NI 81-107 Independent Review Committee for Investment Funds
Comments

Appendix B

Summary of Public Comments on National Instrument 81-107
and Commentary

Table of Contents

Summary of Comments

Background

On May 27, 2005, the CSA published for comment National Instrument 81-107 *Independent Review Committee for Investment Funds* ("the Instrument" or "the 2005 Proposal"). The comment period expired on August 25, 2005. We received submissions from the 36 commenters listed at the end of this table.

We have considered all comments received and wish to thank all those who took the time to comment.

The questions contained in the CSA Notice to the 2005 Proposal ("the 2005 Notice") and the comments we received in response to them are summarized below. The items and headings below correspond to the items and headings in the 2005 Notice. Below the comments which respond to specific questions in the 2005 Notice, we have summarized the other comments we received on the 2005 Proposal.

1. The Instrument now applies to publicly offered investment funds.

An Expanded Scope

We request comment on the expanded scope of the Proposed Instrument and particularly seek feedback from those industry

participants not included in the 2004 Proposal – scholarship plans, labour-sponsored or venture capital funds, and closed-end funds and mutual funds that are listed and posted for trading on a stock exchange or quoted on an over the counter market.

Specifically, we would like to understand what conflicts of interest could exist in the management of these investment funds, the anticipated costs the Instrument could have on these funds, whether there are additional practical considerations for each of these investment funds structures that we should address, and what other mechanisms or approaches the fund managers of these investment funds use today or could use to address any conflicts of interest.

Comments	*Responses*
General Comments ***Agree*** We received considerable support for broadening the Instrument to encompass all investment funds, including labour-sponsored funds and closed-end funds listed and posted for trading on stock exchanges. Commenters specifically supported the notion that there should be a level playing field among investment funds and they should be subject to the same oversight regimes. One commenter remarked that as alternative products become more popular, parity in regulatory regimes becomes increasingly important, and investors should be entitled to expect that similar products are regulated similarly. ***Disagree*** Some commenters continued to question whether there will be any substantial benefit to investors as a result of the Instrument. Most of these commenters told us that IRCs should only be mandatory for managers who wish to benefit from the relaxation of the conflict of interest prohibitions. ***Exchange Traded Funds*** A manager of a family of exchange-traded funds and closed-end funds noted that the Instrument provides an appropriate regime to address real conflicts and that there is not a principled basis for excluding exchange-traded funds from the application of the Instrument. One stock exchange supported the introduction of a minimum, consistent standard of governance for exchange-traded funds and investment funds as listed issuers. We were told that if the fund is a listed entity, it will already have independent directors on the board.	***Response*** We continue to believe that conflicts of interest exist in the management of all publicly offered investment funds. Accordingly, we have maintained the expanded scope of the Instrument to include exchange traded funds, LSIFs, and scholarship plans. We acknowledge that some funds that are listed on the TSX may have some independent directors in place under TSX requirements. We do not believe that these requirements serve as a substitute for the requirements contained in the Instrument. We note, however, that to the extent an exchange traded fund already has directors in place that are independent, it's possible

	that those directors could also be independent under the Instrument and able to serve on the fund's Independent Review Committee ("IRC"). The Commentary to the definition of independence sets out our view that, depending on the circumstances, independent or former independent members of the board of directors of an investment fund may be independent.
Two commenters, remarked that certain types of funds such as split-share corporations or closed-end commodity funds with a single investment should be completely excluded from the Instrument.	We continue to believe that it is appropriate for the Instrument to apply to these entities. These entities may possess business conflicts and often use related brokers. We expect, however, that these entities would possess relatively fewer conflicts resulting in fewer referrals to the IRC.
LSIFs Another commenter specifically welcomed the inclusion of LSIFs in the scope of the Instrument, where conflicts of interest (valuation issues) noted by the commenter have already exhibited themselves.	We agree and have maintained the expanded scope so that the Instrument applies to LSIFs.
One manager of LSIFs told us it is not necessary for LSIFs to have an independent IRC that is separate and distinct from the fund's Board of Directors, since the majority of board members of certain LSIFs have no affiliation with the fund.	We continue to believe that it is important to put in place a consistent governance regime that applies to all funds equally. As discussed above in connection with exchange traded funds, to the extent an LSIF's Board of Directors already possesses independent members, it's possible that such members could also be independent under the Instrument and capable of serving on the LSIF's IRC. The IRC does not necessarily have to be separate and distinct from the fund's Board of Directors so long as it meets the requirements of the Instrument.
Scholarship Plans One sponsor and dealer of certain scholarship plans told us that scholarship plans should be excluded from the application of the Instrument because as 'not-for-profit' entities, scholarship plans do not encounter the conflicts that arise in 'for profit' investment funds. This commenter expressed concern that the Instrument is not sufficiently flexible in recognizing the corporate structures of its scholarship plans. We were told that for scholarship plan dealers, a model which includes a strong, independent board of directors will prove more effective than the model outlined in the Instrument.	Despite being "not –for –profit" entities, we believe it is appropriate for the Instrument to apply to scholarship plans. The managers of these entities may possess conflicts of interest. For instance, the plan managers generally receive compensation and set fees in connection with their management of the plans on behalf of their investors. We have also encountered plans that use advisors that are controlled by plan directors. As discussed above, however, if a scholarship plan possesses independent

Other Types of Funds This commenter suggested that segregated funds and hedge funds should also be included in the Instrument, while another commenter expressed concern that 'similar products' such as pooled funds, are not subject to the Instrument. Still, another commenter asked that we specify whether income trusts are excluded or included in the Instrument.	directors already, some of these directors may also be eligible to serve on the plan's IRC so long as the directors meet the requirements of the Instrument. We do not possess the legislative authority to regulate segregated funds as they fall under the jurisdiction of the Insurance Act. The Joint Forum of Financial Market Regulators continues to discuss issues in connection with segregated funds. The Instrument will apply to hedge funds that are reporting issuers. Consistent with our regulatory regime, the Instrument will not apply to hedge funds that are sold under prospectus exemptions in securities legislation. The Instrument would not apply to income trusts that are the subject of National Policy 41-201 – Income Trusts and Other Indirect Offerings such as business income trusts. The Instrument does, however, apply to income trusts that are investment funds such as exchange traded and closed end funds.

Smaller Investment Funds

We request additional comment on the impact of including smaller investment funds in the Instrument.

Specifically, we would like feedback on our view that, with fewer conflicts of interest to address, an IRC will be less costly for smaller funds. We also seek specific data on the anticipated costs of complying with the Instrument for small investment funds, relative to the other costs of the investment fund.

We would also like to understand what commenters consider 'smaller' – is it a test based on the size of the investment fund? Or the fund manager? Or the number of investors in the investment fund?

The BC Securities Commission has additional questions they would like to ask on this subject. These questions are in the local cover notice published in British Columbia.

Comments	*Responses*
Inclusion of Small Funds under the Instrument Many commenters were supportive of the inclusion in the Instrument of smaller	***Response*** We agree with the commenters. The Instrument continues to apply

investment funds, telling us that despite the size of the fund, there will always be conflicts of interest that arise which need to be the subject of IRC oversight and review. Another commenter specifically told us that the size of a fund or fund complex should not determine whether investors do or do not enjoy the protections afforded by IRCs. We were told that the focus should be on the needs of the investor, and not on the fund companies.	to smaller funds.
Two commenters suggested that any conflicts of interest faced by smaller fund complexes can be adequately dealt with at the level of the board of directors of the manager and by the independent directors of that board. One of these commenters told us that the powers conferred upon the IRC should be attributed to the board of directors of the manager who would in turn see to the application of the Instrument for funds with less than $25 million in assets. As an alternative, this commenter proposed that the Instrument allow companies having less than $500 million under management to establish an IRC only if they do not comply with NI 81-102. In this commenter's view, whether or not an IRC should be required for small companies should be determined in relation to the commercial activities they plan to undertake. Another commenter suggested that if the appointment of an IRC is considered appropriate in all cases, a two-tier set of compliance requirements should be set out in a manner similar to the size-based two-tier structure used for compliance by venture exchange issuers as compared to other issuers under National Instrument 58-101 *Disclosure of Corporate Governance Practices*.	We generally disagree that independent directors of a fund manager's board are an adequate substitute for the independence brought to bear by an IRC. Even independent directors of a fund manager are, or certainly have the potential to be, conflicted in instances where the fund manager's shareholders' interests conflict with those of the fund's unitholders. One exception, however, as explained in the Commentary could be "owner-operated" investment funds, sold exclusively to defined groups of investors, such as members of a trade or professional association or co-operative organization, who directly or indirectly, own the manager. In these investment funds, the CSA view the interests of the fund manager's shareholders and fund investors as aligned. We have concluded that some form of two-tier structure similar to that imposed upon non-investment fund operating businesses under NI 58-101 would be inappropriate for investment funds. We believe that the nature of conflicts faced in the management of investment funds differ from those of regular operating businesses. In addition, the lower tier issuers under NI 58-101 are more easily defined and subject to alternative regulatory requirements designed for smaller issuers under the auspices of the TSXV. From a policy perspective, we cannot rationalize a two-tiered system given our view that unitholders of both large and small funds should be equally protected under the Instrument.
Anticipated costs for 'smaller' investment funds One commenter remarked that just as financial capital requirements are prerequisites to participate in the investment business, governance 'capital' should also be an essential prerequisite for participating in the fund industry. A number of commenters, however, continued to express concern about the cost to smaller funds of complying with the Instrument.	We continue to believe that every mutual fund family, large or small, faces business conflicts of interest which can benefit from IRC oversight. While we are sensitive to the cost concerns of an IRC for small mutual funds, we believe that with no structural conflicts and fewer business conflicts (if the fund employs a largely outsourced structure) the mandate and administration of an IRC for a

	small mutual fund will be much less burdensome than larger fund complexes, and therefore, less costly. For example, we expect fewer meetings of the IRC. Further, the Instrument does not prevent investment funds from sharing an IRC with another investment fund manager. Managers of smaller families of investment funds may find this a cost-effective way to establish IRCs for their funds.
Defining "smaller" Four commenters provided us with submissions regarding how to define 'smaller' investment funds. The commenters suggested that we look to the following factors: asset size, number of unitholders, the size of the mutual fund complex (affiliation with other entities), and the number of funds managed by the manager. One commenter suggested a threshold of $25 million of investments, which has been acceptable for a Toronto Stock Exchange (TSX) listing, and a 300 public holder threshold, which is comparable to the minimum number of holders required for a TSX listing. Another commenter suggested that assets under management of $100 million or less may be appropriately considered 'small'.	We thank the commenters for their submissions. We have, however, decided that the Instrument will apply to smaller investment funds.

2. The Instrument will keep existing conflict of interest and self-dealing prohibitions in securities legislation, and exempt specified transactions with IRC approval.

Keeping Existing Rules

We request comment on this approach and the exemptive provisions in the Proposed Instrument and consequential amendments to NI 81-102.

Specifically, we would like feedback on whether the drafting of these provisions effectively captures the conflict of interest exemptions the CSA has granted to date, and whether the conditions accompanying the exemptions in the Proposed Instrument and NI 81-102 are appropriate.

The BC Securities Commission has additional questions they would like to ask on this subject. These questions are in the local cover notice published in British Columbia.

Comments	*Responses*
Our Approach to keeping existing Instruments We generally received support from commenters on our approach to allow for exemptions from the current conflict of interest Instruments where the IRC has given its approval, subject to ongoing monitoring of the manager's compliance with its policies on such transactions.	***Response*** We agree with the commenters and will maintain the existing conflict of interest and self-dealing prohibitions in securities legislation and exempt specified transactions with IRC approval.
Conflict of Interest Exemptions One commenter sought clarification on the following provisions which seemed to contradict the terms imposed by the CSA in recent exemptive relief orders.	
Purchases during a distribution and purchases of private placements would not be permitted under section 4.1 of NI 81-102 because such purchases would not be on a stock exchange.	Consistent with the exemptive relief the CSA has granted to date, we have amended section 4.1 of NI 81-102 to clarify that a dealer managed fund may purchase during the distribution period if the distribution is under a prospectus or during the 60 day period following the prospectus qualified distribution if the fund makes the purchase on an exchange on which the class of equity securities of the issuer is listed and traded. However, funds must continue to apply for discretionary exemptions in connection with purchases under a private placement.
Purchases of both new issues and private placements would not be permitted under section 6.2 of the Instrument because such purchases would not be on a stock exchange. Another commenter asked us to consider expanding section 6.2(2) of the Instrument to include other types of investments prohibited under the "mutual fund conflict of interest investment restrictions" securities regulators have previously provided exemptions from.	We do not propose any change to section 6.2 of the Instrument in response to the comment provided. The exemption is consistent with the exemptive relief the CSA has routinely granted. Other types of prohibited transactions with which we have less familiarity will continue to require exemptive relief to proceed.
One commenter submitted that the IRC should not be permitted to approve transactions prohibited by securities laws.	We continue to believe it is important to give fund managers some flexibility to engage in these types of transactions. Based on our own experiences with exemptive relief granted to date, we are comfortable that IRC oversight and approval can be effective in addressing the conflicts of interest in these types of transactions. The Instrument is also expected to contribute to more efficient Canadian capital markets, by permitting fund managers to engage in certain types of conflict of interest transactions without prior regulatory approval, provided the IRC approves.

3. The Instrument now provides the IRC with effective methods to oversee and report on manager conflicts of interest.	
We request comment on this approach.	
Comments	***Responses***
Reporting Requirements Generally Several commenters expressed support for the reporting requirements in the Instrument noting they are an integral part of improving governance in the fund industry.	***Response*** We agree with the commenters and continue to believe that the reporting requirements are necessary to address previous concerns regarding the IRC's lack of effectiveness. We have, however, amended some of the provisions regarding reporting to the securities regulatory authorities as described below to clarify our expectations.
Materiality and Confidentiality of Reports One commenter suggested that the reporting provisions in sections 4.3, 4.4, and 4.5 of the Instrument should be subject to a 'materiality' standard , and that they maintain appropriate confidentiality.	We have not imposed a materiality standard in connection with these reports for several reasons. First, the report prepared under section 4.3 is provided to the fund manager with a view to assisting it in improving its policies and procedures. Secondly, the reports prepared under sections 4.4 and 4.5 relate to conflict of interest matters which, by definition, incorporate a reasonable person standard. We also expect IRCs will exercise good judgment with respect to the reports that they will prepare under sections 4.3, 4.4, and 4.5. The report prepared under section 4.3 is provided to the fund manager only. We continue to believe that investors are entitled to the information contained in the report to securityholders prepared under section 4.4. The notification provided to securities regulatory authorities under section 4.5 is not required to be publicly filed.
IRC Reporting to Securities Regulators Many industry commenters expressed reservation about the provisions which allow the IRC to communicate with securities authorities. Others raised a concern with the broad wording of section 3.9(1)(e) given the fund manager's existing fiduciary duty, with one commenter suggesting IRC communication should only be done in exceptional circumstances where the IRC believes that the manager is in violation of securities regulations.	We expect it will be rare that an IRC feels compelled to exercise its authority to report directly to us and expect that IRC's will exercise good judgment in this regard. We have added further guidance in the Commentary regarding the use of this authority. We have, however, consistent with previous discretionary

Reporting to Securityholders One commenter suggested that the Instrument give a fund manager the right to include its own statement in the IRC's annual report on why it did not follow any particular IRC recommendation. This would provide a fair and balanced perspective, remarked the commenter.	exemptions that we have granted, maintained the requirement in section 4.5 that the IRC notify us in writing if it is aware of an instance were the manager acted in a conflict of interest matter under subsection 5.2(1) but did not comply with a condition or conditions imposed by securities legislation or the independent review committee in its approval. We continue to believe that this notification is important as the conflict of interest matters in subsection 5.2(1) are fundamental self dealing provisions under securities legislation. We have clarified our expectations in this regard in the Commentary to section 4.5. We don't believe that it is necessary for the fund manager to provide its own statement in the IRC's annual report for it to be fair and balanced. As discussed above, we expect that IRC's will exercise good judgment in the reports that they prepare. In addition, a fund manager remains free to provide its perspective in other disclosure documents if it so chooses.

4. The Instrument now specifies the key governance practices we expect of the IRC and the manager.	
We request comment on this approach. Specifically, we would like feedback on whether these provisions are best suited for the Proposed Instrument or should be moved into the Commentary.	
Comments	***Responses***
General While some industry commenters supported the specificity on minimum governance practices expected of the IRC and the fund manager other commenters told us that it should be left to the IRC to determine which specific governance practices to adopt, based on its knowledge of and its working relationship with the manager. Another commenter asked that the Instrument provide additional guidance on how securities regulators generally view Commentary in the Instrument from a legal and enforcement perspective. We were told that such guidance would be invaluable to the IRC in formulating their mandate and defining the scope of their obligations.	***Response*** We continue to believe that it is appropriate to include some mandatory minimum governance practices in the Instrument. We believe this approach will create consistent minimum standards and practices among IRCs and fund managers, and will allow for a meaningful comparison by investors of investment funds. The Commentary may explain the implications of the Instrument, offer examples or indicate different ways to comply with the Instrument. It may expand on a particular subject without being exhaustive. The Commentary is not legally binding, but it does reflect the views of the CSA. The Commentary always appears in italic type and is titled "Commentary" in the Instrument.

IRC Self-Assessment One commenter who expressed support for requiring IRC members to perform a self-evaluation, asked that we consider specifying the factors and criteria that should be used in the evaluation.	We believe the Instrument already imposes the necessary minimum factors and criteria that the IRC should consider in conducting its self-assessment.
Still another commenter told us they have found individual directors tend not to give meaningful or critical feedback of other directors unless they are assured that their comments will be confidential. Accordingly, this commenter suggested that only summaries of the assessments be available to the manager and to securities regulators, and that the chair of the IRC have the obligation to summarize the assessments.	Other than imposing the minimum criteria and factors that the IRC should consider, the Instrument does not mandate the manner in which the IRC must conduct its self-assessment. Consequently, the commenter could organize a self-assessment in the manner described. The Commentary now specifies our expectation that the self-assessment should focus on both substantive and procedural aspects of the IRC's operation. It further specifies that a manager may choose to provide the IRC with feedback on its performance as part of the IRC's annual self-assessment process.
Yet, another commenter urged us to consider mandating public disclosure of self-assessments.	We believe that the self-assessment process will likely be more effective if we do not mandate that they be publicly disclosed.
Continuing Education Another commenter requested the Instrument mandate that the IRC consider the necessity of attending continuing education programs as a part of its mandate and annually thereafter. This determination, remarked the commenter, should be left to the IRC. Additionally, section 3.12 should be amended to make clear that the funds are permitted to bear the cost of this education.	Section 3.15 of the Instrument provides that the IRC may reasonably supplement the educational and informational programs provided to its members. We leave it to the IRC to consider whether it wishes to consider continuing education as part of its mandate. We have, however, revised this section to require both the manager and the IRC to provide new IRC members with an orientation to enable the member to understand the role of the IRC as a whole and the role of the individual member. Section 3.13 provides that the fund must pay all reasonable costs and expenses incurred in compliance with this Instrument.

5. The Instrument addresses the liability of IRC members.	
We request feedback on this approach.	
Comments	***Responses***

Limitation on Liability One commenter remarked that limiting the scope of the IRC's mandate may limit the IRC's corresponding fiduciary duty and duty of care. A few commenters remarked the scope of liability of IRC members still remains largely undefined. An existing IRC asked us to include in the Instrument a further statement of our intent that the only duties of the members of the IRC are the duties listed in the Instrument. This IRC went on to suggest some changes to the proposed Commentary to address what appeared to them to be discrepancies with our stated intent. We were told by a few commenters that a lack of appropriate insurance for IRC members would likely discourage otherwise qualified candidates.	***Response*** We continue to believe, based upon the advice we received, that the Instrument appropriately limits the IRC's fiduciary duty and duty of care based upon the unique and limited role that it will serve. We are satisfied that the Instrument clearly specifies the requirements of the members of the IRC, including that the IRC is only required to consider conflict matters that the manager refers to it. Accordingly, we have not made any significant changes to the Instrument. The Commentary has been expanded to clarify that while the Instrument does not preclude the IRC and manager from agreeing to IRC functions additional to those prescribed by the Instrument, the Instrument does not regulate those additional functions. We continue to believe, based upon our review and consultations with the insurance industry, that insurance coverage will be available for IRC members at reasonable cost.

6. The Instrument preserves investor votes for changes to the 'commercial bargain'.	
We request comment on this approach. Specifically, we would like feedback on the drafting of the proposed amendments to Part 5 of NI 81-102.	
Comments	***Responses***

Our Approach Industry commenters seemed generally supportive of the concept that a securityholder vote only be required for changes to a mutual fund that affect the 'commercial bargain' between unitholders and the manager.	***Response*** ***Our Approach*** We agree with the commenters and have not changed our approach in this regard. Consequently, we have not changed the exemptions provided from the requirement to obtain securityholder approval under NI 81-102 based upon IRC approval. Exemptions continue to be provided in connection with a change of auditor and a reorganization between affiliated mutual funds. Otherwise, funds must still obtain securityholder approval for the other changes contemplated under section 5.1 of NI 81-102.
However, two commenters remarked that the requirement of both an IRC recommendation and a securityholder vote is both time consuming and expensive and will provide no meaningful added investor protection in circumstances where securities legislation normally requires unitholder approval, such as an increase in fees. If the manager of a fund is able to convince unitholders that a fee increase is appropriate, that should be sufficient, remarked one commenter.	We continue to believe that the manager (and ultimately the investment fund and securityholders) can benefit from the independent perspective and input of an IRC on all decisions that have an inherent conflict of interest for the manager, including those decisions which are subject to a securityholder vote under Part 5 of NI 81-102. We do not believe that the requirement to obtain IRC input will be expensive or time-consuming.
One commenter told us that we must ensure that IRC approvals or recommendations do not interfere with pre-existing contractual rights of securityholders. For example, the Instrument should not restrict employees of a manager or its affiliates from voting or redeeming their units in in a related mutual fund.	The Instrument is not intended to restrict voting or redemption rights. We do not expect IRC approvals to interfere with pre-existing contractual rights of securityholders in the normal course.

Other Comments on the Instrument

General Comments	
Comments	***Responses***
Support for the Instrument Overall, there was support for the Instrument. For instance, many commenters told us that the Instrument is a step in the right direction of improving governance in the fund industry now, and that the IRC requirement will be an efficient form of 'citizen oversight' of funds affecting a wide range of investors. An investor advocate further noted that investment funds are a unique product in that there is a fundamental conflict between the fund sponsor and the small retail investor, the most vulnerable and trusting of all investor classes.	***Response*** We acknowledge the support of the commenters.

One commenter remarked that the IRC was 'unique to Canada' and had much merit. Another commenter saw the IRC as a key building block for the supervision of investment funds stretching out years into the future. Still another commenter said that independent oversight will enhance public confidence in investing in mutual funds and other investment funds, and may assist fund managers in continuing to meet their fiduciary standard of care. Another commenter told us they understand the overall objectives and role securities regulators have contemplated for the IRC and they support enhanced investor protection through independent oversight.	
Opposed Certain commenters who consider themselves 'smaller' investment funds told us that small funds do not face the structural conflicts contemplated by the Instrument. One of these commenters told us they believe it is contrary to the interests of their unitholders to require all fund companies to meet the onerous requirements of the Instrument when it is the minority of fund companies who have structural conflicts and existing prohibitions already address concerns related to these conflicts.	We continue to believe that the Instrument should apply to smaller funds for the reasons discussed above in our response to the specific comments received regarding the inclusion of smaller funds.
We were also told that the Instrument does not go far enough to recognize the merits of existing governance structures and regulations. For a few commenters, the IRC was seen as an additional and redundant layer of regulation in the context of existing controls.	As discussed above in our responses regarding the expanded scope of the Instrument, we continue to believe that is appropriate to implement consistent governance standards for all funds.
Cost Benefit Analysis Those unsupportive of the CBA told us that the true costs of operating an IRC remain to be seen. We were told that the cost of recruiting, retraining, and insuring IRC members as well as the costs of experts, and the time of IRC members and other employees, were not adequately addressed in the CBA. We heard that the estimated costs related to an IRC's services could be higher than those projected in the CBA.	We acknowledge that there will be costs associated with implementing the Instrument. We continue to believe, however, that there are inherent conflicts of interest in the management of smaller investment funds that will benefit from the independent perspective brought to bear on such matters to an IRC.
We also heard from commenters who remarked that it is self-evident that investors are best served by having some form of independent oversight of the funds, and they are unpersuaded that an extensive cost/benefit analysis is required to prove a need for revisions to the existing regulatory framework for fund governance.	As stated above, in our view, the scope of IRC review for most smaller investment funds (where there are no structural conflicts of interest and where there may be fewer business conflicts, especially if many functions have been outsourced) would be much less burdensome than for larger investment funds, and therefore, less costly. In other words, we perceive the cost burden will be proportionate to the benefit of an independent perspective on conflict of interest matters. We also note the Instrument does not preclude the creation of shared IRCs amongst smaller fund complexes as a means of reducing costs.

Section		*Comments*	*Responses*
Part 1	**Definitions and Application**		
Section 1.3	*Meaning of 'conflict of interest matter"*	The majority of commenters supported the Instrument's principles-based approach to defining conflicts of interest. ***A Materiality Test*** Many commenters urged us to include a 'materiality' or 'significance' threshold in the definition. We were told, there could be matters not sufficiently important or material to warrant referral to or consideration by the IRC. It could also cause micromanagement by the IRC, or review by the IRC of numerous immaterial events which will entail much cost and time dealing with 'de minimus' matters for no material benefit. ***Resolution in Favour of the Fund*** One commenter suggested that the definition should make clear that it	***Response*** We agree with the commenters and, consequently, have maintained the Instrument's principles-based approach. We have not added a materiality threshold into the definition. This does not mean, however, that we expect every conflict of interest to be referred to the IRC. The definition already incorporates a reasonable person test that is designed to provide some limit to the types of conflicts we expect the manager to refer to the IRC. In addition, we have added Commentary to set out our view that we do not consider the reasonable person test to capture inconsequential matters. We have also communicated our expectation that the manager should look to industry best practices, among other factors, for guidance in identifying conflict of interest matters to be referred to the IRC. For greater certainty, we have amended the definition to specifically list – in new Appendix A to the Instrument – the provisions in securities legislation that could restrict or prohibit an investment fund, manager or an entity related to the manager from proceeding with a conflict matter. As discussed above, we expect fund managers and IRCs to exercise good judgment in assessing potential conflict of interest matters.

		excludes any matters that the manager chooses to resolve in favour of the investment fund.	We do not necessarily agree, however, that the matter should not be submitted to the IRC just because the manager believes it has already resolved the matter in favour of the investment fund. We expect that the fund manager would still put the matter before the IRC including its description of how it has resolved the matter.
		Need for Dialogue One commenter told us that the decision as to which matters are material or significant should be allowed to develop as a healthy dialogue between the manager and the IRC. Another commenter suggested that as standards evolve in this area over time, it would be helpful for the CSA to continue to communicate its thinking on conflicts. Still another commenter suggested that securities regulators create and oversee an investment fund industry sub-group.	We encourage both fund managers and IRCs to communicate with one another with the goal developing a mutual understanding of what constitutes a conflict of interest matter for their particular fund. We intend to continue to communicate our thinking on conflicts, but believe that managers are better placed to assess conflict of interest matters based upon their particular circumstances. We expect industry best practices to develop regarding what constitutes a conflict of interest matter.
		Perceived Conflicts Another commenter expressed concern that the definition appears to include perceived conflicts rather than actual conflicts in fact through the use of words such as 'may conflict' and 'may impact'.	We agree with the commenter that the definition includes perceived conflicts. This is our intent. It may be, however, that after referring the matter to the IRC that the IRC and fund manager agree that the matter is not actually a conflict that requires any further action by the manager.
		Original Setting of Management Fees One commenter asked us to explicitly state in Commentary whether we consider the original setting of management fees to be a conflict of interest which is reviewable by the IRC.	We do not consider a manager's initial decision-making in the organization of an investment fund to be subject to IRC review, unless the manager's decisions give rise to a conflict of interest concerning the manager's obligations to existing investment funds within the manager's fund family. However, we anticipate that the fund manager may wish to engage the IRC early in the establishment of the fund to ensure the IRC is adequately informed of potential new conflicts of interest. We have revised the Commentary accordingly.
		Portfolio Managers One commenter repeated their comment	We have amended the Commentary to clarify our view that the

		from the 2004 Proposal that any conflicts of interest experienced by portfolio managers are not conflicts of the manager. We were told the Instrument needs further clarity about how it applies to potential conflicts at a portfolio manager level. ***IRCs as Audit Committees*** Another commenter queried whether securities regulators intended for an IRC to act as an audit committee concerning the investment funds under its authority. This commenter further queried whether preparation of financial statements and liaising with auditors is a 'conflict of interest' matter.	Instrument captures conflicts at the portfolio manager level (or conflicts of any other entity related to the manager captured by the Instrument) only in relation to decisions made on behalf of the fund that may affect or influence the manager's ability to make decisions in good faith and in the best interests of the fund. We expect managers to have knowledge of these conflicts. We have also provided some examples in the Commentary of potential conflict of interest matters at the portfolio manager level that may be caught by the definition of 'conflict of interest matter'. At a minimum, conflict of interest matters would include transactions that the portfolio manager is prohibited from proceeding with by a conflict of interest or self dealing prohibition in securities legislation. We do not intend for the IRC to act as an audit committee. Of course, it always depends on the nature of the particular relationships, but we would not expect the preparation of financial statements and liaising with the auditors to be a conflict of interest matter.
Section 1.4	*Meaning of 'entity related to the manager'*	A few commenters told us that the definition of an 'entity related to the manager' is very broad and potentially captures service providers, such as custodians and transfer agents. Commenters who remarked on this section told us that it is inappropriate and not practical to require a fund manager to be aware of, and refer to the IRC, any conflicts experienced at a third party	***Response*** We have amended paragraph (b) of the definition by deleting reference to "agent'. We have also amended the Commentary by adding a statement regarding our view that the Instrument is not intended to capture conflicts of interest at the service provider level generally. Additional guidance has also been added on the types of entities that may be captured by the definition of 'entity related to the manager'. We have also amended a portion of the definition to capture a person or company who can 'materially affect' the direction of the management and polices of the manager or the investment fund. We refer to our response above under section 1.3 regarding portfolio managers.

		portfolio manager level.	
Section 1.5	*Meaning of 'independent'*	***Principles Based Approach*** Those who commented were generally supportive of the Instrument's principles-based approach to defining 'independence'. Commenters also expressed support for the removal of the list of prescribed material relationships set out in the 2004 Proposal, noting the list was prescriptive and not focused on whether a person possesses an independent mindset and is able to act without influence.	***Response*** We acknowledge the support of the commenters and have maintained the principles-based approach.
		One commenter, however, said that the value of the principles-based definition has been undermined by the detail in the accompanying Commentary. This commenter suggested deleting the Commentary to allow the definition to speak for itself and to be interpreted, as appropriate, in different circumstances.	We have maintained the Commentary, but do not intend it to serve as a substitute for the exercise of judgment by managers and IRCs. We encourage managers and IRCs, as the Commentary suggests, to interpret the definition and the Instrument based upon their particular circumstances. We have amended the Commentary to further clarify our views regarding the types of individuals who may or may not meet the definition of independence.
		Securityholders of the Fund or its Manager One commenter suggested we amend this section to clarify that the 'independence' of IRC members is with respect to the manager or an entity related to the manager, not in relation to the fund.	We believe there may be material relationships with the fund that interferes with an individual's ability to judge conflicts of interest. For example, an executive officer of a fund would not likely be independent for the purpose of serving on the IRC.
		We were told it must be possible to select members of the IRC among securityholders [of the fund] without, however, making it an obligation.	While the Commentary specifies that a material relationship within the definition of independence may include ownership, we continue to expect that only those relationships which might reasonably be perceived to interfere with the exercise of a member's independent judgment to be considered material.
		Another commenter suggested that	We believe that ownership of a fund's or manager's securities

		Commentary specify that share ownership by IRC members in the fund manager or its parent does not automatically 'taint' the independence of those individuals, but rather that the fund manager and the individual should determine whether or not it is material. An investor advocate told us they would not support any compensation scheme that provides IRC members with compensation in the form of company stock or options.	potentially raises difficult issues, but does not necessarily taint an IRC member's independence depending upon the circumstances. For instance, at one end of the spectrum would be an IRC member that holds a small amount of securities through a fully managed account. At the other end, would be an IRC member that holds a large number of securities directly. An IRC member should be careful not to put themselves in a position where their securityholdings can reasonably be seen to compromise their judgment regarding a conflict of interest matter. We have determined not to add this point specifically to the Commentary.
		Existing Independent Boards and IRCs One commenter remarked it is important to recognize that members of the industry have already established independent boards in anticipation of the eventual implementation of the Instrument.	We agree. The Commentary specifies that, depending on the circumstances, independent members of an existing advisory board or IRC may be independent for the purposes of the Instrument.
		Representatives of the Fund Manager or its Affiliates Another commenter suggested that we include additional language in the Commentary to clarify that it will be permissible for funds to seed their initial IRC with former directors of the manager who otherwise satisfy the definition of 'independent'.	We agree and have amended the Commentary to explicitly provide that, depending on the circumstances, former independent members of the manager's board of directors or special committee of the board of directors of the manager may be independent for the purposes of the Instrument.
		We were also asked by a few commenters to again consider permitting existing independent fund manager board members to act as members of the IRC.	We do not agree that it is appropriate for existing independent board members of a fund manager to act as members of the IRC. These board members owe a duty to the fund manager's shareholders in addition to the fund's securityholders. We continue to believe there may be instances where these duties conflict such as, for example, where there are competing takeover bids for the manager that impact the fund's unitholders differently. The Commentary recognizes that former independent members of the manager's board may be eligible to serve on an IRC.
		Another commenter also asked us to permit representatives of the manager to serve as	We agree that manager representatives will add value to the IRC based upon their experience. We continue to believe, however, that

		IRC members. Representatives will bring context to IRC meetings and in-depth experience with the day-to-day functioning of investment funds we were told.	it is inappropriate for representatives of the manager to serve as IRC members. We encourage manager representatives to work with the IRC. We have also revised the Instrument to permit manager representatives to be present during IRC determinations if the IRC so chooses.
		We were told by one commenter that the definition of 'independent' and the Commentary seem to preclude independent directors of a manager's subsidiary or affiliate from acting as members of the IRC for that manager's investment funds.	We continue to believe that it is inappropriate in most instances for the independent directors of a manager's subsidiary to act as a member of the IRC for the reason discussed above. Such a director still owes a duty to the subsidiary's shareholder which, in this case, would be the manager itself. This duty could conflict with the duty owed to the fund's securityholders.
		Directors of Trust Company Another commenter remarked that the definition of 'independence' seems to prohibit a fund manager from using the Board of Directors of a registered trust company as its IRC, if that trust company were related to the fund manager (even if the directors are independent within the meaning of trust company legislation). This commenter requested the definition provided in subsection 2.4(4) and its related Commentary found in the 2004 Proposal be put back in.	The Commentary continues to provide our view that, depending on the circumstances, independent members of the board of directors of a registered trust company that act as trustee for an investment fund may be independent. Where the trust company is related to the manager, we believe the circumstances become potentially more difficult. The manager and IRC must assess whether the IRC member's role with the trust company could be seen to reasonably interfere with their judgment regarding a conflict of interest matter.
		Prescribed Period Still another commenter reiterated their comment from the 2004 Proposal that we introduce the 'prescribed period' concept found in MI 52-110 *Audit Committees* so that individuals would only be considered non-independent under the Instrument if they have or have had a specified relationship during the prescribed period that begins after the Instrument becomes final.	As previously stated, the Instrument now allows individuals with existing relationships with the investment fund, manager or an entity related to the manager (as defined in the Instrument) to act on the IRC, provided they meet the 'principles' based definition of independence. We recognize that the 'principles based definition of independence in the Instrument has the effect of potentially barring an individual's participation on an IRC for a relationship which extends beyond the previously prescribed 'cooling off' period. We consider this outcome appropriate.

		LSIFs We were told that labour sponsored investment funds and labour sponsored venture capital corporations already have independent representation on their boards from labour unions and it was suggested that the Instrument reference the existence of these representatives under this section and under the nominating criteria of section 3.3. ***Disclosure*** Finally, it was suggested by one commenter that the basis for the determination of an IRC member's independence be disclosed in a fund's annual AIF and a cross-reference to this AIF disclosure should be included in the IRC's annual report to securityholders.	Please see our discussion regarding LSIFs in the Expanded Scope section above. We still believe that it is appropriate for LSIFs to have an IRC. To the extent, however, that an LSIF already has independent members on its board, it's possible that these board members can serve on the LSIF's IRC. The Commentary to the definition of independence provides that, depending on the circumstances, independent members of a fund's board of directors may be independent. We agree with the relevance of this disclosure. We have amended section 4.4 of the Instrument to require the IRC to provide in its report to securityholders a description of any relationship that may cause a reasonable person to question the member's independence, and the basis used by the IRC for determining that the member is independent.
Section 1.7	*Meaning of 'manager'*	A number of commenters expressed confusion that the Commentary to the definition of 'manager' suggests the possibility of there being more than one manager of the fund.	***Response*** We have amended the Commentary to delete the reference to circumstances meriting the designation of more than one person or company as "manager". It was not our intention to suggest that there may be more than one manager of the fund. We have added examples in the Commentary of the types of managers the definition may capture. We have also specified in the Commentary, that we may examine a fund if it seems that it was structured to avoid the operation of the Instrument.
Part 2	**Functions of the Manager**		
Section 2.2	*Manager to have written policies and procedures*	One commenter requested more guidance on minimum standards for policies and procedures to be adopted by managers. Another commenter further recommended	***Response*** We have not added more guidance regarding appropriate minimum policies and procedures. We continue to believe that it should be left to the manager to create appropriate policies and procedures based upon its particular circumstances. We have made some of the changes suggested. For example, we

		that similar Commentary to that found in section 4.1 be included here, and suggested that the following concepts are missing from this section of the Instrument: • a fund manager must consider the input of the IRC and its fiduciary obligations in finalizing its policies and procedures • thereafter, the fund manager must follow these policies and procedures in dealing with any conflict of interest, and • if the fund manager wishes to take a different action which is not permitted under its policies and procedures it must take this proposed action to the IRC for review and input .	have added a new subsection (2) to require the manager, in establishing its policies and procedures, to consider input of the IRC, if any. We have also articulated our expectation that if an unanticipated conflict of interest matter arises for which the manager does not have a policy and procedure, we expect the manager to bring the matter and its proposed action to the IRC for its review and input at the time the matter is referred to the IRC. We remain satisfied that the Instrument appropriately sets out the steps a fund manager must follow.
Section 2.3	*Manager to maintain records*	We were asked by one commenter to clarify in subsection 2.3(a) whose meetings are being referred to, the manager's meetings, those of the board of directors, the IRC, or others. This commenter also suggested we add a requirement for a record of the actions taken by the manager in respect of a conflict matter referred to the IRC and questioned the reference to "investment fund' in Commentary 1.	***Response*** We have revised the Commentary to clarify that a manager is expected to keep minutes only of any material discussions it has at meetings with the IRC or internally on matters subject to the review of the IRC. We have revised the Commentary regarding our view that the requirement for the manager to maintain records would include the actions it takes in respect of a matter referred to the IRC. We have also deleted the reference to investment fund in Commentary 1.
Section 2.4	*Manager to provide assistance*	One commenter remarked that this section gives a manager broad discretion to provide whatever information it wants to the IRC. The assumption, we were told, is full, true and plain disclosure, but a manager could	***Response*** We do not believe that the section provides a manager with the discretion to provide whatever information it wants. The obligation is to provide the IRC with information sufficient for the IRC to properly carry out its responsibilities. We expect that, consistent with their fiduciary duty and standard of care, fund managers will

		skew any particular results by giving a different tone to whatever information is produced or provided to the IRC. One commenter suggested we similarly add the manager's proposed policies and procedures to subparagraph 2.4(1)(a)(ii) . This same commenter also urged us to delete or to provide greater clarity in subsection 2.4(2) on when a manager would be considered to have 'prevented' or 'attempted to prevent' the IRC from communicating with securities regulators.	fulfill this obligation in good faith. We have made the suggested change. We do not believe that additional clarity is needed.
Part 3	**Independent Review Committee**		
Section 3.1	*Independent review committee for an investment fund*	***Sharing IRCs*** Responding to Commentary 2, some commenters told us that for competitive reasons, they do not believe IRC members will be shared amongst fund managers. ***Creation of IRCs by 'for profit' firms*** We were also told of concerns regarding the development of 'for profit firms' being created for the sole purpose of providing shared IRCs to smaller fund managers.	***Response*** We recognize that some fund managers will not want to share IRC members. We continue to believe, however, that fund managers should have sufficient flexibility to determine how best to structure their IRCs in a manner suitable to their funds and business operations. We consider that sharing IRCs may be appropriate where warranted by circumstances such as the size of the manager, the funds or fund families. We continue to believe that the final determination as to how IRCs should be structured, rests with the fund manager. This view is captured in the Commentary. As indicated in Commentary, we continue to believe that managers of smaller funds may find this option to be a cost-effective way of establishing IRCs for their funds. We believe that concerns regarding for profit IRCs and their members are addressed through the minimum standards set out in the Instrument regarding, for

			instance, nominating criteria and composition. We also expect that concerns regarding the quality of IRC members will be addressed through the manager and IRC's initial orientation of IRC members mandated by the Instrument and through ongoing education and training. The Commentary expresses our view that the Instrument does not prevent a third party from establishing an IRC or IRCs for investment funds. Any IRC must comply fully with the Instrument.
Section 3.2	*Initial appointment*	***Reappointment of existing IRCs*** One commenter remarked this section is drafted as if no existing fund complex has an IRC. We were told this section should reflect that these managers are not required to 'reappoint' these members. We were also told that this section should also recognize that for some governance agencies, such as a board of directors of a registered trust company, the fund manager will have no ability to reappoint an IRC. ***Appointment of IRCs*** Two commenters remarked they believe the fund manager should be responsible for the appointment of all IRC members, not just initial members as indicated in this section. The commenters understood the concerns of an appearance of bias, but they believe that the ability of the manager to appoint IRC members will serve as a check and balance and ensure a dysfunctional IRC cannot perpetuate itself indefinitely. We heard from another commenter who considered the ability of the manager to appoint even the initial IRC undermines its 'independence'. It was recognized, however,	***Response*** We recognize that certain fund complexes already have existing IRCs in place. However, we expect a manager to turn their mind to appointing an IRC which complies with this Instrument. If an investment fund has an existing oversight body that complies with this Instrument, we expect the manager will appoint these members as the first IRC under the Instrument if they choose. A manager must appoint the fund's first IRC and the IRCs must have the ability to appoint vacancies. We expect a manager to choose an IRC which will have the ability to comply with the Instrument. We continue to believe that IRC appointment of members on an ongoing basis (after initial appointment by the manager) is the best way to foster an independently-minded IRC. The Instrument, however, specifies that the IRC must consider the recommendations of the manager when filling a vacancy on the IRC or when reappointing a member of the IRC. As discussed under section 3.6, in response to hearing that there should be a 'check and balance' on IRC appointments, we have imposed a maximum term limit on IRC members. This term limit may only be extended upon agreement of the IRC and the manager.

		that in the absence of any mandatory appointments by securities regulators, there really is no other way.	
Section 3.3	*Nominating criteria*	One commenter recommended that a fund's AIF include disclosure relating to the competencies and experience of IRC members.	***Response*** We continue to believe that our requirements to disclose the names and composition of the IRC are sufficient.
Section 3.4	*Written charter*	***Further guidance and separate charters*** It was suggested by one commenter that we remove in the Commentary the securities regulators' expectation that there will be separate charters for each fund family. This commenter remarked it is likely that there will be greater differences across funds within a fund family rather than across fund families. Another commenter requested that we provide more guidance on the items which should be included in the IRC's charter. ***Broader mandate of the IRC*** Still another commenter recommended that the Instrument or the Commentary be revised to clarify that any role the IRC and the manager agree upon that is in addition to the role mandated by the Instrument, is not subject to the Instrument. It was suggested that Commentary similar to paragraph 3 of section 2.5 of the 2004	***Response*** We have removed our expectation of separate charters for each fund family from the Commentary. Although such arrangements are not precluded by the Instrument, we have revised the Commentary to clarify that the Instrument permits, but does not require, separate charters for each fund family should a manager so choose. We have added further guidance in the Commentary regarding what should be included in the IRC's charter. For example, the Commentary now sets out our expectation that the written charter include a policy relating to IRC member ownership of units of the investment fund, manager, or any person or company that provides services to the mutual fund or the manager. We continue to believe, however, that the IRC should determine what to include in its charter based upon its particular circumstances. As noted under our discussion on liability, we have revised the Commentary to specify that while the Instrument does not preclude the IRC and manager from agreeing to IRC functions additional to those prescribed by the Instrument, the Instrument does not regulate those additional functions.

		Proposal be reintroduced. Without this assurance, this commenter told us a fund complex or IRC member may be loathe to take on any roles additional to those prescribed by the Instrument. The commenter also urged us to provide further clarity on the meaning of the fourth bullet point in Commentary 3. ***Disclosure of charter*** Finally, one commenter suggested that the IRC's charter should be posted on a fund's website and disclosed in a fund's AIF to increase transparency of the IRC's mandate and functions. Conflict of interest matters identified by the manager to be reviewed by the IRC in the normal course should also be disclosed in the IRC charter, remarked this commenter.	 We have revised the fourth bullet point in Commentary 3 to provide greater clarity. A summary of the IRC's mandate must be disclosed in an investment fund's prospectus. We consider this disclosure to be sufficient.
Section 3.5	*Composition*	Commenters who responded were generally supportive of the Instrument's flexibility in allowing fund managers to determine how best to structure their IRCs. ***Responsibility of IRC chair*** Two commenters expressed concern about our expectations for the duties of an IRC chair outlined in paragraph 2 of the Commentary.	***Response*** We agree with commenters who concurred with the need for flexibility in the Instrument to allow managers to determine how to structure their IRCs. We continue to believe that the chair's responsibilities are appropriate within the context of the IRC's functions. We have, however, provided additional guidance regarding our view of the chair's responsibilities. In addition, we remind the commenters that responsibility for identifying and referring conflict of interest matters to the IRC rests with the manager, not IRC chair.
Section 3.6	*Term of Office and Vacancies*	***Term of office*** One commenter expressed their preference for more flexibility in the term of office	***Response*** For greater clarity, we separated the provisions in the Instrument regarding vacancies and terms of office. We have revised this

		because they elect directors for their mutual funds organized as corporations on an annual basis, and it is administratively easier if the terms can be consistent. ***Self-Perpetuating IRC*** Another commenter urged us to reconsider the potential development of self-perpetuating IRCs or entrenched boards.	section to specify a minimum term of 1 year and a maximum term of 3 years. We reiterate our view that we consider self-selection of IRC members to be the most appropriate way to foster an independently-minded IRC. We were, however, persuaded by requests for manager input into the selection process for IRC members and concerns about an ineffective, entrenched IRC. Accordingly, the Instrument now requires the IRC to consider manager recommendations, if any, when filling a vacancy on the IRC or when reappointing a member of the IRC. In addition, the Instrument now specifies a maximum term limit for IRC members of 6 years on an investment fund's IRC, with reappointments beyond the maximum term only by agreement of the IRC and the manager. We consider the maximum term limit will enhance the independence and effectiveness of IRCs.
Section 3.7	*Standard of care*	A few commenters, among them an existing IRC, told us that the Commentary should include a clear statement that the only duties that are subject to the Instrument are the duties listed. One commenter remarked this seemed consistent with our intent to limit IRC member liability. Another commenter recommended that the Commentary be modified to articulate what common law defences the securities regulators believe are available to IRC members.	***Response*** We are satisfied the Instrument clearly sets out the role of the IRC. We do not consider it appropriate to specify what defences should be applied to IRC members in the normal course. The successful use of these defences rests ultimately with the courts and judicial process.

		Limiting Liability Two commenters told us there should be a limit on the liability of IRC members to take into account the limited scope of their role. ***Liability and Standard of Care*** One of these commenters said they do not believe IRC members who are not corporate directors should be subject to the same liability as corporate directors when they do not have the same scope or the same duties.	In response to concerns raised about the potential unlimited liability of IRC members, we retained legal counsel to provide us with advice on this issue. Based on this advice, the 2005 Proposal was revised to emphasize the limited scope of the IRC's mandate which in turn should limit the IRC's corresponding fiduciary duty and duty of care. We were advised that by clarifying in the Instrument the very specific functions, duties and obligations of the IRC, we will have clarified that the IRC has a very limited role, particularly as compared to the role of corporate directors. We were also advised that the inclusion of a fiduciary duty and duty of care as well as language that mirrors certain defence provisions in corporate law statutes should serve to provide guidance to insurers and to the courts as to how we view the IRC's role. We agree with the commenter and continue to believe that to the extent the Instrument imposes liability on IRC members, that liability is commensurate with the narrow mandate of the IRC to review conflicts of interest. In accordance with the legal advice we received, an IRC member's exposure to liability in connection with the responsibilities mandated in the Instrument is limited, when compared with the exposure to liability of a corporate director. Also, the protection available to an IRC member under the Instrument with respect to the discharge of those responsibilities is no less than that available to a corporate director. We are satisfied that subsections (3) and (4) in this section provide guidance on how an IRC member meets the standard of care.
Section 3.8	*Ceasing to be a member*	Among the causes in subsection (3) that require IRC members to cease from continuing their membership, we were asked by one commenter to add when a member becomes subject to regulatory or criminal sanctions.	***Response*** We have added additional causes to subsection (3), among them, when a member is subject to penalties or sanctions made by a court related to securities legislation.

		Another commenter strongly recommended that the Instrument permit a fund manager to remove an IRC member if that member becomes a member of an IRC for another fund complex. It should be permissive, we were told, but we should be sensitive to competition in the fund industry.	We disagree with the commenter. The manager already has the ability to remove an IRC member. We have, however, revised the Instrument to require the IRC to disclose in its report to securityholders the name of any other fund family on whose IRC the member serves.
		This commenter also recommended we redraft subsection (3) to give the fund manager the ability to decide whether it believes an individual is no longer 'independent' and therefore can remove and replace that member. The manager, we were told, should have this responsibility and right.	We consider that whether an IRC member is independent under the Instrument is a matter of fact. We note that a fund manager retains the right to remove an IRC member by securityholder vote. Accordingly, we have not revised the Instrument. We have, however, amended section 4.4 of the Instrument to require the IRC to provide in its report to securityholders a description of any relationship that may cause a reasonable person to question the member's independence.
		The commenter also remarked they did not see the necessity in 3(a) for the words "and the cause of the non-independence is not temporary..." since the test for independence is sufficiently clear and principles-based that either one is independent or one is not.	We disagree with the commenter. Newly named paragraph 3.10(3)(a) is intended to exclude a situation where a member may in fact, or be perceived to face, a conflict of interest with respect to a specific (one-time) conflict of interest matter being considered by the IRC.
		Notification of changes in IRC membership Finally, this commenter reiterated their query made in the 2004 Proposal asking us to clarify why securities regulators want notification when an individual ceases to be an IRC member in certain circumstances.	As previously stated, we believe that the resignation, removal or disqualification of one or more IRC members may be an early warning sign of a larger, more systemic problem with the IRC or manager. Upon receipt and review of such information, our intention is to determine if further follow-up with the IRC or manager is warranted. We consider this approach to be consistent with the CSA's increasing emphasis on continuous disclosure and compliance reviews.
		Change of manager Another commenter told us if the IRC is truly 'independent', a change of manager or a change in control of manager should not necessitate a change in IRC membership or composition. Accordingly, section	A change in manager could result in changes to the fund's operations, policies, and procedures. Consequently, we continue to believe that it makes sense for the new manager to set its mind to the role of the IRC. We specify in the Commentary, however, that the new manager is not precluded from appointing members of an IRC

		3.8(1)(f) and section 3.8(1)(g) should be removed.	used by the previous manager.
Section 3.9	*Authority*	***Communication with regulators*** A number of commenters expressed concern that the authority conferred by subsection (1)(e) for IRC members to communicate directly with securities regulators was too broad and potentially expanded the IRC's duties. ***Manager communications with regulators*** One commenter suggested that the Instrument should allow a manager to communicate with securities regulators regarding the IRC. We were told that the Instrument should provide a mechanism for a manager to have recourse in the event that an IRC is not functioning effectively or is making decisions that are contrary to the best interests of either the funds or its investors. ***Searching out conflicts of interest*** Other commenters asked that additional clarity be added to indicate that the IRC is not responsible for making business and operational decisions of the manager and that the IRC has no duty to seek out potential conflict of interest matters. Yet, we also heard from an investor advocate who urged that an IRC be responsible for proactively searching out and reviewing conflict of interest matters, and not simply rely on the manager to bring conflict matters to it for review.	***Response*** We continue to believe that an IRC should be able to communicate with securities regulators. We have added guidance in the Commentary to specify, however, that the IRC has no obligation to report matters other than those prescribed by this Instrument or elsewhere in securities legislation. We have revised the Commentary to specify that the Instrument does not prohibit the manager from communicating with securities regulators with respect to any matter. We are satisfied that the ability of the manager to remove an IRC member by vote at a securityholder meeting is sufficient recourse for the manager. Section 5.1 of the Instrument specifies that the manager is responsible for referring conflict matters to the IRC for its review. While we expect the IRC to bring a high degree of rigor and objectivity to its review of conflict of interest matters, we do not consider it to be the role of the IRC to second-guess the investment or business decisions of the manager or entity related to the manager. The Commentary has been revised to reflect this view.

		Compensation and Experts Several commenters continued to express concern regarding the IRC's ability to set its own compensation. One commenter suggested that we revise subsection (d) to state that the IRC must take into account the manager's recommendations in setting its compensation.	In response to comments, we have revised the Instrument to require the manager to set the initial compensation of the IRC. The IRC, going forward, is then expected to set its own compensation. The Instrument now also specifies that the IRC, in setting its compensation, must consider its most recent assessment of its compensation and the manager's recommendations, if any. The Instrument continues to require the IRC to disclose in its report to securityholders if in setting its compensation, it has not followed the recommendation of the manager and its reasons. The IRC report now additionally requires the IRC to describe the process and criteria it has used to determine its level of compensation.
		Experts and external counsel We were told that the Instrument should state that appropriate use of external counsel or other advisors should only be for specific items where the IRC determines the need for independent advice in warranted circumstances.	We continue to believe that an effective IRC must have at its disposal all of the tools necessary to assist the IRC in fulfilling its mandate under the Instrument. This includes the authority to hire experts and independent counsel as required to assist the IRC in making its determinations on conflict matters. It is not our expectation, however, that an IRC will routinely use external counsel or other advisors. We have revised the Commentary to clarify our expectation that independent advisors will be used selectively and only to assist, not replace, IRC decision-making.
		Other commenters told us that the manager should have the power to set a limit on costs that can be incurred by the IRC. In cases where the IRC would propose to exceed this limit, the board of directors of the manager should decide whether such costs are appropriate.	We continue to believe that a manager should not have the power to set limits on costs. We expect IRCs to conduct themselves consistent with the standard of care imposed by the Instrument.
		Other An additional item one commenter recommended we add to section 3.9 was to give the IRC the right to terminate a manager if it demonstrates gross incompetence, consistently	We do not propose to give the IRC the ability to terminate the manager. We consider the choice of manager to be an integral part of an investor's decision in purchasing an investment fund, and accordingly, do not believe that the IRC should have this authority.

		underperforms the benchmark or peers, consistently fails to follow the fund's stated investment policy, or charges excessive fees. This commenter also asked that we clarify whether the IRC will have unimpeded access to internal audits, client complaint summaries, external auditors, and fund compliance officers in the performance of its duties. We were also asked to clarify whether loans to or from related parties will be part of IRC oversight. ***Delegation by IRC*** Other commenters reiterated their comments from the 2004 Proposal that we expressly authorize an IRC to delegate defined responsibilities to a sub-committee of at least three members. This approach is consistent with corporate statutes, we were told, and is needed to allow the committee not to require the 'full' IRC's approval.	The Instrument specifies that a manager must provide the IRC with any assistance it reasonably requests in its review of matters referred to it. IRC oversight could extend to loans to or from related parties if they are conflict of interest matters, as defined in the Instrument. We were persuaded by this comment. Accordingly, we have revised the Instrument to expressly permit an IRC composed of more than three members to delegate any function to one or more committees of at least three members of the IRC, except for the removal of a member of the IRC. The Commentary has been amended to specify that despite any delegation, the IRC remains responsible for all functions delegated under the Instrument.
Section 3.10	*Fees and expenses to be paid by the investment fund*	One commenter remarked that this section appears to assume all IRC costs will be paid for by one fund. We were asked to redraft this section to require fund managers to equitably and reasonably allocate IRC costs amongst the funds under an IRC's authority. While one commenter asked that the Instrument provide an exemption from the unitholder approval requirement for an	***Response*** ***Allocation of Costs to Funds*** We have revised the Commentary to set out our expectation that we expect a manager to allocate costs associated with its IRC on an equitable and reasonable basis amongst the investment funds for which the IRC acts. We have also clarified in the Commentary our view about what IRC costs may appropriately be charged to the investment fund. As we previously responded, we do not consider the expenses incurred by the introduction of the IRC in the Instrument to be caught by section 5.1 of NI 81-102. Our view is that the purpose of

		increase in fees which result solely from complying with the Instrument, another commenter acknowledged our earlier response to this question, and urged us to include the response in the Commentary to this section to provide future clarity and guidance.	section 5.1 is not to capture the costs associated with compliance by an investment fund of new regulatory requirements. We have articulated this guidance in the Commentary to the transition section of the Instrument.
		Disclosure One commenter disagreed that there be disclosure in a fund's prospectus of whether or not a manager reimburses the fund for fees and expenses payable to the IRC. They said the current MER waiver disclosure that is already required is sufficient.	We disagree with the commenter. We believe prospectus disclosure of how IRC fees and expenses are paid is important.
		Other One commenter told us that the manager should have the power to set a limit on costs that can be incurred by the IRC. In cases where the IRC proposes to exceed this limit, it should be up to the board of directors of the manager to decide whether those costs are appropriate, remarked this commenter.	We disagree with the commenter. We do not believe that the right of a manager to limit costs incurred by the IRC is consistent with the role of the IRC as an independent body.
Section 3.11	*Indemnification and insurance*	A few commenters told us not to regulate the form of indemnity or the payment of premiums the fund manager wishes to provide IRC members.	***Response*** Consistent with the legal advice provided to us, we have drafted this section in a way that is analogous to the CBCA to message that it be interpreted in a way parallel to the provisions in the CBCA. We have provided additional guidance in Commentary regarding indemnification of IRC members.
		One of these commenters recommended that further analysis and consideration be given to how a claim under an indemnification obligation should be worked into a daily	Upon review, we would expect a claim for indemnity to be accounted for using appropriate accounting principles.

		NAV calculation for an investment fund.	
Part 4	**Functions of Independent Review Committee**		
Section 4.1	*Review of matters referred by manager*	***Deliberating and Deciding in the Absence of Management*** A number of commenters expressed concern at the requirement in subsection 4.1(3) requiring the IRC to make decisions in the absence of any manager or any entity related to the manager. ***Annual meeting in absence of manager*** One industry commenter agreed with the requirement for the IRC to hold at least one meeting annually in the absence of management. In fact, this commenter suggested we consider requiring more than one meeting, in order to promote trust, good group dynamics, and familiarity amongst IRC members and with the business of the funds. ***Taking minutes*** Still other commenters expressed concern over who would be responsible for taking minutes at these 'in camera' IRC meetings. Another commenter asked us to consider whether the manager will be prohibited from viewing the minutes of the 'confidential' meeting described in subsection (5).	***Response*** We agree with commenters who told us that the IRC should have discretion to determine whether representatives of the manager should be present when the IRC deliberates. The Instrument has been amended accordingly. Consistent with governance principles, the Instrument continues to mandate at least one annual meeting of the IRC in the absence of the manager. We have clarified in Commentary that a portion of any IRC meeting without the presence of the manager will satisfy this requirement. The Commentary to section 4.6 now clarifies that we expect an IRC to keep minutes only of any material discussions it has at meetings with the manager or internally on matters subject to its review. The Instrument does not require, nor does it prevent, the IRC from sharing these minutes with the manager.

		Other One commenter suggested we delete subsection 2(b) noting that it would be a backward step for the Instrument to mandate an IRC to 'perform other functions as may be agreed in writing'.	We agree and have deleted this subsection. As noted, the Commentary specifies that while the Instrument does not preclude the IRC and manager from agreeing to IRC functions additional to those prescribed by the Instrument, the Instrument does not regulate those functions.
Section 4.2	*Regular Assessments*	While one commenter strongly urged us to consider requiring public disclosure of committee self-assessments, another commenter told us that individual directors tend not to give meaningful or critical feedback of other directors unless they are assured their comments will be confidential. ***Frequency of Assessments*** One commenter also asked that we clarify 4.2 to remove any doubt about whether the IRC has a duty to consider further assessments and requirements beyond the 'minimum' assessments referred to in this section and its Commentary.	***Response*** We continue to believe that IRC self-assessments should be confidential. We propose no change. An IRC is required to perform only those functions set out in the Instrument. The Commentary continues to provide that subject to the minimum requirements of the Instrument the IRC may establish a process for, and determine the frequency of, additional assessments as it sees fit.
Section 4.3	*Reporting to manager*	One commenter recommended that the words "or it suspects" be deleted as they are uncertain or vague.	***Response*** We agree, and have amended this section accordingly.
Section 4.4	*Reporting to securityholders*	One commenter remarked that as drafted, a fund complex with funds with March 31, June 30, September 30 and December 31 year ends, would require the funds' IRC to prepare four sets of annual reports, not likely the intention.	***Response*** We acknowledge that if different funds within the same fund complex possess the same IRC, but different financial year ends, an IRC may have to prepare more than one report. This outcome is no different than other financial reporting requirements for this fund complex.

		Another commenter suggested that a manager should be permitted to draft its own response as to why it did not follow IRC recommendations for inclusion in the report to securityholders. This will allow for a fair and balanced perspective in reporting, we were told. ***Disclosure of membership on multiple IRCs*** It was also suggested by a commenter that the Instrument require disclosure of all other IRCs that each member is also a member of. Disclosure of this kind would be consistent with similar disclosure required under Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices.*	The Instrument does not prohibit a manager from responding in one of its disclosure documents to the IRC's report if it chooses. We continue to believe, however, that the IRC's report to securityholders should be prepared by the IRC only. We agree with the commenter. We have revised the Instrument to mandate this disclosure in the IRC's report to securityholders.
Section 4.5	*Reporting to securities regulatory authorities*	***Materiality*** A number of commenters expressed reservations about the requirement for the IRC to report to securities regulators. Some told us to include a 'materiality' concept in the IRC's reporting obligations under this section. ***Disclosure*** One commenter asked us to specify whether or not IRC reports to securities regulators will be made public. Two other commenters asked us to redraft the section to clarify the steps an IRC must take before reporting to securities regulators. For example, one commenter queried whether the IRC should carry out a review	***Response*** We continue to believe, based upon our experience with the discretionary exemptions that we have granted to date in connection with the conflict of interest matters under subsection 5.2(1), that a materiality threshold is neither necessary nor appropriate. The Commentary provides guidance regarding our expectations on such reporting. IRC reports to securities regulators are not required to be publicly filed. We do not expect the IRC to conduct an investigation once they become aware of a breach under this section, only to report to securities regulators. The Commentary now specifies that if known, we expect the IRC to include in its report the steps the manager proposes to take or has taken to remedy the breach in each instance.

		or investigation in appropriate cases. ***Manager right to communicate with regulators*** Still other commenters told us that the section should give managers the right to communicate with securities regulators about their IRCs.	We agree that the manager should have the right to communicate with regulators about their IRCs. The Instrument does not prohibit such communications between the manager and securities regulators with respect to any matter. We have clarified this point in the Commentary.
Part 5	***Conflict of Interest Matters***		
Section 5.1	*Manager to Refer conflict of interest matters to Independent review committee*	We heard from some commenters that we should include a 'materiality' component in this section. One commenter noted that the process of having to seek IRC review and obtain IRC approval or recommendation could cause a manager to lose the opportunity to participate in a time-sensitive transaction. One commenter remarked that this section appears to suggest the fund manager will be regularly taking unique matters to the IRC that have not been dealt with via a conflicts policy and procedure. It also appears to suggest that a fund manager would be required to take each conflict matter to the IRC before taking any action, even though it proposes to follow its policies and procedures in managing that conflict of interest.	***Response*** We do not believe a materiality standard is necessary. The definition of a conflict of interest matter already incorporates a reasonable person test that is designed to provide some limit to the types of conflicts we expect the manager to refer to the IRC. We believe the Instrument addresses time-sensitive matters by permitting the IRC to provide the manager with standing instructions. We expect unique matters to be referred to the IRC and have revised the Commentary to clarify this view. However, we also expect the IRC will give standing instructions in many instances to facilitate timely decisions by the manager that are in the best interests of the fund.
Section 5.2	*Matters*		***Response***

	Requiring independent review committee approval	Commenters on this section focused on the test in subsection (2). One commenter asked why securities regulators care if a manager is free from influence as required in (2)(a) or is uninfluenced as required in (2)(b) as the IRC must decide whether the manager's proposal will achieve a fair and reasonable result under (2)(d). Another commenter remarked that the IRC will be able to arrive at the first three criteria found in 5.2(2)(a)(b) and (c), as these determinations mostly concern procedure. Other commenters expressed concern with the IRC making a determination as to whether an action achieves a fair and reasonable result for the fund as required by (2)(d). ***Short Selling*** Finally, one commenter asked that we clarify whether transactions involving short-selling are captured under this section.	We continue to believe that the conditions in subsection (2) are appropriate based upon our experience with the discretionary exemptions that we have granted to date. This section does not capture short-selling transactions in and of themselves. Short-selling transactions would be captured, however, if they are one of the conflict of interest matters cited in section 5.2(1).
Section 5.3	*Matters subject to independent review committee recommendation*	***Notice Requirements*** One commenter asked that the Instrument provide greater flexibility to the IRC on the notice which it may require under (2) and (3) of this section, for example, so that the IRC may reduce the time period if it determines that notice by press release is sufficient . This commenter also asked that we clarify that the scope of the Instrument as it relates to the 'recommendation' category of conflicts of interest for third party portfolio	***Response*** We believe that if the IRC determines immediate notice to be appropriate, that notice should be a mailing similar to other notice requirements in securities legislation. As previously noted, the Commentary has been amended to clarify our view that the Instrument captures conflicts at the portfolio manager level only in relation to decisions made on behalf of the fund that may affect or influence the manager's ability to act in good

		advisors, is the conflicts the portfolio advisor has with the manager or its affiliates. Another commenter remarked that a fund manager should not be permitted to proceed with a proposed course of action if the IRC has provided a negative recommendation, unless the manager has obtained unitholder approval, rather than only notify securityholders.	faith and in the best interests of the fund. We have also provided some examples in Commentary of potential conflict of interest matters at the portfolio manager level. We continue to be satisfied that IRC notification – whether immediate or in its report to securityholders – is an appropriate response to a manager proceeding with an action despite the negative recommendation of the IRC. The Instrument reinforces that the manager remains ultimately responsible to make decisions in the best interests of the fund.
Section 5.4	*Standing instructions by the independent review committee*	Most commenters responded positively to the ability of the IRC to issue standing instructions. Yet, we also heard from an investor advocate who expressed concern that standing instructions will in effect, become 'entrenched' relief subject to conditions that may differ across IRCs. ***'Good until cancelled'*** A few commenters remarked subsection (3)(b) does not allow a fund manager to continue to follow standing instructions during the time of the IRC's regular assessment of these standing instructions. They further suggested such standing instructions be good until cancelled', subject to annual review by the IRC. We were also asked by a commenter to mandate the posting of each standing instruction on the manager's website. This commenter also suggested that we	***Response*** We believe that the ability of the IRC to give standing instructions appropriately provides managers with greater flexibility to make timely investment decisions that are in the best interests of the fund (and ultimately investors). The Instrument requires the IRC to review and assess the adequacy and effectiveness of standing instructions at least annually. We agree with those commenters who asked that we clarify whether a manager can continue to follow standing instructions during the time of the IRC's regular assessments under the Instrument. The section has been revised accordingly. The Instrument currently mandates disclosure in the IRC's report to securityholders of a brief summary of any recommendations and approvals the manager relied upon during the period of the report. This would include any standing instructions. We contemplate that a manager's policies and procedures will speak

		add as another bullet under Commentary 2, that securities regulators expect the IRC to have assessed the manager's internal control practices before providing or continuing a standing instruction. ***Use of prior exemptive relief orders as guidance*** Finally, one commenter told us that if it is our intent that prior orders granted by securities regulators can be used by an IRC for guidance, that intent should be clarified in Commentary 2.	to how internal control procedures will contribute to the manager's overall ability to handle a conflict of interest. We would not generally expect, however, an IRC to assess the sufficiency of the manager's internal control procedures. Internal controls, in our view, remain the responsibility of the manager. The Commentary specifies that an IRC may consider as guidance the conditions in past exemptive relief orders in considering what, if any, parameters to impose in a standing instruction. It remains the responsibility of the IRC to provide standing instructions based upon the particular circumstances.
Part 6	**Exempted Transactions**		
Section 6.1	*Inter-fund trades*	One commenter, while supportive of the inter-fund trading exemptions, reiterated their comments from the 2004 Proposal that we adopt the U.S. model for inter-fund trading and not attempt to "reinvent the wheel". Another commenter reiterated their remarks from the 2004 Proposal that the inter-fund trading provisions are overly-prescriptive, 'unnecessary', and do not adequately consider a manager's fiduciary obligations and the need for IRC input. These commenters both remarked that the inter-fund trading exemption should extend beyond funds subject to the Instrument to permit a broader universe of potential counterparties, which at the very least, should include U.S. mutual funds. Another commenter suggested we replace	***Response*** As previously stated, we believe the inter-fund trading exemption in the Instrument represents the minimum requirements necessary to mitigate the conflict of interest concerns inherent in such transactions and satisfies the capital market objectives of market integrity. We direct these commenters to our earlier responses published with the 2005 Proposal. Our comfort with the inter-fund trade exemption in the Instrument stems from the protection we believe is afforded to the securityholders by its conditions, including the review and approval by the IRC. Accordingly, we continue to believe that only investment funds subject to the Instrument should be permitted to inter-fund trade under this provision. On review, we propose no change to this section of the French

		the word 'contrepartie' with the word 'compensation' in section 6.1 of the French version of the Instrument. One commenter remarked that section 6.1(1)(d) does not appear to permit processing costs as part of the cost of an inter-fund trade, and requested clarification in this regard. Another commenter told us they considered the discussion in Commentary 4 on 1(c) conflicts with (e)(ii), in that section 6.1(1)(c) permits use of a single pricing source if only one is available, whereas section 6.1(1)(e)(ii) requires use of more than one pricing source to arrive at certain average prices.	version of the Instrument. We consider processing costs to be included in the reference to nominal costs incurred by the investment fund to print or display the trade in this section. We disagree with this commenter. The Commentary in 1(c) provides guidance on how we expect transparency of market price to be obtained, whereas (e)(ii) focuses on how the current market price is determined for non-exchange traded securities.
Section 6.2	*Transactions in securities of related issuers*	A few commenters told us that the 'mutual fund conflict of interest restrictions' are much broader than related party investments, and therefore should extend to any investments prohibited under the 'mutual fund conflict of interest investment restrictions". Without this change, we were told, a fund manager would have to send the conflict to the IRC for its recommendation and apply for relief from the conflict of interest investment restrictions. One of these commenters suggested that the Instrument be revised to state that if the IRC approved a transaction, no reports under section 117 of the *Securities Act* (Ontario) and similar provisions in other provinces,	***Response*** The exemption provided in the Instrument is based upon the recurring applications for discretionary exemptions that we have granted. We acknowledge that a fund manager may still need to apply for discretionary exemptions in connection with other transactions not exempted by this provision in the Instrument. We have amended the Commentary to articulate our view that if an IRC gives its approval for the fund to purchase securities under this section, and then subsequently withdraws its approval for additional purchases, we will not consider the continued holding of such securities to be subject to subsection 1.2(b) of the Instrument. We do, however, expect the manager to consider whether continuing to hold those securities is a conflict of interest matter that subsection 1.2(a) of the Instrument would require the manager to refer to the IRC. We believe that the reports required under section 117 still provide meaningful information not otherwise required under the reporting obligations of the Instrument. The requirement to comply with this reporting is consistent with the discretionary exemptions we have granted to date.

		need to be filed. This commenter also asked that we clarify whether regulatory approval is required for non-exchange traded derivative transactions (such as forwards) notwithstanding IRC approval. Another commenter recommended the disclosure of the particulars of the investment required by subsection 6.2(1)(c) be included in either the financial statements or the MRFP required by NI 81-106, and should not be a separate filing.	We do not consider non-exchange traded derivative transactions to be captured in section 6.2. We continue to believe this disclosure should be filed on SEDAR. Accordingly, no change to the Instrument has been made.
Part 7	**Exemptions**		
Section 7.2	*Existing exemptions, waivers or approvals*	One commenter reiterated their comment from the 2004 Proposal, asking that we provide guidance in the Commentary that a fund manager may in fact stop relying on an order and consider itself no longer subject to the conditions to the order, once it has established an IRC and the IRC and the manager have agreed on a written charter. Another commenter remarked that previously granted exemptions, waivers, and approvals should not be revoked by the Instrument, as this could lead to unnecessary repetition of notices to securityholders, prospectus amendments, and related fees and expenses.	***Response*** We have revised this section to provide greater clarity that all exemptions, waivers or approvals that deal with the matters the Instrument regulates – not just those that deal with matters under subsection 5.2(1) - will expire one year after the Instrument comes into force.
Part 8	**Effective Date**		
Section 8.2	*Transition*		***Response***

		A few commenters told us that new funds may confront the same issues as existing funds in meeting the requirements of the Instrument. These commenters submitted we extend the transitional relief set out in section 8.2 to new funds for a reasonable start-up period. One commenter recommended that we delete subsection 8.2(4), questioning the purpose of this notification from a regulatory perspective. Some commenters asked for more guidance on the extent to which an IRC must revisit decisions and policies and procedures on conflict matters made prior to the formation of the IRC and prior to the implementation of the Instrument. ***Disclosure*** One commenter told us there should be a clear transition for disclosure obligations and mutual funds should not be expected to file an amendment to offering documents.	We agree with these commenters and have revised the Instrument to provide the same transition period to new funds. We have also revised the transition period to the earlier of the date the manager notifies securities regulators it is complying with the Instrument and one year after the Instrument comes into force. We believe that notification by managers who intend to rely on the Instrument prior to the expiry of the transition period is appropriate. This will assist securities regulators in monitoring compliance with the Instrument. For a fund established before the Instrument comes into force, we do not expect an IRC to revisit decisions made prior to the formation of the IRC. The Commentary has been revised to clarify that we expect the manager to establish policies and procedures on any ongoing conflict of interest matters, and to refer to the IRC these policies and procedures and any new decisions related to such matters. We have also added to the Commentary that we do not consider a manager's initial decision-making in the organization of the fund to be subject to IRC review, unless the manager's decisions give rise to a conflict of interest concerning the manager's obligations to existing investment funds within the manager's fund family.. However, we anticipate that the manager will wish to engage the IRC early in the establishment of the fund to ensure the IRC is adequately informed of potential new conflicts of interest. We have revised the Commentary to clarify our expectation that funds can incorporate any new disclosure obligations or changes arising out of the Instrument as part of their annual prospectus renewal filing or continuous disclosure filing.
Proposed Amendments to NI 81-101		We heard from two commenters who remarked that there is no added value to investors in breaking out and disclosing	***Response*** The disclosure relating to IRC members in section 15(2) of the Form is consistent with the disclosure required under this section for directors of a mutual fund. Accordingly, we propose no change.

		the individual compensation paid to IRC members required by new section 15(2) of Form 81-101F2. One of these commenters queried why this form requirement is only included in the mutual fund prospectus form (including the prospectus for a commodity pool) and not for other types of investment funds, and strongly recommended that proposed new subsection 15(2) be deleted.	
Proposed Amendments to NI 81-102		While industry commenters told us that the conditions found in our consequential amendments to section 4.1 of NI 81-102 *Mutual Funds* appropriately reflected the terms and conditions of exemptive relief granted in the past, a few commenters asked us to clarify certain parts of the amendments. Some commenters asked whether we intended the requirement to purchase securities on a stock exchange to apply during the distribution period, the 60-day period following same, or both. One commenter noted that we have granted discretionary exemptions in the past to permit purchases under private placements. Another commenter remarked that the consequential amendments to NI 81-102 do not address non-exchange traded derivative transactions. We were also asked by a commenter to amend the wording of proposed 4.1(4)(d) and 4.2(3)(d) in the French version of the Instrument.	***Response*** We have revised the exemption in section 4.1 of NI 81-102 to specify that only purchases made during the 60 days after the end of the distribution period must be made on an exchange. We have limited the exemption in section 4.1 to the most frequently occurring transactions from which we have granted discretionary relief to date. We will to continue to deal with other types of transactions on a discretionary basis. We have also included a new Appendix C to the Instrument to specifically list the provisions in the regulations of the CSA that are also exempted if investments are made in accordance with new subsection 4.1(4) of NI 81-102. We agree with the commenter and have added the word ‘ainsi’ after ‘placement’ in the French version of the Instrument.

		One commenter suggested the revisions to Part 5 should indicate that non-management fees are to be approved by the IRC, and not by securityholders. Also, there should be a clear distinction between third party fees and other operating expenses.	We note that section 5.3(1) (a) of NI 81-102 specifically excludes third party fees from a securityholder vote. We continue to believe that a securityholder should have the right to vote for changes to fees caught by section 5.1 of the Instrument.
		One commenter also suggested the consequential amendment adding section 5.3 to NI 81-102 should also reference paragraph 5.1(g) in addition to paragraph 5.1(f).	We have chosen not to make this change. We believe that securityholders of the continuing fund should have the right to vote on a material change to their fund, resulting from a reorganization or merger.
		Change of Auditor Finally, one commenter did not see why the right to select an auditor or change an auditor is being delegated to the IRC. This commenter told us that it is best practice to have fund auditors at arms length from the manager or its parent.	We believe a change of auditor to be a matter that can be appropriately reviewed by an IRC.
		Companion Policy to NI 81-102 – Section 3.8(2) Another commenter remarked that it is inappropriate to provide, as set out in Commentary, that the IRC may satisfy itself that the price of the security is fair by obtaining at least one price quote from an independent, arms length purchaser or seller, immediately before the purchase or sale. We were told that a fund manager's policies and procedures would be expected to address the issue of obtaining price quotes in connection with the purchase or sale of securities.	The Commentary is intended only as guidance to the IRC on what to look for in judging whether the manager has achieved a fair price for the security under section 4.2(3).
Proposed			***Response***

OSC Rule 81-802		For greater certainty, one commenter suggested that rather than specifying in detail the sections to which a manager or investment fund or portfolio manager is exempt (as set out in sections 3.4 and 3.5), the Instrument should specify that these entities are exempt from sections 111 to 118 inclusive of the *Securities Act* (Ontario) (the "Act") to the extent that the IRC has approved a particular action that would otherwise be prohibited or restricted by these sections.	The recent legislative changes to the Act now specifies in section 121.1 that, a prohibition under Part XXI (Insider Trading and Self-Dealing) does not apply to a transaction approved by an independent body, if the regulations or rules provide for this approval. OSC Rule 81-802 has been amended accordingly.

Summary of Public Comments on
Proposed National Instrument 81-107 and Commentary

List of Commenters

AGF Funds Inc.
AIM Trimark Investments
Association of Canadian Pension Management
Barclays Global Investors Canada Limited
BMO Mutual Funds
Board of Governors of the RBC Funds and RBC Private Pools
Borden Ladner Gervais LLP
Brandes Investment Partners & Co.
Canadian Bankers Association
Canadian Imperial Bank of Commerce
Chou Associates Management Inc.
CIBC Independent Review Committee
Conseil des fonds d'investissement du Québec (CFIQ)
Desjardins Fédération des caisses du Québec
Fidelity Investments Canada Limited
Frank Russell Canada Limited
Franklin Templeton Investments Corp.
Fraser Milner Casgrain LLP
Frank Santangeli
GrowthWorks
Guardian Group of Funds
IGM Financial Inc.
Independent Review Inc.
Investment Funds Institute of Canada
International Scholarship Foundation/USC Education Savings Plan Inc.
Leith Wheeler Investment Counsel Ltd.
PFSL Investments Canada Ltd.
RBC Financial Group
Resolute Funds Limited
Small Investor Protection Association ("SIPA")
Simon Romano
SEI Investments Canada Company
TD Asset Management Inc.
Toronto Stock Exchange
Tradex Management Inc. ("TMI")
Westcap Management Limited