



## ADELSON LAW

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### BY EMAIL

April 27, 2022

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
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  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territory  
Registrar of Securities, Yukon Territory  
Superintendent of Securities, Nunavut

**Attention: The Secretary, Ontario Securities Commission  
Me Philippe Lebel, Autorité des marchés financiers**

Dear sirs or mesdames:

**Re: CSA Notice and Request for Comment  
Proposed Amendments to National Instrument 41-101 *Prospectus Requirements*,  
National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related  
Proposed Consequential Amendments and Change (the “Proposed  
Amendments”) and  
Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds  
in Continuous Distribution (the “Consultation Paper”)  
Modernization of the Prospectus Filing Model for Investment Funds**

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I am writing in respect of the Proposed Amendments and Consultation Paper relating to burden reduction initiatives for investment funds. Thank you for the opportunity to comment on these important proposals.

I have been employed as legal counsel for investment management firms for over 17 years, including 11 as General Counsel. I am currently in private practice serving the investment management industry. I have frequently commented on proposed regulation and have participated on OSC advisory bodies. As such, I am very familiar with the instruments and policies for which changes are proposed and believe I can offer helpful insight.

In general, I am supportive of the Proposed Amendments as reducing the frequency of prospectus filings for investment funds to a biennial cycle will certainly, on its face, reduce the regulatory burden currently faced by investment fund managers (“IFMs”). Furthermore, elimination of the 90-day rule will also reduce the regulatory burden, albeit less significantly. I commend the Canadian Securities Administrators for these initiatives.

### Proposed Removal of “Slip Sheet” Prospectus Amendments

The Proposed Amendments fall short of achieving the goal of regulatory burden reduction as a result of the changes to subsection 2.2(1) to NI 81-101 and subsection 6.1(3.1) of NI 41-101, requiring all amendments to investment fund prospectuses to be in the form of amended and restated prospectuses (“ARPs”). This will increase the burden for prospectus amendments significantly both from the perspective of internal IFM resources as well as costs of external counsel, where used for these purposes. Furthermore, it is not clear that the stated benefit of this, overcoming the difficulty of tracing through “slip sheet” amendments, is achieved or desirable.

It is important to understand the process followed by an IFM in preparing a prospectus, a “slip sheet” amendment to the prospectus and an ARP:

- Prospectus: Typically led by a project manager in conjunction with the legal group, each department or function of the IFM is canvassed to ascertain whether there are any changes in the disclosure relating to matters for which that department or function is responsible. This typically involves multiple reviews by multiple individuals in each department or function, even when there are few if any changes since the previous prospectus. Discussions may occur among multiple departments or functions to draft particularly sensitive disclosure or disclosure of items that are confusing.
- “Slip sheet” amendment: Such amendments typically relate to changes to a fund’s investment strategies, offerings of new series or programs, or fundamental changes (as defined in Part 5 of NI 81-102 *Investment Funds*). The amendment is focused on the change so only departments or functions responsible for the subject matter of the change are involved in the drafting and review of the amendment. In addition to the involvement of the legal and compliance functions in all amendments, a change in investment strategies would typically involve the portfolio manager and the product management team as well. No other operational groups would be involved. For a fundamental change, there would likely be no involvement in the prospectus amendment beyond legal and compliance. For a new series or program, one would expect much broader involvement among IFM departments and functions.
- ARP: An ARP would typically be used for a substantial amendment, such as the complete overhaul of a major program offered by the IFM. Such amendments would typically impact much Part A disclosure and extensive Part B disclosure. An ARP is

used in these situations precisely because a slip sheet amendment would be difficult to follow. The same process as employed for a prospectus is likely to be used, although with less tolerance for minor changes.

Importantly, from a legal perspective, there is no difference between a prospectus and an ARP, which explains why a similar process is followed. The ARP fully replaces the prospectus and carries the same liability. While the internal reviews may be quicker for an ARP, they are unlikely to be much different than for a prospectus. This imposes a burden on departments and functions within the IFM that would have no involvement if such were a “slip sheet” amendment. For example, if a simplified prospectus is being amended to revise investment strategies of a fund, the only functions of the IFM that would be involved would be product management and investment management, alongside legal and compliance. By requiring an ARP for an amendment, other functions that would be involved in prospectus review would have to be involved in the review as well, just as they would for a prospectus.

Firms that outsource this work incur hard costs. Depending on the complexity of an amendment, external counsel may charge several thousand dollars for a “slip sheet” amendment. However, that cost will increase significantly for an ARP as counsel would need to be sure that no other parts of the prospectus have been amended (or require amendment) and the disclosure in the unamended parts remains current. These extra hours add up to thousands of dollars in cost.

If an IFM, and consequently an investment fund, is required to incur these additional costs and burdens, what would be the point of biennial renewal of the prospectus? If a prospectus has been amended and restated within the two-year period, the biennial renewal is not necessary. Perhaps the two-year period ought to run from the date of the amended and restated prospectus. I note that this seems similar in concept to that put forth in the Consultation Paper and I encourage the CSA down that path.

The stated benefit of the change to mandating the use of an ARP for amendments is to overcome the difficulty of tracing through “slip sheet” amendments. An investor who receives an amended and restated prospectus does not know what has been changed. Importantly, current investors of an investment fund would not be able to look at the amended and restated prospectus and know what has changed. The change itself for which the ARP is prepared could impact the subsequent purchase of an investment fund, yet it would not be very clear to such purchaser what has changed. Such an investor would only have recourse to the material change report and press release accompanying the amended and restated document to determine what has changed with a particular fund, yet investors do not typically know about such filings and such filing would not typically give the level of disclosure gleaned from a “slip sheet” amendment. The current investor could view a “slip sheet” amendment and immediately know what has changed. As such, the removal of the “slip sheet” amendment actually reduces investor protection.

The only way to determine what changes there were from the original prospectus to the ARP would be to run a blackline. Blacklines are required to be filed with an ARP so that regulators who review the document can see what has been revised. Investors do not have that benefit. While the benefit to regulators from removing the ability to “slip sheet” amendments is thus obvious, the benefit to investors is not. As such, the requirement that amendments to a prospectus be made only by way of ARP should be removed from the Proposed Amendments.

It is interesting that the proposal in the Consultation Paper for a base shelf prospectus would allow for amendment by a document incorporated by reference into the prospectus rather than an ARP. These positions seem inconsistent, yet no explanation for such inconsistency is apparent.

### Consultation Paper

The Consultation Paper proposes that investment funds move to a base shelf prospectus model. This is an excellent idea. Referring to Form 81-101F1 *Contents of Simplified Prospectus*, much disclosure required under the new form is time sensitive. It is ordinary for IFM's to tweak the disclosure items over time, but generally changes to Part A of a simplified prospectus are minor from year to year. Under the new form, only the following items in Part A require annual updating:

- Item 4.3 Brokerage Arrangements – due to the need to identify what goods or services were used since the previous prospectus filing
- Item 4.16 Remuneration of Directors, Officers and Trustees – due to the disclosure requirement relating to compensation and expenses paid to IRC members
- Item 4.18 Legal Proceedings (if there are any)
- Item 11 Income Tax Considerations

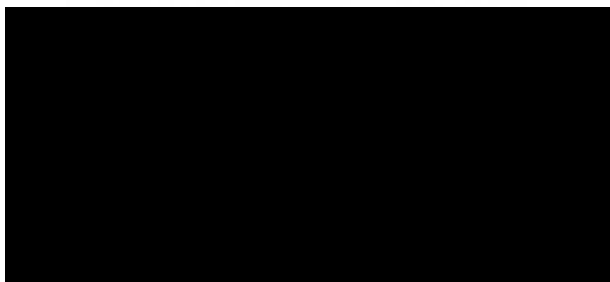
In Part B of the simplified prospectus, the most likely item to change relates to the fund's risk classification. This is an annual calculation (at least) and we have seen many risk classification changes over time. These disclosures can easily be posted on and updated annually on the IFM's designated website.

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Should you wish to discuss my comments further or require any clarification, please do not hesitate to contact me at your convenience.

Yours truly,

**ADELSON LAW**



Eric Adelson  
Principal