLIFIED PROSPECTUS  
AND FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM OF  
NATIONAL INSTRUMENT 81-101 MUTUAL FUND  
PROSPECTUS DISCLOSURE**

#### AMENDMENT INSTRUMENT

1. Form 81-101 F1 Contents of Simplified Prospectus is amended

(a) in Item 3 of Part A by:

(i) repealing the third bullet under section 3.1 and substituting the following:

- “• Additional information about the Fund is available in the following documents:
- the Annual Information Form;
  - the most recently filed Fund Facts;
  - the most recently filed annual financial statements;
  - any interim financial statements filed after those annual financial statements;
  - the most recently filed annual management report of fund performance;
  - any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this Simplified Prospectus, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.”; and

(ii) repealing the third bullet under section 3.2 and substituting the following:

- “• Additional information about each Fund is available in the following documents:
- the Annual Information Form;
  - the most recently filed Fund Facts;
  - the most recently filed annual financial statements;

- any interim financial statements filed after those annual financial statements;
- the most recently filed annual management report of fund performance;
- any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this document, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.”

(b) in Item 11 of Part A by repealing Item 11 and substituting the following:

**“Item 11 : Statement of Rights**

Provide a brief explanation, under the heading “What are your Legal Rights?”, of an investor’s statutory rights of rescission and damages, including the right of action for misrepresentations contained in the simplified prospectus and in any documents incorporated by reference into the simplified prospectus, in substantially the following words:

“Securities legislation gives you the right to cancel your purchase within 48 hours of receiving confirmation of your order.

Securities legislation in some provinces and territories also allows you to cancel an agreement to buy mutual fund [units/shares] and get your money back, or to make a claim for damages, if the Simplified Prospectus, Fund Facts, Annual Information Form or financial statements misrepresent any facts about the Fund. These rights must usually be exercised within certain time limits.

For more information, refer to the securities legislation of your province or territory or consult your lawyer.””

(c) in Item 14 of Part A by:

(i) repealing the first bullet under subsection 14(2) and substituting the following:

- “• Additional information about the Fund[s] is available in the Fund[’s/s’] Annual Information Form, Fund Facts, management reports of fund performance and financial statements. These documents are incorporated by reference into this Simplified

Prospectus, which means that they legally form part of this document just as if they were printed as a part of this document.”;

and

(ii) repealing subsection 14(3) and substituting the following:

“(3) For a multiple SP in which the Part A section is bound separately from the Part B sections, state, in substantially the following words:

“A complete simplified prospectus for the mutual funds listed on this cover consists of this document and an additional disclosure document that provides specific information about the mutual funds in which you are investing. This document provides general information applicable to all of the [name of mutual fund family] funds. When you request a simplified prospectus, you must be provided with the additional disclosure document.””

(d) in Part B by adding the following after Item 9:

**“Item 9.1: Investment Risk Classification Methodology**

(1) Briefly describe the methodology used by the manager for the purpose of identifying the investment risk level of the mutual fund as required by Item 5(2) in Part I of 81-101F3.

(2) State how frequently the investment risk level of the mutual fund is reviewed.

(3) Disclose that the methodology that the manager uses to identify the investment risk level of the mutual fund is available on request, at no cost, by calling [toll-free/collect call telephone number] or by writing to [address].

***INSTRUCTION:***

*Include a brief description of the formulas, methods or criteria used by the manager of the mutual fund in identifying the investment risk level of the mutual fund.”.*

(e) in Item 10 of Part B by:

(i) repealing Instruction (1) and substituting the following:

“(1) *In responding to the disclosure required by this Item, indicate the level of investor risk tolerance that would be appropriate for investment in the mutual fund.”*



- (ii) by adding the following after Instruction (1):

*“(1.1) Briefly describe how the manager has determined the level of investor risk tolerance that would be appropriate for investment in the mutual fund.”.*

2. Form 81-101F2 *Annual Information Form* is amended

- (a) in Item 19 by:

- (i) repealing paragraph 19(1)(a) and substituting the following:

“(a) for a simplified prospectus and annual information form,

“This annual information form, together with the simplified prospectus and the documents incorporated by reference into the simplified prospectus, constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus, as required by the securities legislation of [insert the jurisdictions in which qualified] and do not contain any misrepresentations.””;

- (ii) repealing paragraph 19(1)(b) and substituting the following:

“(b) for an amendment to a simplified prospectus or annual information form that does not restate the simplified prospectus or annual information form,

“This amendment no. [specify amendment number and date], together with the [amended and restated] annual information form dated [specify], [amending and restating the annual information form dated [specify],] [as amended by (specify prior amendments and dates)] and the [amended and restated] simplified prospectus dated [specify], [amending and restating the simplified prospectus dated [specify],] [as amended by (specify prior amendments and dates)] and the documents incorporated by reference into the [amended and restated] simplified prospectus, [as amended,] constitute full, true and plain disclosure of all material facts relating to the securities offered by the [amended and restated] simplified prospectus, [as amended,] as required by the securities legislation of [insert the jurisdictions in which qualified] and do not contain any misrepresentations.”, and”; and

- (iii) repealing paragraph 19(1)(c) and substituting the following:

(c) for an amendment that amends and restates a simplified prospectus or annual information form,

“This amended and restated annual information form dated [specify], amending and restating the annual information form dated [specify] [,as amended by (specify prior amendments and dates)], together with the [amended and restated] simplified prospectus dated [specify] [, amending and restating the simplified prospectus dated [specify]] [,as amended by (specify prior amendments and dates)] and the documents incorporated by reference into the [amended and restated] simplified prospectus, [as amended,] constitute full, true and plain disclosure of all material facts relating to the securities offered by the [amended and restated] simplified prospectus, [as amended,] as required by the securities legislation of [insert the jurisdictions in which qualified] and do not contain any misrepresentations.””

(b) in Item 22 by repealing subsection 22(1) and substituting the following:

“(1) Include a certificate of the principal distributor of the mutual fund that states:

“To the best of our knowledge, information and belief, this annual information form, the financial statements of the fund [specify] for the financial period ended [specify] and the auditors’ report on those financial statements, together with the simplified prospectus and the fund facts document dated [specify], constitute full, true and plain disclosure of all material facts relating to the securities offered by the simplified prospectus and do not contain any misrepresentation.””; and

(c) in Item 24 by repealing the first bullet under subsection 24(2) and substituting the following:

“• Additional information about the Fund[s] is available in the Fund[’s/s’] Fund Facts, management reports of fund performance and financial statements.”.

3. This Instrument comes into force on •.

**APPENDIX C**

**Schedule 4**

**Proposed Form 81-101F3**  
*Contents of Fund Facts Document*  
**of National Instrument 81-101**  
*Mutual Fund Prospectus Disclosure*

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**National Instrument 81-101**  
**Mutual Fund Prospectus Disclosure**  
**Form 81-101F3**  
**Contents of Fund Facts Document**

**GENERAL INSTRUCTIONS:**

*General*

(1) *This Form describes the disclosure required in a fund facts document for a mutual fund. Each Item of this Form outlines disclosure requirements. Instructions to help you provide this disclosure are in italic type.*

(2) *Terms defined in National Instrument 81-101 Mutual Fund Prospectus Disclosure, National Instrument 81-102 Mutual Funds, National Instrument 81-105 Mutual Fund Sales Practices or National Instrument 81-106 Investment Fund Continuous Disclosure and used in this Form have the meanings that they have in those national instruments.*

(3) *A fund facts document must state the required information concisely and in plain language. To ensure ease of readability, the fund facts document must be written at a Flesch-Kincaid grade level of 6.0 or less.*

(4) *Respond as simply and directly as is reasonably possible. Include only the information necessary for a reasonable investor to understand the fundamental and particular characteristics of the mutual fund.*

(5) *National Instrument 81-101 Mutual Fund Prospectus Disclosure requires the fund facts document to be presented in a format that assists in readability and comprehension. This Form does not mandate the use of a specific format or template to achieve these goals. However, mutual funds must use, as appropriate, tables, captions, bullet points or other organizational techniques that assist in presenting the required disclosure clearly and concisely.*

(6) *This Form does not mandate the use of a specific font size or style but the font must be legible. Where the fund facts document is made available online, information must be presented in a way that is capable of being printed in a readable format.*

(7) *A fund facts document can be produced in colour or in black and white, and in portrait or landscape orientation.*

(8) *A fund facts document must contain only the information that is specifically mandated or permitted by this Form. In addition, each Item must be presented in the order and under the heading or sub-heading stipulated in this Form.*

(9) *A fund facts document must not contain design elements (e.g., graphics, photos, artwork) that detract from the information disclosed in the document.*

*Contents of a Fund Facts Document*

(10) *A fund facts document must disclose information about only one class or series of securities of a mutual fund. Mutual funds that have more than one class or series that are referable to the same portfolio of assets must treat each class or series as a separate mutual fund for purposes of this Form.*

**Issue for Comment:**

**1. In response to comments, we have provided some flexibility in the proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* for a fund facts document to be attached to, or bound with, one or more fund facts documents of other mutual funds. To date, however, we have not seen a sample fund facts document that contains multiple class or series disclosure that meets the principle of providing investors with information in a simple, accessible and comparable format as set out in *Framework 81-406: Point of Sale Disclosure for Mutual Funds and Segregated Funds (Framework)*.**

**For us to consider allowing flexibility to permit a single fund facts document per mutual fund, we request sample fund facts documents that demonstrate multiple class or series information presented in a manner consistent with the principles of the Framework.**

(11) *The fund facts document must be prepared on letter-size paper and must consist of two Parts: Part I and Part II.*

(12) *The fund facts document must begin with the responses to the Items in Part I of this Form. These responses must contain specific information about the mutual fund to which the fund facts document pertains.*

(13) *Part I must be followed by the responses to the Items in Part II of this Form. These responses must contain information about costs of buying and owning the mutual fund, dealer compensation, the cancellation right and how to get additional information about the mutual fund.*

(14) *Each of Part I and Part II must not exceed one page in length, unless the required information in any section causes the disclosure to exceed this limit. Where this is the case, a fund facts document must not exceed a total of 3 pages in length.*

(15) *A mutual fund must not attach or bind other documents to a fund facts document, except those documents permitted under section 5.4 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.*

*Consolidation of Fund Facts Document into a Multiple Fund Facts Document*

(16) *Fund facts documents must not be consolidated with each other to form a multiple fund facts document, except as permitted by section 5.4 of National Instrument 81-101 Mutual Fund Prospectus Disclosure. When a multiple fund facts document is permitted under the Instrument, a mutual fund must provide information about each of the mutual funds described in the document on a fund-by-fund or catalogue basis and must set out for each mutual fund separately the information required by this Form. Each fund facts document must start on a new page.*

*Multi-Class Mutual Funds*

(17) *As provided in National Instrument 81-102 Mutual Funds, a section, part, class or series of a class of securities of a mutual fund that is referable to a separate portfolio of assets is considered to be a separate mutual fund. Those principles apply to National Instrument 81-101 Mutual Fund Prospectus Disclosure and this Form.*

**PART I      INFORMATION ABOUT THE FUND**

**Item 1:      Introduction**

Include at the top of the first page a heading consisting of:

- (a) the title “Fund Facts”;
- (b) the name of the manager of the mutual fund;
- (c) the name of the mutual fund to which the fund facts document pertains and, if the mutual fund has more than one class or series of securities, the name of the class or series covered in the fund facts document; and
- (d) the date of the document.

**INSTRUCTION:**

*The date for a fund facts document that is filed with a preliminary simplified prospectus or simplified prospectus must be the date of the certificate contained in the related annual information form. The date for a fund facts document that is filed with a pro forma simplified prospectus must be the date of the anticipated simplified prospectus. The date for a fund facts document that is updated quarterly or semi-annually must be the date on which it was filed.*

**Item 2: Quick Facts**

Under the heading “Quick Facts”, include disclosure in the form of the following table:

<b>Date fund created:</b> (see instruction 1)	<b>Portfolio manager:</b> (see instruction 4)
<b>Total value on [date]:</b> (see instruction 2)	<b>Distributions:</b> (see instruction 5)
<b>Management expense ratio (MER):</b> (see instruction 3)	<b>Minimum investment:</b> (see instruction 6)

*INSTRUCTIONS:*

- (1) *Use the date that the securities of the class or series of the mutual fund described in the fund facts document first became available to the public.*
- (2) *Specify the total net assets as at a date within 30 days before the date of the fund facts document. The amount disclosed must take into consideration all classes or series that are referable to the same portfolio of assets. For a newly established mutual fund, simply state that this information is not available because it is a new mutual fund.*
- (3) *Use the management expense ratio (MER) disclosed in the most recently filed management report of fund performance (MRFP) for the mutual fund. The MER must be net of fee waivers or absorptions and, despite section 15.1(2) of National Instrument 81-106 Investment Fund Continuous Disclosure, need not include any additional disclosure about the waivers or absorptions. For a newly established mutual fund that cannot comply with s. 15.1(1) of National Instrument 81-106 Investment Fund Continuous Disclosure, state that the MER is not available because it is a new mutual fund.*

**Issue for Comment**

**2. We are considering whether it is more appropriate to require disclosure of the MER without any waivers or absorptions, since there is no guarantee such waivers or absorptions will continue. Do you agree with this approach?**

- (4) *Specify the name of the company or companies providing portfolio management services to the mutual fund. The mutual fund may also include the name of the specific individual(s) responsible for portfolio selection.*
- (5) *Include disclosure under this element of the “Quick Facts” only if distributions are a fundamental feature of the mutual fund. Disclose the expected frequency and timing of distributions. If there is a targeted amount for distributions, the mutual fund may include this information as well.*
- (6) *Specify both the minimum amount for an initial investment and for each additional investment. This can include minimum amounts for pre-authorized contribution plans.*

**Item 3: Investments of the Fund**

- (1) Briefly set out under the heading “What does the fund invest in?” a description of the fundamental nature of the mutual fund, or the fundamental features of the mutual fund that distinguish it from other mutual funds.
- (2) For an index mutual fund,
  - (a) disclose the name or names of the permitted index or permitted indices on which the investments of the index mutual fund are based, and
  - (b) briefly describe the nature of that permitted index or those permitted indices.
- (3) Include an introduction to the information provided in response to subsection (4) and subsection (5) using wording similar to the following:

The charts below give you a snapshot of the fund’s investments on [insert date]. The fund’s investments will change.
- (4) Include under the sub-heading “Top 10 investments [date]” a table disclosing:
  - (a) the top 10 positions held by the mutual fund;
  - (b) the total number of positions; and
  - (c) the percentage of net asset value of the mutual fund represented by the top 10 positions.
- (5) Under the sub-heading “Investment mix [date]” include at least one, and up to two, charts or tables that illustrate the investment mix of the mutual fund’s investment portfolio.

**INSTRUCTIONS:**

- (1) *Include in the information under “What does this fund invest in?” a description of what the mutual fund primarily invests in, or intends to primarily invest in, or that its name implies that it will primarily invest in, such as*
  - (a) *particular types of issuers, such as foreign issuers, small capitalization issuers or issuers located in emerging market countries;*
  - (b) *particular geographic locations or industry segments; or*
  - (c) *portfolio assets other than securities.*



- (2) *Include a particular investment strategy only if it is an essential aspect of the mutual fund, as evidenced by the name of the mutual fund or the manner in which the mutual fund is marketed.*
- (3) *If a mutual fund's stated objective is to invest primarily in Canadian securities, specify the maximum exposure to investments in foreign markets.*
- (4) *The information under "Top 10 investments" and "Investment mix" is intended to give a snapshot of the composition of the mutual fund's investment portfolio. The information required to be disclosed under these sub-headings must be as at a date within 30 days before the date of the fund facts document. The date shown must be the same as the one used in Item 2 for the total value of the mutual fund.*
- (5) *If the mutual fund owns more than one class of securities of an issuer, those classes should be aggregated for the purposes of this Item, however, debt and equity securities of an issuer must not be aggregated.*
- (6) *Portfolio assets other than securities should be aggregated if they have substantially similar investment risks and profiles. For instance, gold certificates should be aggregated, even if they are issued by different financial institutions.*
- (7) *Treat cash and cash equivalents as one separate discrete category.*
- (8) *In determining its holdings for purposes of the disclosure required by this Item, a mutual fund should, for each long position in a derivative that is held by the mutual fund for purposes other than hedging and for each index participation unit held by the mutual fund, consider that it holds directly the underlying interest of that derivative or its proportionate share of the securities held by the issuer of the index participation unit.*
- (9) *If a mutual fund invests substantially all of its assets directly or indirectly (through the use of derivatives) in securities of one other mutual fund, list only the 10 largest holdings of the other mutual fund and show the percentage of net asset value of the other mutual fund represented by the top 10 positions, as disclosed by the other mutual fund in its most recent fund facts document.*
- (10) *Indicate whether any of the mutual fund's top 10 positions are short positions.*
- (11) *Each investment mix chart or table must show a breakdown of the mutual fund's investment portfolio into appropriate subgroups and the percentage of the aggregate net asset value of the mutual fund constituted by each subgroup. The names of the subgroups are not prescribed and can include security type, industry segment or geographic location. The mutual fund should use the most appropriate categories given the nature of the mutual fund. The choices made must be consistent with disclosure provided under "Summary of Investment Portfolio" in the mutual fund's MRFP.*

(12) *In presenting the investment mix of the mutual fund, consider the most effective way of conveying the information to investors. All tables or charts must be clear and legible.*

(13) *For new mutual funds where the information required to be disclosed under “Top 10 investments” and “Investment mix” is not available, include the required sub-headings and provide a brief statement explaining why the required information is not available.*

**Item 4: Past Performance**

(1) Under the heading “How has the fund performed?” include an introduction using wording similar to the following:

This section tells you how the fund has performed over the past [insert the lesser of 10 years or the number of completed calendar years] years. Returns are after the MER has been deducted. These expenses reduce the returns you get on your investment.

It’s important to note that this doesn’t tell you how the fund will perform in the future. Also, your actual return will depend on your personal tax situation.

(2) Under the sub-heading “Average return” show

(a) the final value, of a hypothetical \$1,000 investment in the mutual fund as at the end of the period that ends within 30 days before the date of the fund facts document and consists of the lesser of

- (i) 10 years, or
- (ii) the time since inception of the mutual fund;

and

(b) the annual compounded rate of return that would equate the initial \$1,000 investment to the final value.

(3) Under the sub-heading “Year-by-year returns” provide a bar chart that shows the annual total return of the mutual fund, in chronological order with the most recent year on the right of the bar chart, for the lesser of

- (a) each of the 10 most recently completed calendar years; and
- (b) each of the completed calendar years in which the mutual fund has been in existence and which the mutual fund was a reporting issuer.

(4) Provide an introduction to the bar chart indicating

- (a) that the bar chart shows the mutual fund’s annual performance for each of the years shown; and
- (b) for the particular years shown, the number of years in which the value of the mutual fund dropped.

**INSTRUCTIONS**

- (1) *In responding to the requirements of this Item, a mutual fund must comply with the relevant sections of Part 15 of National Instrument 81-102 Mutual Funds as if those sections applied to a fund facts document.*
- (2) *Use a linear scale for each axis of the bar chart required by this Item.*
- (3) *The x-axis and y-axis for the bar chart required by this Item must intersect at 0.*
- (4) *A mutual fund that distributes different classes or series of securities that are referable to the same portfolio of assets must only show performance data related to the specific class or series of securities being described in the fund facts document.*
- (5) *If the information required to be disclosed under this Item for “Average return” and “Year-by-year returns” is not reasonably available, include the required sub-headings and provide a brief statement explaining why the required information is not available. For information under “Average return”, this will generally be the case for a mutual fund that has been distributing securities under a simplified prospectus for less than 12 consecutive months. For information under “Year-by-year returns”, this will generally be the case for a mutual fund that has been distributing securities under a simplified prospectus for less than one calendar year.*
- (6) *The dollar amount shown under “Average return” may be rounded up to the nearest dollar.*
- (7) *The percentage amounts shown under “Average return” and “Year-by-year returns” may be rounded up to the nearest decimal place.*

**Item 5: Risks**

- (1) Under the heading “How risky is it?” provide an introduction using wording similar to the following:

When you invest in a fund, the value of your investment can go down as well as up.

- (2) Using the investment risk classification methodology set out in the mutual fund’s simplified prospectus, identify the mutual fund’s investment risk level on the following scale:

Low	Low to Medium	Medium	Medium to High	High
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**INSTRUCTIONS:**

(1) *Based upon the investment risk classification methodology adopted by the manager of the mutual fund, identify where the mutual fund fits on the continuum of investment risk levels by showing the full investment risk scale and highlighting the applicable category on the scale. A brief explanation of the mutual fund's risk level may also be included.*

(2) *Where the mutual fund is a new mutual fund and it is not possible for the manager of the mutual fund to apply its investment risk classification methodology to the mutual fund, include a statement explaining that it is a new mutual fund and use the chart to indicate the investment risk level that the manager of the mutual fund would expect for the mutual fund.*

**Issues for Comment:**

**3. In response to comments, including concerns raised by investors and the Investment Funds Institute of Canada (IFIC) of the use of its risk scale, we are proposing for the manager to identify the mutual fund's risk level on a prescribed scale set out in the fund facts document, based upon the risk classification methodology adopted by the manager.**

**We request comment on whether this approach achieves our objective to provide investors with a simple and comparable presentation of the level of investment risk associated with the mutual fund. Are there alternatives to achieve this objective?**

**4. We would like feedback on whether the band we've prescribed for the scale is appropriate. Are there better ways to describe the range of investment risk for a mutual fund?**

**5. We recognize that managers with similar type mutual funds may adopt different methodologies to identify the mutual fund's risk level on the scale prescribed. We would like your view on whether this will detract from our objective to provide a simple and comparable presentation of the level of investment risk. Should we consider requiring a particular type of risk classification methodology be used? If so, what methodology would be appropriate?**

**6. In response to comments, we are considering allowing the disclosure in this section to be supplemented with a brief description of the key risks associated with an investment in the mutual fund. We request feedback on this approach. Should we limit this risk disclosure? If so, how?**

**Item 6: Guarantee**

(1) Under the heading "Are there any guarantees?", if the mutual fund has an insurance or guarantee feature protecting all or some of the principal amount of an investment in the mutual fund:

- (a) identify the person or company providing the guarantee or insurance;
  - (b) provide a brief description of the material terms of the guarantee or insurance, including the maturity date of the guarantee or insurance.
- (2) If the mutual fund does not have any guarantee or insurance, state in wording similar to the following:

Like most mutual funds, this fund doesn't have any guarantees. You may not get back the money you invest.

**INSTRUCTION:**

*If applicable, state that the guarantee or insurance does not apply to the amount of any redemptions before the maturity date of the guarantee or before the death of the securityholder and that redemptions before that date would be based on the net asset value of the mutual fund at the time.*

**Item 7: Suitability**

Provide a brief statement of the suitability of the mutual fund for particular investors under the heading "Who is this fund for?". Describe the characteristics of the investor for whom the mutual fund may or may not be an appropriate investment, and the portfolios for which the mutual fund is and is not suited.

**INSTRUCTION:**

*If the mutual fund is particularly unsuitable for certain types of investors or for certain types of investment portfolios, emphasize this aspect of the mutual fund. Disclose both the types of investors who should not invest in the mutual fund, with regard to investments on both a short- and long-term basis, and the types of portfolios that should not invest in the mutual fund. If the mutual fund is particularly suitable for investors who have particular investment objectives, this can also be disclosed.*

**PART II COSTS, RIGHTS AND OTHER INFORMATION**

**Item 1: Costs of Buying, Owning and Selling the Fund**

**1.1 Introduction**

- (1) Under the heading "How much does it cost?", state using wording similar to the following:

The following tables show the fees and expenses you could pay to buy, own and sell [name of the class or series of securities covered in the fund facts document] [units/shares] of the fund.

(2) If applicable, state that

- the mutual fund has other classes or series of securities;
- the fees and expenses for each class or series of securities of the mutual fund are different; and
- the investor should ask about other classes or series of securities that may be suitable for the investor.

## 1.2 Illustrations of Different Sales Charge Options

(1) For a mutual fund with multiple sales charge options, include an introduction under the sub-heading “Sales charges” using wording similar to the following:

You have to choose a sales charge option when you buy the fund. Ask about the pros and cons of each option.

(2) Provide information about the sales charges payable by an investor under the available sales charge options in the form of the following table:

Sales charge option	What you pay	How it works
(see instruction 1)	(see instruction 2)	(see instruction 3)

(3) If the mutual fund has only one sales charge option, replace the introductory statement required in paragraph (1) above with a statement highlighting the sales charge option applicable to the mutual fund.

(4) If the mutual fund does not have any sales charges, replace the introductory statement and the table required in paragraph (1) and paragraph (2) above with a general statement explaining that no sales charges apply.

### *INSTRUCTIONS:*

(1) *The mutual fund must disclose all sales charge options (e.g., initial sales charge, deferred sales charge) that apply to the class or series being described in the fund facts document. It is not necessary to disclose sales charge options that do not apply to the series or class to which the fund facts document relates.*

(2) *Specify each sales charge option as a percentage. For an initial sales charge, include a range for the amount that can be charged, if applicable. For a deferred sales charge, provide the full sales charge schedule.*

(3) Provide a brief overview of the key elements of how each sales charge option works including:

- whether the amount payable is negotiable;
- whether the amount payable is deducted from the amount paid at the time of purchase or from the amount received at the time of sale;
- who pays and who receives the amount payable under each sales charge option.

In the case of a deferred sales charge, the disclosure must also briefly state:

- any amount payable as an upfront sales commission;
- who pays and who receives the amount payable as the upfront sales commission;
- any free redemption amount and key details about how it works;
- whether switches can be made without incurring a sales charge; and
- how the amount paid by an investor at the time of a redemption of securities is calculated, for example, whether it is based on the net asset value of those securities at the time of redemption or another time.

### 1.3 Ongoing fund expenses

(1) Under the sub-heading “Ongoing fund expenses” include an introduction using wording similar to the following:

You don’t pay these expenses directly. They affect you because they reduce the return you get on your investment.

(2) Provide information about the MER of the mutual fund in the form of the following table:

	<b>Annual rate (as a % of the fund’s value)</b>
<b>Management fee</b> The fund pays a management fee to [insert name of manager of the mutual fund].	(see instruction 1)
<b>Operating expenses</b> These are the costs of the fund, other than trading costs.	(see instruction 2)
<b>Management expense ratio (MER)</b> This is the total of the management fee and operating expenses. (see instruction 3)	(see instruction 4)

(3) If the mutual fund pays an incentive fee that is determined by the performance of the mutual fund, provide a brief statement disclosing the amount of the fee and the circumstances where the mutual fund will pay it.

(4) If the manager of the mutual fund or another member of the mutual fund's organization pays trailing commissions, include a brief description of these commissions under the sub-heading "Trailing commission".

(5) The description of trailing commissions must include a statement in substantially the following words:

The trailing commission is paid out of the management fee. The trailing commission is paid for as long as you own the fund.

**INSTRUCTIONS:**

(1) *The percentage disclosed must correspond to the percentage shown in the fee table in the simplified prospectus.*

(2) *The amount included for operating expenses is the amount arrived at by subtracting the management fee from the MER.*

(3) *Use the same MER that is disclosed in Item 2 of Part I of this Form.*

(4) *The description of trailing commissions must briefly and concisely explain the purpose of the commission, how the commissions are paid and the range of the rates of the commission for each sales charge option.*

**Issue for Comment:**

**7. To better convey the impact on the investor of sales charges and ongoing fund expenses, we are considering requiring an illustration of the amounts payable in dollars and cents. What are your views?**

**8. We are also considering whether to require disclosure in the fund facts document of the trading expense ratio (TER), to provide investors with a more complete picture of the costs associated with an investment in a mutual fund. We request feedback on this proposal.**

**1.4 Other Fees**

(1) Under the sub-heading "Other fees" provide an introduction using wording similar to the following:

You may have to pay other fees when you sell or switch [units/shares] of the fund.



(2) Provide information about the amount of fees, other than sales charges, payable by an investor when they sell or switch units or shares of the mutual fund, substantially in the form of the following table:

<b>Fee</b>	<b>What you pay</b>
(see instruction 1)	(see instruction 2)

**INSTRUCTIONS:**

(1) *Under this Item, it is only necessary to include fees that apply to the particular series or class of the mutual fund. Examples include short-term trading fee, switch fee and change fee. If there are no other fees associated with selling or switching units or shares of the mutual fund, replace the table with a statement to this effect.*

(2) *Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee.*

**Item 2: Cancellation Right**

(1) Under the heading “What if I change my mind?” state in substantially the following words:

- You can cancel most investments up to two days after you receive the trade confirmation.
- You have to tell your investment firm in writing that you want to cancel.
- You’ll get back the amount you invested, or less if the value of the fund has gone down.
- You’ll also get back any sales charges and fees you paid.

**Item 3: More Information About the Fund**

(1) Under the heading “For more information” state in substantially the following words:

This Fund Facts may not have all the information you want. You can ask for the fund’s simplified prospectus and other disclosure documents, which have more detailed information. These documents and the Fund Facts make up the fund’s legal documents.

(2) State the name, address and toll-free telephone number of the manager of the mutual fund. If applicable, also state the e-mail address and website of the manager of the mutual fund.

**APPENDIX C**

**Schedule 5**

**Companion Policy 81-101CP to National Instrument 81-101  
Mutual Fund Prospectus Disclosure**

**AMENDMENT INSTRUMENT**

This is an unofficial consolidation of Companion Policy 81-101CP to National Instrument 81-101 Mutual Fund Prospectus Disclosure. The proposed amendments are shown by blackline. No part of this document represents an official statement of law.

1. \_\_\_\_\_ Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.

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**Companion Policy 81-101CP to National Instrument 81-101  
Mutual Fund Prospectus Disclosure**

**PART 1 PURPOSE OF THE COMPANION POLICY**

**1.1 Purpose of the Companion Policy** - The purpose of this Companion Policy is to state the views of the Canadian ~~securities regulatory authorities~~ Securities Administrators (CSA or we) on various matters relating to the Instrument, including,

- (a) a discussion of the general approach taken by the ~~Canadian securities regulatory authorities~~ CSA in, and the general regulatory purpose for, the Instrument;
- (b) explanation and discussion of various parts of the Instrument; and
- (c) examples of some matters described in the Instrument.

**PART 2 PURPOSE AND GENERAL APPROACH OF THE INSTRUMENT**

**2.1 Purpose of the Instrument**

(1) The purpose of the Instrument is to ensure that the disclosure regime for mutual funds provide ~~provides~~ investors with disclosure documents that clearly and concisely state information that investors should consider in connection with an investment decision about the mutual fund, while recognizing that investors have differing needs in receiving disclosure. ~~Two general approaches have been used in the Instrument in order~~

(2) The disclosure regime for mutual funds is built on three main principles:

- providing investors with key information about a mutual fund;
- providing the information in a simple, accessible and comparable format; and
- providing the information before investors make their decision to buy.

(3) We use the following approaches in the Instrument to achieve this result: ~~the principles referred to in subsection (2):~~

(2) ~~First, the Instrument requires, in subsection 4.1(1), that these documents be prepared using plain language and in a format that assists in readability and comprehension.~~

~~(3) Second, the~~ 1. The Instrument has been designed to ensure that investors receive disclosure documents that will be helpful to them, and permits mutual fund organizations considerable to permit some flexibility in designing those documents in order to assist investors. The Instrument contemplates

2. The Instrument requires a mutual fund summary document called the ‘fund facts’, which contains key information about a mutual fund. The fund facts document is intended to provide investors with sufficient information about the potential benefits, risks and costs of investing in a mutual fund.

3. The Instrument further permits the use of two other disclosure documents by a mutual fund (in addition to financial statements): a simplified prospectus, which is given to all investors, and an annual information form, which is available on request, and that, together with the financial statements, the management reports of fund performance and the fund facts document, contain full, true and plain disclosure about the mutual fund. However, the Instrument contemplates that, at the option of mutual fund organizations, investors may receive only the disclosure documents that pertain to the mutual funds in which they are interested. These documents are available to investors to provide more detailed information about a mutual fund.

4. The Instrument requires, in subsection 4.1(1), that the simplified prospectus, fund facts document and annual information form be prepared using plain language and in a format that assists in readability and comprehension. The Instrument and related forms provide detailed requirements on the content and format of these documents.

5. The Instrument recognizes that investors have differing needs in receiving mutual fund disclosure and provides for flexibility in delivery of the fund facts document based on the type of purchase and who is initiating the transaction.

(4) Mutual funds, managers and participants in the mutual fund industry should prepare disclosure documents and carry out delivery in a manner that is consistent with the spirit and intent of the Instrument.

### **2.1.1 Fund Facts Document**

(1) The Instrument requires each investor in a mutual fund to receive a fund facts document for the initial purchase of the mutual fund. An ‘initial purchase’ is defined in the Instrument. The fund facts document must be in plain language, generally fit on both sides of one page, and highlight key information important to investors, including performance, risk and cost. The fund facts document is incorporated by reference into the simplified prospectus.

(2) The Instrument and Form 81-101F3 (the “FF Form”) set out detailed requirements on the content and format of a fund facts document, while allowing some flexibility to accommodate different kinds of mutual funds. The requirements are designed to ensure that the information in a fund facts document of a mutual fund is clear, concise, understandable and easily comparable with information in the fund facts document of other mutual funds.

### **2.2 Simplified Prospectus**

(1) The Instrument contemplates that all investors in a mutual fund will receive a simplified prospectus, which is to be a clear concise document that is designed to provide the typical

investor with the necessary information to permit the making of an informed investment decision. The Instrument requires the delivery only of a simplified prospectus to an investor in connection with a purchase, unless the investor also requests delivery of the annual information form, financial statements or both. (2) The approach of the Instrument is to give investors a choice of the amount of information that they wish to consider before making a decision about investing in the mutual fund. Investors will have the option of purchasing the mutual fund's securities after reviewing the information in the simplified prospectus only or after requesting and reviewing the annual information form, financial statements or management reports of fund performance. A simplified prospectus is the prospectus for the purposes of securities legislation. While the Instrument specifies that the requirement under securities legislation to deliver the prospectus is satisfied by delivery of the fund facts document, an investor may request to receive the simplified prospectus, or any document incorporated by reference into the simplified prospectus.

~~(3) The Instrument and Form 81-101F1 (the "SP Form") provides~~ set out detailed requirements as to the content and format of a simplified prospectus. These requirements (a) are designed to ensure that the information about a mutual fund in a simplified prospectus is clear, concise, understandable and well-organized, and contain the most important information that an investor would consider in making an investment decision, in order to encourage investors to read and consider the contents of the simplified prospectus; well-organized and easily comparable with other mutual funds.

~~(b) standardize, to some degree, the order in which information is presented in a simplified prospectus, in order to ensure that investors may easily compare disclosure about one mutual fund with disclosure about other mutual funds in the same or a different simplified prospectus; and~~

~~(c) prohibit the addition of information in the simplified prospectus not specifically required by the SP Form, in order to prevent a simplified prospectus from expanding to a size that discourages an investor from reading it, and that obscures the most important information about a mutual fund that should be considered by an investor.~~

## **2.3 Annual Information Form**

(1) ~~The Instrument contemplates~~ requires that a supplemental disclosure document, the annual information form, will be provided to any person on request. The annual information form is incorporated by reference into the simplified prospectus.

(2) Information contained in the related simplified prospectus will generally not be repeated in an annual information form except as necessary to make the annual information form comprehensible as an independent document. ~~Generally speaking~~ In general, an annual information form is intended to provide disclosure about different matters than those discussed in the fund facts document and simplified prospectus, such as information concerning the internal operations of the manager of the mutual fund, which may be of assistance or interest to some investors.

(3) The Instrument and Form 81-101F2 (the “AIF Form”) are designed to ensure that an annual information form, like a simplified prospectus, is prepared in a clear manner that will encourage investors to read it. Therefore, an annual information form is subject to the same general requirements of subsection 4.1(1) of the Instrument as the simplified prospectus, which is that both documents must be prepared using plain language and in a format that assists readability and comprehension. (4) The Instrument and the AIF Form allow for more flexibility in the preparation of an annual information form than is the case with a simplified prospectus. The rules pertaining to the order in which information is to be disclosed in an annual information form are not as stringent as for a fund facts document or a simplified prospectus, and an Annual information form may include information not specifically required by the AIF Form.

**2.4 Financial Statements and Management Reports of Fund Performance** – The Instrument contemplates that the mutual fund’s most recently audited financial statements, and any interim statements filed after those audited statements, as well as the mutual fund’s most recently filed annual management report of fund performance, and any interim management report of fund performance filed after that annual management report, will be provided upon request to any person or company requesting them. Like the fund facts document and the annual information form, these financial statements and management reports of fund performance are incorporated by reference into the simplified prospectus. The result is that future filings will be incorporated by reference into the simplified prospectus, while superseding the financial statements and management reports of fund performance previously filed.

## **2.5 Filing and Delivery of Documents**

(1) Section 2.3 of the Instrument distinguishes between documents that are required by securities legislation to be “filed” with the securities regulatory authority and those that must be “delivered” or “sent” to the securities regulatory authority. ~~The Canadian securities regulatory authorities remind mutual funds that documents~~ Documents that are “filed” are on the public record, and documents that are “delivered” or “sent” are not necessarily on the public record. All documents required to be filed under the Instrument must be filed in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

(2) Section 1.1 of the Instrument defines “business day” as any day other than a Saturday, Sunday or a statutory holiday. In some cases, a statutory holiday may only be a statutory holiday in one jurisdiction. The definition of business day should be applied in each local jurisdiction in which a prospectus is being filed. For example, section 5.1.2 of the Instrument states that the date of the ~~certificates~~ certificate in a simplified prospectus must be within 3 business days before the filing of the simplified prospectus. ~~The certificates~~ For example, the certificates in the simplified prospectus are dated Day 1. Day 2 is a statutory holiday in Québec but not in Alberta. If the simplified prospectus is filed in both Alberta and Québec, it must be filed no later than Day 4 in order to comply with the requirement in section 5.1.2 of the Instrument, despite the fact that Day 2 was not a business day in Québec. If the simplified prospectus is filed only in Québec, it could be filed on Day 5.

## 2.6 Supporting Documents

(1) ~~[Repealed]~~ (2) Subsection 2.3(6) of the Instrument permits the filing of certain material contracts from which certain commercial or financial information was deleted in order to be kept confidential. ~~The Canadian securities regulatory authorities are of the view~~ We think that information such as fees and expenses and non-competition clauses is the type of information that could be kept confidential under this provision. In these cases, the benefits of disclosing that information to the public are outweighed by the potentially adverse consequences of disclosure for mutual fund managers and portfolio advisers. However, the basic terms of these agreements must be included in the contracts that are filed. These terms would include the provisions relating to the term and termination of the agreements and the rights and responsibilities of the parties to the agreements.

## 2.7 Amendments

(1) Paragraph 2.1(1)(d) of the Instrument requires an amendment to an annual information form to be filed whenever an amendment to a simplified prospectus is filed. Similarly, subsection 2.3(5.1) of the Instrument requires an amendment to an annual information form to be filed whenever an amendment to a fund facts document is filed. If the substance of the amendment to the fund facts document or to the simplified prospectus ~~is~~ would not such as to require a change to the text of the annual information form, the amendment to the annual information form would consist only of the certificate page referring to the mutual fund to which the amendment to the fund facts document or the simplified prospectus pertains.

(2) Paragraph 2.1(1)(e) of the Instrument requires a mutual fund to file an amendment to a fund facts document when a material change to the mutual fund occurs that requires a change to the disclosure in the fund facts document. This mirrors the requirement in paragraph 11.2(1)(d) of National Instrument 81-106 *Investment Fund Continuous Disclosure*. We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the mutual fund to be material changes. However, changes to the mutual fund's investment objective and risk profile would generally constitute a material change under securities legislation.

(3) The commercial copies of an amended and restated simplified prospectus, annual information form and fund facts document can be created ~~either by a full reprint of~~ by reprinting the entire document, or by ~~the use of~~ using stickers, ~~affixed to~~ on an existing document, that provide the new text created by the amendment. If stickers are used, ~~it will be necessary to use both a one sticker~~ will be required for the substance of the amendments and a separate sticker will be required for the cover page of the document ~~in order to describe~~ that describes the type and date of the document ~~as required by subsection 2.2(1)(b) of the Instrument, as applicable.~~

(34) ~~The requirements contained in section 2.2 of the Instrument apply to both in relation to an amendment to a full simplified prospectus, and an amendment only to a Part A or Part B section of a simplified prospectus in cases in which~~ where the Part A and Part B sections are bound separately. ~~The Canadian securities regulatory authorities note that section~~ Section 2.2 of the Instrument ~~would require~~ requires amendments to various parts of a multiple SP to be evidenced as follows:



1. For a multiple ~~Multiple SP in which the~~ **with Part A and the Part B sections are bound together**, ~~an.~~ An amendment to either or both of the Part A or Part B sections could be in the form of a free standing amending instrument ~~which that~~ would be delivered to investors with the rest of the multiple SP. The amending instrument would be identified, in accordance with subsection 2.2(3) of the Instrument, as “Amendment No. [insert number], dated [date of amendment] to the simplified prospectus document for the [name of funds] dated [date of original document]”. ~~Alternatively~~ **Or**, the amendment could be in the form of a restated and amended multiple SP document, identified as such in accordance with subsection 2.2(3).

2. For a multiple ~~Multiple SP in which the~~ **with Part A and the Part B sections are bound separately from each other**, ~~.~~ If there is an amendment to the Part A section of the document in circumstances in which there was no amendment but not to a Part B section , the amendment could be either in the form of an amending document or an amended and restated Part A document. An amending document could be identified as “Amendment No. [insert number], dated [date of amendment], to the Part A section of the simplified prospectuses of the [name of funds] dated [original date of multiple SP]”, and the amended and restated Part A document could be identified as “Amended and Restated Simplified Prospectuses dated [date of amendment] of the [name of funds], amending and restating the Simplified Prospectuses dated [original date of document].”.

3. In the circumstances described in paragraph 2 above, ~~it is noted that~~ no amendment of any kind is required to be made to the Part B sections of the multiple SP. The footer required by Item 1 of Part B of Form 81-101F1 to be contained on the bottom of each page of a Part B section will continue to show the date of the original Part A document; ~~for.~~ For this reason, the amended Part A document must be identified in a way that shows both the date of the amendments and the original date of the document so that ~~it can be identified by investors as the document that know~~ it relates to the corresponding Part B sections.

4. ~~For~~ If there is an amendment to a Part B section of a multiple SP in which the **with Part A and the Part B sections are bound separately bound**, ~~an~~ the amendment to a Part B section must be made by way of an amended and restated Part B document, ~~regardless of whether there is an amendment or not an amendment is being made to the Part A section of the simplified prospectus.~~ If no amendment to the Part A section of the simplified prospectus is being made, ~~then it is not necessary to make any amendment~~ no amendment is required to the Part A document. The amended and restated Part B document will ~~be identified by an addition of~~ include a statement in the footer required by Item 1 of Part B of Form 81-101F1 that identifies the document as a document that amends and restates the original Part B document.

~~(4) The Canadian securities regulatory authorities note that an~~ (5) Subsection 2.2(2.1) of the Instrument requires an amendment to a fund facts document to be in the form of a restated and amended fund facts document. An amended fund facts document does not have to be otherwise identified, except for the date of the amendment.

(6) An amendment to a prospectus of a mutual fund, even if it amends and restates the prospectus, does not change the date under Canadian securities legislation by which the mutual fund must renew the prospectus. That date, which is commonly referred to as the “lapse date” for

the prospectus, remains that date established under ~~Canadian~~ securities legislation. An amendment to a fund facts document will not change the lapse date for the prospectus.

~~(57)~~ Securities legislation provides that no person or company shall distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued by the securities regulatory authority or regulator. We interpret this requirement to also apply to mutual funds. If a mutual fund adds a new class or series of securities to a simplified prospectus that is referable to a new separate portfolio of assets, a preliminary simplified prospectus must be filed, together with a preliminary annual information form and preliminary fund facts document. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by ~~way of amendment~~ an amendment to the simplified prospectus. In this circumstance, a preliminary fund facts document for the new class or series must still be filed, as set out in subparagraph 2.1(1)(d)(iii) of the Instrument.

**2.8 Websites** – The Instrument requires in section 2.3.2 that a mutual fund post its fund facts document to the website of the mutual fund, the mutual fund’s family or manager, as applicable. A fund facts document should remain on the website at least until the posting of the next fund facts document for the mutual fund. A fund facts document should be displayed in an easily visible and accessible location on the website and presented in a format that is convenient for both reading online and printing on paper.

## **PART 3 PLAIN LANGUAGE AND PRESENTATION**

**3.1 Plain Language** - Subsection 4.1(1) of the Instrument requires that a simplified prospectus and ~~an~~ annual information form and fund facts document be written in plain language. The term “plain language” is defined in the Instrument as “language that can be understood by a reasonable person, applying a reasonable effort”. ~~The Canadian securities regulatory authorities note that the purpose of requiring documents to be written in plain language is to ensure that disclosure documents will be easy to read, and therefore more widely read by investors than traditional prospectuses.~~ reason for using “plain language” is to communicate in a way that ensures the audience can immediately understand what you tell them. The plain language approach focuses on the needs and abilities of the audience to ensure that the content of a communication is relevant, the organization of the information is logical, the language is appropriate and the presentation is visually appealing.

Mutual funds should consider the following plain language techniques in preparing their documents:

- ~~using~~ short sentences
- ~~using~~ definite, concrete, everyday language
- ~~using~~ the active voice
- ~~avoiding~~ superfluous words

- ~~organizing a~~ Organize the document into clear, concise sections, paragraphs and sentences
- Use:
  - common everyday words
  - technical, legal and business terms only when unavoidable and provide clear and concise explanations for them
  - the active voice
  - short sentences and paragraphs
  - a conversational and personal tone
  - examples and illustrations to explain abstract concepts
- Avoid:
  - superfluous words
    - ~~avoiding legal or~~ unnecessary technical, legal and business jargon
  - ~~using strong verbs~~
  - ~~using personal pronouns to speak directly to the reader~~
    - vague boilerplate wording
      - ~~avoiding reliance on~~ glossaries and defined terms unless they facilitate aid in understanding of the disclosure
  - ~~avoiding vague boilerplate wording~~
    - ~~avoiding~~ abstractions by using more concrete terms or examples
    - ~~avoiding~~ excessive detail
  - ~~avoiding~~ multiple negatives
  - ~~using technical and business terms only when unavoidable and only if clear and~~
  - ~~concise explanations are provided for these terms.~~

### 3.2 Presentation

(1) Subsection 4.1(1) of the Instrument requires that a simplified prospectus ~~and~~ annual information form and fund facts document be presented in a format that assists in readability and comprehension. The Instrument and related forms also set out certain aspects of a simplified prospectus ~~and~~ annual information form and fund facts document that must be presented in a required format, requiring some information to be presented in the form of tables, charts or diagrams. Within these requirements, mutual funds have considerable flexibility in the format used for simplified prospectuses ~~and~~ annual information forms and fund facts documents.

The formatting of documents can contribute substantially to the ease with which the document can be read and understood. Mutual funds should consider using the following formatting ideas when preparing their documents:

- ~~tabular or bulleted presentation of complex information~~

- ~~maintaining white space on each page to lessen the density of the text~~
- reasonably-sized, easy-to-read typeface
- headings that are clearly differentiated from the body text
- bulleted or numbered lists
- margins, boxes or shading to highlight information or for supplementary information
- tables, graphs and diagrams for complex information
- “question and answer” format to organize information
- sufficient white space on each page
- images, colour, lines and other graphical elements
- avoiding presenting blocks of text in the use of upper-case or italicized letters, bold, italic or underlining in blocks of text
- avoiding full-justified margins.

(2) ~~The Canadian securities regulatory authorities are of the view that~~ We think documents ~~may~~ would be easier to read and understand with the use of the design features such as pictures, colour, boxes, shading, graphs, charts, tables, graphics, sidebars and logos ~~set out in subsection (1). The use of logos and pictures that accurately depict aspects of the mutual fund industry, the mutual fund or mutual fund family or products and services offered by the mutual fund family-~~ Mutual ~~may also aid in comprehension and readability. However, mutual funds should, however,~~ exercise caution when using design features in their documents, as excessive use or crowding of design features might make the documents more difficult to read or understand.

(3) ~~The Canadian securities regulatory authorities note that they have, on~~ 2.1) Subsection 4.1(3) of the Instrument requires the information in a fund facts document be written overall at a grade level of 6.0 or less on the Flesch-Kincaid grade level scale. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level. For the purposes of the Instrument, the Flesch-Kincaid score of a document may be determined by the use of Flesch-Kincaid tests built into commonly used word processing programs.

(3) On occasion, we have seen amendments to simplified prospectuses prepared in highly legal and technical styles. For example, some amendments merely reference specific lines or sections of a simplified prospectus that are being amended, without providing the reader with a restated section or an explanation for the changes. In addition, some amendments have been presented in the form of photocopies of some other documents, such as meeting materials, with the word “amendment” written on the top of the photocopy. The Canadian securities regulatory authorities

~~are of the view~~ We think that these approaches are inappropriate ways of amending a simplified prospectus, ~~an~~ annual information form or fund facts document under the Instrument.

Material changes to mutual funds must be described in a format that assists in readability and comprehension, as required by subsection 4.1(1) of the Instrument. Therefore, ~~the Canadian securities regulatory authorities expect that amendments will~~ should be expressed clearly, and in a manner that enables the reader to easily read and understand both the amendment and the revised sections of the relevant document. This manner of expression may require the preparation of either an amended ~~or~~ and restated simplified prospectus or annual information form or a clearly worded amendment insert for the existing simplified prospectus or annual information form. Any amendment to a fund facts document must be in the form of an amended and restated fund facts document.

## **PART 4 THE MULTIPLE SP**

### **4.1 General Provisions Relating to a Multiple SP**

(1) ~~The predecessor to the Instrument, National Policy Statement No. 36 (“NP36”), contemplated the consolidation of the disclosure concerning a number of mutual funds into one document. What NP36 implied, and what the Instrument makes explicit, is that a~~ consolidated “simplified prospectus” pertaining to a number of mutual funds is in law a number of separate simplified prospectuses, one simplified prospectus for each mutual fund. Further, a receipt issued by the securities regulatory authority in connection with a consolidated “simplified prospectus” in law represents a separate receipt for the simplified prospectus pertaining to each mutual fund. The Instrument and the SP Form make clear that a simplified prospectus under the Instrument pertains to one mutual fund and use the term “multiple SP” to refer to a document that contains more than one simplified prospectus. ~~This distinction has been made explicit in order to clarify the statutory prospectus delivery obligation that arises on the sale of a security of a mutual fund if the two parts of the simplified prospectus are not bound together, as discussed in section 7.3 of this Policy.~~

(2) Under the Instrument, a simplified prospectus consists of two sections: a Part A section, which provides introductory information about the mutual fund, general information about mutual funds and information applicable to the mutual funds managed by the mutual fund organization, and a Part B section, which contains specific information about the mutual fund.

(3) The Instrument states that simplified prospectuses ~~shall~~ must not be consolidated to form a multiple SP unless the Part A section of each simplified prospectus is substantially similar. ~~In the view of the Canadian securities regulatory authorities,~~ We think the term “substantially similar” would be applicable in this context if there is a high degree of similarity between the Part A sections of the simplified prospectuses that are proposed to be consolidated. This option would be available generally to mutual funds in the same mutual fund family that are administered by the same entities and operated in the same manner. There may be some deviation ~~between~~ among the disclosure that would be provided for some of the mutual funds; those deviations have been largely contemplated by the SP Form.

(4) In order to maximize flexibility for ~~mutual fund organizations~~ funds and managers and improve the accessibility of disclosure provided to investors, the Instrument allows the Part B sections of a multiple SP to be bound separately from the Part A section. In addition, the Instrument permits the physical separation of each Part B section that pertains to a different mutual fund. This would permit an investor to be provided with a Part A section that described the mutual fund family and mutual fund organization generally, and only the mutual fund-specific disclosure that relates to the mutual fund or mutual funds in which the investor is interested. This approach could permit a “back pocket” approach in which the Part B sections of a simplified prospectus could be inserted in a pocket of the Part A section of the document.

(5) ~~The Instrument and the SP Form contain detailed requirements designed to ensure that the investor is aware that both the general and fund specific parts of a multiple SP should be read.~~  
(6) ~~The Instrument~~ contains no restrictions on how many simplified prospectuses can be consolidated into a multiple SP.

## **4.2 Adding Additional Funds to a Multiple SP**

(1) ~~It is noted that, as with NP36, mutual~~ Mutual funds may create and file a document that contains both a pro forma simplified prospectus and a preliminary simplified prospectus in order to include the disclosure of a new mutual fund in documents that already pertain to existing mutual funds.

(2) It is also possible to add a new mutual fund to a multiple SP that contains final simplified prospectuses. In this circumstance, an amended multiple SP and multiple AIF containing disclosure of the new mutual fund, as well as a new fund facts document for each class or series of the new mutual fund would be filed. The preliminary filing would constitute the filing of a preliminary simplified prospectus, fund facts document and annual information form for the new mutual fund and a draft amended and restated simplified prospectus and annual information form for each existing mutual fund. Once comments concerning the document had been cleared, a final filing of the documents could be made; these documents would be a simplified prospectus ~~and~~, annual information form and fund facts document for the new mutual fund and an amended and restated simplified prospectus and annual information form for each previously existing mutual fund. An amendment to an existing fund facts document would generally not be necessary.

(3) ~~As noted under subsection 2.7(4) of this Policy, an~~ An amendment to a prospectus of a mutual fund does not change the “lapse date” of the prospectus under Canadian securities legislation. Mutual funds are encouraged to pay particular attention to this issue when following the procedures described in subsection (2).

## **PART 4.1 THE FUND FACTS DOCUMENT**

**4.1.1 General Purposes-** The general purposes of the disclosure regime for mutual funds and of the fund facts document are described in section 2.1 of this Policy. This Part provides guidance to preparers of the fund facts document in meeting those purposes.

A sample fund facts document is set out in Appendix A to this Policy. The sample is provided for illustrative purposes only.

**4.1.2 Multiple Class Mutual Funds** – The purpose for the requirements on the content and format of a fund facts document is to give investors the opportunity to easily compare the key information of one mutual fund to another. For many mutual funds, the class or series may affect not only the management expense ratio and performance, but a number of other considerations as well, such as minimum investment amounts, distributions, suitability, dealer compensation and sales charge options. For this reason the Instrument requires a fund facts document to be prepared for each class and each series of a mutual fund that is referable to the same portfolio of assets.

### **4.1.3 Filings**

(1) Section 2.1 of the Instrument requires that a fund facts document for each class and series of the securities of a mutual fund be filed concurrently with the mutual fund’s simplified prospectus and annual information form.

(2) Section 2.3.1 of the Instrument allows a mutual fund to periodically update the disclosure in a fund facts document by filing on SEDAR an updated fund facts in accordance with the section. These filings do not require the issuance of a receipt and are in addition to any required filing under Part 2 of the Instrument.

(3) The most recently filed fund facts document for a mutual fund is incorporated by reference into the simplified prospectus under section 3.1 of the Instrument, with the result that any fund facts document filed under the Instrument after the date of receipt for the simplified prospectus supersedes the fund facts document previously filed. Section 3.2 of the Instrument specifies that a dealer must deliver the most recently filed fund facts document for a mutual fund in accordance with Part 3A to satisfy the prospectus delivery requirements under securities legislation.

(4) Section 2.3.2 of the Instrument requires a fund facts document filed under Part 2 of the Instrument to be posted by the mutual fund to the website of the mutual fund, the mutual fund’s family or manager’s website. Only a fund facts document that satisfies delivery under the Instrument should be posted to a website. A preliminary or pro forma fund facts document, for example, should not be posted.

**4.1.4 Additional Information** – Paragraph 4.1(3)(d) of the Instrument requires a fund facts document to include only information that is specifically mandated or permitted by the required FF Form.

### **4.1.5 Combinations of Fund Facts Documents**

(1) For the purposes of delivery, section 5.4(1) of the Instrument allows a fund facts document to be attached to, or bound with, one or more fund facts documents, provided the size of the document does not make the presentation of the information inconsistent with the principles of simplicity, accessibility and comparability. For example, a fund facts document may be attached

to, or bound with, fund facts documents of several classes or series of securities of the same mutual fund, several mutual funds from the same fund family, or several mutual funds of a similar type from different fund families. In making this determination, mutual funds, managers and participants in the mutual fund industry should consider the ability of an investor to easily find and link the information that is relevant to the particular mutual funds they are considering or have bought, and whether a reasonable person in the circumstance would come to the same conclusion. We think a document with more than 10 fund facts documents bound together may discourage an investor from reading a fund facts document and obscure key information which is inconsistent with the principles of simplicity, accessibility and comparability.

(2) When delivery of the fund facts document occurs with the confirmation of trade for the purchase, subsections 5.4(3) and (4) of the Instrument permit a fund facts document to be attached to, or bound with, certain other materials or documents provided the fund facts documents are located first in any package.

(3) To facilitate the filing requirements for a fund facts document under securities legislation, section 5.4(5) of the Instrument allows a fund facts document to be attached to, or bound with, other fund facts documents of a mutual fund in a single SP or, if a multiple SP, other mutual funds which are combined in the multiple SP.

(4) Section 5.4(2) of the Instrument specifies that a fund facts document that is delivered electronically must not be attached or bound with another fund facts document. For the purposes of delivery, we think that an electronic link or directing the investor to a file containing multiple fund facts documents could constrain an investor's ability to download the file, find and print the specific fund facts document.

**4.1.6 Format** - The Instrument requires a mutual fund to use the headings and sub-headings stipulated in the Instrument and the FF Form.

## **PART 5 THE SIMPLIFIED PROSPECTUS**

**5.1 General Purposes** - The general purposes of a simplified prospectus are described in section 2.22.1 of this Policy. In light of those purposes, the ~~Canadian securities regulatory authorities~~ CSA wish to bring a number of matters to the attention of the ~~persons or companies that prepare~~ preparers of simplified prospectuses.

**5.2 Catalogue Approach** - The Instrument requires that a multiple SP must present the fund-specific, or Part B, disclosure about each fund using a catalogue approach, with the disclosure about each mutual fund presented separately from the disclosure about each other mutual fund. ~~The Canadian securities regulatory authorities consider this~~ This requirement to ~~be~~ is a key element of the disclosure regime created by the Instrument and related forms and ~~expect that~~ so the catalogue approach ~~will~~ should be strictly followed.

**5.2.1 Accessibility of a Simplified Prospectus** - Mutual funds, managers, principal distributors and participating dealers should encourage investors who want more information about a mutual fund to both request and read the simplified prospectus and any of the documents incorporated



by reference into the simplified prospectus. The Instrument requires that a simplified prospectus or any of the documents incorporated by reference be sent within three business days of a request.

### **5.3 Additional Information**

(1) Paragraph 4.1(2)(a) of the Instrument provides that a simplified prospectus ~~shall~~must provide all information briefly and concisely. Paragraph 4.1(2)(e) of the Instrument requires that a simplified prospectus ~~shall~~ include only educational material or information that is specifically mandated or permitted by the required ~~form~~SP Form.

~~(2) As described in Part 2 of this Policy, the general requirements referred to in subsection (1) are important elements of the disclosure regime implemented by the Instrument and related forms. The Canadian securities regulatory authorities are of the view that simplified prospectuses must be restricted to key information and kept short in order to encourage as many potential investors as possible to read simplified prospectuses. (3) Item 12 of Part A and Item 14 of Part B of Form 81-101F1 permit disclosure of information required or permitted by securities legislation or by an order or ruling of the securities regulatory authority pertaining to the mutual fund that is not otherwise required to be disclosed by Form 81-101F1. This addition has been made to ensure that such information is not technically prohibited from being included in a simplified prospectus by paragraph 4.1(2)(e) of the National Instrument. Instruction (1) to Item 12 of Part A of Form 81-101F1 contains examples of the type of disclosure that may be appropriately included under these Items.~~

### **5.4 Inclusion of Educational Material**

(1) Paragraph 4.1(2)(e) of the Instrument permits the inclusion of educational material in a simplified prospectus. There are no requirements as to the location of any educational material; however, the ~~Canadian securities regulatory authorities~~CSA recommend that educational material contained in a simplified prospectus be close to mandated disclosure to which the educational material substantively relates.

(2) It is noted that educational material contained in a simplified prospectus is subject to the general requirements of the Instrument, and therefore should be presented in a manner consistent with the rest of the simplified prospectus. ~~Therefore~~That is, the educational material should be concise, clear and not so lengthy as to detract from the clarity or presentation of the balance of the simplified prospectus.

(3) The definition of “educational material” contained in section 1.1 of the Instrument excludes material that promotes a particular mutual fund or mutual fund family or the products or services offered by the mutual fund or mutual fund family. A mutual fund, mutual fund family or those products or services may be referred to in educational material as an example so long as the reference does not result in the promotion of those entities, products or services. Mutual funds should ensure that any material included within, attached to or bound with a simplified prospectus is educational material within the meaning of this definition.

**5.5 Format** - The ~~Canadian securities regulatory authorities~~ CSA emphasize that a simplified prospectus is required to use the headings and specified sub-headings exactly as they are set out in the Instrument. For sections for which no sub-heading is specified, a simplified prospectus is permitted to include sub-headings, under the required headings, if it is so desired.

## **PART 6 THE ANNUAL INFORMATION FORM**

**6.1 General Purposes** - The general purposes of an annual information form are described in section ~~2.32.1~~ 2.1 of this Policy. In light of those purposes, the ~~Canadian securities regulatory authorities~~ CSA wish to bring a number of matters to the attention of the ~~persons or companies that prepare~~ preparers of annual information forms.

~~**6.2 Accessibility of an Annual Information Form** - The Canadian securities regulatory authorities expect that mutual funds, managers of mutual funds, principal distributors and participating dealers will encourage investors who want more information about a mutual fund to both request and read annual information forms. The Instrument requires that an annual information form be sent within three business days of a request, and the Canadian securities regulatory authorities expect that mutual funds and their managers will be diligent in complying with this requirement.~~ **6.3 Consolidation of Annual Information Forms** - Subsection ~~5.45.3(1)~~ 5.3(1) of the Instrument requires the consolidation of annual information forms into a multiple AIF if the related simplified prospectuses are consolidated into a multiple SP. It is noted that the Instrument does not prevent the consolidation of annual information forms even if the related simplified prospectuses are not consolidated. Therefore, a mutual fund organization may prepare, for instance, one multiple AIF that pertains to all of its mutual funds, even if the simplified prospectuses for those mutual funds are not fully or even partially consolidated.

### **6.46.3 Additional Material**

(1) The Instrument and AIF Form do not prohibit the inclusion in an annual information form of information not specifically required by the AIF Form. Among other things, a mutual fund may therefore include educational information in an annual information form. Additional material in an annual information form is, however, subject to the general requirements contained in subsection 4.1(1) of the Instrument that all information must be presented in plain language and in a format that assists in readability and comprehension.

(2) The ~~Canadian securities regulatory authorities~~ CSA remind mutual funds that if they include additional information, such as educational material, in an annual information form to, they should ensure that the material is not included primarily for purpose of promotion. An annual information form is designed to be easily understandable to investors and less legalistic in its drafting than traditional prospectuses, but it still constitutes part of a prospectus under securities legislation.

## **PART 7 DELIVERY**

### **7.1 Delivery of the Simplified Prospectus and Annual Information Form**

~~(1) The Instrument contemplates~~Under section 3.2 of the Instrument, delivery to all investors of a simplified prospectus in accordance with the requirements of a fund facts document to an investor for an initial purchase in a mutual fund will satisfy the prospectus delivery requirements in securities legislation, and does not require the delivery of the documents. There is no requirement to deliver the simplified prospectus, any document incorporated by reference into the simplified prospectus unless requested. However, a mutual fund is free to or any document for subsequent purchases in a mutual fund, unless an investor requests it. However, a dealer may adopt a practice of routinely providing investors or potential investors with a fund facts document. Similarly, a mutual fund may adopt a practice of routinely providing investors or potential investors with a fund facts document, simplified prospectus, annual information form and financial statements and management reports of fund performance if it so chooses.

~~(2) The Canadian securities regulatory authorities~~CSA encourage mutual funds, their managers and principal distributors to make simplified prospectuses and participating dealers to make disclosure documents, particularly the fund facts document, available to potential investors as soon as possible in the sales process, in advance of any requirements contained in the Instrument or securities legislation, either directly or through dealers and others involved in selling mutual fund securities to investors.

~~(3) The Canadian securities regulatory authorities~~Nothing in the Instrument prevents disclosure documents to be prepared in other languages, provided they are delivered or sent in addition to any disclosure document filed and delivered in accordance with the Instrument. We would consider such documents to be sales communications.

~~(4) We do not consider the requirements of section 3.4 of the Instrument to be exclusive. Mutual funds are therefore encouraged to inform investors that they may use the mutual fund's Internet sites~~website and e-mail addresses to request further information and additional documents.

### **7.2 Delivery of the Fund Facts Document**

(1) The delivery of the fund facts document is a key component to the three principles discussed in subsection 2.1(2) of this Policy.

(2) The CSA recognize that investors will have differing needs in receiving disclosure documents. The timing of delivery of the fund facts document, therefore, depends on the type of purchase and who is initiating the purchase. A central factor is the distinction between investors who rely on a dealer's recommendation and those who do their own research and simply want to execute a trade. In this way, the timing of the delivery of the fund facts document is based largely on the nature of an investor's relationship with their dealer and on the circumstances of the purchase.

(3) Part 3A of the Instrument requires delivery of the most recently filed fund facts document before the initial purchase of a mutual fund (except for money market mutual funds) that is recommended by a dealer. An investor can choose to receive the fund facts document with the trade confirmation, instead of before the purchase, for an initial purchase of a money market mutual fund or for an initial purchase of any type of mutual fund that is not recommended by the dealer. An investor who makes an initial purchase of a mutual fund through an order execution-only service will receive the fund facts document with the trade confirmation.

A flow chart summarizing the delivery requirements is set out in Appendix B to this Policy.

(4) The most recently filed fund facts document is the fund facts document filed with the simplified prospectus and annual information form, or any fund facts document filed in accordance with securities legislation after that date, for example, an amended fund facts document or updated fund facts document.

(5) In accordance with existing practices, dealers must establish internal policies and procedures to ensure delivery of the fund facts document occurs in accordance with Part 3A. Dealers must maintain evidence of delivery of the fund facts document, as well as client instructions that waive delivery of the fund facts document, as permitted by the Instrument. We think that existing dealer practices to maintain evidence of required disclosures will be sufficient to document delivery of the fund facts document.

(6) The term “order execution-only service” is defined in paragraph 3A.1 of the Instrument. This includes trades executed through discount brokerages, or through full service dealers that offer an order execution-only service.

(7) Nothing in Part 3A of the Instrument is intended to detract from existing duties on dealers, including know-your-client and suitability obligations and a general duty to deal fairly, honestly and in good faith.

### **7.3 Initial Purchases**

(1) The term “initial purchase” is defined in paragraph 3A.1 of the Instrument. If an investor held a mutual fund, sold it all and bought the same mutual fund later, the CSA would consider that purchase to be an initial purchase. If an investor purchases a new class or series of a security of a mutual fund currently held, we would also consider that purchase to be an initial purchase. Switches from one mutual fund to another mutual fund will be an initial or subsequent purchase depending on whether the investor already holds the class or series of the mutual fund being purchased.

(2) Under section 3A.2 of the Instrument, two conditions must be met to satisfy the delivery of the fund facts document for an initial purchase of a security of a mutual fund. Before entering the agreement to purchase:

- the dealer must deliver the most recently filed fund facts document to the investor; and

- once delivered, the dealer must bring the fund facts document to the attention of the investor.

(3) To satisfy the requirement to bring a fund facts document to the attention of the investor, a dealer will need to convey sufficient information about the purpose of a fund facts document to enable a reasonable investor to link the fund facts document to the purchase they are considering. Dealers should maintain adequate records to evidence that disclosure about the fund facts document has been brought to the attention of investors in compliance with paragraph 3A.2(1)(b) of the Instrument.

#### **7.4 Subsequent Purchases**

Subsection 3A.2(2) of the Instrument specifies that a dealer does not have to deliver a fund facts document for an order or subscription for a purchase of a mutual fund that is not an initial purchase, as defined in the Instrument. For the purposes of Part 3A of the Instrument, a subsequent purchase is the purchase of more units or shares of a mutual fund currently held in the investor's account. This would include purchases made under a pre-authorized purchase plan and switches under an asset allocation plan.

#### **7.5 Dealer Recommended and Non-Recommended Purchases**

(1) Except for the purchase of a money market mutual fund, the timing of delivery of the fund facts document depends on who is initiating the transaction. To meet the delivery requirements in section 3A.3 of the Instrument, a dealer must determine whether a particular purchase of a mutual fund by an investor has been recommended by the dealer or not. In making this determination, a dealer should consider whether a reasonable person in the circumstance would come to the same conclusion. For example, if an investor makes an investment decision based on his or her own research, and solicits the dealer to simply execute the trade, the CSA would consider that purchase not to be recommended by the dealer.

(2) The CSA recognize that the specific facts of a transaction will determine whether a purchase is identified as dealer recommended or non-recommended. Dealers should look to industry best practices, as well as regulatory guidance, in making this determination. Dealers should establish policies and procedures to ensure purchases of mutual funds are appropriately classified and recorded either as dealer recommended purchases or non-recommended purchases.

(3) Under section 3A.3 of the Instrument an investor may waive the requirement of delivery of the fund facts document before entering into the agreement to purchase and choose to receive the fund facts document with the trade confirmation in two circumstances:

- when the dealer recommends the initial purchase of a money market fund; and
- when the initial purchase is initiated by the investor

(4) Before an investor may waive delivery of a fund facts document in the circumstances referred to in subsection (3), paragraph 3A.3(2)(b) of the Instrument requires the dealer to have conveyed

to the investor sufficient information about the fund facts document for the investor to determine when they wish to receive the fund facts document. This may include describing the purpose of the fund facts document, the type of information it contains and advising investors that they are entitled to receive and review the fund facts document before entering into the agreement to purchase the mutual fund. Dealers should maintain adequate records to evidence that disclosure about the fund facts document has been provided to investors in compliance with paragraph 3A.3(1)(b).

(5) In the instances where an investor has the option to waive delivery of the fund facts document before entering into an agreement to purchase a mutual fund, this waiver should occur with each initial purchase.

(6) Subsection 3A.3(3) of the Instrument requires that the most recently filed fund facts document must be delivered with the trade confirmation for all initial purchases of a mutual fund for which delivery of the fund facts document is not required before entering into the agreement to purchase.

## **7.6 Methods of Delivery**

(1) The method of delivering a fund facts document is flexible. Part 3A1 of the Instrument contemplates that a dealer may deliver a fund facts document in person, by mail, by fax, electronically or by other means. The CSA do not consider oral delivery or the availability of the fund facts document alone to satisfy delivery under the Instrument.

(2) When a dealer is required to deliver or send a fund facts document before the agreement to purchase, the Instrument does not prescribe the timing. What constitutes delivery ‘before’ is intended to be flexible, provided it occurs within a reasonable timeframe of the investor making the investment decision. Investors must be able to find information about the mutual fund and link it to a particular purchase they are considering at a later date.

## **7.7 Electronic Delivery**

(1) Any fund facts document required to be delivered or sent under Part 3A of the Instrument may be sent by electronic delivery. Electronic delivery may include sending an electronic copy of a fund facts document directly to the investor as an attachment or link, or directing the investor to a specific fund facts document on a website.

(2) Simply making the fund facts document available on a website or referring an investor to a website address with the fund facts document does not constitute delivery under the Instrument, even if the investor consents to that method of delivery. ‘Directing’ an investor to a fund facts document on a website would generally involve the dealer providing real-time instruction to an investor to locate the fund facts document, or providing an internet link that takes the investor to the specific fund facts document.

(3) For the delivery to be effective, electronic access to a fund facts document must not be burdensome or overly complicated for investors. Accordingly, we consider it unlikely that

'directing' an investor to a specific fund facts document on www.sedar.com or an equivalent third party provider will constitute delivery under the Instrument. For electronic delivery, the dealer should ensure an investor can view the fund facts document.

(4) In addition to the requirements in the Instrument and the guidance in this section, dealers may want to refer to National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Québec, *Notice 11-201 Relating to The Delivery of Documents by Electronic Means* for additional guidance.

## **7.8 Annual Option to Receive Fund Facts Document**

(1) The CSA recognize that some investors may find it useful to receive updated fund facts document annually. Accordingly, section 3A.5 of the Instrument requires a dealer to deliver or send annually in accordance with a client's instructions the most recently filed fund facts document for each mutual fund held by the client in an account with the dealer.

(2) The section gives dealers flexibility in how they solicit delivery instructions from clients. A dealer may obtain annual instructions, standing instructions or use any means it has at its disposal to obtain instructions from clients. The section does not prescribe the timing of the annual delivery. The CSA anticipate that dealers will choose to deliver to clients any applicable fund facts document on an annual basis concurrently with other documents or information being sent to clients.

(3) When soliciting delivery instructions from a client, a dealer can deem no response from the client to be a request by the client to receive all, some or none of the fund facts documents for each mutual fund held by the client. Dealers should make clear what the consequence of no response will be to the client.

(4) Dealers should give clients a reasonable amount of time to respond to a request for instructions. Dealers should provide clients with complete contact information for the dealer, including a toll-free telephone number or a number for collect calls and an email address.

(5) Subsection 3A.5(4) of the Instrument permits the fund facts documents for all of the mutual funds held by the client to be bound together. There is no prohibition against binding a fund facts document with other materials or documents when delivering a fund facts document to a client who has requested it.

(6) Dealers should establish policies and procedures to demonstrate they have used appropriate and reasonable means to solicit delivery instructions from clients and effect delivery.

**7.9 Delivery of Documents by a Mutual Fund** - Section 3.3 of the Instrument requires that a mutual fund deliver or send to a person or company, upon request, a simplified prospectus or documents incorporated by reference. The ~~Canadian securities regulatory authorities~~ CSA are of the view that compliance with this specifically-mandated requirement by an unregistered entity is not a breach of the registration requirements of securities legislation.

### **7.3 Delivery of Separate Part A and Part B Sections**

(1) Mutual fund organizations that create physically separate Part B sections are reminded of section 3.2 of the Instrument, which provides that the requirement under securities legislation to deliver or send a prospectus for a mutual fund is satisfied by the delivery or sending of a simplified prospectus for the mutual fund. This obligation would be satisfied only by the delivery of both the Part A and Part B sections of a simplified prospectus. Particularly in the case of a switch by an investor from one mutual fund to another in a mutual fund family, the mutual fund organization must ensure that the investor is provided with the Part B section of the simplified prospectus pertaining to the mutual fund just purchased, even if the Part A section of the simplified prospectus was previously delivered.

(2) Subsection 5.3(2) of the Instrument permits Part B sections that have been bound separately from the related Part A section to either be bound individually or together, at the option of the mutual fund organization. There is no prohibition against the same Part B section of a multiple SP being bound by itself for distribution to some investors, but also being bound with the Part B section of other mutual funds for distribution to other investors.

**7.47.10 Delivery of Non-Educational Material** - The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with either of the simplified prospectus or the and annual information form. This type of material may, therefore, be delivered with, but cannot be included within, ~~wrapped around, or attached or bound to, the~~ the simplified prospectus and/or annual information form. Section 5.4 of the Instrument sets out what materials or documents are permitted to be included with, wrapped around or attached or bound to, the fund facts document for the purposes of delivery under the Instrument.

**7.11 Failure to Deliver** – Section 3.2.1 of the Instrument provides for a right of rescission or damages against a dealer who fails to deliver the fund facts document in accordance with the Instrument within 180 days after the date of the transaction. In the case of an action for rescission under that section, a purchaser is entitled to receive the net asset value of the securities at the time of purchase and must be reimbursed for all sales charges and fees arising from the purchase.

## **PART 8 COMMENTARY ON INVESTMENT AND RELATED DISCLOSURE**

**8.1 Investment Disclosure** - The FF Form and SP Form requiresrequire detailed disclosure concerning a number of aspects of the investment approach taken by a mutual fund, including disclosure concerning fundamental investment objectives, investment strategies, and risk and risk management. The SP Form has been prepared to require better disclosure in this regard than what was required under NP36. The Canadian securities regulatory authorities CSA emphasize the importance that they attach to ~~this~~ these disclosure documents, and note that, for many mutual funds, the best persons to prepare and review the disclosure are the portfolio advisers of the mutual fund. Therefore, ~~it is~~ we ~~highly recommended~~ recommend that those persons play an important role in the preparation and review of this disclosure.



**8.2 Portfolio Advisers** – The AIF Form requires disclosure concerning the extent to which investment decisions are made by particular individuals employed by a portfolio adviser, or by committee, and requires in section Section 10.3(3)(b) of the AIF Form ~~that requires~~ certain ~~specified information be given about these~~ the individuals principally responsible for the investment portfolio of the mutual fund. Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* requires a simplified prospectus and a fund facts document to be amended if a material change occurs in the affairs of the mutual fund that results in a change to the disclosure in the simplified prospectus and fund facts document. Reference is made to section 7.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* for a discussion of when a departure of a high-profile individual from a portfolio adviser of a mutual fund may constitute a material change for the mutual fund. ~~Mutual funds should consider these provisions if and when they encounter the departure of such a person from a portfolio adviser. If such a~~ If the departure is not a material change for the mutual fund, ~~then there is no requirement for an amendment to amend~~ a simplified prospectus, subject to the general requirement that a simplified prospectus contain full, true and plain disclosure about the mutual fund.

## **PART 9 NEED FOR MULTIPLE OR SEPARATE APPLICATIONS**

### **9.1 Need for Multiple or Separate Applications**

(1) ~~The Canadian securities regulatory authorities note that a~~ A person or company that obtains an exemption from a provision of the Instrument need not apply again for the same exemption at the time of each simplified prospectus ~~and~~, annual information form and fund facts document refiling unless there has been some change in an important fact relating to the granting of the exemption.

(2) ~~It should be noted that the~~ The principle described in subsection (1) does not necessarily apply to applications required to be made under the Regulations to the Securities Act (Quebec) for relief from provisions of those Regulations that are substantially similar to those contained in the Instrument. In that case, an application may be required with each refiling of a simplified prospectus ~~and~~, annual information form and fund facts document of a mutual fund.

(3) In Quebec, it may be necessary to apply for exemptions from the equivalent sections in the Act and the Regulations. [~~Amended March 17, 2008~~]

## **PART 10 CANCELLATION RIGHTS**

**10.1 General Purposes** – Securities legislation provides investors with the opportunity to change their mind after buying a mutual fund, a so-called cooling-off period. Securities legislation also provides investors with recourse if the disclosure documents contain incomplete or inaccurate information, or if the investor does not receive the fund facts document as required under the Instrument.

## **10.2 Cancellation Right**

(1) Section 2.9 of the Instrument gives investors a right to cancel a mutual fund purchase within two business days after receiving the trade confirmation by providing written notice to their dealer. In Ontario, a similar right allows a purchase of a mutual fund security to be rescinded for purchases not exceeding \$50,000. This right of rescission expires 180 days after the date of the purchase.

(2) Under subsection 2.9(3) of the Instrument, an investor will get back the lesser of the amount of the net asset value of the securities of the mutual fund on the day of the original investment and the net asset value of the securities of the mutual fund on the day the investor exercises the cancellation right. Net asset value on the day of exercise will be calculated like any other transaction. The section specifies that the investor will get back any costs associated with the purchase, such as sales charges. An investor exercising this right must not pay any redemption fees or short-term trading fees.

## **PART 11 TRANSITION**

### **11.1 Transition**

(1) Part 7 of the Instrument provides for a transitional period after the Instrument comes into force. Any mutual fund that files a preliminary or pro forma prospectus after the effective date of the Instrument is required to file a fund facts document. The CSA anticipate that all mutual funds that existed before the Instrument came into force will file a fund facts document as part of the mutual funds' renewal process following the effective date of the Instrument.

(2) The requirement to deliver the fund facts document in accordance with the Instrument does not apply until two years after the date the Instrument comes into force. Until this date, the prospectus delivery requirements under securities legislation in effect before the effective date of the Instrument apply. This includes the timing of delivery. During the two-year transition period, a simplified prospectus that is delivered or sent must comply with the packaging requirements of the Instrument in effect before the effective date of the Instrument.

(3) Section 7.3 of the Instrument gives a dealer the option of satisfying the prospectus delivery requirements under securities legislation during the two-year transition period for the delivery requirements under the Instrument by delivering or sending the most recently filed fund facts document instead of the simplified prospectus. Delivery of the fund facts document during this transition period is in accordance with the prospectus delivery requirements under securities legislation in effect before the effective date of the Instrument. Therefore, delivery of the fund facts document is not required to be before the time of purchase. A fund facts document delivered or sent during this period must comply with the binding requirements of section 5.4 of the Instrument.

(4) Part 7 of the Instrument specifies that the withdrawal and rescission rights under securities legislation in effect before the date that the Instrument comes into force will continue to apply to

the delivery of the simplified prospectus or the fund facts document during the two-year transition period for the delivery requirements under the Instrument.

(5) To comply with transitional delivery of the fund facts document referred to in subsection (3), the most recently filed fund facts document for the purposes of delivery is the fund facts document filed with the simplified prospectus and annual information form, or any fund facts subsequently filed in accordance with the Instrument after that date, for example, an amended fund facts or updated fund facts.

(6) Although the Instrument contemplates an initial purchase to be the purchase of a mutual fund not currently held in an investor's account, section 7.4 of the Instrument requires that a dealer deliver or send the most recently filed fund facts document in accordance with Part 3A for the first purchase of any mutual fund that occurs following the date the Instrument comes into force. This transitional provision applies to all first purchases of a mutual fund whether or not held in the investor's account and whether or not the fund facts document was delivered during the transitional period.

2. This Policy comes into force on ●.

## Appendix B to Commentary – Delivery Flow Chart

The following flow chart summarizes the delivery requirements that apply to a fund facts document:

Type of account	Type of trade	Type of fund	Time of delivery		
			Initial purchase	Subsequent purchase	Annually
Full-service	Adviser-recommended	All funds other than money market	• Before or at point of sale	No delivery	Investor will be given option to receive annually <i>Fund Facts</i> for all funds held.
		Money market	• Before or at point of sale OR • With trade confirmation if investor chooses		
	Investor-initiated	All funds	• With trade confirmation if investor chooses		
Order execution-only	All	All funds	• With trade confirmation		

## APPENDIX C

### Schedule 6

#### Companion Policy 81-101CP to National Instrument 81-101 Mutual Fund Prospectus Disclosure

#### AMENDMENT INSTRUMENT

This is an unofficial consolidation of Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. No part of this document represents an official statement of law.

1. Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.

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**Companion Policy 81-101CP to National Instrument 81-101  
Mutual Fund Prospectus Disclosure**

**PART 1 PURPOSE OF THE COMPANION POLICY**

**1.1 Purpose of the Companion Policy** - The purpose of this Companion Policy is to state the views of the Canadian Securities Administrators (CSA or we) on various matters relating to the Instrument, including,

- (a) a discussion of the general approach taken by the CSA in, and the general regulatory purpose for, the Instrument;
- (b) explanation and discussion of various parts of the Instrument; and
- (c) examples of some matters described in the Instrument.

**PART 2 PURPOSE AND GENERAL APPROACH OF THE INSTRUMENT**

**2.1 Purpose of the Instrument**

(1) The purpose of the Instrument is to ensure that the disclosure regime for mutual funds provides investors with disclosure documents that clearly and concisely state information that investors should consider in connection with an investment decision about the mutual fund, while recognizing that investors have differing needs in receiving disclosure.

(2) The disclosure regime for mutual funds is built on three main principles:

- providing investors with key information about a mutual fund;
- providing the information in a simple, accessible and comparable format; and
- providing the information before investors make their decision to buy.

(3) We use the following approaches in the Instrument to achieve the principles referred to in subsection (2):

1. The Instrument has been designed to ensure that investors receive disclosure documents that will be helpful to them, and to permit some flexibility in designing those documents in order to assist investors.

2. The Instrument requires a mutual fund summary document called the ‘fund facts’, which contains key information about a mutual fund. The fund facts document is intended to provide investors with sufficient information about the potential benefits, risks and costs of investing in a mutual fund.

3. The Instrument further permits the use of two other disclosure documents by a mutual fund: a simplified prospectus and an annual information form, which are available on request, and that, together with the financial statements, the management reports of fund performance and the fund facts document, contain full, true and plain disclosure about the mutual fund. These documents are available to investors to provide more detailed information about a mutual fund.

4. The Instrument requires, in subsection 4.1(1), that the simplified prospectus, fund facts document and annual information form be prepared using plain language and in a format that assists in readability and comprehension. The Instrument and related forms provide detailed requirements on the content and format of these documents.

5. The Instrument recognizes that investors have differing needs in receiving mutual fund disclosure and provides for flexibility in delivery of the fund facts document based on the type of purchase and who is initiating the transaction.

(4) Mutual funds, managers and participants in the mutual fund industry should prepare disclosure documents and carry out delivery in a manner that is consistent with the spirit and intent of the Instrument.

### **2.1.1 Fund Facts Document**

(1) The Instrument requires each investor in a mutual fund to receive a fund facts document for the initial purchase of the mutual fund. An ‘initial purchase’ is defined in the Instrument. The fund facts document must be in plain language, generally fit on both sides of one page, and highlight key information important to investors, including performance, risk and cost. The fund facts document is incorporated by reference into the simplified prospectus.

(2) The Instrument and Form 81-101F3 (the “FF Form”) set out detailed requirements on the content and format of a fund facts document, while allowing some flexibility to accommodate different kinds of mutual funds. The requirements are designed to ensure that the information in a fund facts document of a mutual fund is clear, concise, understandable and easily comparable with information in the fund facts document of other mutual funds.

### **2.2 Simplified Prospectus**

(1) A simplified prospectus is the prospectus for the purposes of securities legislation. While the Instrument specifies that the requirement under securities legislation to deliver the prospectus is satisfied by delivery of the fund facts document, an investor may request to receive the simplified prospectus, or any document incorporated by reference into the simplified prospectus.

(2) The Instrument and Form 81-101F1 (the “SP Form”) set out detailed requirements on the content and format of a simplified prospectus. The requirements are designed to ensure that the information about a mutual fund in a simplified prospectus is clear, concise, understandable, well-organized and easily comparable with other mutual funds.



## **2.3 Annual Information Form**

(1) The Instrument requires that a supplemental disclosure document, the annual information form, will be provided to any person on request. The annual information form is incorporated by reference into the simplified prospectus.

(2) Information contained in the related simplified prospectus will generally not be repeated in an annual information form except as necessary to make the annual information form comprehensible as an independent document. In general, an annual information form is intended to provide disclosure about different matters than those discussed in the fund facts document and simplified prospectus, such as information concerning the internal operations of the manager of the mutual fund, which may be of assistance or interest to some investors.

(3) The Instrument and Form 81-101F2 (the “AIF Form”) allow for more flexibility in the preparation of an annual information form than is the case with a simplified prospectus. The rules pertaining to the order in which information is to be disclosed in an annual information form are not as stringent as for a fund facts document or a simplified prospectus. An annual information form may include information not specifically required by the AIF Form.

**2.4 Financial Statements and Management Reports of Fund Performance** – The Instrument contemplates that the mutual fund’s most recently audited financial statements, and any interim statements filed after those audited statements, as well as the mutual fund’s most recently filed annual management report of fund performance, and any interim management report of fund performance filed after that annual management report, will be provided upon request to any person or company requesting them. Like the fund facts document and the annual information form, these financial statements and management reports of fund performance are incorporated by reference into the simplified prospectus. The result is that future filings will be incorporated by reference into the simplified prospectus, while superseding the financial statements and management reports of fund performance previously filed.

## **2.5 Filing and Delivery of Documents**

(1) Section 2.3 of the Instrument distinguishes between documents that are required by securities legislation to be “filed” with the securities regulatory authority and those that must be “delivered” or “sent” to the securities regulatory authority. Documents that are “filed” are on the public record, and documents that are “delivered” or “sent” are not necessarily on the public record. All documents required to be filed under the Instrument must be filed in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

(2) Section 1.1 of the Instrument defines “business day” as any day other than a Saturday, Sunday or a statutory holiday. In some cases, a statutory holiday may only be a statutory holiday in one jurisdiction. The definition of business day should be applied in each local jurisdiction in which a prospectus is being filed. For example, section 5.1.2 of the Instrument states that the date of the certificate in a simplified prospectus must be within 3 business days before the filing of the simplified prospectus. For example, the certificates in the simplified prospectus are dated Day 1. Day 2 is a statutory holiday in Québec but not in Alberta. If the simplified prospectus is

filed in both Alberta and Québec, it must be filed no later than Day 4 in order to comply with the requirement in section 5.1.2 of the Instrument, despite the fact that Day 2 was not a business day in Québec. If the simplified prospectus is filed only in Québec, it could be filed on Day 5.

## **2.6 Supporting Documents**

(1) Subsection 2.3(6) of the Instrument permits the filing of certain material contracts from which certain commercial or financial information was deleted in order to be kept confidential. We think that information such as fees and expenses and non-competition clauses is the type of information that could be kept confidential under this provision. In these cases, the benefits of disclosing that information to the public are outweighed by the potentially adverse consequences of disclosure for mutual fund managers and portfolio advisers. However, the basic terms of these agreements must be included in the contracts that are filed. These terms would include the provisions relating to the term and termination of the agreements and the rights and responsibilities of the parties to the agreements.

## **2.7 Amendments**

(1) Paragraph 2.1(1)(d) of the Instrument requires an amendment to an annual information form to be filed whenever an amendment to a simplified prospectus is filed. Similarly, subsection 2.3(5.1) of the Instrument requires an amendment to an annual information form to be filed whenever an amendment to a fund facts document is filed. If the substance of the amendment to the fund facts document or to the simplified prospectus would not require a change to the text of the annual information form, the amendment to the annual information form would consist only of the certificate page referring to the mutual fund to which the amendment to the fund facts document or the simplified prospectus pertains.

(2) Paragraph 2.1(1)(e) of the Instrument requires a mutual fund to file an amendment to a fund facts document when a material change to the mutual fund occurs that requires a change to the disclosure in the fund facts document. This mirrors the requirement in paragraph 11.2(1)(d) of National Instrument 81-106 *Investment Fund Continuous Disclosure*. We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the mutual fund to be material changes. However, changes to the mutual fund's investment objective and risk profile would generally constitute a material change under securities legislation.

(3) The commercial copies of an amended and restated simplified prospectus, annual information form and fund facts document can be created by reprinting the entire document or by using stickers on an existing document that provide the new text created by the amendment. If stickers are used, one sticker will be required for the substance of the amendments and a separate sticker will be required for the cover page of the document that describes the type and date of the document, as applicable.

(4) The requirements in section 2.2 of the Instrument apply to both an amendment to a full simplified prospectus and an amendment only to a Part A or Part B section of a simplified prospectus in cases where the Part A and Part B sections are bound separately. Section 2.2 of the Instrument requires amendments to various parts of a multiple SP to be evidenced as follows:

**1. Multiple SP with Part A and the Part B sections bound together.** An amendment to either or both of the Part A or Part B sections could be in the form of a free standing amending instrument that would be delivered to investors with the rest of the multiple SP. The amending instrument would be identified, in accordance with subsection 2.2(3) of the Instrument, as “Amendment No. [insert number], dated [date of amendment] to the simplified prospectus document for the [name of funds] dated [date of original document]”. Or, the amendment could be in the form of a restated and amended multiple SP document, identified as such in accordance with subsection 2.2(3).

**2. Multiple SP with Part A and the Part B sections are bound separately.** If there is an amendment to the Part A section of the document but not to a Part B section, the amendment could be in the form of an amending document or an amended and restated Part A document. An amending document could be identified as “Amendment No. [insert number], dated [date of amendment], to the Part A section of the simplified prospectuses of the [name of funds] dated [original date of multiple SP]”, and the amended and restated Part A document could be identified as “Amended and Restated Simplified Prospectuses dated [date of amendment] of the [name of funds], amending and restating the Simplified Prospectuses dated [original date of document].”.

3. In the circumstances described in paragraph 2 above, no amendment is required to be made to the Part B sections of the multiple SP. The footer required by Item 1 of Part B of Form 81-101F1 to be contained on the bottom of each page of a Part B section will continue to show the date of the original Part A document. For this reason, the amended Part A document must be identified in a way that shows the date of the amendments and the original date of the document so that investors know it relates to the corresponding Part B sections.

4. If there is an amendment to a Part B section of a multiple SP with Part A and Part B sections bound separately, the amendment must be made by way of an amended and restated Part B document, whether or not an amendment is being made to the Part A section. If no amendment to the Part A section is being made, no amendment is required to the Part A document. The amended and restated Part B document will include a statement in the footer required by Item 1 of Part B of Form 81-101F1 that identifies the document as a document that amends and restates the original Part B document.

(5) Subsection 2.2(2.1) of the Instrument requires an amendment to a fund facts document to be in the form of a restated and amended fund facts document. An amended fund facts document does not have to be otherwise identified, except for the date of the amendment.

(6) An amendment to a prospectus of a mutual fund, even if it amends and restates the prospectus, does not change the date under Canadian securities legislation by which the mutual fund must renew the prospectus. That date, which is commonly referred to as the “lapse date” for the prospectus, remains that date established under securities legislation. An amendment to a fund facts document will not change the lapse date for the prospectus.

(7) Securities legislation provides that no person or company shall distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued by the

securities regulatory authority or regulator. We interpret this requirement to also apply to mutual funds. If a mutual fund adds a new class or series of securities to a simplified prospectus that is referable to a new separate portfolio of assets, a preliminary simplified prospectus must be filed, together with a preliminary annual information form and preliminary fund facts document. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by an amendment to the simplified prospectus. In this circumstance, a preliminary fund facts document for the new class or series must still be filed, as set out in subparagraph 2.1(1)(d)(iii) of the Instrument.

**2.8 Websites** – The Instrument requires in section 2.3.2 that a mutual fund post its fund facts document to the website of the mutual fund, the mutual fund’s family or manager, as applicable. A fund facts document should remain on the website at least until the posting of the next fund facts document for the mutual fund. A fund facts document should be displayed in an easily visible and accessible location on the website and presented in a format that is convenient for both reading online and printing on paper.

### **PART 3 PLAIN LANGUAGE AND PRESENTATION**

**3.1 Plain Language** - Subsection 4.1(1) of the Instrument requires that a simplified prospectus, annual information form and fund facts document be written in plain language. The reason for using “plain language” is to communicate in a way that ensures the audience can immediately understand what you tell them. The plain language approach focuses on the needs and abilities of the audience to ensure that the content of a communication is relevant, the organization of the information is logical, the language is appropriate and the presentation is visually appealing.

Mutual funds should consider the following plain language techniques in preparing their documents:

- Organize the document into clear, concise sections, paragraphs and sentences
- Use:
  - common everyday words
  - technical, legal and business terms only when unavoidable and provide clear and concise explanations for them
  - the active voice
  - short sentences and paragraphs
  - a conversational and personal tone
  - examples and illustrations to explain abstract concepts
- Avoid:
  - superfluous words
  - unnecessary technical, legal and business jargon
  - vague boilerplate wording
  - glossaries and defined terms unless they aid in understanding the disclosure
  - abstractions by using more concrete terms or examples
  - excessive detail

- multiple negatives

### **3.2 Presentation**

(1) Subsection 4.1(1) of the Instrument requires that a simplified prospectus, annual information form and fund facts document be presented in a format that assists in readability and comprehension. The Instrument and related forms also set out certain aspects of a simplified prospectus, annual information form and fund facts document that must be presented in a required format, requiring some information to be presented in the form of tables, charts or diagrams. Within these requirements, mutual funds have considerable flexibility in the format used for simplified prospectuses, annual information forms and fund facts documents.

The formatting of documents can contribute substantially to the ease with which the document can be read and understood. Mutual funds should consider using the following formatting ideas when preparing their documents:

- reasonably-sized, easy-to-read typefaces
- headings that are clearly differentiated from the body text
- bulleted or numbered lists
- margins, boxes or shading to highlight information or for supplementary information
- tables, graphs and diagrams for complex information
- “question and answer” format to organize information
- sufficient white space on each page
- images, colour, lines and other graphical elements
- avoiding the use of upper-case, bold, italic or underlining in blocks of text
- avoiding full-justified margins.

(2) We think documents would be easier to read and understand with the use of the design features set out in subsection (1). The use of logos and pictures that accurately depict aspects of the mutual fund industry, the mutual fund or mutual fund family or products and services offered by the mutual fund family may also aid in comprehension and readability. However, mutual funds should exercise caution when using design features in their documents, as excessive use or crowding of design features might make the documents more difficult to read or understand.

(2.1) Subsection 4.1(3) of the Instrument requires the information in a fund facts document be written overall at a grade level of 6.0 or less on the Flesch-Kincaid grade level scale. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding

grade level. For the purposes of the Instrument, the Flesch-Kincaid score of a document may be determined by the use of Flesch-Kincaid tests built into commonly used word processing programs.

(3) On occasion, we have seen amendments to simplified prospectuses prepared in highly legal and technical styles. For example, some amendments merely reference specific lines or sections of a simplified prospectus that are being amended, without providing the reader with a restated section or an explanation for the changes. In addition, some amendments have been presented in the form of photocopies of some other documents, such as meeting materials, with the word “amendment” written on the top of the photocopy. We think that these approaches are inappropriate ways of amending a simplified prospectus, annual information form or fund facts document under the Instrument.

Material changes to mutual funds must be described in a format that assists in readability and comprehension, as required by subsection 4.1(1) of the Instrument. Therefore, amendments should be expressed clearly, and in a manner that enables the reader to easily read and understand both the amendment and the revised sections of the relevant document. This manner of expression may require the preparation of either an amended and restated simplified prospectus or annual information form or a clearly worded amendment insert for the existing simplified prospectus or annual information form. Any amendment to a fund facts document must be in the form of an amended and restated fund facts document.

## **PART 4 THE MULTIPLE SP**

### **4.1 General Provisions Relating to a Multiple SP**

(1) A consolidated “simplified prospectus” pertaining to a number of mutual funds is in law a number of separate simplified prospectuses, one simplified prospectus for each mutual fund. Further, a receipt issued by the securities regulatory authority in connection with a consolidated “simplified prospectus” in law represents a separate receipt for the simplified prospectus pertaining to each mutual fund. The Instrument and the SP Form make clear that a simplified prospectus under the Instrument pertains to one mutual fund and use the term “multiple SP” to refer to a document that contains more than one simplified prospectus.

(2) Under the Instrument, a simplified prospectus consists of two sections: a Part A section, which provides introductory information about the mutual fund, general information about mutual funds and information applicable to the mutual funds managed by the mutual fund organization, and a Part B section, which contains specific information about the mutual fund.

(3) The Instrument states that simplified prospectuses must not be consolidated to form a multiple SP unless the Part A section of each simplified prospectus is substantially similar. We think the term “substantially similar” would be applicable in this context if there is a high degree of similarity between the Part A sections of the simplified prospectuses that are proposed to be consolidated. This option would be available generally to mutual funds in the same mutual fund family that are administered by the same entities and operated in the same manner. There may be

some deviation among the disclosure that would be provided for some of the mutual funds; those deviations have been largely contemplated by the SP Form.

(4) In order to maximize flexibility for mutual funds and managers and improve the accessibility of disclosure provided to investors, the Instrument allows the Part B sections of a multiple SP to be bound separately from the Part A section. In addition, the Instrument permits the physical separation of each Part B section that pertains to a different mutual fund. This would permit an investor to be provided with a Part A section that described the mutual fund family and mutual fund organization generally, and only the mutual fund-specific disclosure that relates to the mutual fund or mutual funds in which the investor is interested. This approach could permit a “back pocket” approach in which the Part B sections of a simplified prospectus could be inserted in a pocket of the Part A section of the document.

(5) The Instrument contains no restrictions on how many simplified prospectuses can be consolidated into a multiple SP.

#### **4.2 Adding Additional Funds to a Multiple SP**

(1) Mutual funds may create and file a document that contains both a pro forma simplified prospectus and a preliminary simplified prospectus in order to include the disclosure of a new mutual fund in documents that already pertain to existing mutual funds.

(2) It is also possible to add a new mutual fund to a multiple SP that contains final simplified prospectuses. In this circumstance, an amended multiple SP and multiple AIF containing disclosure of the new mutual fund, as well as a new fund facts document for each class or series of the new mutual fund would be filed. The preliminary filing would constitute the filing of a preliminary simplified prospectus, fund facts document and annual information form for the new mutual fund and a draft amended and restated simplified prospectus and annual information form for each existing mutual fund. Once comments concerning the document had been cleared, a final filing of the documents could be made; these documents would be a simplified prospectus, annual information form and fund facts document for the new mutual fund and an amended and restated simplified prospectus and annual information form for each previously existing mutual fund. An amendment to an existing fund facts document would generally not be necessary.

(3) An amendment to a prospectus of a mutual fund does not change the “lapse date” of the prospectus under Canadian securities legislation. Mutual funds are encouraged to pay particular attention to this issue when following the procedures described in subsection (2).

## **PART 4.1 THE FUND FACTS DOCUMENT**

**4.1.1 General Purposes-** The general purposes of the disclosure regime for mutual funds and of the fund facts document are described in section 2.1 of this Policy. This Part provides guidance to preparers of the fund facts document in meeting those purposes.

A sample fund facts document is set out in Appendix A to this Policy. The sample is provided for illustrative purposes only.

**4.1.2 Multiple Class Mutual Funds** – The purpose for the requirements on the content and format of a fund facts document is to give investors the opportunity to easily compare the key information of one mutual fund to another. For many mutual funds, the class or series may affect not only the management expense ratio and performance, but a number of other considerations as well, such as minimum investment amounts, distributions, suitability, dealer compensation and sales charge options. For this reason the Instrument requires a fund facts document to be prepared for each class and each series of a mutual fund that is referable to the same portfolio of assets.

### **4.1.3 Filings**

(1) Section 2.1 of the Instrument requires that a fund facts document for each class and series of the securities of a mutual fund be filed concurrently with the mutual fund's simplified prospectus and annual information form.

(2) Section 2.3.1 of the Instrument allows a mutual fund to periodically update the disclosure in a fund facts document by filing on SEDAR an updated fund facts in accordance with the section. These filings do not require the issuance of a receipt and are in addition to any required filing under Part 2 of the Instrument.

(3) The most recently filed fund facts document for a mutual fund is incorporated by reference into the simplified prospectus under section 3.1 of the Instrument, with the result that any fund facts document filed under the Instrument after the date of receipt for the simplified prospectus supersedes the fund facts document previously filed. Section 3.2 of the Instrument specifies that a dealer must deliver the most recently filed fund facts document for a mutual fund in accordance with Part 3A to satisfy the prospectus delivery requirements under securities legislation.

(4) Section 2.3.2 of the Instrument requires a fund facts document filed under Part 2 of the Instrument to be posted by the mutual fund to the website of the mutual fund, the mutual fund's family or manager's website. Only a fund facts document that satisfies delivery under the Instrument should be posted to a website. A preliminary or pro forma fund facts document, for example, should not be posted.

**4.1.4 Additional Information** – Paragraph 4.1(3)(d) of the Instrument requires a fund facts document to include only information that is specifically mandated or permitted by the required FF Form.



#### **4.1.5 Combinations of Fund Facts Documents**

(1) For the purposes of delivery, section 5.4(1) of the Instrument allows a fund facts document to be attached to, or bound with, one or more fund facts documents, provided the size of the document does not make the presentation of the information inconsistent with the principles of simplicity, accessibility and comparability. For example, a fund facts document may be attached to, or bound with, fund facts documents of several classes or series of securities of the same mutual fund, several mutual funds from the same fund family, or several mutual funds of a similar type from different fund families. In making this determination, mutual funds, managers and participants in the mutual fund industry should consider the ability of an investor to easily find and link the information that is relevant to the particular mutual funds they are considering or have bought, and whether a reasonable person in the circumstance would come to the same conclusion. We think a document with more than 10 fund facts documents bound together may discourage an investor from reading a fund facts document and obscure key information which is inconsistent with the principles of simplicity, accessibility and comparability.

(2) When delivery of the fund facts document occurs with the confirmation of trade for the purchase, subsections 5.4(3) and (4) of the Instrument permit a fund facts document to be attached to, or bound with, certain other materials or documents provided the fund facts documents are located first in any package.

(3) To facilitate the filing requirements for a fund facts document under securities legislation, section 5.4(5) of the Instrument allows a fund facts document to be attached to, or bound with, other fund facts documents of a mutual fund in a single SP or, if a multiple SP, other mutual funds which are combined in the multiple SP.

(4) Section 5.4(2) of the Instrument specifies that a fund facts document that is delivered electronically must not be attached or bound with another fund facts document. For the purposes of delivery, we think that an electronic link or directing the investor to a file containing multiple fund facts documents could constrain an investor's ability to download the file, find and print the specific fund facts document.

**4.1.6 Format** - The Instrument requires a mutual fund to use the headings and sub-headings stipulated in the Instrument and the FF Form.

### **PART 5 THE SIMPLIFIED PROSPECTUS**

**5.1 General Purposes** - The general purposes of a simplified prospectus are described in section 2.1 of this Policy. In light of those purposes, the CSA wish to bring a number of matters to the attention of the preparers of simplified prospectuses.

**5.2 Catalogue Approach** - The Instrument requires that a multiple SP must present the fund-specific, or Part B, disclosure about each fund using a catalogue approach, with the disclosure about each mutual fund presented separately from the disclosure about each other mutual fund. This requirement is a key element of the disclosure regime created by the Instrument and related forms so the catalogue approach should be strictly followed.

**5.2.1 Accessibility of a Simplified Prospectus** –Mutual funds, managers, principal distributors and participating dealers should encourage investors who want more information about a mutual fund to both request and read the simplified prospectus and any of the documents incorporated by reference into the simplified prospectus. The Instrument requires that a simplified prospectus or any of the documents incorporated by reference be sent within three business days of a request.

### **5.3 Additional Information**

(1) Paragraph 4.1(2)(a) of the Instrument provides that a simplified prospectus must provide all information briefly and concisely. Paragraph 4.1(2)(e) of the Instrument requires that a simplified prospectus include only educational material or information that is specifically mandated or permitted by the required SP Form.

(2) Item 12 of Part A and Item 14 of Part B of Form 81-101F1 permit disclosure of information required or permitted by securities legislation or by an order or ruling of the securities regulatory authority pertaining to the mutual fund that is not otherwise required to be disclosed by Form 81-101F1. This addition has been made to ensure that such information is not technically prohibited from being included in a simplified prospectus by paragraph 4.1(2)(e) of the Instrument. Instruction (1) to Item 12 of Part A of Form 81-101F1 contains examples of the type of disclosure that may be appropriately included under these Items.

### **5.4 Inclusion of Educational Material**

(1) Paragraph 4.1(2)(e) of the Instrument permits the inclusion of educational material in a simplified prospectus. There are no requirements as to the location of any educational material; however, the CSA recommend that educational material contained in a simplified prospectus be close to mandated disclosure to which the educational material substantively relates.

(2) It is noted that educational material contained in a simplified prospectus is subject to the general requirements of the Instrument and therefore should be presented in a manner consistent with the rest of the simplified prospectus. That is, the educational material should be concise, clear and not so lengthy as to detract from the clarity or presentation of the balance of the simplified prospectus.

(3) The definition of “educational material” contained in section 1.1 of the Instrument excludes material that promotes a particular mutual fund or mutual fund family or the products or services offered by the mutual fund or mutual fund family. A mutual fund, mutual fund family or those products or services may be referred to in educational material as an example so long as the reference does not result in the promotion of those entities, products or services. Mutual funds should ensure that any material included within, attached to or bound with a simplified prospectus is educational material within the meaning of this definition.

**5.5 Format** - The CSA emphasize that a simplified prospectus is required to use the headings and specified sub-headings exactly as they are set out in the Instrument. For sections for which

no sub-heading is specified, a simplified prospectus is permitted to include sub-headings, under the required headings, if it is so desired.

## **PART 6 THE ANNUAL INFORMATION FORM**

**6.1 General Purposes** - The general purposes of an annual information form are described in section 2.1 of this Policy. In light of those purposes, the CSA wish to bring a number of matters to the attention of the preparers of annual information forms.

**6.2 Consolidation of Annual Information Forms** - Subsection 5.3(1) of the Instrument requires the consolidation of annual information forms into a multiple AIF if the related simplified prospectuses are consolidated into a multiple SP. It is noted that the Instrument does not prevent the consolidation of annual information forms even if the related simplified prospectuses are not consolidated. Therefore, a mutual fund organization may prepare, for instance, one multiple AIF that pertains to all of its mutual funds, even if the simplified prospectuses for those mutual funds are not fully or even partially consolidated.

### **6.3 Additional Material**

(1) The Instrument and AIF Form do not prohibit the inclusion in an annual information form of information not specifically required by the AIF Form. Among other things, a mutual fund may therefore include educational information in an annual information form. Additional material in an annual information form is, however, subject to the general requirements contained in subsection 4.1(1) of the Instrument that all information must be presented in plain language and in a format that assists in readability and comprehension.

(2) The CSA remind mutual funds that if they include additional information, such as educational material, in an annual information form, they should ensure that the material is not included primarily for purpose of promotion. An annual information form is designed to be easily understandable to investors and less legalistic in its drafting than traditional prospectuses, but it still constitutes part of a prospectus under securities legislation.

## **PART 7 DELIVERY**

### **7.1 Delivery**

(1) Under section 3.2 of the Instrument, delivery of a fund facts document to an investor for an initial purchase in a mutual fund will satisfy the prospectus delivery requirements in securities legislation. There is no requirement to deliver the simplified prospectus, any document incorporated by reference into the simplified prospectus or any document for subsequent purchases in a mutual fund, unless an investor requests it. However, a dealer may adopt a practice of routinely providing investors or potential investors with a fund facts document. Similarly, a mutual fund may adopt a practice of routinely providing investors or potential investors with a fund facts document, simplified prospectus, annual information form, financial statements and management reports of fund performance if it so chooses.

(2) The CSA encourage mutual funds, managers, principal distributors and participating dealers to make disclosure documents, particularly the fund facts document, available to potential investors as soon as possible in the sales process, in advance of any requirements contained in the Instrument or securities legislation, either directly or through dealers and others involved in selling mutual fund securities to investors.

(3) Nothing in the Instrument prevents disclosure documents to be prepared in other languages, provided they are delivered or sent in addition to any disclosure document filed and delivered in accordance with the Instrument. We would consider such documents to be sales communications.

(4) We do not consider the requirements of section 3.4 of the Instrument to be exclusive. Mutual funds are therefore encouraged to inform investors that they may use the mutual fund's website and e-mail addresses to request further information and additional documents.

## **7.2 Delivery of the Fund Facts Document**

(1) The delivery of the fund facts document is a key component to the three principles discussed in subsection 2.1(2) of this Policy.

(2) The CSA recognize that investors will have differing needs in receiving disclosure documents. The timing of delivery of the fund facts document, therefore, depends on the type of purchase and who is initiating the purchase. A central factor is the distinction between investors who rely on a dealer's recommendation and those who do their own research and simply want to execute a trade. In this way, the timing of the delivery of the fund facts document is based largely on the nature of an investor's relationship with their dealer and on the circumstances of the purchase.

(3) Part 3A of the Instrument requires delivery of the most recently filed fund facts document before the initial purchase of a mutual fund (except for money market mutual funds) that is recommended by a dealer. An investor can choose to receive the fund facts document with the trade confirmation, instead of before the purchase, for an initial purchase of a money market mutual fund or for an initial purchase of any type of mutual fund that is not recommended by the dealer. An investor who makes an initial purchase of a mutual fund through an order execution-only service will receive the fund facts document with the trade confirmation.

A flow chart summarizing the delivery requirements is set out in Appendix B to this Policy.

(4) The most recently filed fund facts document is the fund facts document filed with the simplified prospectus and annual information form, or any fund facts document filed in accordance with securities legislation after that date, for example, an amended fund facts document or updated fund facts document.

(5) In accordance with existing practices, dealers must establish internal policies and procedures to ensure delivery of the fund facts document occurs in accordance with Part 3A. Dealers must maintain evidence of delivery of the fund facts document, as well as client instructions that

waive delivery of the fund facts document, as permitted by the Instrument. We think that existing dealer practices to maintain evidence of required disclosures will be sufficient to document delivery of the fund facts document.

(6) The term “order execution-only service” is defined in paragraph 3A.1 of the Instrument. This includes trades executed through discount brokerages, or through full service dealers that offer an order execution-only service.

(7) Nothing in Part 3A of the Instrument is intended to detract from existing duties on dealers, including know-your-client and suitability obligations and a general duty to deal fairly, honestly and in good faith.

### **7.3 Initial Purchases**

(1) The term “initial purchase” is defined in paragraph 3A.1 of the Instrument. If an investor held a mutual fund, sold it all and bought the same mutual fund later, the CSA would consider that purchase to be an initial purchase. If an investor purchases a new class or series of a security of a mutual fund currently held, we would also consider that purchase to be an initial purchase. Switches from one mutual fund to another mutual fund will be an initial or subsequent purchase depending on whether the investor already holds the class or series of the mutual fund being purchased.

(2) Under section 3A.2 of the Instrument, two conditions must be met to satisfy the delivery of the fund facts document for an initial purchase of a security of a mutual fund. Before entering the agreement to purchase:

- the dealer must deliver the most recently filed fund facts document to the investor; and
- once delivered, the dealer must bring the fund facts document to the attention of the investor.

(3) To satisfy the requirement to bring a fund facts document to the attention of the investor, a dealer will need to convey sufficient information about the purpose of a fund facts document to enable a reasonable investor to link the fund facts document to the purchase they are considering. Dealers should maintain adequate records to evidence that disclosure about the fund facts document has been brought to the attention of investors in compliance with paragraph 3A.2(1)(b) of the Instrument.

**7.4 Subsequent Purchases** - Subsection 3A.2(2) of the Instrument specifies that a dealer does not have to deliver a fund facts document for an order or subscription for a purchase of a mutual fund that is not an initial purchase, as defined in the Instrument. For the purposes of Part 3A of the Instrument, a subsequent purchase is the purchase of more units or shares of a mutual fund currently held in the investor’s account. This would include purchases made under a pre-authorized purchase plan and switches under an asset allocation plan.

## **7.5 Dealer Recommended and Non-Recommended Purchases**

(1) Except for the purchase of a money market mutual fund, the timing of delivery of the fund facts document depends on who is initiating the transaction. To meet the delivery requirements in section 3A.3 of the Instrument, a dealer must determine whether a particular purchase of a mutual fund by an investor has been recommended by the dealer or not. In making this determination, a dealer should consider whether a reasonable person in the circumstance would come to the same conclusion. For example, if an investor makes an investment decision based on his or her own research, and solicits the dealer to simply execute the trade, the CSA would consider that purchase not to be recommended by the dealer.

(2) The CSA recognize that the specific facts of a transaction will determine whether a purchase is identified as dealer recommended or non-recommended. Dealers should look to industry best practices, as well as regulatory guidance, in making this determination. Dealers should establish policies and procedures to ensure purchases of mutual funds are appropriately classified and recorded either as dealer recommended purchases or non-recommended purchases.

(3) Under section 3A.3 of the Instrument an investor may waive the requirement of delivery of the fund facts document before entering into the agreement to purchase and choose to receive the fund facts document with the trade confirmation in two circumstances:

- when the dealer recommends the initial purchase of a money market fund; and
- when the initial purchase is initiated by the investor

(4) Before an investor may waive delivery of a fund facts document in the circumstances referred to in subsection (3), paragraph 3A.3(2)(b) of the Instrument requires the dealer to have conveyed to the investor sufficient information about the fund facts document for the investor to determine when they wish to receive the fund facts document. This may include describing the purpose of the fund facts document, the type of information it contains and advising investors that they are entitled to receive and review the fund facts document before entering into the agreement to purchase the mutual fund. Dealers should maintain adequate records to evidence that disclosure about the fund facts document has been provided to investors in compliance with paragraph 3A.3(1)(b).

(5) In the instances where an investor has the option to waive delivery of the fund facts document before entering into an agreement to purchase a mutual fund, this waiver should occur with each initial purchase.

(6) Subsection 3A.3(3) of the Instrument requires that the most recently filed fund facts document must be delivered with the trade confirmation for all initial purchases of a mutual fund for which delivery of the fund facts document is not required before entering into the agreement to purchase.

## **7.6 Methods of Delivery**

(1) The method of delivering a fund facts document is flexible. Part 3A of the Instrument contemplates that a dealer may deliver a fund facts document in person, by mail, by fax, electronically or by other means. The CSA do not consider oral delivery or the availability of the fund facts document alone to satisfy delivery under the Instrument.

(2) When a dealer is required to deliver or send a fund facts document before the agreement to purchase, the Instrument does not prescribe the timing. What constitutes delivery ‘before’ is intended to be flexible, provided it occurs within a reasonable timeframe of the investor making the investment decision. Investors must be able to find information about the mutual fund and link it to a particular purchase they are considering at a later date.

## **7.7 Electronic Delivery**

(1) Any fund facts document required to be delivered or sent under Part 3A of the Instrument may be sent by electronic delivery. Electronic delivery may include sending an electronic copy of a fund facts document directly to the investor as an attachment or link, or directing the investor to a specific fund facts document on a website.

(2) Simply making the fund facts document available on a website or referring an investor to a website address with the fund facts document does not constitute delivery under the Instrument, even if the investor consents to that method of delivery. ‘Directing’ an investor to a fund facts document on a website would generally involve the dealer providing real-time instruction to an investor to locate the fund facts document, or providing an internet link that takes the investor to the specific fund facts document.

(3) For the delivery to be effective, electronic access to a fund facts document must not be burdensome or overly complicated for investors. Accordingly, we consider it unlikely that ‘directing’ an investor to a specific fund facts document on [www.sedar.com](http://www.sedar.com) or an equivalent third party provider will constitute delivery under the Instrument. For electronic delivery, the dealer should ensure an investor can view the fund facts document.

(4) In addition to the requirements in the Instrument and the guidance in this section, dealers may want to refer to National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Québec, *Notice 11-201 Relating to The Delivery of Documents by Electronic Means* for additional guidance.

## **7.8 Annual Option to Receive Fund Facts Document**

(1) The CSA recognize that some investors may find it useful to receive updated fund facts document annually. Accordingly, section 3A.5 of the Instrument requires a dealer to deliver or send annually, in accordance with a client’s instructions, the most recently filed fund facts document for each mutual fund held by the client in an account with the dealer.

(2) The section gives dealers flexibility in how they solicit delivery instructions from clients. A dealer may obtain annual instructions, standing instructions or use any means it has at its disposal to obtain instructions from clients. The section does not prescribe the timing of the annual delivery. The CSA anticipate that dealers will choose to deliver to clients any applicable fund facts document on an annual basis concurrently with other documents or information being sent to clients.

(3) When soliciting delivery instructions from a client, a dealer can deem no response from the client to be a request by the client to receive all, some or none of the fund facts documents for each mutual fund held by the client. Dealers should make clear what the consequence of no response will be to the client.

(4) Dealers should give clients a reasonable amount of time to respond to a request for instructions. Dealers should provide clients with complete contact information for the dealer, including a toll-free telephone number or a number for collect calls and an email address.

(5) Subsection 3A.5(4) of the Instrument permits the fund facts documents for all of the mutual funds held by the client to be bound together. There is no prohibition against binding a fund facts document with other materials or documents when delivering a fund facts document to a client who has requested it.

(6) Dealers should establish policies and procedures to demonstrate they have used appropriate and reasonable means to solicit delivery instructions from clients and effect delivery.

**7.9 Delivery of Documents by a Mutual Fund** - Section 3.3 of the Instrument requires that a mutual fund deliver or send to a person or company, upon request, a simplified prospectus or documents incorporated by reference. The CSA are of the view that compliance with this specifically-mandated requirement by an unregistered entity is not a breach of the registration requirements of securities legislation.

**7.10 Delivery of Non-Educational Material** - The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with the simplified prospectus and annual information form. This type of material may, therefore, be delivered with, but cannot be included within the simplified prospectus or annual information form. Section 5.4 of the Instrument sets out what materials or documents are permitted to be included with, wrapped around or attached or bound to, the fund facts document for the purposes of delivery under the Instrument.

**7.11 Failure to Deliver** – Section 3.2.1 of the Instrument provides for a right of rescission or damages against a dealer who fails to deliver the fund facts document in accordance with the Instrument within 180 days after the date of the transaction. In the case of an action for rescission under that section, a purchaser is entitled to receive the net asset value of the securities at the time of purchase and must be reimbursed for all sales charges and fees arising from the purchase.



## **PART 8 COMMENTARY ON INVESTMENT AND RELATED DISCLOSURE**

**8.1 Investment Disclosure** - The FF Form and SP Form require detailed disclosure concerning a number of aspects of the investment approach taken by a mutual fund, including disclosure concerning fundamental investment objectives, investment strategies, and risk and risk management. The CSA emphasize the importance that they attach to these disclosure documents, and note that, for many mutual funds, the best persons to prepare and review the disclosure are the portfolio advisers of the mutual fund. Therefore, we highly recommend that those persons play an important role in the preparation and review of this disclosure.

**8.2 Portfolio Advisers** – The AIF Form requires disclosure concerning the extent to which investment decisions are made by particular individuals employed by a portfolio adviser or by committee. Section 10.3(3)(b) of the AIF Form requires certain information about the individuals principally responsible for the investment portfolio of the mutual fund. Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* requires a simplified prospectus and a fund facts document to be amended if a material change occurs in the affairs of the mutual fund that results in a change to the disclosure in the simplified prospectus and fund facts document. Reference is made to section 7.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* for a discussion of when a departure of a high-profile individual from a portfolio adviser of a mutual fund may constitute a material change for the mutual fund. If the departure is not a material change for the mutual fund, there is no requirement to amend a simplified prospectus, subject to the general requirement that a simplified prospectus contain full, true and plain disclosure about the mutual fund.

## **PART 9 NEED FOR MULTIPLE OR SEPARATE APPLICATIONS**

### **9.1 Need for Multiple or Separate Applications**

(1) A person or company that obtains an exemption from a provision of the Instrument need not apply again for the same exemption at the time of each simplified prospectus, annual information form and fund facts document refiling unless there has been some change in an important fact relating to the granting of the exemption.

(2) The principle described in subsection (1) does not necessarily apply to applications required to be made under the Regulations to the Securities Act (Quebec) for relief from provisions of those Regulations that are substantially similar to those contained in the Instrument. In that case, an application may be required with each refiling of a simplified prospectus, annual information form and fund facts document of a mutual fund.

(3) In Quebec, it may be necessary to apply for exemptions from the equivalent sections in the Act and the Regulations.

## **PART 10 CANCELLATION RIGHTS**

**10.1 General Purposes** – Securities legislation provides investors with the opportunity to change their mind after buying a mutual fund, a so-called cooling-off period. Securities

legislation also provides investors with recourse if the disclosure documents contain incomplete or inaccurate information, or if the investor does not receive the fund facts document as required under the Instrument.

## **10.2 Cancellation Right**

(1) Section 2.9 of the Instrument gives investors a right to cancel a mutual fund purchase within two business days after receiving the trade confirmation by providing written notice to their dealer. In Ontario, a similar right allows a purchase of a mutual fund security to be rescinded for purchases not exceeding \$50,000. This right of rescission expires 180 days after the date of the purchase.

(2) Under subsection 2.9(3) of the Instrument, an investor will get back the lesser of the amount of the net asset value of the securities of the mutual fund on the day of the original investment and the net asset value of the securities of the mutual fund on the day the investor exercises the cancellation right. Net asset value on the day of exercise will be calculated like any other transaction. The section specifies that the investor will get back any costs associated with the purchase, such as sales charges. An investor exercising this right must not pay any redemption fees or short-term trading fees.

## **PART 11 TRANSITION**

### **11.1 Transition**

(1) Part 7 of the Instrument provides for a transitional period after the Instrument comes into force. Any mutual fund that files a preliminary or pro forma prospectus after the effective date of the Instrument is required to file a fund facts document. The CSA anticipate that all mutual funds that existed before the Instrument came into force will file a fund facts document as part of the mutual funds' renewal process following the effective date of the Instrument.

(2) The requirement to deliver the fund facts document in accordance with the Instrument does not apply until two years after the date the Instrument comes into force. Until this date, the prospectus delivery requirements under securities legislation in effect before the effective date of the Instrument apply. This includes the timing of delivery. During the two-year transition period, a simplified prospectus that is delivered or sent must comply with the packaging requirements of the Instrument in effect before the effective date of the Instrument.

(3) Section 7.3 of the Instrument gives a dealer the option of satisfying the prospectus delivery requirements under securities legislation during the two-year transition period for the delivery requirements under the Instrument by delivering or sending the most recently filed fund facts document instead of the simplified prospectus. Delivery of the fund facts document during this transition period is in accordance with the prospectus delivery requirements under securities legislation in effect before the effective date of the Instrument. Therefore, delivery of the fund facts document is not required to be before the time of purchase. A fund facts document delivered or sent during this period must comply with the binding requirements of section 5.4 of the Instrument.

(4) Part 7 of the Instrument specifies that the withdrawal and rescission rights under securities legislation in effect before the date that the Instrument comes into force will continue to apply to the delivery of the simplified prospectus or the fund facts document during the two-year transition period for the delivery requirements under the Instrument.

(5) To comply with transitional delivery of the fund facts document referred to in subsection (3), the most recently filed fund facts document for the purposes of delivery is the fund facts document filed with the simplified prospectus and annual information form, or any fund facts subsequently filed in accordance with the Instrument after that date, for example, an amended fund facts or updated fund facts.

(6) Although the Instrument contemplates an initial purchase to be the purchase of a mutual fund not currently held in an investor's account, section 7.4 of the Instrument requires that a dealer deliver or send the most recently filed fund facts document in accordance with Part 3A for the first purchase of any mutual fund that occurs following the date the Instrument comes into force. This transitional provision applies to all first purchases of a mutual fund whether or not held in the investor's account and whether or not the fund facts document was delivered during the transitional period.

2. This Policy comes into force on ●.

## Appendix B to Commentary – Delivery Flow Chart

The following flow chart summarizes the delivery requirements that apply to a fund facts document:

Type of account	Type of trade	Type of fund	Time of delivery		
			Initial purchase	Subsequent purchase	Annually
Full-service	Adviser-recommended	All funds other than money market	• Before or at point of sale	No delivery	Investor will be given option to receive annually <i>Fund Facts</i> for all funds held.
		Money market	• Before or at point of sale OR • With trade confirmation if investor chooses		
	Investor-initiated	All funds	• With trade confirmation if investor chooses		
Order execution-only	All	All funds	• With trade confirmation		

## APPENDIX D

### National Instrument 81-102 *Mutual Funds*

#### AMENDMENT INSTRUMENT

1. Section 1.1 of National Instrument 81-102 *Mutual Funds* is amended by adding the following after clause (b) 2 in the definition of “sales communication”:

“2.1 A fund facts document or preliminary or *pro forma* fund facts document.”
2. Section 3.3 of National Instrument 81-102 *Mutual Funds* is amended by repealing the section and substituting the following:

“3.3 Prohibition Against Reimbursement of Organization Costs – None of the costs of incorporation, formulation or initial organization of a mutual fund, or of the preparation and filing of any of the preliminary simplified prospectus, preliminary fund facts, preliminary annual information form, initial simplified prospectus, fund facts or annual information form of the mutual fund shall be borne by the mutual fund or its securityholders.”
3. Section 5.6 of National Instrument 81-102 *Mutual Funds* is amended
  - (a) in clause (1)(f)(ii) by striking out “current simplified prospectus” and substituting “most recently filed fund facts document” and striking out “and the most recent annual and interim financial statements that have been made public”; and
  - (b) in clause (1)(f)(iii) by repealing the clause and substituting the following:

“(iii) a statement that securityholders may obtain at no cost a simplified prospectus, an annual information form and the most recent annual and interim financial statements that have been made public for the mutual fund into which the mutual fund will be reorganized by contacting that mutual fund at a specified address or telephone number or by accessing the documents at a specified website address;”.
4. Section 5.7 of National Instrument 81-102 *Mutual Funds* is amended by repealing paragraph (1)(d) and substituting the following:

“(d) if the application relates to a matter that would constitute a material change for the mutual fund, a draft amendment to the simplified prospectus and, if applicable, to the fund facts document of the mutual fund reflecting the change; and”.

5. Section 15.2 of National Instrument 81-102 *Mutual Funds* is amended by repealing paragraph (1)(b) and substituting the following:

“(b) include a statement that conflicts with information that is contained in the preliminary simplified prospectus, the preliminary fund facts document, the preliminary annual information form, the simplified prospectus, the fund facts document or annual information form

- (i) of a mutual fund, or
- (ii) in which an asset allocation service is described.”

6. This Instrument comes into force on ●.

**Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds*  
AMENDMENT INSTRUMENT**

1. Section 13.1 of Companion Policy 81-102 CP *Mutual Funds* is amended by
  - (a) repealing subsection (3) and substituting the following:

“(3) An advertisement that presents information in a manner that distorts information contained in the preliminary prospectus or prospectus, or preliminary simplified prospectus, preliminary fund facts and preliminary annual information form or simplified prospectus, fund facts and annual information form of a mutual fund or that includes a visual image that provides a misleading impression will be considered to be misleading.”  
and
  - (b) repealing subsection (5) and substituting the following:

“(5) Paragraph 15.2(1)(b) of the Instrument provides that sales communications must not include any statement that conflicts with information that is contained in, among other things, a simplified prospectus or fund facts. The Canadian securities regulatory authorities are of the view that a sales communication that provides performance data in compliance with the requirements of Part 15 of the Instrument for time periods that differ from the time periods for which performance data is required to be provided in a simplified prospectus or fund facts under National Instrument 81-101 does not violate the requirements of paragraph 15.2(1)(b) of the Instrument.”
2. This Instrument comes into force on ●.

## APPENDIX E

### **National Instrument 81-106 *Investment Fund Continuous Disclosure* AMENDMENT INSTRUMENT**

1. Section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure* is amended by repealing paragraph (1)(d) and substituting the following:  
  
“(d) file an amendment to its prospectus or simplified prospectus and, if applicable, to its fund facts document that discloses the material change in accordance with the requirements of securities legislation.”
2. This Instrument comes into force on ●.



**Companion Policy 81-106CP to  
National Instrument 81-106 *Investment Funds Continuous Disclosure*  
AMENDMENT INSTRUMENT**

1. Section 10.1 of Companion Policy 81-106CP *Investment Funds Continuous Disclosure* is amended by repealing subsection (1) and substituting the following:

“10.1 Calculation of Management Expense Ratio – (1) Part 15 of the Instrument sets out the method to be used by an investment fund to calculate its management expense ratio (MER). The requirements apply in all circumstances in which an investment fund calculates and discloses an MER. This includes disclosure in a sales communication, a prospectus, a fund facts document, an annual information form, financial statements, a management report of fund performance or a report to securityholders.”

2. This Instrument comes into force on ●.

## APPENDIX F

### National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*

#### AMENDMENT INSTRUMENT

1. Appendix A – Mandated Electronic Filings of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* is amended
  - (a) in Part I A by
    - (i) adding “, Fund Facts” before “and Annual Information Form” in Item 1;
    - (ii) adding “, Fund Facts” before “and Annual Information Form” in Item 2;
    - (iii) adding “, Fund Facts” before “and Annual Information Form” in Item 3; and
  - (b) in Part I B by adding the following after Item 21:

“22. Fund Facts update”.
2. This Instrument comes into force on ●.