CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Consultation

Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1

September 12, 2019

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period

- draft amendments to the following regulations:
    - *Regulation 14-101 respecting Definitions* (**Regulation 14-101**),
    - *Regulation 41-101 respecting General Prospectus Requirements* (**Regulation 41-101**),
    - *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure* (**Regulation 81-101**),
    - *Regulation 81-102 respecting Investment Funds* (**Regulation 81-102**),
    - *Regulation 81-106 respecting Investment Fund Continuous Disclosure* (**Regulation 81-106**), and
    - *Regulation 81-107 respecting Independent Review Committee for Investment Funds* (**Regulation 81-107**),
- draft consequential amendments to the following regulations:
    - *Regulation 13-101 respecting the System* for *Electronic Document Analysis and Retrieval (SEDAR)*, and
    - *Regulation 13-102 respecting System Fees for SEDAR and NRD*, and
- draft amendments to the following policy statements:
    - *Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions*,
    - *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements*,
    - *Policy Statement to Regulation 81-101 respecting Mutual Fund Prospectus Disclosure*,
    - *Policy Statement to Regulation 81-102 respecting Investment Funds*,
    - *Policy Statement to Regulation 81-106 respecting Investment Fund Continuous Disclosure* (**Policy Statement 81-106**), and
    - *Policy Statement to Regulation 81-107 respecting Independent Review Committee for Investment Funds*

(collectively, the **Draft Amendments**).

The Draft Amendments are part of the first stage of Phase 2 of the CSA's efforts to reduce regulatory burden for investment fund issuers. On May 24, 2018, CSA Staff published CSA Staff Notice 81-329 *Reducing Regulatory Burden for Investment Fund Issuers*, which provided an overview of the CSA's work to date and indicated that the Draft Amendments were forthcoming.

The text of the Draft Amendments is published with this notice and will also be available on the websites of CSA jurisdictions, including

www.bcsc.bc.ca,
www.albertasecurities.com,
www.fcaa.gov.sk.ca,
www.mbsecurities.ca,
www.osc.gov.on.ca,
www.lautorite.qc.ca,
www.fcnb.ca, and
https://nssc.novascotia.ca.

Substance and Purpose

The Draft Amendments represent the first stage of the CSA's initiative to reduce the regulatory burden for investment fund issuers. Specifically, the objectives of the Draft Amendments are to

- remove redundant information in selected disclosure documents,
- use web-based technology to provide certain information about investment funds,
- codify exemptive relief that is routinely granted, and
- minimize the filing of documents that may contain duplicative information, such as Personal Information Forms (**PIFs**).

Background

The CSA have identified reviewing regulatory burden for reporting issuers as a key priority for the 2016-2019 period.[1] The focus of the CSA's review is to identify areas that would benefit from a reduction of any undue regulatory burden and to streamline those requirements without negatively impacting investor protection or efficiency of the capital markets.

Efforts aimed at identifying opportunities for the reduction of regulatory burden on investment fund issuers began in March 2017.[2] The efforts are being carried out in two phases.

Phase 1

In Phase 1, CSA Staff conducted a comprehensive review of the current investment fund disclosure regime, evaluated disclosure elements borrowed from the non-investment fund reporting issuer regime, gathered information on relevant regulatory reforms conducted by other regulators internationally, and received feedback from stakeholders. Based on these efforts, CSA Staff identified potential areas of focus for development of proposals aimed at reducing regulatory burden for investment fund issuers while maintaining investor protection and efficiency of the capital markets.

Phase 2

In Phase 2, CSA Staff decided to prioritize, investigate and develop proposals regarding the areas of focus identified in Phase 1. Prioritization was based on whether the proposed changes could be implemented in the near term and at limited cost to stakeholders, without compromising investor protection or efficiency of the markets. The scope was later broadened to consider the burden associated with not only disclosure requirements but some operational matters as well. Phase 2 will be carried out in several stages.

As part of the first stage of Phase 2, CSA Staff are now publishing for comment the Draft Amendments.

[1] https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_Business_Plan_2016-2019.pdf
[2] The CSA is pursuing a separate project to reduce burden for non-investment fund reporting issuers and issued CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* on March 27, 2018.

Summary of Draft Amendments

CSA Staff have organized the Draft Amendments into eight separate workstreams. A summary of each workstream is set out below.

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

The CSA propose to repeal the requirement for a mutual fund in continuous distribution to file an annual information form (**AIF**). In lieu of an AIF, the CSA proposes to consolidate Form 81-101F2 *Contents of Annual Information Form* (**Form 81-101F2**) and Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**).

Currently, a simplified prospectus (**SP**) and an AIF must each be filed with regulators annually by conventional mutual funds in continuous distribution. The CSA propose a revised Form 81-101F1 which consolidates the requirements of Form 81-101F2 by removing overlapping disclosure between the two forms,[3] repealing requirements that are not meaningful to investors and are difficult to produce,[4] and repealing requirements for disclosure that are available in other regulatory documents.[5] Repealing the AIF filing requirement and adding unique requirements from Form 81-101F2 into Form 81-101F1 eliminates the requirement to file two separate disclosure documents (the SP and the AIF) and replaces it with a requirement to file one (the SP) instead.

Originally, the SP was the disclosure document delivered to mutual fund investors, and consolidation of some of the disclosure requirements from Form 81-101F2 may not have been desirable. However, given that the fund facts document (the **Fund Facts**) is now delivered to mutual fund investors instead of the SP, consolidating certain AIF disclosure requirements into the SP will reduce regulatory burden for investment fund managers without impacting the Fund Facts disclosure provided to mutual fund investors.

Investment Funds Not in Continuous Distribution

The CSA propose to require an investment fund that has not obtained a receipt for a prospectus during the last 12 months preceding its financial year-end to file a document prepared in accordance with Form 81-101F1 or Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**) to meet its obligation to file an AIF under section 9.2 of Regulation 81-106. We also propose to exempt such investment funds from several sections of Form 81-101F1 and Form 41-101F2 while requiring that all references to "prospectus" be replaced with "annual information form".

Workstream Two: Investment Fund Designated Website

Given the widespread use of Internet-based technology in communications, we propose to add Part 16.1 to Regulation 81-106 to require reporting investment funds to designate a qualifying website on which the investment fund intends to post regulatory disclosure. Under the proposed section 16.1.2 of Regulation 81-106, a qualifying website will have to meet two requirements, namely that (i) it is publicly accessible, and (ii) it 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 a part of its investment fund family[6] (a **Related Person**).

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[3] For example: Item 4(3) of Form 81-101F2 has not been carried over into the draft Form 81-101F1 on the basis that the requirement duplicates the existing Form 81-101F1, Part B, Item 6(2); Items 8(1) and 8(2) of Form 81-101F2 have not been carried over on the basis that the requirements are similar to those set out in the existing Form 81-101F1, Part A, Item 6(1); and Item 8(4) of Form 81-101F2 has not been carried over on the basis that the requirement is similar to those set out in the existing Form 81-101F1, Part A, Item 6(4).

[4] Subsections (3)-(6) of Item 11.1 (Principal Holders of Securities) of Form 81-101F2 have not been carried over into the draft Form 81-101F1. The CSA are of the view that the information required by these subsections may not be of sufficient benefit to justify the significant time and cost associated with producing it.

[5] The CSA notes two items in this regard. Form 81-101F1, Part A, Item 8.2 (Illustrations of Different Purchase Options) has not been carried forward on the basis that Form 81-101F3, Part II, Item 1.2 (Illustrations of Different Sales Charge Options) provides similar information in a more easily accessible location. Item 9.2 (Dealer Compensation from Management Fees) of the existing Part A of Form 81-101F1 has also not been carried over into the draft Form 81-101F1. The CSA are of the view that disclosure of this nature is made available to investors by, for example, section 14.17 (Report on charges and other compensation) of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*. The CSA has not identified similar requirements in Form 41-101F2 *Information Required in an Investment Fund Prospectus* that would also need to be deleted to ensure that Form 41-101F2 and the proposed SP remain comparable.

[6] In accordance with subsection 1.3(3) of Regulation 81-106, the term "investment fund family" used in Regulation 81-106 has the same meaning ascribed to the term "mutual fund family" defined in section 1.1 of *Regulation 81-105 respecting Mutual Fund Sales Practices*, except that the reference in this definition to "mutual fund" must be read as a reference to "investment fund". Therefore,

The purpose of this proposed requirement is to improve the accessibility of disclosure for investors while taking into account the current way investment funds or Related Persons generally structure their websites. We are of the view that this requirement will create possibilities for regulatory disclosure that is currently found in printed documents to be moved to the designated qualifying website, which can potentially reduce burden and costs for investment fund managers and investment funds.

While the proposed requirement will create a new obligation on investment funds, it aims to provide reporting investment funds flexibility in meeting the obligation. Consequently, the Draft Amendments will allow a reporting investment fund to post its regulatory disclosure on either its website or the website of a Related Person. In the latter case, the CSA will expect that the website identifies and differentiates between the documents and information that are specific to various investment funds.

The CSA is of the view that such a requirement would not unduly impose an additional regulatory burden on investment funds and their investment fund managers since it would formalize a commercial practice adopted by most investment funds and their investment fund managers. Indeed, most investment funds now post regulatory disclosure and other information (e.g. fund profiles) on a website that is established by the investment fund, or a Related Person, since it allows them to better reach and inform current and potential investors. Consequently, we expect that the incremental costs of this new requirement for reporting investment funds and their investment fund managers would be minimal.

Several provisions within the regulatory framework applicable to investment funds already provide that certain regulatory disclosure[7] must be posted to the website of the investment fund, investment fund family or investment fund manager, if one exists. In addition, several investment funds are currently sending their securityholders hyperlinks that lead them to specific documents posted on their website or the website of a Related Person. Despite these provisions to facilitate electronic delivery of documents, there is no regulatory requirement to mandate that an investment fund establish and maintain a website for the purpose of posting regulatory disclosure.

Concurrent with the requirement to designate an investment fund website, we propose certain consequential amendments to provisions in Regulation 41-101, Regulation 81-101, Regulation 81-106 and Regulation 81-107 to reflect the proposed requirement. Since several regulations would include requirements for investment funds to post regulatory disclosure on a designated website, we propose to introduce a definition of "designated website" of an investment fund in Regulation 14-101 for clarity.

We also propose to add Part 11 in Policy Statement 81-106 to provide guidance to investment funds and their investment fund managers on how a designated website should be maintained.[8] Among other things, we clarify that supervision of the website and its content should be taken into account in the existing compliance systems of the investment fund and its investment fund manager. We note that the establishment and maintenance of a compliance system by investment fund managers is required under section 11.1 of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**Regulation 31-103**).

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

The CSA propose to introduce, in sections 12.2.1 to 12.2.6 of Regulation 81-106, a notice-and-access system for the solicitation of proxies under subsection 12.2(2) of Regulation 81-106 and section 2.7 of *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (**Regulation 54-101**). This follows earlier CSA implementation of a notice-and-access system for non-investment fund reporting issuers.

In 2012, the CSA adopted amendments for non-investment fund reporting issuers to improve the investor voting communication process by which proxies and voting instructions are solicited.[9] These amendments came into force in 2013.[10] The introduction of a notice-and-access system was one of the most significant features of the amendments. Notice-and-access permits delivery of proxy-related materials by sending a notice providing registered holders or beneficial owners, as the case may be, with summary information about the proxy-related materials and instructions on how to access them. The 2013 amendments applied to both management and non-management solicitations.[11]

"investment fund family" means two or more investment funds that have (a) the same manager, or (b) managers that are affiliates of each other.

[7] For example, the following regulatory disclosure must be posted to a website if the investment fund has one: prospectuses, Fund Facts and ETF Facts documents, quarterly portfolio disclosure, annual financial statements, interim financial reports, annual and interim management reports of fund performance and reports of the independent review committee.

[8] This guidance is consistent with the guidance currently provided under section 4.6 of Policy Statement 81-106 and section 6.11 of *National Policy 51-201: Disclosure Standards*.

[9] https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/54-101/2012-11-29/2012nov29-54-101-avis-publ-en.pdf

[10] https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/54-101/2013-02-07/2013fev07-54-101-final-en.pdf

[11] See section 2.7.7 of Regulation 54-101 and CSA Notice of *Regulation to amend Regulation 54-101 respecting Communication*

Following comments received that recommended enabling the use of notice-and-access by investment funds, the CSA determined that it would consider the issue at a later date.[12]

In 2016, the CSA began granting exemptive relief from the requirement in paragraph 12.2(2)(a) of Regulation 81-106 to deliver a completed Form 51-102F5 *Information Circular* (**Information Circular**) to permit use of notice-and-access for solicitation of proxies by or on behalf of management of an investment fund.[13] This exemptive relief was drafted with reference to the notice-and-access system set out for non-investment fund reporting issuers in sections 9.1.1 to 9.1.4 of *Regulation 51-102 respecting Continuous Disclosure Obligations* (**Regulation 51-102**) and sections 2.7.1 to 2.7.8 of Regulation 54-101, with adaptations for investment funds. In this way, the exemptive relief placed investment funds with relief in a similar position as non-investment fund reporting issuers, with respect to proxy-related materials.

The CSA now propose to codify this frequently-granted exemptive relief and extend its availability to non-management solicitation of proxies, consistent with the notice-and-access system set out for non-investment fund reporting issuers. The Draft Amendments are consistent with the conditions of recently granted notice-and-access exemptive relief and the notice-and-access provisions in Regulation 51-102 and Regulation 54-101. The Draft Amendments do not change the requirement to prepare an Information Circular.

Workstream Four: Minimize Filings of Personal Information Forms

The CSA propose to eliminate the PIF requirements for specified individuals in Regulation 41-101[14] and Regulation 81-101[15] for investment fund issuers. Specified individuals are individual registrants and permitted individuals who have already submitted a Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals* (**Form F4**).[16] This would eliminate the need for similar information to be provided to securities regulators in both a PIF and a Form F4 to achieve regulatory oversight of such individuals.

The Draft Amendments would not affect investor protection as information provided to the regulators, either upon application for registration or as an ongoing matter, is required to be kept up-to-date. In particular, securities regulators must receive notification of certain changes, generally within 10 to 30 days of a change under *Regulation 33-109 respecting Registration Information* (**Regulation 33-109**).

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

The CSA are proposing amendments to Regulation 81-102 and Regulation 81-107 to codify frequently granted exemptive relief in respect of conflict of interest prohibitions contained under securities legislation, Regulation 81-102 and Regulation 31-103.

In 2000, the CSA adopted Regulation 81-102, which included certain conflict of interest prohibition exemptions in respect of which exemptive relief had been previously provided. In 2006, the CSA adopted Regulation 81-107, which included further conflict of interest prohibition exemptions of the same nature. Regulation 81-107 was adopted with a view to

- continuing to monitor what other exemptions may be appropriate based on applications received, and
- further reviewing the appropriateness of more exemptions applying to different types of transactions involving investment funds and related entities.

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with Beneficial Owners of Securities of a Reporting Issuer, Amendments to *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*, *Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations,* Amendments to *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations,* published on November 29, 2012 in the *Bulletin de l'Autorité des marché financiers*, Vol. 9, No. 48, page 1251, which notes that the notice-and-access provisions in Regulation 51--102 contain an equivalent concept.

[12] https://lautorite.qc.ca/fileadmin/lautorite/reglementation/valeurs-mobilieres/54-101/2012-11-29/2012nov29-54-101-avis-publ-en.pdf

[13] *In the Matter of Desjardins Investments Inc., Fiera Capital Corporation, IA Clarington Investments Inc., National Bank Investments Inc.*, September 8, 2016.

[14] Subparagraph 9.1(1)(b)(ii) of Regulation 41-101.

[15] Subparagraphs 2.3(1)(b)(ii) and 2.3(2)(b)(iv) of Regulation 81-101.

[16] Part 4 (Changes to Registered Individual and Permitted Individual Information) of Regulation 33-109, prescribes requirements to update the information in the Form F4 by filing a Form 33-109F5 *Change of Registration Information*.

The CSA now propose to codify eight types of exemptions, subject to conditions, that will permit

a) fund-on-fund investments by investment funds that are not reporting issuers,

b) investment funds that are reporting issuers to purchase non-approved rating debt under a related underwriting,

c) *in specie* subscriptions and redemptions involving related managed accounts and mutual funds,

d) inter-fund trades of portfolio securities between related reporting investment funds, investment funds that are not reporting issuers and managed accounts at last sale price,

e) investment funds that are not reporting issuers to invest in securities of a related issuer over an exchange,

f) reporting investment funds and investment funds that are not reporting issuers to invest in debt securities of a related issuer in the secondary market,

g) reporting investment funds and investment funds that are not reporting issuers to invest in long-term debt securities of a related issuer in primary market distributions, and

h) reporting investment funds, investment funds that are not reporting issuers and managed accounts to trade debt securities with a related dealer.

Investment fund managers have generally been able to demonstrate that the above transactions are beneficial to investors despite evidencing a potential conflict of interest. The exemptions are codified based on conditions the CSA have incorporated into numerous discretionary exemptive relief decisions. The conditions are designed to mitigate the investor protection concerns and potential risks associated with these transactions, largely by promoting transparency, objective pricing, and, in some cases, oversight by an independent review committee (**IRC**).

The Draft Amendments aim at codifying exemptions to the "investment fund conflict of interest restrictions" defined in Regulation 81-102 and the "inter-fund self-dealing investment prohibitions" defined in Regulation 81-107. Those restrictions and prohibitions include certain restrictions for registered advisers set out in subsection 13.5(2) of Regulation 31-103.[17] We also propose to extend the scope of the "investment fund conflict of interest restrictions" defined in Regulation 81-102 to include the restrictions for dealer managed investment funds set out in subsection 4.1(2) of Regulation 81-102.[18]

a) Fund-on-Fund Investments by Investment Funds that are not Reporting Issuers

We propose to add section 2.5.1 to Regulation 81-102 to provide an exemption to permit investment funds that are not reporting issuers to invest in other related investment funds.

Section 2.5 of Regulation 81-102 currently permits investment funds that are reporting issuers to invest in other investment funds that are reporting issuers. Subsection 2.5(7) of Regulation 81-102 provides an exemption from the investment fund conflict of interest investment restrictions and reporting requirements listed in Appendix D and Appendix E to Regulation 81-102 in cases where the underlying fund may be a related fund. Most commonly this occurs when the top fund, or a group of related top funds, are substantial securityholders in the underlying fund. Top funds that are reporting issuers must comply with the fund-on-fund regime prescribed under section 2.5 as a condition of relying on the exemption set out in subsection 2.5(7).

[17] Subsection 13.5(2) of Regulation 31-103 prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, to do any of the following: (a) purchase a security of an issuer in which a responsible person or an associate of a responsible person is a partner, officer or director unless (i) this fact is disclosed to the client, and (ii) the written consent of the client to the purchase is obtained before the purchase; (b) purchase or sell a security from or to the investment portfolio of any of the following: (i) a responsible person; (ii) an associate of a responsible person; (iii) an investment fund for which a responsible person acts as an adviser.

[18] Subsection 4.1(2) of Regulation 81-102 prohibits a dealer managed investment fund from knowingly making an investment in a class of securities of an issuer of which a partner, director, officer or employee of the dealer manager of the investment fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer, unless the partner, director, officer or employee (a) does not participate in the formulation of investment decisions made on behalf of the dealer managed investment fund; (b) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed investment fund; and (c) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed investment fund.

The CSA have frequently granted exemptive relief from the investment fund conflict of interest investment restrictions and reporting requirements to facilitate investment funds that are not reporting issuers investing in related investment funds. The benefits of permitting these transactions are the same as those recognized by the CSA in the existing fund-on-fund regime for publicly offered funds which include more efficient and cost-effective portfolio diversification. The exemptions have typically been granted by analogy to the prescribed fund-on-fund regime in section 2.5 of Regulation 81-102 with additional conditions, as necessary, to address that the funds are not reporting issuers subject to Regulation 81-102.

To implement this exemption in Regulation 81-102, we propose all of the following:

- to add subsection 1.2(2.1) to Regulation 81-102 so that the new exemption in section 2.5.1 will apply to investment funds that are not reporting issuers;

- to add section 2.5.1 to Regulation 81-102 to provide a new exemption from the investment fund conflict of interest investment restrictions and reporting requirements. Subject to several conditions to be met, the new exemption would permit top funds that are not reporting issuers to invest in all of the following:

    - investment funds that are reporting issuers;

    - investment funds that are not reporting issuers.

b) Investment Funds that are Reporting Issuers to Purchase Non-Approved Rating Debt Under a Related Underwriting

Subsection 4.1(4) of Regulation 81-102 provides a statutory exemption to subsection 4.1(1) of Regulation 81-102 for dealer managed investment funds[19] to invest in certain offerings that are underwritten by the fund's dealer manager if certain conditions are met. We propose to amend subsection 4.1(4) to permit a dealer managed investment fund to invest in offerings of debt securities of reporting issuers that do not have an approved rating, if the offerings are underwritten by the fund's dealer manager. We also propose to expand the scope of subsection 4.1(4) to permit a dealer managed fund to invest in other offerings of reporting issuers underwritten by the fund's dealer manager that are made under an exemption from the prospectus requirement.

The CSA have frequently granted exemptive relief from the prohibition in subsection 4.1(1) to permit dealer managed investment funds to participate in offerings of debt securities that do not have a designated rating, as required under paragraph 4.1(4)(b) of Regulation 81-102. This exemptive relief has been granted by analogy to the existing exemptions under subsection 4.1(4) for debt securities. The exemptive relief recognizes that there tends to be a limited supply of debt securities such that a dealer managed investment fund may be unduly restricted in the pursuit of its investment objectives where it has a dealer manager that is an underwriter in this market. One of the conditions for this exemptive relief is that there be independent oversight provided by the fund's IRC as provided in paragraph 4.1(4)(a) of Regulation 81-102.

The CSA have also granted exemptive relief from the prohibition in subsection 4.1(4) to permit dealer managed funds to participate in offerings of other securities by reporting issuers where the distribution proceeds under an exemption from the prospectus requirement. The exemptive relief recognizes that there is still adequate transparency so long as the issuer is a reporting issuer.

To implement these exemptions in Regulation 81-102, we propose all of the following:

- to amend subsection 4.1(4) of Regulation 81-102 so that the provision applies to investments in securities of a reporting issuer;

- to remove the designated rating requirement in paragraph 4.1(4)(b) of Regulation 81-102;

- to add a qualifier in paragraph 4.1(4)(b.1) of Regulation 81-102 to permit offerings to be made under an exemption from the prospectus requirement in addition to prospectus qualified offerings;

- to add a pricing condition in paragraph 4.1(4)(c.1) of Regulation 81-102 for purchases of debt securities that do not trade on an exchange and which are made during the 60-day period following the distribution.

[19] In accordance with section 1.1 of Regulation 81-102, a "dealer managed investment fund" means an investment the portfolio adviser of which is a dealer manager.

c) In Specie Subscriptions and Redemptions Involving Related Managed Accounts and Mutual Funds

We propose to add subsections 9.4(7) and (8) to Regulation 81-102 to provide the necessary exemptions to facilitate the *in specie* payment of the issue price of the securities of a mutual fund, including a mutual fund that is not a reporting issuer, by a related mutual fund or managed account under paragraph 9.4(2)(b) of Regulation 81-102.[20] We also propose to add subsections 10.4(6) and (7) to provide the necessary exemptions to facilitate the *in specie* payment of redemption proceeds by mutual funds, including mutual funds that are not reporting issuers, to related mutual funds and managed accounts under paragraph 10.4(3)(b) of Regulation 81-102.[21]

The CSA have frequently granted exemptive relief to facilitate *in specie* subscriptions and redemptions between related mutual funds and managed accounts. These transactions have been interpreted to be prohibited trades in portfolio securities under the investment portfolio conflict of interest restrictions set out at paragraph 13.5(2)(b) of Regulation 31-103. The main benefit of permitting these transactions is to minimize brokerage and trading costs between related mutual funds and managed accounts. The exemptive relief has generally been granted by analogy to the *in specie* subscription and redemption provisions already contained in sections 9.4 and 10.4 of Regulation 81-102 with additional conditions designed to mitigate the risks associated with conducting these transactions between related investment funds and managed accounts.

To implement these exemptions in Regulation 81-102, we propose all of the following:

- to amend section 1.2 of Regulation 81-102 so that the new exemptions will also apply in connection with *in specie* subscriptions to mutual funds that are not reporting issuers and the payment of redemption proceeds *in specie* by investment funds that are not reporting issuers including subscriptions by, or payments to, related managed accounts;

- to add subsection 9.4(7) to Regulation 81-102 to provide a new exemption from the investment fund conflict of interest investment restrictions. The new exemption would permit mutual funds, including mutual funds that are not reporting issuers, to subscribe *in specie* to related mutual funds, including mutual funds that are not reporting issuers, if certain conditions are met;

- to add subsection 9.4(8) to Regulation 81-102 to provide a new exemption from the investment fund conflict of interest investment restrictions. The new exemption would permit managed accounts to subscribe *in specie* to related mutual funds, including mutual funds that are not reporting issuers, if certain conditions are met;

- to add subsection 10.4(6) to Regulation 81-102 to provide a new exemption from the investment fund conflict of interest investment restrictions. The new exemption would permit mutual funds, including mutual funds that are not reporting issuers, to pay redemption proceeds *in specie* to related mutual funds, including mutual funds that are not reporting issuers, if certain conditions are met;

- to add subsection 10.4(7) to Regulation 81-102 to provide a new exemption from the investment fund conflict of interest investment restrictions. The new exemption would permit mutual funds, including mutual funds that are not reporting issuers, to pay redemption proceeds *in specie* to related managed accounts, if certain conditions are met.

d) Inter-Fund Trades of Portfolio Securities between Related Reporting Investment Funds, Investment Funds that are not Reporting Issuers and Managed Accounts at Last Sale Price

We propose to amend the conditions to the exemption from the inter-fund self-dealing investment prohibitions in subsection 6.1(2) of Regulation 81-107 so that it will apply to inter-fund trades involving related investment funds that are not reporting issuers, and managed accounts. The exemption would continue to apply to trades between related investment funds that are reporting issuers. We will also amend the conditions in section 6.1 of Regulation 81-107 so that all inter-fund trades of exchange-traded securities may occur at last sale price.

The CSA have frequently granted exemptive relief to expand the existing codified exemption and permit inter-fund trades between related investment funds, including funds that are not reporting issuers, and managed accounts. These transactions have been interpreted to be prohibited trades for registered advisers in investment portfolios under paragraph 13.5(2)(b) of Regulation 31-103. The main benefit of permitting these transactions is to minimize brokerage

[20] Paragraph 9.4(2)(b) of Regulation 81-102 provides, among other things, that the payment of the issue price of the securities of a mutual fund may be made to the mutual fund by making good delivery of securities ("*in specie* payment") if certain conditions are met.
[21] Paragraph 10.4(3)(b) of Regulation 81-102 provides, among other things, that an investment fund must pay the redemption proceeds for a redeemed security by making good delivery to the securityholders of portfolio assets if certain conditions are met.

and trading costs on behalf of the related funds and managed accounts. The exemptive relief has generally been granted by analogy to the inter-fund self-dealing investment prohibitions already contained in subsection 6.1(2) of Regulation 81-107.

The CSA have also frequently granted exemptive relief to permit inter-fund trades of exchange-traded securities to occur at last sale price as defined under the Universal Market Integrity Rules (**UMIR**) published by the Investment Industry Regulatory Organization of Canada (**IIROC**) in lieu of closing sale price, as currently required under section 6.1 of Regulation 81-107. The main benefit of permitting the use of last sale price is to obtain a more accurate price that is closer to the market price at the time the trade decision is made.

To implement the expansion of the inter-fund trading exemption in Regulation 81-107, we propose all of the following:

- to amend subsection 1.1(1) of Regulation 81-107 so that the inter-fund trade exemption will apply in connection with trades involving investment funds that are not reporting issuers and managed accounts;

- to amend the definition of current market price under paragraph 6.1(1)(a) of Regulation 81-107 to include last sale price;

- to add a definition of managed account under paragraph 6.1(1)(c) of Regulation 81-107;

- to amend subsection 6.1(2) of Regulation 81-107 so that the conditions include trades involving investment funds that are not reporting issuers and managed accounts;

- to amend subsection 6.1(3) of Regulation 81-107 so that the exemptions from *Regulation 21-101 respecting Marketplace Operation*, and Part 6 and Part 8 of *Regulation 23-101 respecting Trading Rules* apply in connection with trades involving investment funds that are not reporting issuers and managed accounts;

- to amend subsection 6.1(4) of Regulation 81-107 so that the exemption from the inter-fund self-dealing investment prohibitions does not apply in connection with trades involving investment funds that are not reporting issuers and managed accounts.

e) Investment Funds that are Not Reporting Issuers to Invest in Securities of a Related Issuer Over an Exchange

We propose to amend the exemption contained in section 6.2 of Regulation 81-107 that permits reporting investment funds to invest in securities of related issuers if certain conditions are met, so that it will also apply to investments made by investment funds that are not reporting issuers. The exemption would continue to apply to investment funds that are reporting issuers.

The CSA have frequently granted exemptive relief from investment fund conflict of interest investment restrictions to permit fund families that include investment funds that are not reporting issuers to invest in securities of related issuers on similar conditions, including IRC oversight and that the purchase is made over an exchange. The benefit of permitting these transactions is the same as for investment funds that are reporting issuers. In some instances, an investment fund's related issuer may be a good investment for the investment fund based on its investment objectives.

To implement expansion of the exemption in section 6.2 of Regulation 81-107 to include investments by investment funds that are not reporting issuers, we propose all of the following:

- to amend subsection 1.1(1) of Regulation 81-107 so that the related issuer purchase exemption will apply in connection with trades involving investment funds that are not reporting issuers;

- to amend subsection 6.2(1) of Regulation 81-107 so that it includes investment funds that are not reporting issuers in addition to investment funds that are reporting issuers;

- to amend subsection 6.2(2) of Regulation 81-107 so that the exemption from the investment conflict of interest investment restrictions applies in connection with investments made by investment funds that are not reporting issuers.

f) Reporting Investment Funds and Investment Funds that are not Reporting Issuers to Invest in Debt Securities of a Related Issuer in the Secondary Market

We propose to create a new exemption by adding section 6.3 to Regulation 81-107 in order to permit investment funds to invest in non-exchange traded debt securities of a related issuer in the secondary market if certain conditions are met.

The CSA have frequently granted exemptive relief from the conflict of interest investment restrictions, particularly in connection with funds managed by an affiliate of a financial institution, to permit these investments. Because the debt securities are not traded on an exchange, the investment fund cannot benefit from the exemption provided in section 6.2 of Regulation 81-107. Several exemptive relief decisions have been granted in cases where one investment fund manager purchases the business of another.

In granting the exemptive relief, the CSA have generally accepted the submission that there tends to be a relative lack of supply of debt securities in the market and an investment fund may be unduly restricted in the pursuit of its fixed-income investment objectives if it cannot purchase debt securities of a related issuer. The exemptive relief has been granted based on conditions that include IRC oversight, including for funds that are not reporting issuers, and objective pricing and transparency.

To implement this new exemption in Regulation 81-107, we propose all of the following:

- to amend subsection 1.1(1) of Regulation 81-107 so that the exemption will apply in connection with investments by investment funds that are not reporting issuers;

- to add section 6.3 to Regulation 81-107, which would set out the conditions of the exemption from the investment fund conflict of interest investment restrictions;

- to amend Appendix D of Regulation 81-102 to refer to subsection 4.1(2) of Regulation 81-102 in the list of investment fund conflict of interest investment restrictions.

g) Reporting Investment Funds and Investment Funds that are not Reporting Issuers to Invest in Long-Term Debt Securities of a Related Issuer in Primary Market Distributions

We propose to add section 6.4 to Regulation 81-107 to provide an exemption from the investment fund conflict of interest investment restrictions which would permit investment funds to purchase non-exchange traded long-term debt securities of a related issuer under a primary distribution by that issuer.

The CSA have frequently granted exemptive relief, particularly in connection with funds managed by an affiliate of a financial institution, to permit these investments. Similar to the new exemption in section 6.3 of Regulation 81-107, the CSA have generally accepted the submission that there tends to be a relative lack of supply of debt securities in the market and a related fund may be unduly restricted in the pursuit of its fixed-income investment objectives if it cannot purchase debt securities of its related issuer. The exemptive relief has been granted based on conditions that include IRC oversight, including for funds that are not reporting issuers, and objective pricing and transparency. There are also additional conditions to mitigate the potential risk of the related issuer attempting to use the funds as a captive finance company.

To implement this exemption in Regulation 81-107, we propose all of the following:

- to amend subsection 1.1(1) of Regulation 81-107 so that the exemption would apply in connection with investments by investment funds that are not reporting issuers;

- to add section 6.4 to Regulation 81-107 which would set out the conditions of the exemption and provide the necessary exemption from the investment fund conflict of interest investment restrictions;

- to amend Appendix D of Regulation 81-102 to refer to subsection 4.1(2) of Regulation 81-102 in the list of investment fund conflict of interest investment restrictions.

h) Reporting investment funds, investment funds that are not reporting issuers and managed accounts to trade debt securities with a related dealer

We propose to add section 6.5 to Regulation 81-107 to provide the necessary exemptions to the inter-fund self-dealing investment prohibitions and the self-dealing restrictions set out in section 4.2 of Regulation 81-102 to permit investment funds and managed accounts to trade debt securities with a related dealer.

The CSA have frequently granted exemptive relief, particularly in connection with funds managed by an affiliate of a financial institution, to permit these trades. This exemptive relief pre-dates the coming into force of Regulation 81-107, in some cases, and should be re-issued. There has also been further exemptive relief granted, particularly when one fund manager purchases the business of another.

In granting those exemptions, the CSA have generally accepted the submission that there tends to be a relative lack of supply of debt securities in the market and a related fund may be unduly restricted in the pursuit of its fixed-income investment objectives if it cannot purchase debt securities from its related dealer. The exemptive relief has been granted based on conditions, among others, that include IRC oversight, including for funds that are not reporting issuers, and objective pricing and transparency. In addition, trades between managed accounts and a related dealer must be authorized by the client in its investment management agreement.

To implement this exemption in Regulation 81-107, we propose all of the following:

- to amend subsection 1.1(1) of Regulation 81-107 so that the exemption will apply in connection with investments by investment funds that are not reporting issuers;

- to add section 6.5 to Regulation 81-107 which would set out the conditions of the exemption and provide the necessary exemption from the inter-fund self-dealing investment prohibitions;

- to amend Appendix B of Regulation 81-107 so that it includes necessary references to section 4.2 of Regulation 81-102.

Workstream Six: Broaden Pre-Approval Criteria for Investment Fund Mergers

The CSA propose to introduce amendments to Regulation 81-102 to broaden the pre-approval criteria for investment fund mergers contained in section 5.6 of Regulation 81-102. The Draft Amendments codify a type of regulatory approval that is frequently granted when a proposed merger does not satisfy all of the pre-approval criteria in section 5.6 of Regulation 81-102. More specifically, the Draft Amendments will apply to an investment fund merger that does not qualify under either of the following provisions:

- subparagraph 5.6(1)(a)(ii) of Regulation 81-102 because a reasonable person may not consider the continuing fund to have substantially similar fundamental investment objectives, valuation procedures and fee structure;

- paragraph 5.6(1)(b) of Regulation 81-102 because the transaction is not a qualifying exchange or tax-deferred transaction.

Since implementation of the merger approval requirement under paragraph 5.5(1)(b) of Regulation 81-102, the CSA have approved numerous investment fund mergers that do not comply with the above-mentioned pre-approval criteria in section 5.6 because investment fund managers have generally been able to demonstrate that the proposed mergers are beneficial to investors despite not meeting the pre-approval criteria.

The existing pre-approval criteria in section 5.6 of Regulation 81-102 will be broadened based on conditions and representations found in past discretionary merger approval decisions. In particular, when granting discretionary merger approval, the CSA requires clear disclosure in an Information Circular that explains to investors why a proposed merger remains in securityholders' best interests despite the proposed merger not meeting the pre-approval criteria. We are proposing to include these explanations as required disclosure elements for pre-approval under the Draft Amendments.

We propose to amend the pre-approval criteria in subparagraph 5.6(1)(a)(ii) and paragraph 5.6(1)(b) so long as the fund manager obtains securityholder approval and provides prescribed disclosure in an Information Circular. The proposed merger must also comply with all other pre-approval criteria under section 5.6, as applicable.

More specifically, the CSA propose to amend subsection 5.6(1) of Regulation 81-102 to add a disclosure alternative

- where a reasonable person would not consider the terminating investment fund to have substantially similar fundamental investment objectives, valuation procedures and fee structure as the continuing investment fund in the proposed merger, and

- that applies if the proposed merger is neither a "qualifying exchange" under section 132.2 of the ITA nor a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA.

In the former case, the Information Circular must disclose the differences and explain the investment fund manager's view that the transaction is in the best interests of securityholders despite the differences. In the latter case, the Information Circular must disclose why the proposed merger is structured as it is and explain the investment fund manager's view that the transaction is in the best interests of securityholders despite the tax treatment of the proposed merger.

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

The CSA propose to repeal the regulatory approval requirements in section 5.5 for a change of manager, a change of control of a manager, or a change of custodian that occurs in connection with a change of manager. Since the implementation of these requirements, the CSA has granted regulatory approvals to numerous changes of managers and changes of control of managers. The purpose of these requirements is to provide the CSA with an opportunity to assess the integrity and proficiency of a proposed new person in a change of manager, change of control of a manager and change of custodian with a change of manager, as well as to ensure that adequate disclosure is given to securityholders regarding such a change. This is generally satisfied by conducting background checks on the officers and directors of the proposed new person and where there is a change of manager, by reviewing the Information Circular prepared in connection with the requisite securityholder vote.

Since the CSA's adoption of these requirements, Regulation 31-103 has implemented registration requirements for investment fund managers. The registration process provides an opportunity for the CSA to assess that new investment fund managers have sufficient integrity, proficiency and solvency to adequately carry out their functions. The registration processes include all of the following:

- background checks, including obtaining information on any criminal offences, civil actions alleging fraud, theft, deceit, misrepresentation or similar misconduct, financial information on prior bankruptcies, and other detrimental information from other securities regulatory proceedings or investigations;

- an examination of the individuals' relevant securities industry experience, including employment history.

Once registered, firms and individuals must report changes in the information they provided at the time of registration by filing Form 33-109F5 *Change of Registration Information* within required timeframes. This allows the CSA to continue assessing suitability for investment fund manager registration.

A change of manager will continue to be subject to securityholder approval and the requirement to prepare an Information Circular. In order to help investment funds meet their disclosure obligations, we have also added certain disclosure requirements that will apply to the Information Circular when there is a change of manager.

To implement the foregoing changes in Regulation 81-102, we propose all of the following:

- to amend subsection 5.4(2) of Regulation 81-102 to clarify that certain disclosure regarding a change of investment fund manager must be made in an Information Circular;

- to repeal paragraph 5.5(1)(a) of Regulation 81-102 with respect to a change of manager;

- to repeal paragraph 5.5(1)(a.1) of Regulation 81-102 with respect to a change of control of a manager;

- to repeal paragraph 5.5(1)(c) of Regulation 81-102 with respect to a change of custodian that occurs in connection with a change of manager;

- to repeal paragraph 5.7(1)(a) of Regulation 81-102 with respect to the requirement to file an application for a change of manager and a change of control of a manager.

As noted in Appendix A, the CSA are seeking comments on whether additional measures are necessary to ensure investor protection in the event of a change of manager or a change of control of a manager, and whether securityholders are currently receiving adequate disclosure in these circumstances. We are also seeking comments on whether the CSA should streamline the approval process for a change of manager and a change of control of a manager instead of repealing paragraphs 5.5(1)(a) and 5.5(1)(a.1).

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

a) Managed Accounts and Permitted Clients

The CSA propose to introduce an exemption from the fund facts delivery requirement[22] for conventional mutual fund purchases made in managed accounts or by permitted clients that are not individuals. The Fund Facts is a summary disclosure document that provides key information about a mutual fund to investors in a simple, accessible and comparable format, before investors make their investment decision.

In the final amendments published on December 11, 2014 to implement pre-sale delivery of Fund Facts (the **POS Amendments**), the CSA provided an exemption from the pre-sale delivery requirements for purchases of mutual fund securities made in managed accounts or by permitted clients that are not individuals in section 3.2.04 of Regulation 81-101. For these purchases, the Fund Facts are required to be delivered or sent to the purchaser within two days of buying the mutual fund.

Subsequent to the publication of the POS Amendments, the CSA received feedback from portfolio managers that post-sale delivery of the Fund Facts is not necessary for purchases made in managed accounts or by permitted clients, and that an exception from the Fund Facts delivery requirement should be provided. The CSA agree with this feedback and propose to amend section 3.2.04 of Regulation 81-101 to introduce an exemption from the fund facts delivery requirement for purchases of mutual fund securities made in managed accounts or by permitted clients that are not individuals.

b) Portfolio Rebalancing Plans

The CSA propose to codify exemptive relief from the Fund Facts delivery requirement for subsequent purchases of conventional mutual fund securities under model portfolio products and portfolio rebalancing services.

In finalizing the POS Amendments, the CSA did consider stakeholder comments that asked for an exemption for model portfolio products from the pre-sale delivery requirement on terms similar to the exemption from the Fund Facts delivery requirement for pre-authorized purchase plans set out in section 3.2.03 of Regulation 81-101 (the **PAC Exception**). At the time, the CSA determined that exemptive relief should only be granted to model portfolio products with rebalancing features on a case-by-case basis and indicated its position in the summary of comments published with the POS Amendments.

Since the publication of the POS Amendments, exemptive relief has been routinely granted from the Fund Facts delivery requirement for subsequent purchases made pursuant to rebalancing in the context of model portfolio products and portfolio rebalancing services. Generally, model portfolio products are offered by investment fund managers and each model portfolio is comprised of a number of mutual funds with target asset allocation levels for each fund in the portfolio. On rebalancing dates, each fund in the portfolio is rebalanced back to the target asset allocation level. Generally, portfolio rebalancing services are offered by dealers for a portfolio of mutual funds selected by an investor with target asset allocation levels for each fund in the portfolio. On rebalancing dates, each fund in the portfolio is rebalanced back to the target asset allocation level.

Each subsequent purchase of mutual fund securities in model portfolio products and portfolio rebalancing services triggers the Fund Facts delivery requirement.

An investor with a model portfolio product or portfolio rebalancing service makes an investment decision at the outset and subsequent purchases do not reflect new investment decisions. This is similar to subsequent purchases made under a pre-authorized purchase plan, which is a contract or other arrangement, where an investor purchases mutual fund securities, by payment of a specified amount, on a regularly scheduled basis, and which can be terminated at any time. However, model portfolios and portfolio rebalancing services cannot rely on the PAC Exception as these products/ services do not meet the “pre-authorized purchase plan” definition.

[22] Section 3.2.01 of *Regulation 81-101 respecting Mutual Fund Prospectus Disclosure.*

The CSA propose to amend section 3.2.03 of Regulation 81-101 to codify exemptive relief from the Fund Facts delivery requirement for subsequent purchases made in model portfolio products and portfolio rebalancing services. The Draft Amendments expand the current PAC Exception to add "portfolio rebalancing plans", which are defined to include both model portfolio products and portfolio rebalancing services.

c) Automatic Switch Programs

The CSA propose to codify exemptive relief from the Fund Facts delivery requirement for purchases of conventional mutual fund securities made under automatic switch programs, which are offered by investment fund managers. Generally, investors in automatic switch programs purchase a class or series of securities of a mutual fund, and on predetermined dates, automatic switches are made to a different class or series of the same fund based on the balance in the investor's account or group of accounts meeting the minimum investment amount of the other class or series.

Mutual funds in an automatic switch program offer two or more series with the only differences between the classes or series being progressively lower management fees and progressively higher minimum investment thresholds. Automatic switch programs benefit investors because they automatically switch investors into another class or series of securities of the same mutual fund as soon as they meet the minimum investment threshold.

The investor's investment amount may change based on purchases, redemptions and changes in market value. Each automatic switch entails a redemption of a class or series of mutual fund securities, immediately followed by a purchase of another class or series of securities of the same mutual fund. Each purchase made pursuant to an automatic switch triggers the Fund Facts delivery requirement. However, because the switches are automatic in nature, it is often very difficult or impractical for an investment fund manager to deliver the Fund Facts prior to an automatic switch.

The CSA have routinely granted exemptive relief from the Fund Facts delivery requirement for purchases made under an automatic switch program. In many instances, exemptive relief has also been granted from the form requirements of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), which allows mutual funds in an automatic switch program to file a single consolidated Fund Facts for all the classes or series of securities of the fund that are in the automatic switch program.

The CSA propose to introduce amendments to Regulation 81-101 to codify exemptive relief from all of the following:

- the Fund Facts delivery requirement for purchases made under automatic switch programs, which are offered by investment fund managers;

- the form requirements in Form 81-101F3 to allow a single consolidated Fund Facts to be filed for all the classes or series of securities of a mutual fund offered in an automatic switch program.

The Draft Amendments reflect the conditions of recently granted exemptive relief for automatic switch programs, including notices to investors and modified form requirements for a single, consolidated Fund Facts. The exemption would apply to purchases of a class or series of securities of a mutual fund as a result of the purchaser meeting the minimum investment amount of a class or series of securities of the mutual fund due to additional purchases, redemptions or positive market movement. The exemption would not apply to purchases of a class or series of securities of a mutual fund as a result of the purchaser no longer meeting the minimum investment amount of a class or series of securities of the mutual fund due to negative market movement. The new exemption will be introduced in section 3.2.05 of Regulation 81-101 while the provisions for electronic delivery of the Fund Facts will be moved to section 3.2.06 of Regulation 81-101.

d) Proposed Amendments to Conform Form 81-101F3 Contents of Fund Facts Document with Form 41-101F4 Information Required in an ETF Facts Document

The CSA propose amendments to Form 81-101F3 to conform with certain disclosure requirements in Form 41-101F4 *Information Required in an ETF Facts Document*. The Draft Amendments set out the disclosure requirements for a newly established mutual fund, a mutual fund that has not yet completed a calendar year and a mutual fund that has not yet completed 12 consecutive months under the sub-headings "Top 10 investments", "Investment mix", and "How has the fund performed?" in the Fund Facts, as applicable.

Additional Amendments

The CSA propose consequential amendments to certain regulations for reasons not directly related to efforts to reduce regulatory burden for investment funds.

Transition/ Coming into Force

Subject to the nature of comments we receive, as well as any applicable regulatory requirements, we are proposing that if approved, the Draft Amendments would come into force approximately 3 months after the final publication date.

Adoption Procedures

We expect the Draft Amendments to be incorporated as part of rules in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut, and incorporated as part of commission regulations in Saskatchewan and regulations in Québec. The Draft Amendments involving changes to policy statements are expected to be adopted as part of policies in each of the CSA jurisdictions.

Alternatives Considered to the Draft Amendments

An alternative to the Draft Amendments would be not to implement any changes to the regulatory regime governing investment fund issuers and instead maintain the *status quo*.

Not proceeding with the Draft Amendments would be a missed opportunity to reduce regulatory burden for investment fund reporting issuers in a way that maintains investor protection and market efficiency. Reducing regulatory burden through the Draft Amendments would have the benefits of reducing associated costs to investment fund managers and investment funds and where applicable, providing investors with more focused disclosure to review.

Anticipated Costs and Benefits of the Draft Amendments

The CSA are of the view that the Draft Amendments strike the right balance between protecting investors and fostering fair and efficient capital markets. The Draft Amendments would provide streamlined disclosure for investors and generate cost savings for investment fund managers and investment funds.

Anticipated Benefits

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

For investment funds in continuous distribution, the anticipated benefits include a reduction in the amount of disclosure required to be prepared and filed by investment fund managers. This should reduce costs and cost savings may be passed on to securityholders of conventional mutual funds. The consolidation of certain AIF disclosure into an SP would lead to more streamlined disclosure for investors. In addition to the Fund Facts, investors and dealers will only need to consult the SP instead of both the SP and the AIF.

Workstream Two: Investment Fund Designated Website

This proposed requirement may lay the foundation for migrating information that is currently included in the prospectus and other regulatory documents, to the investment fund's designated website. The anticipated benefits include: (i) easier and more streamlined access to investment fund regulatory disclosure and information for investors, and (ii) potential cost savings for investment fund managers and investment funds in the printing and delivery of various documents if the disclosure is instead permitted to be posted on the designated website.

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

The anticipated benefits of codifying use of a notice-and-access system for investment funds include cost savings in the printing and delivery of meeting materials sent to securityholders for persons soliciting proxies. Additional benefits include more focused disclosure for investors to review, while still providing a way for investors to access additional information if required. We will continue to monitor any CSA policy initiatives impacting the notice-and-access model

for non-investment fund reporting issuers made as part of the CSA's efforts to enhance electronic delivery of documents for non-investment fund reporting issuers.[23]

Workstream Four: Minimize Filings of Personal Information Forms

The anticipated benefits of this Proposed Amendment include cost savings from not having to prepare and submit a PIF with an investment fund prospectus filing for registrants and permitted individuals who have already submitted a Form F4.

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

The anticipated benefits of codifying exemptions for these conflict of interest transactions, which have frequently been granted in the past, include cost savings from not having to prepare and file exemptive relief applications. Furthermore, codification of these exemptions will centralize the different exemptions with respect to investment fund conflict of interest matters in Regulation 81-102 and Regulation 81-107.

Workstream Six: Broaden Pre-Approval Criteria for Investment Fund Mergers

The anticipated benefits of broadening the investment fund merger pre-approval criteria include cost savings from not having to prepare and file regulatory approval applications under paragraph 5.5(1)(b) of Regulation 81-102.

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

The anticipated benefits of repealing the requirements relating to a change of manager, a change of control of a manager and a change of custodian related to a change of manager, include cost savings from not having to prepare and file regulatory approval applications under paragraphs 5.7(1)(a), 5.7(1)(b) and 5.7(1)(c) of Regulation 81-102.

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

The anticipated benefits of introducing an exemption from the fund facts delivery requirement for mutual fund purchases made in managed accounts or by permitted clients that are not individuals, include cost savings in the printing and delivery of Fund Facts.

The anticipated benefits of codifying exemptive relief from the Fund Facts delivery requirement by expanding the PAC Exception for subsequent purchases under model portfolio products and portfolio rebalancing services include cost savings in the printing and delivery of Fund Facts.

Other anticipated benefits include enhanced disclosure to investors with a single consolidated Fund Facts for all the classes or series of securities of the mutual fund in the automatic switch program, and cost savings in the printing and delivery of Fund Facts for investors in an automatic switch program.

Anticipated Costs

Overall, the CSA are of the view that the Draft Amendments would not create substantial costs for investment funds, investment fund managers or securityholders.

Regarding the Draft Amendments for Workstream One: Consolidate the Simplified Prospectus and the Annual Information Form, while investment fund managers and investment funds may incur some upfront costs in modifying SPs based on the revised Form 81-101F1, these initial costs will be outweighed by the cost savings in the long term from not having to prepare and file an AIF. Where investment funds are currently not in continuous distribution and have already filed an AIF, costs may be incurred in revising their AIF to meet the proposed disclosure requirements.

Overall, we think the anticipated benefits of the Draft Amendments outweigh their anticipated costs. We seek feedback on whether you agree or disagree with our view on the cost burden of the Draft Amendments. Specific quantitative data in support of your views in this context would be particularly helpful.

[23] CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* published April 6, 2017.

Next Steps: Later Stages of Phase 2

Further proposals to reduce regulatory burden for investment fund issuers that require additional analysis will be developed in the medium to long term and will be published for comment as part of subsequent stages of Phase 2. Areas that will receive consideration for the development of further proposals will include all of the following:

- continuous disclosure obligations;
- securityholder meetings and information circular requirements;
- prescribed notices and reporting requirements;
- prospectus regime provisions;
- methods used to communicate with investors.

Local Matters

An annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Unpublished Materials

In developing the Draft Amendments, we have not relied on any significant unpublished study, report or other written materials.

Request for Comments and Feedback

We welcome your comments on the Draft Amendments. While we welcome comments on any aspect of this publication, we also invite responses to the specific questions in Appendix A to this Notice.

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 websites of each of the Ontario Securities Commission at www.osc.gov.on.ca, the Alberta Securities Commission at www.albertasecurities.com and the Autorité des marches financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Deadline for Comments

Please submit your comments in writing on or before **December 11, 2019**. If you are not sending your comments by email, please send a USB flash drive containing the submissions.

Please note that some CSA jurisdictions may also host roundtables to discuss the Draft Amendments. We encourage interested stakeholders to participate.

Where to Send Your Comments

Address your submission to all of the CSA as follows:

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 Consumers Services Commission, 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 Territories

Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Please send your comments only to the addresses below. Your comments will be forwarded to the other CSA members.

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Contents of Appendices

APPENDIX A
SPECIFIC QUESTIONS FOR COMMENT RELATING TO THE DRAFT AMENDMENTS

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.

2. With the exception of Workstreams 1, 2 and 3, the Draft Amendments 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 Draft Amendments 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.

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 draft Form 81-101F1. Do you support or disagree with these changes? If so, please explain.

4. Are there any disclosure requirements from the draft 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.

5. As an alternative to complete removal, are there any disclosure requirements from the draft 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).

6. The proposed Item 7(2) of Part A of Form 81-101F1 requires a description of the circumstances when the suspension of redemption rights could occur. We are considering, however, whether to require specific disclosure in the prospectus regarding any liquidity risk management policies that have been put in place for the investment fund. This would include a list of any liquidity risk management tools that have been adopted as permitted by securities regulations, along with a brief description of how and when they will be employed and the effect of their use on redemption rights. Would the prospectus be the most appropriate place for this type of disclosure, or are there other alternatives that we should consider?

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 draft Form 81-101F1? Why or why not?

8. Item 11.2 (Publication of Material Change) of Regulation 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?

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.

10. Are there any disclosure requirements in the draft Form 81-101F1 that require additional guidance or clarity?

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?

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?

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).

Workstream Two: Investment Fund Designated Website

14. The proposed Part 16.1 of Regulation 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.

    b. What other technological means of providing public access to regulatory disclosure should be captured by the proposed amendments? Please be specific. Of these means, please identify which are currently in use and which are expected to be used in the future.

    c. Should any parameters (e.g. free to access, accessible to the public) be applied to limit which technological means of providing public access to regulatory disclosure besides websites should be included in the proposed Part 16.1? If so, please state which parameters should apply and why.

    d. If you agree that technological means of providing public access to regulatory disclosure besides websites should be included in the proposed Part 16.1, what terms could be used to refer to these means? What

are the benefits and drawbacks of each possible option? Some examples include “digital platform”, “electronic platform”, and “online platform”.

e. Are there any elements of the current draft amendments under Workstream Two that would not work if an investment fund could designate other technological means of providing public access to regulatory disclosure besides websites?

15. Are there unintended consequences arising from the proposed section 16.1.2 of Regulation 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?

16. Are there any aspects of the proposed guidance provided in Policy Statement 81-106 that are impractical or misaligned with current market practices?

17. Some investment funds may maintain a website that is accessible only by securityholders with an access code and a password (i.e. a private website). Would an investment fund currently maintaining a private website accessible only to its securityholders encounter any issues with the proposed requirement to post regulatory disclosure required by securities legislation on a designated website that is publicly accessible?

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.

Workstream Four: Minimize Filings of Personal Information Forms

No questions.

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

19. The Draft Amendments include new exemptions in sections 6.3 and 6.5 of Regulation 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 Regulation 81-107.

- In accordance with subsection 6.1(2) of Regulation 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 Regulation 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 Regulation 81-107;
    - 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?

Workstream Six: Broaden Pre-Approval Criteria for Investment Fund Mergers

20. We propose to mandate new disclosure requirements in the Information Circular in subparagraph 5.6(1)(a)(ii) and paragraph 5.6(1)(b) of Regulation 81-102 as pre-approval criteria for investment fund mergers. Are there any additional disclosure elements that we should require beyond what has been proposed? If so, please provide details.

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 Regulation 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 Regulation 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.

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?

23. We propose to add to subsection 5.4(2) of Regulation 81-102 certain disclosure requirements in the Information Circular regarding a change of manager. Is there any other disclosure in the Information Circular that we should mandate, beyond what has been proposed? If so, please provide details.

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 Regulation 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?

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

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

    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?

    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.

    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)?

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 Regulation 81-101, or Regulation 41-101 respectively. The Draft 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 Regulation 81-101.

b. Are there other circumstances where consolidation should be allowed or mandated? If so, what parameters should be placed on such consolidation? Additionally, what disclosure changes would need to be made to Form 81-101F3 to accommodate the consolidation?

ANNEX B

LOCAL MATTERS

The draft regulatory amendments that are part of the proposals to reduce the regulatory burden for investment funds include initiatives that aim to codify exemptive relief that is routinely granted.

In addition to these draft amendments concerning regulation that is applicable across all jurisdictions, the Authority wishes to make a regulatory amendment in order to reduce the regulatory burden and foster competitiveness among asset managers in Québec.

Section 271 of the Securities Regulation (the **Regulation**) provides that in the case of a mutual fund which invests all its assets in one or more other mutual funds of the same group, the fees are payable only on the gross value of the securities distributed by the first mutual fund.

In order to avoid duplication of fees, the Authority regularly grants exemptive relief so that, in the case of a mutual fund which invests only part of its assets in one or more other mutual funds of the same group, the fees are payable only on the gross value of the securities distributed by the first mutual fund. The Authority is proposing to codify this relief in the Regulation.