

## Annex A

### Summary of Changes to the 2010 Proposal

This Annex sets out the key changes we made to the 2010 Proposal. We have provided our rationale for the changes in the Summary of Public Comments contained in Annex B to this Notice.

#### 1. Exchange-traded mutual funds:

##### *ETFs in continuous distribution:*

- We deleted proposed paragraphs 9.4(2)(c) and 10.4(3)(c) of NI 81-102 permitting payment of the issue or redemption price of a mutual fund to be made in a combination of cash and securities. We have instead modified the lead in language to both subsection 9.4(2) and 10.4(3) of NI 81-102 so that payment may be made in “any or a combination” of the methods of payment specified in paragraphs (a) and (b) of those respective subsections;
- We have deleted proposed paragraph 14.1(d) of NI 81-102 permitting an ETF to set its record date for distributions in accordance with the rules of the exchange. We have instead added new section 14.0.1 at the beginning of Part 14 which simply provides that Part 14 does not apply to ETFs;
- In response to comments, and consistent with prior exemptive relief, we have added new subsections 9.1(0.1) and 10.2(0.1) of NI 81-102 that provide that the process for the transmission and receipt of purchase and redemption orders contemplated in sections 9.1 and 10.2 does not apply to ETFs in continuous distribution;
- In response to comments, we have made an amendment to paragraph 10.4(3)(b) of NI 81-102 to exempt redemptions that are exchanges of a manager-prescribed number of units from the requirement for a mutual fund to obtain the prior written consent of a securityholder for each redemption in kind.

##### *ETFs not in continuous distribution:*

- The change made to Part 14 of NI 81-102 discussed above also applies here;
- In response to comments, and consistent with prior exemptive relief, we have made a new amendment to subsection 12.1(1) of NI 81-102 to exempt ETFs not in continuous distribution from the requirement to file annual compliance reports describing compliance with the applicable requirements of Parts 9, 10 and 11. We recognize that as the bulk of the requirements of Parts 9, 10 and 11 have no practical application to the purchase and redemption processes utilized by ETFs not in continuous distribution, a compliance report for such funds under

subsection 12.1(1) would likely not provide meaningful information and therefore should not be required;

- In conjunction with the above change, we have added the following new provisions to NI 81-102:
  - section 9.0.1 at the beginning of Part 9 which recognizes that the requirements of Part 9 have no application to ETFs not in continuous distribution;
  - subsection 10.2(0.1) which recognizes that the process for the transmission of redemption orders contemplated in section 10.2 does not apply to ETFs not in continuous distribution.

## **2. Short-selling and specified derivatives:**

- In response to comments, we have made a minor change to the proposed definition of “floating rate evidence of indebtedness” in NI 81-102 to require that the floating interest rate be determined by reference to a “commonly used benchmark interest rate” as opposed to a “widely accepted market benchmark interest rate”, as was previously proposed.

## **3. Fund of fund:**

- We are no longer adding index participation units traded on a stock exchange in the U.K. to the definition of “index participating unit” in NI 81-102;
- In response to comments, we are clarifying by way of a new change to section 3.4 of 81-102CP that the exemption from the mutual fund conflict of interest investment restrictions and mutual fund conflict of interest reporting requirements set out in subsection 2.5(7) of NI 81-102 may be relied on by mutual funds that have obtained exemptive relief from certain of the fund-on-fund requirements of section 2.5 of NI 81-102;
- We have renumbered proposed subsection 4.1(6) of NI 81-102, setting out the meaning ascribed to the term “approved rating” in paragraph 4.1(4)(b), as new subsection 4.1(4.1) of NI 81-102.

## **4. Money market funds**

- We have made a minor change to new subparagraph 2.18(1)(a)(v) of NI 81-102, which allows a money market fund to hold securities of other money market funds, such that it no longer specifies that the investment in other funds must be “made in accordance with section 2.5”;
- In response to comments, we have extended the new weighted average term to maturity limit of 120 days in subparagraph 2.18(1)(b)(i) of NI 81-102 to 180 days;

- In response to comments, we have added new section 3.7.1 to 81-102CP to give guidance on the meaning of “readily convertible to cash” as used in the new liquidity provision in paragraph 2.18(1)(d) of NI 81-102.

## **5. Mutual fund dealers:**

- We have replaced the amendment proposed to subsection 11.4(1) of NI 81-102, intended to exempt members of the MFDA and mutual fund dealers in Québec from the commingling and interest determination and allocation requirements of sections 11.1 and 11.2, with new subsections 11.4(1.1) and (1.2) of NI 81-102;
- We have made a new amendment to subsection 11.4(2) of NI 81-102 that flows from, and is consistent with, the above change;
- We have replaced the amendment proposed to subsection 12.1(4) of NI 81-102, intended to exempt members of the MFDA and mutual fund dealers in Québec from the compliance report filing requirement of subsections 12.1(2) and (3), with new subsections 12.1(4.1) and (4.2) of NI 81-102.

## **6. Sales communications:**

- We have made the following changes to the new definition of “mutual fund rating entity”:

  - changed paragraph (a) to require that the mutual fund rating entity disclose its rating methodology on its website and that the methodology be based on quantitative performance measurements;
  - expanded paragraph (c) to prohibit not only the manager of a mutual fund, but also its promoter, portfolio adviser, principal distributor or participating dealer or any of their respective affiliates from procuring the services of the mutual fund rating entity to assign a rating or ranking to a mutual fund;

- We made a minor change to the new definition of “overall rating or ranking” and to new paragraphs 15.3(4)(d) and (e) of NI 81-102 to add references to “asset allocation services”;
- In response to comments, we have replaced the requirement in new subparagraph 15.3(4)(e)(vi) of NI 81-102 to disclose the key elements of the methodology used by the rating entity with the requirement to disclose the criteria on which the rating or ranking is based (e.g. total return, risk-adjusted performance);
- We are substituting the requirement in new subparagraph 15.3(4)(e)(vii) to disclose the significance of a rating or ranking on the mutual fund rating entity’s scale of ratings and rankings with a requirement to disclose the meaning of a rating or ranking where it is a symbol rather than a number (e.g. a five-star rating indicates the fund is in the top 10% of all mutual funds in the category).

## 7. Continuous disclosure:

- We are not proceeding with the new definition of “limited life fund” under NI 81-106 and the corresponding amendment proposed to section 9.2 of NI 81-106 to exempt “limited life funds” such as flow-through limited partnerships from the requirement to file an annual information form;
- We have renumbered proposed subsection 14.2(8) of NI 81-106, which requires investment funds to make their net asset values available to the public at no cost, as new subsection 14.2(6.1). That subsection now also includes the requirement for an investment fund other than a scholarship plan to make available its net asset value per security. In connection with this new requirement to make available the net asset value per security, we have made a change to proposed Item 7(2.1) of Form 81-101F2 *Contents of Annual Information Form* (Form 81-101F2) and a new amendment to Item 20.3 of Form 41-101F2 *Information Required in an Investment Fund Prospectus* to require investment funds to disclose in their annual information form and long form prospectus the manner in which the net asset value and net asset value per security of the investment fund will be made available at no cost to the public.

## 8. Other changes:

The comments received on the 2010 Proposal included many suggestions for additional amendments to our investment fund regulation. To the extent we have considered the suggested additional changes to be non material changes that serve to enhance the clarity of the current regulation, we have opted to make those changes now in the final publication of the Amendments.

### *Other amendments to NI 81-102:*

- We added “European Investment Bank” to the list of financial institutions in the definition of “permitted supranational agency”;
- We replaced references to “net assets” and “net assets of the mutual fund, taken at market value at the time of the transaction” throughout NI 81-102 with “net asset value”;
- We have amended paragraph 5.4(2)(a) to include a reference to paragraph 5.1(a.1), consistent with the similar amendment made to section 5.3. The absence of this amendment in the 2010 Proposal was an oversight;
- We have amended the securityholder approval requirement for pre-approved mergers under subparagraph 5.6(1)(e)(i) so that it contemplates the situation where the independent review committee has approved the merger under subsection 5.3(2), in which case securityholder approval is not required;

- For greater clarity and to ensure consistency with the French version of the Instrument, we have replaced the term “redemption price” used in subsections 10.4(1), (2), (3) & (5), as well as in subsection 10.6(2) of NI 81-102, with “redemption proceeds”.

*Other amendments to NI 81-101:*

- We have replaced references to “net assets” throughout NI 81-101 with “net asset value”, consistent with the similar change to NI 81-102 discussed above;
- We have repealed Item 5(e) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (Form 81-101F1) which requires disclosure of whether the securities of a mutual fund constitute foreign property under the Income Tax Act. This disclosure item has no relevance since the removal of the foreign content limit. For the same reason, we have also repealed Items 4(4)3 and 4(5)(c) of Form 81-101F2;
- We have amended the large securityholder risk disclosure requirement in Item 9(1.1) of Part B of Form 81-101F1 such that it requires disclosure of the risk of large redemptions when a securityholder holds securities of a mutual fund representing more than 10% of the net asset value of the mutual fund;
- We have amended the disclosure requirement relating to concentration risk in Item 9(6) of Part B of Form 81-101F1 such that it now contemplates a cut off date for the requested information that is 30 days prior to the date of the prospectus.

*Other amendment to NI 81-106:*

- We have amended the soft dollar disclosure requirement in the notes to the financial statements under paragraph 3.6(1)3 of NI 81-106 to align the terminology with that used and defined under NI 23-102 *Use of Client Brokerage Commissions*.