

CSA Notice and Request for Comment

Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes

and

Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution

Modernization of the Prospectus Filing Model for Investment Funds

January 27, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are proposing to modernize the prospectus filing model for investment funds, with a particular focus on investment funds in continuous distribution. The CSA's proposed modernization will reduce unnecessary regulatory burden of the current prospectus filing requirements under securities legislation without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The fund facts document (**Fund Facts**) and the ETF facts document (**ETF Facts**) will continue to be filed annually and will continue to be delivered to investors under the current delivery requirements.

We are seeking feedback on a staged approach to implementation of a new prospectus filing model for investment funds in continuous distribution:

- **Stage 1** – As a first step, we are seeking feedback on proposed amendments that would reduce the frequency of prospectus filings by extending the lapse date period for pro forma prospectuses filed by investment funds in continuous distribution. The end result would be to shift the current prospectus renewal cycle from annual to biennial (every 2 years). There will be no change to when Fund Facts and the ETF Facts must be filed and delivered. The adoption of this change will be contingent on not having a negative impact on filing fees. Additionally, we are proposing to repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus (**90-day rule**) for all investment funds.

- **Stage 2** – In the longer term, we are also contemplating the possibility of introducing a new base shelf prospectus filing model that could apply to all investment funds in continuous distribution. We have developed a conceptual framework for this model based on an adaptation of the current shelf prospectus system and are seeking specific input on the viability of this framework.

As part of Stage 1, we are publishing, for a 90-day comment period, proposed amendments to

- National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), and
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**),

proposed consequential amendments to

- National Instrument 81-106 *Investment Fund Continuous Disclosure*,

and proposed consequential changes to

- Companion Policy 41-101 *General Prospectus Requirements* (**41-101CP**), and
- Companion Policy 81-101 *Mutual Fund Prospectus Disclosure* (**81-101CP**)

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

As part of Stage 2, we are publishing, for a 90-day comment period, a consultation paper (the **Consultation Paper**) to provide a forum for discussing possible adaptations to the shelf prospectus filing model that could apply to all investment funds in continuous distribution. Stakeholder comments on the Consultation Paper will be used to formulate appropriate adaptations to the shelf prospectus model for use by all investment funds in continuous distribution. Any adaptations drafted as part of Stage 2 will be subject to further consultation prior to implementation.

We encourage commenters to provide any data and information that could help us evaluate the effects of modernizing the prospectus filing model for investment funds on investor protection. In addition to the general feedback on the Proposed Amendments and the Consultation Paper, we have also set out specific questions for stakeholders to consider.

The text of the Proposed Amendments is contained in Annexes A, B, C, D and E of this notice and will also be available on the websites of the following CSA jurisdictions:

www.bcsc.bc.ca
www.asc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.ca
www.lautorite.qc.ca
www.fcnb.ca
nssc.novascotia.ca

Substance and Purpose

The purpose of the Proposed Amendments is to modernize the prospectus filing model for investment funds without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The current prospectus filing model was based on an investment fund prospectus being filed every 12 months in order to remain in continuous distribution and the prospectus being delivered to investors in connection with a purchase. With the introduction of the Fund Facts and the ETF Facts as summary disclosure documents that are now delivered to investors instead of the prospectus, investors are provided with key information about a fund in a simple, accessible and comparable format. The Fund Facts and ETF Facts are required to be filed annually and provide disclosure that changes from year to year. In contrast, a prospectus is also filed annually but the disclosure in the prospectus does not generally change materially from year to year.

A prospectus must contain full, true and plain disclosure of all material facts relating to the securities being distributed. Where material changes in respect of a mutual fund take place prior to that fund's next prospectus renewal (e.g., fee changes, changes in investment objectives or fund mergers), a fund must file a material change report and also amend its prospectus, Fund Facts or ETF Facts to reflect the new information, if applicable. These requirements help ensure that the mutual fund's continuous disclosure and offering documents are kept up to date on a continuous basis so that prospective investors have access to up-to-date disclosure to inform their investment decision.

As part of Stage 1, the Proposed Amendments will

- extend the lapse date for investment funds in continuous distribution from 12 months to 24 months, which will allow investment funds in continuous distribution to file their pro forma prospectuses biennially, rather than annually, and
- repeal the 90-day rule for all investment funds.

Implementation of the Proposed Amendments will better reflect the shift from the delivery of the prospectus to the delivery of the Fund Facts and ETF Facts to investors and reduce unnecessary regulatory burden imposed by the current prospectus filing requirements under securities legislation on investment funds.

Background

The Proposed Amendments are part of Stage 1 of the CSA's proposed modernization of the prospectus filing model for investment funds. The Proposed Amendments are also in response to comments received on the Project RID Consultation (as defined below), as well as the OSC Burden Reduction Consultation (as defined below).

On September 12, 2019, the CSA published for consultation Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1, as part of the CSA's efforts to reduce regulatory burden for investment fund issuers (**Project RID Consultation**). On October 7, 2021, the CSA

published final amendments for Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1 (**Project RID amendments**).

On January 14, 2019, the Ontario Securities Commission (**OSC**) published OSC Staff Notice 11-784 *Burden Reduction* to seek suggestions from stakeholders on ways to further reduce unnecessary regulatory burden (**OSC Burden Reduction Consultation**).

The Current Prospectus Filing Model for Investment Funds in Continuous Distribution

The prospectus is the source of all material information about an investment fund and the prospectus renewal process ensures that information is kept current and up-to-date. Securities legislation requires an investment fund to file a new prospectus every 12 months in order to remain in continuous distribution. *A pro forma* prospectus must be filed not less than 30 days prior to the lapse date of the previous prospectus. A final prospectus must then be filed not later than 10 days following the lapse date of the previous prospectus and a receipt for the final prospectus must be obtained within 20 days following the lapse date of the previous prospectus.

For an annual prospectus renewal for conventional mutual funds, the following prospectus and related documents must be prepared and filed: the simplified prospectus (**SP**), Fund Facts, material contracts not previously filed, personal information forms where required, blacklines of the SP and Fund Facts from the latest filed versions, annual and interim financial statements with a signed auditor's report, an auditor's consent letter, and French translations of the SP and Fund Facts, if the documents are also filed in Quebec. For an annual prospectus renewal for exchange-traded mutual funds (**ETFs**), the same documents must be prepared and filed, except ETFs prepare and file a long-form prospectus instead of an SP, and the ETF Facts instead of a Fund Facts.

With respect to the prospectus filing model for investment funds in continuous distribution, stakeholders commented that the model should be modernized because the annual prospectus filing requirement is an unnecessary regulatory burden for investment funds in continuous distribution. Investment fund managers spend significant internal and external resources on the preparation and filing of annual prospectus and related documents, which generally do not change materially from year to year. Some stakeholders suggested reducing the frequency of prospectus renewal by extending the prospectus lapse date to allow for prospectuses to be renewed every other year. Other stakeholders suggested that investment funds in continuous distribution should be allowed to use the shelf prospectus system available to public companies. Stakeholders noted that investors rely on the Fund Facts or the ETF Facts, rather than the prospectus, for key information about a fund to inform their investment decision. Stakeholders also noted that the continuous disclosure regime in National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) ensures that investors will continue to be informed of material changes and prospectus amendments in a timely manner.

The Current 90-Day Prospectus Filing Requirement for Investment Funds

Securities legislation requires that an investment fund issuer file a final prospectus no more than 90 days after the date of the receipt for the preliminary prospectus. If the investment fund issuer

is unable to meet the 90-day filing deadline, then an exemptive relief application must be filed to seek an extension of the 90-day rule.

The 90-day rule was implemented to ensure that corporate issuers are not marketing by means of preliminary prospectuses containing outdated information, particularly financial statements. Stakeholders commented that while the 90-day rule was also adopted for investment funds, investment funds generally do not market by means of preliminary prospectuses. Also, preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days. Stakeholders noted that there is no investor protection rationale for the 90-day rule for investment funds, unlike for corporate issuers. Some stakeholders suggested that eliminating the 90-day rule for investment funds would help reduce regulatory burden as investment fund issuers would no longer be required to file an application for exemptive relief in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. Such exemptive relief is routinely granted to investment fund issuers.

Summary of the Proposed Amendments

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

The Proposed Amendments would extend the lapse date for investment funds in continuous distribution from 12 months to 24 months.

The Proposed Amendments would result in the following changes:

(i) Cost Savings

The Proposed Amendments would extend the lapse date for investment funds in continuous distribution from 12 months to 24 months. We anticipate that investment funds in continuous distribution would save the time, effort and costs associated with a prospectus filing, including external and internal resources, every other year.

(ii) Biennial Prospectus Filing

The Proposed Amendments would allow prospectuses and related documents for investment funds in continuous distribution to be filed biennially, instead of annually.

(iii) Prospectus Amendments

The Proposed Amendments would require every prospectus amendment to be filed as an amended and restated prospectus. Prospectus amendments would no longer be made in the form of a “slip sheet” amendment because the number of “slip sheet” amendments associated with a prospectus would increase over a 2-year period relative to a 1-year period, thereby making it more difficult to trace through how disclosure pertaining to a particular fund has been modified.

(iv) Filing Processes

In terms of filing processes, for the years where a “renewal” prospectus is not being filed, a Fund Facts or ETF Facts, as applicable, would be filed as (i) a “Year 2 Fund Facts – Private” or “Year 2 ETF Facts – Private”, respectively, where there are material changes to the disclosure from the most recently filed Fund Facts or ETF Facts, or (ii) a “Year 2 Fund Facts – Auto Public” or “Year 2 ETF Facts – Auto Public”, respectively, if there are no material changes to the disclosure from the most recently filed Fund Facts or ETF Facts.

(A) Private Filings

The filing of a “Year 2 Fund Facts – Private” or “Year 2 ETF Facts – Private” would be filed with a blackline showing changes from the most recently filed version along with a prospectus certificate and would trigger a “prospectus review process” of any material changes made to the disclosure since the most recently filed Fund Facts or ETF Facts, respectively, which would conclude with the issuance of a receipt in connection with the filing. If the material change(s) relate to the information contained in the corresponding prospectus, then a blackline of the prospectus would also be filed, along with any changes to personal information forms, if applicable.

(B) Auto-Public Filings

Where there are no material changes since the most recently filed Fund Facts or ETF Facts and changes are limited to updating the variable data (i.e., date, top 10 holdings, investment mix, risk rating, past performance, MER, TER and fund expenses), the new filing categories of “Year 2 Fund Facts – Auto Public” and “Year 2 ETF Facts – Auto Public” can be used and the document will be made public automatically without being subject to a prospectus review process. Filings under “Year 2 Fund Facts – Auto Public” and “Year 2 ETF Facts – Auto Public” would be required to be filed with a blackline showing changes from the most recently filed version of the Fund Facts or ETF Facts, as applicable, but would not be required to be filed with a certificate.

(v) Local Fee Rule Changes

By moving to a biennial filing model without changes to local fee rules, there will likely be an impact on fees collected in connection with prospectus filings. We anticipate that affected CSA jurisdictions will make concurrent changes to their fee rules to ensure that the Proposed Amendments will not have a negative impact on filing fees. In some CSA jurisdictions, public consultation on changes to local fee rules may also be required. It is contemplated that local fee rules will be changed such that current filing fees for prospectuses for investment funds in continuous distribution will instead be replaced with filing fees for the Fund Facts and ETF

Facts. For additional clarity, filing fees for the Fund Facts and ETF Facts in the years when a “renewal” prospectus is not being filed will be the same as in the years when a “renewal” prospectus is being filed.

The Lapse Date Extension would not affect the following:

(i) Prospectus Form Requirements

The Proposed Amendments would not require amendments to the form requirements for prospectus related disclosure documents for investment funds in continuous distribution.

As part of the CSA’s efforts to reduce regulatory burden for investment fund issuers, the Project RID amendments consolidate annual information form disclosure into an SP to provide more streamlined disclosure for investors.

(ii) Fund Facts and ETF Facts Requirements

The Proposed Amendments would not affect the form requirements or the filing requirements for the Fund Facts or the ETF Facts. The Funds Facts or ETF Facts, as applicable, would continue to be filed annually in order to ensure that variable information in those documents is not stale. On this, basis, the Fund Facts or ETF Facts would be filed by the 12-month anniversary of the investment fund’s most recently filed prospectus.

The Proposed Amendments would not affect the Fund Facts delivery requirement or the ETF Facts delivery requirement. The Fund Facts or ETF Facts must be delivered to purchasers in accordance with securities legislation.

(iii) Material Changes

The Proposed Amendments would not affect the reporting requirements for material changes, or the need to update the prospectus for investment funds in continuous distribution to reflect any material changes. Material changes will continue to be reported by way of material change reports, in accordance with NI 81-106.

(iv) Continuous Disclosure Documents

The Proposed Amendments would not affect the filing requirement or delivery requirement of an investment fund’s annual financial statements and interim financial reports, in accordance with NI 81-106.

Similarly, the Proposed Amendments would not affect the filing requirement or delivery requirement of an investment fund’s annual management reports of fund performance and interim management reports of fund performance, in accordance with NI 81-106.

(v) Investor Rights

The Proposed Amendments would not affect investor rights relating to liability for misrepresentation in a prospectus. For example, for a conventional mutual fund, the following documents will continue to be incorporated by reference into the simplified prospectus:

- the most recently filed Fund Facts,
- the most recently filed annual financial statements,
- any interim financial reports filed after the annual financial statements,
- the most recently filed management report of fund performance, and
- any interim management report of fund performance filed after the annual management report of fund performance.

(vi) Certificate Pages

The Proposed Amendments would not affect the certificate pages filed with a prospectus or a prospectus amendment. The certificate pages filed with a prospectus or a prospectus amendment includes all documents incorporated by reference and are effective until the next prospectus or prospectus amendment filing.

(b) Repeal of the 90-Day Rule for Investment Funds

The Proposed Amendments would repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus for investment funds.

Impact on Investors

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

Although we are proposing to extend the lapse date period, to the extent that an investment fund in continuous distribution does experience a significant change, the material change reporting requirements in NI 81-106 would apply and there would be an obligation to update any affected prospectus disclosure by way of an amendment. As a result, shifting to a biennial prospectus filing model would not affect the currency or accuracy of the information available to investors. In addition, the Proposed Amendments would not affect the filing and delivery requirements of the Fund Facts and the ETF Facts, which provide key information about a fund for investors to make an informed investment decision.

(b) Repeal of the 90-Day Rule for Investment Funds

As preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days, eliminating the 90-day rule does not raise any investor protection issues. The Proposed Amendments will help reduce regulatory burden as investment fund issuers would no longer be required to file an exemptive relief

application in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt.

Anticipated Costs and Benefits

The prospectus regime for investment funds is cumbersome and the filing process is repetitive and frequent. Prospectuses must be filed annually even when there are no substantive changes in content. Any lapse date extension must be effected by way of exemptive relief, which results in unnecessary costs for the affected issuer.

Overall, we are of the view that the potential benefits of the Proposed Amendments outweigh the costs of making them. We do not expect investment fund managers will incur any material incremental costs to comply with the Proposed Amendments.

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

The Proposed Amendments will benefit both investors and investment funds in continuous distribution by reducing the unnecessary regulatory burden of the current prospectus filing requirements under securities legislation. Investors will benefit from lower fund expenses as a result of shifting to biennial prospectus filing. Investment funds in continuous distribution will benefit as a result of the time, effort and cost savings of biennial prospectus filing.

(b) Repeal of the 90-Day Rule for Investment Funds

The Proposed Amendments will also benefit investment funds by reducing the unnecessary regulatory burden of filing exemptive relief applications in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt.

Local Fee Changes

As explained above, changes to local fee rules will also be required to ensure that there is not a negative impact on filing fees in each CSA jurisdiction. In some CSA jurisdictions, public consultation will be required on local fee rule changes. Given that fee rule changes are local matters, it is expected that the necessary processes in each jurisdiction would run separately from this consultation and any required changes to local fee rules would be finalized prior to the effective date of the Proposed Amendments.

Transition

There will not be a transition period prior to the effective date of the Proposed Amendments.

Request for Comments

Please submit your comments on the Proposed Amendments, the Consultation Paper, and specifically, the Consultation Questions in this Notice. We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received

during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at www.asc.ca, the Ontario Securities Commission at www.osc.ca and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Deadline for Comments

Please submit your comments in writing on or before April 27, 2022. If you are not sending your comments by email, please send a USB flash drive containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to all of the CSA as follows:

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

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA jurisdictions.

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20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
Email: comments@osc.gov.on.ca

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Email: consultation-en-cours@lautorite.qc.ca

Content of Annexes

The text of the Proposed Amendments is contained in the following annexes to this Notice and is available on the websites of members of the CSA:

- Annex A: Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*
- Annex B: Proposed Changes to Companion Policy 41-101 *General Prospectus Requirements*
- Annex C: Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*
- Annex D: Proposed Changes to Companion Policy 81-101 *Mutual Fund Prospectus Disclosure*
- Annex E: Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*
- Annex F: Specific Consultation Questions Relating to the Lapse Date Extension
- Annex G: Consultation Paper
- Annex H: Local Matters

Questions

Please refer your questions to any of the following:

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