PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

VIA E-MAIL December 11, 2019

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

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Re: CSA Notice and Request for Comment - Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1

Background

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments regarding CSA Notice and Request for Comment – Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1 (the **Consultation**).

PMAC represents over 275 investment management firms registered to do business in Canada as portfolio managers. PMAC's members encompass both large and small firms managing total assets in excess of $2.7 trillion for institutional and private client portfolios.

PMAC members include investment fund managers (IFMs)

Of note, close to 70% of PMAC's members are IFMs. Of these, many manage non-reporting investment funds (**pooled funds**), and therefore our comments include the impact of the proposed amendments on such funds, in addition to implications for mutual funds.

Pooled funds play an increasingly important role in Canada's asset management landscape. The majority of pooled funds in Canada are made available through employer-sponsored defined contribution pension plans. Pooled funds are offered via prospectus exemptions to advisers, institutions and various retirement and other savings vehicles. Pooled funds offer Canadians access to diverse asset classes on a cost-effective basis; they can realize economies of scale through pooling investments and sharing costs. As a result, our comments with respect to the impact of the proposed amendments on pooled funds focus on ensuring an appropriate balance between regulatory burden and investor protection to maintain the efficiency and utility of pooled funds for the sophisticated investors who hold them.

Support for the Consultation

PMAC views the Consultation as an important opportunity to recalibrate the balance between onerous and outdated disclosure requirements with effective, meaningful, and accessible disclosure on investment funds.

We are very supportive of the CSA's efforts to reduce regulatory burden for investment fund issuers, as well as of the harmonized approach the CSA is taking with respect to this Consultation. Regulatory burden and compliance costs ultimately have a negative impact on investors and on the competitiveness of Canadian capital markets.

Subject to the comments made in the body of this letter in respect of certain proposals, PMAC believes that the Consultation would appropriately balance market efficiency with investor protection in a way that is generally beneficial for the Canadian capital markets.

As a general comment, we believe the CSA is pursuing the right path by preserving technology-neutral regulations. PMAC believes that flexible regulation that is technology-neutral can reduce the regulatory burden and support the investment management industry and investors alike. For this reason, the regulations applicable to investment funds must be flexible and adaptable to both technological and behavioural change in an evolving investment landscape.

We thank the CSA for their continued consultation and work to strike the appropriate balance and to streamline disclosure requirements for investment fund issuers.

KEY RECOMMENDATIONS

We would like to highlight the following key recommendations:

1) In codifying existing exemptive relief, do not create new requirements for pooled funds. While the Consultation proposes to give pooled funds the benefit of exemptions from National Instrument 81-102 *Investment Funds* (**NI 81-102**) and National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**), many of the conditions and obligations in the proposed amendment are not applicable to pooled funds. The amendment could create new requirements rather than codifying existing exemptive relief, adding cost and burden to pooled funds (see response to Question 19);

2) Streamline disclosure requirements by reducing the frequency of simplified prospectus renewals from an annual renewal to a 24-month period and eliminating the Management Report of Fund Performance (**MRFP**) requirement (see responses to Questions 1 and 3);

3) Permit IFMs to post documents and provide access to the designated website to meet an investment fund's disclosure delivery requirements, in most cases (see response to Question 14);

4) Do not introduce new requirements such as: (i) the creation of an amended and restated prospectus; and (ii) the necessity to obtain regulatory approval of a draft Information Circular (see responses to Questions 7 and 24); and,

5) Make corresponding burden reduction changes to the regulatory regime applicable to Exchange-Traded Funds (**ETFs**), including the relevant forms, to reflect the proposals regarding mutual funds. In particular, as noted below, we question the different disclosure regime for ETFs compared to mutual funds, and whether this conforms to investor needs and expectations (see responses to Questions 3, 4 and 26).

Responses to questions in Appendix A

We have considered the questions in Schedule 1 of Appendix A of the Consultation and have used these to structure our comments. Specific member comments on the questions in the Consultation are set out below. Please note that we have only referenced those questions on which our members provided specific feedback.

General

1. *Are there any areas that would benefit from a reduction of undue regulatory burden or streamlining of requirements, while preserving investor protection and market efficiency, which we should consider as part of Phase 2, Stage 2 (and onwards)? Please prioritize any suggestions you may have.*

Response:

We suggest that the following areas would benefit from a reduction of regulatory burden while preserving investor protection and market efficiency:

a) we question why the codification of common exemptive relief does not happen more frequently and efficiently. Given the expense of applying for exemptive relief, we suggest that where relief is repeatedly given, the CSA should promptly communicate this to registrants and codify commonly granted relief, where appropriate, within a reasonable timeframe.

   Moreover, we suggest that codifying existing relief is not sufficient to reduce regulatory burden (as most registrants who require relief already have it); please see the response to Question 19 for additional commentary.

b) PMAC previously raised several investment fund burden reduction matters for consideration in the context of the OSC Staff Notice 11-784 *Burden Reduction*, some of which are repeated here:

   i. Management Report of Fund Performance

   With respect to National Instrument 81-106, specifically, 81-106F1 – *Contents of Annual and Interim Management Report of Fund Performance* (**MRFP**), we query whether MRFPs are still useful now that CRM2 requires the disclosure of personalized rates of return. Other items in the MRFP (such as the Management Expense Ratio (**MER**) and Trading Expense Ratio (**TER**)) are also included in the Fund Facts or ETF Facts. We recommend eliminating the MRFP requirement, including interim MRFPs.

   Alternatively, if MRFPs will still be required, we suggest that MRFPs should be posted on the designated website instead of delivered to clients; that MRFPs should be an annual filing; that the semi-annual form (which is simpler and shorter) should be used for the annual filing; and that portions of the form that are duplicated in other filings be eliminated.

   ii. *Securities Act* filings

   The filings by management companies contemplated under various provincial securities legislation (see *Securities Act* (Ontario) s. 117(1); *Securities Act* (Alberta) s. 191(1); *Securities Act* (New Brunswick) s. 143(1); *Securities Act* (Newfoundland & Labrador) s. 118(1); *Securities Act* (Nova Scotia) s. 125(1); *The Securities Act, 1988* (Saskatchewan) s. 126(2)) are now covered

by NI 81-107. Though many registrants have obtained relief from the requirements, the statutory provisions are no longer relevant and should be eliminated, as obtaining relief is burdensome.

Additional general comment:

PMAC notes that the Consultation states in *Appendix C – Local Matters* at *Schedule 3 – Quantitative Cost-Benefit Analysis of Proposed Amendments and Proposed Changes*, that the industry savings resulting from the elimination of the Annual Information Form (**AIF**) filing would be $914,131.20. This estimates an hourly cost of $243.12 based on the national average hourly rate for a lawyer with 2-5 years' experience (footnote 31 in the Consultation). The cited hourly lawyer rate of $243 is virtually unheard of in the securities industry, and as such, we believe that the costs of such filings are vastly underestimated. Additionally, the analysis also does not appear to take into account the internal cost of employee time spent on the filing. While we are supportive of conducting a cost analysis for the proposed changes, the data for this analysis should come from registrants and from appropriately qualified professionals who work in investment management.

Additional considerations are set out under the relevant questions below.

2. *With the exception of Workstreams 1, 2 and 3, the Proposed Amendments and Proposed Changes do not introduce any new requirements for investment funds. Instead, we are either removing requirements or introducing exemptions that are permissive in nature. As a result, we do not contemplate any prolonged transition period following the in-force date of the proposals. Are there any specific elements of the Proposed Amendments and Proposed Changes which investment funds and their managers would require additional time to comply with? If so, please explain why and provide suggestions for an appropriate transition period.*

Response:

PMAC suggests that a minimum six-month transition period would be required to comply with Workstream One. This will give firms additional time to revise and implement the new forms, update policies and procedures, train and liaise with third party service providers, *et cetera*.

Workstream One: Consolidate the Simplified Prospectus and the Annual Information Form

Consolidation of Form 81-101F2 into Form 81-101F1

3. *As described in footnotes 3 to 5 of the Notice, certain specific requirements from the existing Form 81-101F1 and Form 81-101F2 were not carried over into the proposed Form 81-101F1. Do you support or disagree with these changes? If so, please explain.*

Response:

a) We are supportive of the proposed consolidation and the elimination of the AIF requirement for mutual funds in continuous distribution, as this would eliminate the requirement to provide redundant disclosure.

b) Additionally, when filing the simplified prospectus, if there are no comments on a filing, it would be preferable for the prospectus to be receipted immediately rather than the IFM receiving a "no-comment" letter and waiting 24 hours for a receipt.

c) PMAC would like to reiterate the following comments provided to the Ontario Securities Commission (**OSC**) in March of 2019 in response to the OSC regulatory burden reduction consultation. Since the Fund Facts document replaced the simplified prospectus as the delivery document to purchasers of mutual funds that are reporting issuers, there is less investor reliance on the disclosure contained in the simplified prospectus.

   Accordingly, we urge the CSA to consider eliminating the time and cost-intensive process of annually renewing an investment fund's simplified prospectus and to instead rely on the continuous disclosure requirements in NI 81-106 with respect to timely amendments reflecting material changes.

   In lieu of the annual simplified prospectus renewal, only the Fund Facts should be renewed annually. Most of the information contained in the simplified prospectus does not require annual updating, particularly because investors will receive the updated Fund Facts. Additionally, material changes to the investment fund would trigger an amendment to the simplified prospectus under the material change report regime in Part 11 of NI 81-106.

   The prospectus should be renewed only every 24 months, consistent with the regime for base shelf prospectuses in National Instrument 44-102 - *Shelf Distributions*.[1]

d) Application to ETFs

   This burden reduction initiative should apply to the forms required for ETFs, including a review of the ETF prospectus form. ETF disclosure should be streamlined and simplified. We also question the different disclosure regimes for ETFs compared to mutual funds, and whether these different regimes conform to investor needs and expectations.

   Any amendments to the Fund Facts form should also be made to the ETF Facts form.

[1] Under section 17.2 of NI 41-101, the lapse date of a simplified prospectus is currently set at 12 months. In Ontario, the requirement is in the *Securities Act* (Ontario), section 62

4. *Are there any disclosure requirements from the proposed Form 81-101F1 that are redundant or unnecessary and that can be removed or modified without impacting investor protection or market efficiency? If so, what are the reasons why the disclosure requirements should be removed or modified and how will investor protection and market efficiency be maintained? Are there any significant cost implications associated with sourcing the required disclosure? If so, please explain. Please comment in particular on the proposed Item 4.14 (Ownership of Securities of the Mutual Fund and the Manager) of Part A and whether it should be narrowed in scope or removed entirely.*

Response:

a) With respect to the ETF long-form prospectus, the annual returns/MER/TER chart appears twice in the form, which is unnecessary and burdensome to populate. Other repetitive aspects of the form (such as the "objectives and strategies" sections both in the summary and body of the document) should be consolidated or eliminated. As noted above, similar information is duplicated in the MRFP and ETF Facts documents.

b) PMAC is in favour of removing the disclosure of unitholders over 10% as it is not clear how this information benefits investors (for example, in a mutual fund with two series, where one series has a NAV of $1 billion and the other has a NAV of $100, an investor holding $11 of the second series would be disclosed, whereas an investor holding over $100 million of the first series would not be disclosed).

   If the rationale for this disclosure is the risk of one series being forced to cover the terminating series expenses if a large unitholder redeems out of the fund and one series is forced to close, this is not a concern for funds that charge fixed administrative fees daily, and therefore the disclosure is not necessary. If this disclosure is not eliminated, we recommend disclosure at the fund level, and not the series level. Further, due to privacy concerns and because the information is not likely to be material to investors, we suggest eliminating the requirement to disclose individual investor names on request; if the investor is an individual, their name should only be disclosed to the regulator, if requested.

c) The requirement to disclose information and biographies about individual advisers associated with an investment fund should also be eliminated, as it does not provide relevant information to investors, unless the investment fund is managed by a high-profile adviser. Whether the identity of the adviser is material should be determined in the IFM's discretion. If the identity of the adviser is required to be disclosed, the information could be posted to the proposed designated website.

5. *As an alternative to complete removal, are there any disclosure requirements from the proposed Form 81-101F1 that could be relocated to another required disclosure document or to the proposed "designated website" for investment funds, while still maintaining investor protection and market efficiency? If so, why should these disclosure requirements be relocated and where should they be relocated to? Please comment in particular on any of the following proposed Items:*

    a. *Part A, Item 4 (Responsibility for Mutual Fund Operations);*
    b. *Part A, Item 7 (Purchases, Switches and Redemptions);*
    c. *Part A, Item 8 (Optional Services Provided by the Mutual Fund Organization);*
    d. *Part B, Item 8 (Name, Formation and History of the Mutual Fund).*

Response:

As discussed above, we request that the noted disclosures be eliminated, as it is not clear what benefit the information provides to investors, and this would reduce burden and cost for the funds. If not eliminated, these disclosures should be made through the designated website to eliminate the time and expense of individual delivery to investors. Many fund websites already post pertinent fund-specific information, including information about the investment fund's profile and advisers.

7. *The current prospectus disclosure rules were drafted at a time when inventories of physically printed prospectuses were required to satisfy prospectus delivery requirements. In recognition of this, flexibility exists in terms of how to deal with amendments to avoid significant costs that might be associated with having to reprint large quantities of commercially prepared copies of the prospectus. With the transition to delivery of the Fund Facts and the ETF Facts documents in place of the prospectus, along with the advent of print-on-demand technology and electronic delivery, is it still necessary to maintain this flexibility? Would it be less burdensome for investment funds and investment fund managers to follow the approach taken with the Fund Facts document and ETF Facts document by requiring that all amendments be in the form of an amended and restated prospectus, prepared in accordance with the proposed Form 81-101F1? Why or why not?*

Response:

PMAC strongly disagrees with any requirement to create an amended and restated prospectus. We urge the CSA to maintain flexibility in this respect. Information regarding material changes is provided to investors in in the material change report, the press release and the Fund Facts and ETF Facts documents. Creating an amended and restated prospectus would require updating of all the information in the document (beyond information affected by the amendments), resulting in significant additional costs including staff time, legal review and translation, which would increase the burden on issuers. The IFM should have the discretion to amend and restate the prospectus when it deems necessary.

8. *Item 11.2 (Publication of Material Change) of NI 81-106 sets out requirements that an investment fund must satisfy where a material change occurs in its affairs. Can these requirements be streamlined or modified in any way while maintaining investor protection and market efficiency?*

Response:

We suggest that the requirement to prepare and file a material change report pursuant to NI 81-106 could be eliminated, as all relevant information is disclosed in the associated press release and could be posted to the designated website.

9. *Will any exemptive relief decisions be rendered ineffective as a result of the repeal of Form 81-101F2? If so, are there any transitional issues that need to be considered? Please explain.*

Response:

We strongly urge the CSA to "grandfather" or continue existing exemptive relief, as the proposed amendments will not address each firm's unique situation and a failure to continue existing relief will create substantial burden for registrants. Managers and funds operating under current exemptive relief will have met relevant regulatory requirements for investor and market protection and other fairness considerations; therefore, if the goal of this workstream is burden reduction of regulation, there is no policy reason to require these firms to incur the time and expense to implement amendments to reflect the standardized exemptive relief proposed in the Consultation, instead of continuing to rely on their existing relief.

11. *Currently a final prospectus must be filed within 90 days of receiving a receipt for a preliminary prospectus. We are of the view that this requirement is more relevant to non-investment fund issuers and is not necessarily applicable to investment funds, particularly to investment funds in continuous distribution. As a result, we are currently considering whether to either extend the final filing deadline or remove this requirement entirely. Do you have any views on the applicability of this provision to investment fund issuers? If you agree that the provision is not required, please explain whether it would be preferable to extend or eliminate the filing deadline, including the reason for your preference. If an extension is preferred, would 180 days be sufficient?*

Response:

Many PMAC members find that this 90-day deadline can be restrictive and find it does not address the overarching policy rationale for the time limit. In addition, the cost of applying for exemptive relief to extend the deadline often exceeds the cost to file the original preliminary prospectus. Investment fund issuers do not typically market the fund using the preliminary prospectus, unlike corporate issuers. Additionally, since the preliminary prospectus does not contain any material financial information that would be considered stale after 90 days, we do not see an investor protection rationale for requiring the 90-day deadline. As the proposed

extension of the 90-day deadline will not address the concerns stated above, it is suggested that this deadline be eliminated.

In the alternative, certain members have noted that, absent eliminating a deadline altogether, a 180-day deadline would be more workable.

Investment Funds Not in Continuous Distribution

12. *Should investment funds not in continuous distribution that have already prepared and filed an AIF using Form 81-101F2 be permitted to continue using that Form? If so, why?*

Response:

Investment funds not in continuous distribution that have already prepared and filed an AIF using Form 81-101F2 should be permitted to continue using that form as this will ensure consistency. The introduction of another form would add regulatory burden because the issuer would have to create an additional document that conforms to the new form, incurring unnecessary cost to the fund.

13. *Should investment funds not in continuous distribution be relieved entirely of the requirement to file an AIF? If so, what impact would this have on an investor's ability to access an up-to-date consolidated disclosure record for an investment fund not in continuous distribution? Alternatively, please comment on whether elements from the current Form 81-101F2 should be incorporated into any of the following:*
    a. *Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance;*
    b. *a designated website;*
    c. *other forms of disclosure (please specify).*

Response:

We request that the CSA eliminate the AIF for funds that are no longer in public distribution but that are still reporting issuers. Material information could be posted on the designated website; this would permit investors to determine whether to redeem their securities or remain in the fund.

Workstream Two: Investment Fund Designated Website

14. *The proposed Part 16.1 of NI 81-106 requires reporting investment funds to designate a qualifying website on which the investment fund must post regulatory disclosure documents. This proposal represents the first stage of a broader initiative to both improve the accessibility of disclosure to investors and enhance the efficiency with which investment funds can meet their disclosure obligations. The CSA, however, recognize that electronic methods of providing access to*

information and documents besides websites may be used to provide information regarding investment funds. As a result, we ask for specific feedback on the following questions related to the issue of making the proposed Part 16.1 more technologically neutral:

a. *Should the proposed Part 16.1 be revised to provide investment funds with the option to designate other technological means of providing public access to regulatory disclosure besides websites? In your response, please comment on the following issues: any potential investor protection concerns, consistency with securities instruments outside of the investment fund regime, and the benefits of making such a change.*

Response:

We are supportive of measures that improve the accessibility of disclosure to investors and agree that the proposed posting of such information on a website would achieve this goal.

However, clarification is requested regarding the meaning of the term "designated" and the means by which a website would be "designated".

It is also not clear whether client access to the website would be sufficient to meet an investment fund's disclosure delivery requirements – we believe this should be the case, as this would significantly reduce burden for registrants while recognizing investor demands for convenient access to information in a digital age. Posting the prospectus on a designated website would also diminish the need to renew the prospectus as frequently. Other disclosures, such as financial statements and MRFPs, could also be delivered via access to the designated website, eliminating the need for annual mailing, as well as the associated printing, postage and environmental costs.

We urge the CSA to avoid overly prescriptive rules with respect to the content and management of the website.

15. *Are there unintended consequences arising from the proposed section 16.1.2 of NI 81-106 that we should consider? For example, under the proposed section, an investment fund may designate a website that is maintained by a Related Person. We are of the view that this would avoid circumstances where an investment fund would have to create an entirely new and separate website, where to do so would not be desirable. Are there any practical issues associated with this that we should consider?*

Response**:**

While the proposed section contemplates the use of a website that is "established and maintained either by the investment fund, or by its investment fund manager, an affiliate or an associate of its investment fund manager, or another investment fund that is part of its investment fund family," the CSA should also permit the operation and maintenance of the website by a third-party service provider, subject to the investment fund manager having appropriate oversight measures in place.

This will provide additional flexibility and may increase efficiency for the issuer and accessibility for investors.

Workstream Three: Codify Exemptive Relief Granted in Respect of Notice-and-Access Applications

18. Will participation rates for investment fund securityholder meetings change under the notice-and-access system? In particular, is it anticipated that participation rates would change? Please provide an explanation for your answer.

Response**:**

PMAC members have not experienced any change in participation to date as a result of using the notice-and-access system. However, we are supportive of the change in any event because it will reduce burden regardless of any change in participation rates. In addition, the use of technology may generate more interest and investor engagement and enable timely and easy access to searchable information for investors when they need it.

Workstream Four: Minimize Filings of Personal Information Forms

No questions.

Comment:

We welcome the elimination of duplication with respect to the requirements to provide similar information to regulators using the Personal Information Form and Form 33-109F4.

Similar steps should be taken in coordination with the Toronto Stock Exchange and the NEO Exchange to eliminate duplication of information with respect to ETF managers.

Workstream Five: Codify Exemptive Relief Granted in Respect of Conflicts Applications

19. The Proposed Amendments include new exemptions in sections 6.3 and 6.5 of NI 81-107 to permit secondary market trades in debt securities of related issuers and secondary market trades in debt securities with a related dealer, respectively. The exemptions are based on discretionary relief granted to date that includes pricing conditions. The pricing conditions are not the same under each exemption and also differ from what is currently codified under section 6.1 of NI 81-107.

- *In accordance with subsection 6.1(2) of NI 81-107, for inter-fund trades of portfolio securities between related reporting investment funds, non-reporting investment funds and managed accounts, the portfolio*

manager may purchase or sell a debt security if, among other conditions, all of the following apply:

- *the bid and ask price of the security is readily available as provided under paragraph 6.1(2)(c);*
- *the transaction is executed at a price, which is the average of the highest current bid and lowest current ask determined on the basis of reasonable inquiry as provided under paragraph 6.1(2)(e) and subparagraph 6.1(1)(a)(ii).*

- *In accordance with the proposed paragraph 6.3(1)(d) of NI 81-107, reporting and non-reporting investment funds would be able to invest in non-exchange traded debt securities of a related issuer in the secondary market if, among other conditions, all of the following apply:*

  - *where the purchase occurs on a marketplace, the price is determined in accordance with the requirements of that marketplace as provided under the proposed subparagraph 6.3(1)(d)(i) of NI 81107;*
  - *where the purchase does not occur on a marketplace, as provided under the proposed subparagraph 6.3(1)(d)(ii), the price is either of the following:*
    - *the price at which an arm's length seller is willing to sell the security;*
    - *not more than the price quoted publicly by an independent marketplace or the price quoted, immediately before the purchase, by an arm's length purchaser or seller.*

- *In accordance with the proposed subsection 6.5(1), reporting investment funds, non-reporting investment funds and managed accounts, may trade debt securities with a related dealer if, at the time of the transaction, among other conditions, all of the following apply:*
  - *the bid and ask price of the security transacted is readily available as provided under the proposed paragraph 6.5(1)(d);*
  - *the purchase is not executed at a price which is higher than the available ask price and the sale is not executed at a price which is lower than the available bid price, as provided in the proposed paragraph 6.5(1)(e).*

Should these pricing conditions be revised? Should they be more harmonized? Are there any self-regulatory organization rules or guidance for pricing methods that we should consider in such cases?

Response:

a) With respect to Workstream Five, and the codification of exemptive relief generally, we question what process will be implemented for transitioning firms with existing exemptive relief. As noted above, we strongly suggest that registrants that already have relief should be entitled to continue to rely on the relief despite the codification. If the CSA ultimately determines not to grandfather existing exemptive relief, we believe that a detailed cost/benefit analysis of this decision should be published. If existing relief is not continued, a lengthy transition period should be permitted for firms to comply with any new requirements (this is especially true where these may require approval of the Independent Review Committee).

b) We note that there are various types of funds that are not specifically covered by the proposed changes, such as U.S., U.K., E.U. and other international funds or those managed by an affiliate of the fund manager, which are frequently the subject of exemptive relief, due to the international reach of Canadian IFMs. These types of funds should be expressly included in the proposals. Alternatively, existing exemptive relief with respect to such funds should be continued. For example, the conflict of interest relief for *in specie* trades and fund-of-fund investments in international funds. We believe these measures will encourage and maintain the competitiveness of Canadian firms and funds, and hence the strength of our capital markets.

c) Application of NI 81-102, NI 81-106 and NI 81-107 to pooled funds

The proposed conditions and obligations in the new s.2.5.1 of NI 81-102 are not applicable to pooled funds, which have different attributes than mutual funds and are offered under prospectus exemptions to institutional and sophisticated investors. For this reason, NI 81-102, National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) and NI 81-107 should only apply to pooled funds for the purpose of benefiting from the exemptions. In some circumstances, imposing the proposed amendments would introduce new and unnecessary requirements, rather than codifying existing relief. Adopting the proposed amendments may cause significant burden to investment fund managers without an articulated investor or market protection benefit, particularly for pooled funds.

Many of the conditions included in the proposed s. 2.5.1 (such as 2.5.1(2)(c) (compliance with 2.4), 2.5.1(2)(e) (same redemption and valuation dates) and 2.5.1(2)(f)(objective price)) should not be applicable to investments in underlying funds that are non-reporting issuers. If the funds are not currently subject to these conditions (as a result of existing exemptive relief, for example), they would have to change the operation of the funds mid-stream, potentially requiring significant investments of time and money, potentially to the detriment of investors.

The proposals also include new obligations regarding the transfer of illiquid assets (requiring an independent quote) under sections 9.4(7)(c), 9.4(8)(c), 10.4(6)(d) and 10.4(7)(d) of 81-102. Funds may not be subject to such requirements in their current exemptive relief and we question why it is required where the investment fund manager is on both sides of the transaction, and therefore owes duties to each of the subject funds.

Pooled funds are generally sold under prospectus exemptions to permitted (institutional) and other sophisticated clients. PMAC members use pooled funds as a way to reduce costs to investors. The investor protection concerns relevant to retail investors in mutual funds are not present in these circumstances. The proposed amendments may increase the costs of the pooled funds, which would be harmful to the beneficiaries.

We also question the need to include the following conditions: s. 2.5.1(2)(g)(vi) (disclosing the approximate amount of significant interest held by an officer, director or substantial securityholder) and s. 2.5.1(2)(h) (investors are informed annually of their right to receive, on request and free of charge, the offering documents); these will create additional burden if not present in current exemptive relief, and they are not necessary for investor protection (in the former case, we do not believe it is a material consideration for investors, and in the latter, investors can always request relevant documents from their advisers).

Alternatively, firms should be permitted to continue to rely on existing relief ("grandfather"), at the individual fund manager's option, so that managers may choose to rely on existing relief or comply with new requirements. This will minimize disruption to current fund operations to the benefit of investors. However, this will not resolve the problem of additional burden for new pooled fund products that do not have exemptive relief.

d) Pricing Conditions

We support the simplification and harmonization of the pricing conditions. However, any new conditions that are imposed (including with respect to pricing) should not be more onerous than the terms of existing exemptive relief, or overly prescriptive. We also believe that there are two principles that should be covered – the price must be fair to the fund and there must be a record proving that the price was fair. In both cases, instead of prescriptive rules that result in potentially conflicting and burdensome standards, requirements should be harmonized based on these principles. If the portfolio manager can (a) prove that the price paid or received by the fund was fair and (b) document that the price was fair by using third party quotes, this should be sufficient to satisfy both fairness and record keeping considerations.

However, if the CSA were to impose prescriptive rules, the pricing conditions for a related issuer provide some guidance:

- where the purchase occurs on a marketplace, the price is determined in accordance with the requirements of that marketplace as provided under the proposed subparagraph 6.3(1)(d)(i) of NI 81107;
- where the purchase does not occur on a marketplace, as provided under the proposed subparagraph 6.3(1)(d)(ii), the price is either of the following:
  - the price at which an arm's length seller is willing to sell the security;
  - not more than the price quoted publicly by an independent marketplace or the price quoted, immediately before the purchase, by an arm's length purchaser or seller.

e) We also request that primary market related issuer debt relief be extended to all debt, not just long-term debt.

Workstream Seven: Repeal Regulatory Approval Requirements for Change of Manager, Change of Control of a Manager, and Change of Custodian that Occurs in Connection with a Change of Manager

21. *Given the oversight regime in place for investment fund managers, we are proposing to repeal the requirement for regulatory approval of a change of manager or a change of control of a manager under Part 5 (Fundamental Changes) of NI 81-102. Does this proposal raise any investor protection issues? If so, explain what measures, if any, securities regulators should consider in order to mitigate such issues. Alternatively, should we maintain the requirements for regulatory approval of these matters and seek to streamline the approval process by eliminating certain requirements in subsection 5.7(1) of NI 81-102? If so, please comment on whether such an approach would be preferable to the existing proposal, which has been put forward with consideration given to the presence of the investment fund manager registration regime.*

Response:

PMAC is supportive of this change; given that (i) the IFM is a registrant registered and regulated pursuant to NI 31-103, (ii) registrants owe duties to the funds, and (iii) firms are subject to significant due diligence, regulatory approval for a change of manager or control of a manager should not be required.

22. *When there is a change of manager or a change of control of a manager, should securityholders have the right to redeem their securities without paying any redemption fees before the change? If so, what should be the period after the announcement of the change during which securityholders should be allowed to redeem their securities without having to pay any redemption fees?*

Response:

We agree that in most circumstances, securityholders should have the right to redeem, from the time of the announcement to the last day redemptions are permitted under the current manager.

24. *When a change of manager is planned, we are considering requiring that the related draft Information Circular be sent to securities regulators for approval before it is sent to securityholders in accordance with subsection 5.4(1) of NI 81-102. What concerns, if any, would arise from introducing this requirement? We expect that securities regulators would establish a process to review the Information Circular. If securities regulators took 10 business days to approve the Information Circular as part of the review process, would that create any issues with respect to the organization of the securityholder meeting?*

Response:

We strongly disagree with a requirement to obtain regulatory approval of a draft Information Circular. This would create timing issues that could complicate the transition, and would require additional expenditure of time and money, thereby increasing the burden on registrants. The scope and rationale for the review is not clear – this would create additional burden for the securities regulator**.**

25. *Investment funds currently rely on the form of Information Circular provided for in Form 51-102F5 Information Circular of NI 51-102, which was developed primarily for non-investment fund issuers.*

a. *Should Form 51-102F5 of NI 51-102 be replaced with an Information Circular form that is tailored to investment funds?*

Response:

We support a form that is tailored to investment funds. This will reduce the regulatory burden of attempting to adapt the current form to the particularities of the change and will improve consistency, which is likely to benefit investors.

b. *If investment funds had their own form of Information Circular, would this reduce costs or make it easier to comply with requirements to produce an Information Circular?*

Response:

We believe this will both reduce the costs and improve compliance as it will (at minimum) be a better starting point for issuers, rather than attempting to adapt the existing form (which is designed for a different type of issuer), and will provide investors with salient information with respect to the change.

c. *If investment funds had their own form of Information Circular, are there certain form requirements that should be added which would provide investors with useful disclosure that is not currently required by Form 51-102F5? Alternatively, are there disclosure requirements that could be removed? Please provide details.*

Response:

Our members did not cite any specific information that is missing from the form; rather, they view this change as an opportunity to improve its readability in the investment funds context. Members would not want to see additions to the form that would increase their costs to complete it.

d. *Should investors receive additional tailored disclosure adapted to their needs? Would investors benefit from receiving a summary of key information from the Information Circular in a simple and comparable format, in addition to the Information Circular itself or as a distinctive part of the Information Circular (e.g. as a summary appearing at the front of the document)?*

Response:

We agree that investors may benefit from additional tailored disclosure in certain circumstances. Disclosure should be simple, concise and clear, such that a summary should not be required. We encourage the CSA to make this subject to the fund or fund manager's discretion, based on their opinion that it is necessary for the investor.

Workstream Eight: Codify Exemptive Relief Granted in Respect of Fund Facts Delivery Applications

26. *Currently, a separate Fund Facts or ETF Facts must be filed for each class or series of a mutual fund or ETF that is subject to NI 81-101, or NI 41-101 respectively. The Proposed Amendments contemplate allowing a mutual fund to prepare a single consolidated Fund Facts that includes all the classes or series covered by certain automatic switch programs on the basis that the only distinction between the classes or series relates to fees.*

a. *Should the CSA consider allowing the preparation and filing of consolidated Fund Facts and ETF Facts where there are no distinguishing features between classes*

or series other than fees, even in circumstances where there is no automatic switch program? Alternatively, should the CSA consider mandating consolidation in such circumstances? In either case, we anticipate revising the form requirements of Form 81-101F3 to be consistent with paragraph 3.2.05(e) of NI 81-101 as set out in Appendix B, Schedule 8 of this publication.

Response:

We are in favour of the proposed consolidated Fund Facts and ETF Facts, even in circumstances where there is no automatic switch program. This will reduce the burden of creating multiple versions of the document when fees are the only distinguishing feature between classes or series.

The proposals only appear to address mutual funds; similar changes should be provided for the ETF Facts form.

Additional comment regarding Workstream 8:

Fund Facts and ETF Facts delivery – The proposed amendment to section 3.2.04 of NI 81-101 provides that delivery of the Fund Facts document is not required (either pre- or post-sale) for conventional mutual fund purchases made in managed accounts or by permitted clients that are not individuals. We believe that this is the correct position; in the case of managed accounts, the portfolio manager making the decision in respect of the investments for a managed account is the "purchaser" – delivery to the managed account client is unnecessary as the end client is not making the investment decision, and delivery would likely cause confusion to the client. Therefore, the CSA should clarify that the Fund Facts document does not need to be delivered to either the portfolio manager or the end investor in these circumstances. The same comments apply to the ETF Facts document.

Summary

PMAC supports this regulatory burden reduction initiative and believes that it strikes the appropriate balance between investor protection and burden reduction, as described in this submission.

In summary, we reiterate the following recommendations:

1. Do not impose new requirements on pooled funds. The proposed amendments have the potential to negatively impact pooled funds by imposing requirements that may not currently be included in exemptive relief; given that pooled funds do not give rise to the same investor protection concerns as retail mutual funds, they should not be subject to the same conditions;
2. Streamline disclosure requirements and eliminate repetitive and redundant disclosures for mutual funds and ETFs;

3. Permit IFMs to post information to a designated website to meet disclosure delivery requirements;
4. Do not introduce new regulatory requirements through the Consultation; and,
5. Make corresponding changes to the ETF regime where applicable.

Conclusion

We are pleased that CSA members are reviewing the disclosure regime to determine what information is most useful to investors; research has demonstrated how difficult it can be for retail investors to interpret and understand the information they are given. PMAC is also pleased that duplicative information requirements are being eliminated as these add cost and complexity, without corresponding value for investors and the market.

We would be pleased to discuss any of our comments with you at your convenience. Please do not hesitate to contact Katie Walmsley at [redacted] or Victoria Paris at [redacted].

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

[redacted]

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