Advance Notice of Amendments to

National Instrument 81-102 *Mutual Funds*

and to

National Instrument 81-101 *Mutual Fund Prospectus Disclosure*
and
Form 81-101F1 *Contents of Simplified Prospectus*
and
Form 81-101F2 *Contents of Annual Information Form*

Introduction

The amendments (the "amendments") to:

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101),

2. Form 81-101F1 *Contents of Simplified Prospectus* (Form 81-101F1),

3. Form 81-101F2 *Contents of Annual Information Form* (Form 81-101F2),

4. National Instrument 81-102 *Mutual Funds* (NI 81-102), and

5. Companion Policy 81-102CP (81-102CP).

are initiatives of the Canadian Securities Administrators ("CSA" or "we"). The rules and the policy regulate mutual funds that offer securities under a simplified prospectus for so long as the mutual fund remains a reporting issuer. The amendments have been made or are expected to be made by each member of the CSA, and will be implemented as a:

- rule in each of British Columbia, Alberta, Manitoba, Ontario, and Nova Scotia;
- commission regulation in Saskatchewan and in Québec; and
- policy in all other jurisdictions represented by the CSA.

If the required government approval is obtained in British Columbia, the British Columbia Securities Commission intends to make the instrument and adopt the policy. The BCSC will also publish the instrument and policy at that time.

In Ontario, the amendments and other required materials were delivered to the Minister of Finance on October 10, 2003. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument or does not take any

further action by December 9, 2003, the Instrument will come into force on December 31, 2003.

The amendments are effective December 31, 2003 provided that the above noted government approvals have been obtained.

Substance and Purpose of the Amendments

The purpose of the amendments is to provide:

- a regulatory framework to permit mutual funds to invest in other mutual funds (the “fund of fund amendments”) that is appropriate to ensure investor protection, and permit mutual funds to realize the potential benefits of these transactions for their securityholders; and

- make various housekeeping amendments to the existing rules.

Fundamental Principles of Fund of Fund Amendments

The fund of fund amendments are based on the following fundamental principles:

1. If a mutual fund invests in another mutual fund that is subject to the same rules,

    (i) the mutual fund should be able to pursue its investment objectives indirectly by investing in the other mutual fund;

    (ii) the mutual fund should be able to actively manage the investment as it would any other investment (i.e. it is not necessary to restrict the investment to fixed percentages disclosed in the simplified prospectus); and

    (iii) it is not necessary to “look through” the fund of fund structure and treat investors *as if they themselves purchased the securities of the underlying mutual fund.*

2. A fund of fund structure provides investors with access to one or more other mutual funds and the strategies pursued by those mutual funds, therefore,

    (i) fund of fund structures should not permit the indirect distribution of securities of other mutual funds that otherwise would not be distributed in a jurisdiction;

    (ii) fund of fund structures should not permit the use of investment strategies that a mutual fund at the top of the structure could not use directly; and

(iii) it is necessary to "look through" fund of fund structures to ensure that they do not lead to the sale of products or use of strategies that cannot be sold or used directly in a jurisdiction.

3. Fees charged in a fund of fund structure should be transparent and not duplicated (i.e. fees must be for services which add value to the mutual fund and its securityholders).

4. Multi-layered fund of fund structures can reduce transparency for investors and regulators. Regulators are concerned about multi-layered fund of fund structures for a number of reasons including
    - the inherent complexity of the structure would make it difficult to ensure that investors are able to understand how these multi-layered funds operate and are able to make informed investment decisions,
    - diluted accountability for portfolio management services,
    - reduced transparency with respect to fees, investments and investment practices,
    - potential for abuse, and
    - other major jurisdictions also prohibit these types of multi-layered structures.

As a result, multi-layered structures should be restricted to specific exceptions that benefit investors and are not contrary to the public interest. We agree that the following are appropriate exceptions: the bottom fund "the other mutual fund" may hold no more than 10% of its net assets in certain other mutual funds, may be an RSP clone fund, may purchase or hold securities of a money market fund or that are index participation units.

Transitional Issue relating to discretionary relief granted previously for fund of fund structures

The Amendments provide a new comprehensive regime under which fund of fund structures can operate and so supersede the discretionary relief that has been granted in the past. The CSA consider that the proposed changes to NI 81-102 and NI 81-101 will render the discretionary relief obsolete. The Amendments introduce a new section 19.3 of NI 81-102 that deals with the revocation of such exemptions previously granted under National Policy Statement 39 and NI 81-102 in order to treat all mutual funds uniformly, one year after the coming into force of the amendments. Section 19.3 refers specifically to exemptions or approvals relating to a mutual fund investing in other mutual funds.

In some cases these exemptions have been provided in decision documents which also incorporate other exemptive relief, such as the relief required for RSP clone funds to enter into forward contracts with related counterparties. Section 19.3 does not apply to such additional relief that may have been included in the same document.

Section 19.3 will not apply in British Columbia. This is because the BC Securities Commission has decided that within its legislative framework, it can more effectively

deal with this issue by issuing a BC Instrument revoking the exemptions or approvals issued to mutual funds that invest in other mutual funds. The effective date of that BC Instrument will be the same as the transition provided in s. 19.3.

Summary of Written Comments Received by the CSA

During the comment period, we received submissions from 17 commenters. We have considered the comments received and thank all the commenters. The names of all the commenters and a summary of their comments, together with our responses, are contained in Appendices A and B of this notice.

After considering the comments, we have made changes to the proposed amendments. However, as these changes are not material, we are not republishing the instrument for a further comment period.

Summary of Changes to the Proposed Amendments

This section describes changes made from the proposed amendments published for comment on July 19, 2002 in all jurisdictions and from the proposed amendments published for comments on June 13, 2003 in Québec only (the "proposed amendments") except that changes of a minor nature, or those made only for the purposes of clarification or drafting reasons, are generally not discussed.

Amendments to NI 81-102

Section 1.1 – Definitions

"bottom fund"/"top fund"

The proposed amendments created two new definitions that determined the eligibility of a mutual fund to invest in other mutual funds. A top fund was required to disclose its intention to invest in other mutual funds in its investment objective. A bottom fund could not invest in other mutual funds.

The definitions were introduced to address the CSA's concerns with multi-layered structures. They were also intended to facilitate compliance with the multi-layering restriction by allowing a top fund manager to look only at the investment objective of a potential bottom fund.

In response to comments received, we have removed the definitions of top fund and bottom fund. However, we have retained the principle of restricting multi-layered structures to specific exceptions. The restriction on multi-layered structures is set out in section 2.5.

Removing the definitions addresses the concerns raised by commenters that mutual funds would have to hold securityholder meetings to change their investment objectives in order to become top funds. It also allows the disclosure requirements in NI 81-101 to address disclosure issues. By virtue of those rules, some funds will have to include their use of a fund of fund structure in their investment objective disclosure.

Section 2.1 – Concentration Restriction

In response to comments, we modified section 2.1 to provide an additional exemption from the concentration restrictions for investments in index participation units. After reviewing the comments on how index participation units are used as an investment tool by mutual funds, the CSA believe that mutual funds should be permitted to invest in index participation units similar to the way they can invest in conventional mutual funds.

Section 2.2 – Control Restriction

Similarly, in response to comments, we modified new subsection 2.2(1.1) to provide an additional exemption from the control restriction for investments in index participation units.

Section 2.5 – Investments in Other Mutual Funds

We modified section 2.5 because we deleted the definitions of "top fund" and "bottom fund".

Subsection 2.5(2)(b) sets out a general prohibition against multi-layered structures unless the other mutual fund holds no more than 10% of its net assets in other mutual funds. This will continue the current exemption found in 2.5(1)(a) of NI 81-102, and will provide greater flexibility to the manager. Subsection 2.5(4) sets out the three other exceptions to that prohibition: RSP clone funds, money market funds and index participation units. We added these exceptions for money market funds and index participation units to the amendments because of comments. These changes will permit all mutual funds to use money market funds and index participation units as investment tools (e.g., "sweep" accounts for cash management purposes).

We also made changes to simplify and clarify restrictions about fees for fund of fund structures. In response to comments, the amendments no longer contain broad restrictions on fees. Instead, there is a prohibition on duplicating management fees, incentive fees, sales fees and redemption fees. The amendments provide for a reasonable person test in determining whether there is a duplication of fees for the same service. We prohibit sales and redemption fees in relation to investments in related mutual funds. A number of commenters agreed that such a prohibition was a reasonable restriction.

In response to comments, we modified subsection 2.5(6) to provide a manager with discretion to pass through voting rights attached to securities of a related underlying

mutual fund, if it so chooses, so that beneficial holders of the mutual fund can vote those securities.

Section 2.8 – Swap Provisions

We sought to clarify the swap provisions. We have withdrawn these amendments for further consideration.

Section 5.8 – Notice Requirement for Change of Control of Manager

We sought to modify section 5.8 to address the issue of providing a securityholder list to a person making a hostile bid for another fund manager in order to facilitate sending the 60-day notice for a change of control of a manager. These amendments have been withdrawn for further consideration.

<u>Amendments to NI 81-101</u>

Item 5 of Part A, Form 81-101F1 and Item 4 of Part B, Form 81-101F1

We added a new disclosure requirement for managers to disclose, if applicable, whether they may arrange for the securities of other related mutual funds to be voted by the beneficial holders of the securities of the mutual fund.

Item 8 of Part A, Form 81-101F1

We updated the disclosure requirements in the fees section to reflect the changes made to section 2.5 of NI 81-102.

Item 6 of Part B, Form 81-101F1

We deleted the requirement to disclose in the investment objective that a mutual fund may invest in securities of other mutual funds, because the definition of "top fund" was removed. Depending on the nature of a particular mutual fund, it may be necessary to disclose the use of a fund of fund structure in the investment objective section under the current disclosure requirements in Item 6 of Part B.

Item 7 of Part B, Form 81-101F1

Because of the change to Item 6, the requirement to disclose if the other mutual fund is managed by the manager of the mutual fund has been moved from the investment objective section to the investment strategies section.

Questions

Please refer your questions to any of the following:

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Amendments

The text of the amendments follows.

DATED: October 10, 2003

Appendix A
to
Notice of Amendments to
National Instrument 81-102 *Mutual Funds*
and
National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

List of Commenters

1. AIM Funds
2. AGF Management Limited
3. Barclays Global Investors
4. Borden Ladner Gervais LLP
5. Canadian Life and Health Insurance Association Inc.
6. Desjardins
7. Fasken Martineau DuMoulin LLP
8. Fidelity Investments Canada Limited
9. Franklin Templeton Investments Corp.
10. Highstreet Asset Management Inc.
11. Investment Funds Institute of Canada
12. Investors Group Inc.
13. International Swaps and Derivatives Association
14. Royal Bank of Canada
15. Torys – Primerica/ AGF
16. TD Asset Management Inc.
17. The Toronto Stock Exchange

Appendix B
to
Summary of Comments and Responses of the Canadian Securities Administrators (the "CSA")

#	Theme	Comments	CSA Response
1.	Definition of "Top Fund"/ "Bottom Fund"	Several commenters expressed concern that the requirement for top funds to disclose in their investment objective their intention to invest in other mutual funds would require each top fund to hold securityholders' meetings to change its current investment objective. These commenters suggested that this disclosure was more suited for the investment strategies section of the prospectus. Several commenters expressed concern that by declaring itself a "top fund", a mutual fund would be disqualified from being purchased by another mutual fund. Also, the proposed amendments (the "proposed amendments") published on July 19, 2002 prohibit "bottom funds" from investing any amount of their assets in other mutual funds. Three commenters suggested that the disclosure requirements under Item 6, Part B, NI 81-101F1 should be only for funds which intend to invest more than 10% in bottom funds. Two other commenters suggested that funds be able to declare whether they intend to invest in other mutual funds as a primary or as a secondary strategy. Funds which choose to declare fund of fund investing as a secondary strategy should be permitted to be bottom funds.	The definitions of "top fund" and "bottom fund" were created to implement the prohibition against multi-layered fund of fund structures. The definitions were also designed to assist top fund managers in complying with the prohibition by allowing them to rely on the investment objective disclosure of the bottom fund. In response to comments, mandatory investment objective disclosure has been eliminated along with both definitions. This addresses a concern that unitholder meetings would have to be called to amend investment objective disclosure. The general prohibition against multi-layered fund of fund structures has been modified. Section 2.5 now contains four (4) exceptions to the general prohition. RSP clone funds were proposed as an exception to the prohibition. We are now retaining the 10% provision currently found in 2.5(1)(a) of NI 81-102. This would continue to allow the bottom fund to hold no more than 10% of its net assets in other mutual funds. Money market funds and IPUs have also been added as exceptions. As a consequence of these changes, a fund

#	Theme	Comments	CSA Response
			manager must exercise due diligence to ensure that the multi-layering prohibition is not violated (i.e. cannot just rely on what is disclosed in the investment objective of the bottom fund). Disclosure of fund of fund investing in the investment objectives still may be necessary in certain circumstances – see Item 6, Part B, NI 81-101F1.
2.	Disclosure in the Investment Strategies section	One commenter expressed concerns with the requirement to disclose in the Investment Strategies section the selection criteria for bottom funds. The commenter suggested that this level of disclosure is not required for mutual funds which invest in individual securities. The commenter also raised concerns with the requirement to disclose a range, as well as the selection criteria for mutual funds which invest in individual securities.	No change. The CSA expect mutual fund managers to disclose the process or criteria used to select investments in other mutual funds. The requirement addresses disclosure. It does not mandate the use of fixed percentage ranges or any other strategy.
3.	Multiple Layering	Two commenters argued that multi-layered fund of fund structures should be permitted. A comparison was made to investments in conglomerates with multi-tiered corporate structures such as Brascan. It was also argued that there may be valid commercial reasons for a portfolio manager to invest in such structures if in the best interest of the mutual fund. Two other commenters argued that a portfolio manager's investment options should not be limited to "bottom funds" (as defined in the proposed amendments). Any policy concerns with multi-layering should be addressed through disclosure.	Multiple Layering is generally prohibited. The CSA are concerned about multi-layering because of: (i) the complexity of the information regarding these pyramidal structures; (ii) accountability (i.e. who is providing the portfolio management services); and (iii) transparency of fees, investments and investment practices. Although the prohibition against multi-layered fund of fund structures remains, three (3) additional exceptions have been added (in addition to the exception for RSP clone funds) for investments by the other fund of not more than

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			10% of its net assets in other mutual funds (de minimis level), in money market funds and IPUs. The CSA added the 10% exception in order to provide the manager with greater flexibility without endangering investor's protection. Also, this recognizes the potential benefits of money market funds and IPUs as investment tools (eg. for "sweep accounts" to manage cash).
4.	De Minimis Exception to Multi-Layering	Some commenters expressed concern with the removal of the 10% provision currently in paragraph 2.5(1)(a) of NI 81-102. "Bottom fund" managers should not be precluded from using a small portion of their assets in money market funds or equity funds (pending investment in individual securities). Using funds in this way is not a *primary* or *essential aspect* of the mutual fund. This restriction reduces a portfolio adviser's flexibility.	The rule has been changed to permit the other mutual fund to hold no more than 10% of its assets into certain other mutual funds. This retains the exemption currently found in 2.5(1)(a). Other exceptions added to the multi-layering prohibition for investments include investments into money market funds and IPUs so that all mutual funds will have the flexibility to use them as investment tools eg. for cash management purposes.
5.	"RSP Clone Fund" Definition	Three commenters expressed concern that the "RSP Clone Fund" definition was too restrictive and that it should include mutual funds whose strategy is to track a basket of securities reflecting portfolio investments of a bottom fund while also investing in securities of the target mutual fund.	The definition has been changed so that it is now broad enough to encompass mutual funds that use derivatives on a basket of securities or derivatives on funds.
6.	Index Participation Units (IPUs)	Five commenters expressed concern that only top funds can purchase IPUs. They argued that bottom funds would benefit from the use of IPUs for cash management and as an "equitization" mechanism to avoid a cash-drag on performance. It was argued that bottom funds are permitted to use exchange traded *index* futures and other "specified derivatives" while the use of IPUs is restricted. It was submitted that IPUs are more liquid and more transparent than these derivatives contracts.	In response to comments received, the amendments (the "Amendments") published with this summary of comments have been modified to permit all mutual funds to invest in IPUs. This is in recognition of comments received about how IPUs are used by mutual funds as investment tools. This change was accomplished by deleting the definitions of "top" and "bottom" funds and by creating an exception to the multi-layering

#	Theme	Comments	CSA Response
		These commenters also argued that the concentration and control restrictions should not apply to IPUs. IPUs are relatively small in the Canadian marketplace. The restrictions might prevent large mutual funds from investing in them. One commenter suggested that proposed subsections 2.5(1)(d), (f) and (g) of NI 81-102, which restrict fees, are not necessary for investments in IPUs as they are arm's length investments. One commenter suggested that the definition of IPU should be broadened beyond securities traded on Canadian and American exchanges. It was submitted that there are more than 120 IPUs listed on stock exchanges in Europe, Japan, Australia, South Africa, Hong Kong, South Africa, India, Israel and Singapore which a mutual fund may want to invest in. It was suggested that short selling of IPUs should be permitted to effect risk management strategies.	prohibition for investments in IPUs. In response to comments received, the Amendments were changed to exempt investments in IPUs from the concentration and control restrictions. The CSA believe that it is appropriate to continue to limit the definition of IPUs to those traded on a Canadian or U.S. exchange. No change was made concerning short selling of IPUs. The issue of short selling of securities by mutual funds is a larger issue which is beyond the scope of the fund of fund project.
7.	Exchange Traded Mutual Funds (ETFs)	One commenter argued that ETFs are similar in nature to any other traded security and should be an eligible investment for mutual funds. Another commenter suggested that the proposed approach may significantly disadvantage the development and growth of ETFs in the Canadian market. It was submitted that the Amendments create an unlevel playing field vis-a-vis conventional mutual funds. The prohibition on investing in ETFs constrains a portfolio adviser's ability to actively manage its portfolio using these products.	No change. Only ETFs that are IPUs are eligible investments. The Amendments maintain the fundamental principle that a mutual fund cannot use a fund of fund structure to invest indirectly in a manner that it could not invest directly. Many ETFs have received exemptions from the restrictions and requirements of NI 81-102 which would not have been granted if those funds were distributed pursuant to NI 81-101.

#	Theme	Comments	CSA Response
8.	Bottom Fund must be Qualified in the Same Jurisdictions as the Top Fund	Three commenters argued that a mutual fund should be permitted to invest in another mutual fund if it has been qualified pursuant to a simplified prospectus in any CSA jurisdiction. Investors should be able to rely on other members of the CSA for regulating such mutual funds.	No change. A fundamental principle of the Amendments is that if a mutual fund invests in another mutual fund that is subject to the same rules, then there is no need to "look through" to the bottom fund. Conversely, if the bottom fund is not subject to the same rules, a "look through" is appropriate. This will ensure that a mutual fund cannot use a fund of fund structure to do indirectly what it cannot do directly. If the bottom fund cannot be sold directly to the public in the jurisdiction where the top fund is distributed, it should not be permitted to be sold indirectly. There are other reasons for rejecting this comment: - mutual funds do not always file in every CSA jurisdiction, therefore it cannot be assumed that mutual reliance will address all concerns; - some mutual funds could have been refused exemptive relief and a prospectus receipt in one or more other jurisdictions; such mutual funds should not be distributed indirectly through a fund of fund structure; - the proposal could lead to "forum shopping" for lesser regulatory scrutiny (eg. limited staff review) and lower fees; - the issue of filing fees should be (and is being) addressed in another forum; - this is not just a fund of fund issue it is a

#	Theme	Comments	CSA Response
			jurisdictional issue. The CSA believes that the fund of funds amendments are not the proper forum to address this issue. - it is premature to relax prospectus qualification requirements; the USL project is proposing a delegation model to streamline regulation.
9.	Pooled Funds	Eight commenters suggested that a mutual fund should be permitted to invest in any fund, including "pooled funds", which voluntarily comply with the investment restrictions and custodial provisions in NI 81-102. So long as these funds have a registered portfolio adviser making investment decisions, they should be eligible investment. One benefit of non-prospectus funds is that they usually offer a lower MER. Another commenter suggested that pooled funds which are managed for the benefit of pension funds should be permitted underlying funds. Such funds which offer securityholder redemption on demand (i.e., a level of liquidity) should be eligible investments. Two commenters submitted that any fund which may be considered liquid assets should be a permitted investment. One commenter submitted that the CSA have approved an existing structure where a public mutual fund is permitted to invest in a related pooled fund, which has adopted the investment restrictions in NI 81-102. It was submitted that this structure provides adequate protections through: (i) privity of contract (i.e., duty of care of the portfolio adviser) and (ii) where an investor has appointed the portfolio adviser on a fully discretionary basis that discretion (or trust) remains whether the investment is in public mutual funds or in pooled funds.	No change. Consistent with the fundamental principle of the Amendments that bottom funds be subject to the same rules. Pooled funds are not subject to the investment restrictions and practices of NI 81-102. In addition, pooled funds cannot be distributed to retail investors, therefore they should not be distributed indirectly through a fund of fund structure. See CSA response to comment #8. There are broader issues about the use of pooled funds that are being addressed in other forums (e.g., Joint Forum project on Capital Accumulation Plans). The CSA expect that cost concerns can and are addressed (at least in part) by the use of separate classes of securities.

#	Theme	Comments	CSA Response
10.	Foreign Funds	One commenter suggested that Canadian mutual funds should be able to invest in securities of foreign mutual funds just as they are permitted to invest in foreign corporate issuers, such as Enron or Tyco. It was submitted that there is no policy justification for treating mutual fund securities differently. The use of mutual funds to gain exposure is not a fundamental feature, the investment exposure itself is fundamental. Another commenter suggested that mutual funds should be permitted to invest in mutual funds and pooled funds domiciled within or outside of Canada. At minimum, mutual funds should be permitted to invest in funds registered with the SEC and pooled funds offered in Canada or the U.S.	No change. An investment in another mutual fund is not the same as investing in corporate securities in the secondary market. Investment management takes place in the underlying fund and there are rules related to such investment management. Those rules must not be avoided through the creation of a fund of fund structure. See CSA response to comments #8 and #9. This issue raises many broad policy concerns, and these amendments are not the proper forum to address them. There is presently no regulatory recognition between Canadian mutual funds and foreign mutual funds.
11.	Commodity Pools	Three commenters suggested that mutual funds should be able to invest in any funds, including commodity pools, as long as they can be considered liquid assets.	No change. Commodity pools employ strategies that cannot be used by conventional mutual funds. Also, the prospectus form and registration (sales) requirements are different because of the strategies employed. See response to comment #9.
12.	Sales and Redemption Fees	Six commenters agreed with a prohibition on sales and redemption fees for related mutual funds. However, these commenters submitted that disclosure, rather than a prohibition, is more appropriate for unrelated mutual funds. One commenter agreed with the proposal that sales and redemption fees should be prohibited in all fund of fund investments.	The rule has been changed to prohibit sales and redemption fees only for investments in related mutual funds. Sales and redemption fees are otherwise permitted so long as there is no duplication of fees, i.e. an investor should not pay such fees directly as well as indirectly through the mutual fund.
13.	Short-term Trading Fee	One commenter argued that it would be a mistake to take away a mutual fund manager's right to levy a short-term trading fee on investors which are mutual funds. It was submitted that this fee is used to discourage short-term trading and to protect the interest of the remaining securityholders.	The result of the amendments to the fee provisions in section 2.5 is such that the use of a short-term trading fee is permitted.

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14.	Duplication of Management Fees	One commenter submitted that "no duplication of management fees" makes sense for related mutual funds, but not for third party mutual funds. Two other commenters submitted that a top fund should be permitted to charge a fee. Three other commenters stated that the "no duplication of management fees" restriction would not work for U.S. IPUs which cannot rebate management fees.	Duplication of fees is prohibited; however, the drafting has been changed to clarify that fees can be charged for value added services.
15.	Trailer Fees and Rebates	One commenter argued that fee rebates payable by underlying funds to top fund managers should be permitted as such fee rebates are currently being paid to life companies that invest through segregated funds in mutual funds. Four commenters submitted that the prohibition on paying trailer fees to a top fund's manager removes an efficient way to redistribute income to cover distribution fees incurred by the top fund. In some cases, the proposed approach would require some top funds to increase their management fee which would require a securityholder vote. The commenters encouraged the CSA to replace paragraphs 2.5(1)(d), (g) and (h) with provisions which permit maximum flexibility to negotiate their financial arrangements. Another commenter expressed concern that the prohibition on paying trailer fees to a top fund's manager would create a material change to its business relationship, as a retail distributor of other mutual funds provided by a wholesaler. In that case, the responsibility for funding of obligations for paying initial sales commissions for deferred sales charges (DSC) units have been taken on by the wholesaler (i.e., the bottom fund manager). Limited partnerships, which may be traded on an exchange, have been created to deal with these funding arrangements. In addition, the use of management fee rebates, as	Change. The prohibition against trailer fees has been removed.

#	Theme	Comments	CSA Response
		required by the Amendments, would create tax problems. This commenter also expressed concern that the use of the terminology “fees payable in connection with holding” may catch certain third party negotiated bundles of services provided by a mutual fund wholesaler .	
16.	Voting Rights	Four commenters were supportive of the removal of the requirement to pass through voting rights to top fund investors. They also agreed with the restriction of voting units of related bottom funds. They stated that the current pass-through of voting rights was both cumbersome and ineffective. It is a huge cost burden which adds little value. One commenter stated that it agreed with the approach for unrelated mutual funds; however, it would prefer a pass-through of voting rights when the bottom fund is related. It was argued that this approach would empower securityholders of mutual funds. One commenter expressed concern with the restriction on voting units held in related bottom funds. Its concern was that the top fund securityholders would have no say, directly or indirectly, in the affairs of the related bottom fund. An example was submitted where a top fund currently owns more than 50% of units of bottom funds. It was suggested that rather than a prohibition on voting, the current pass-through approach should be used.	The rule has been amended to address concerns with the restriction on related mutual funds. A fund manager that invests in a related mutual fund may not vote the securities but has the option of passing all of the mutual fund’s voting rights in the underlying fund through to its securityholders.
17.	Massive Redemptions	Five commenters expressed concern with the requirement to disclose “large redemption risk” in the simplified prospectus of a bottom fund. It was submitted that top funds which hold large investments in bottom funds are no different from any other large institutional investor with large holdings. There is no specific disclosure requirement for large holdings by institutional investors.	Most of the comments on this part supported our proposed approach. We have expanded the disclosure requirement to treat the risk of large scale redemption by all large investors in the same way.

#	Theme	Comments	CSA Response
		Two commenters suggested that bottom funds should have a sufficient delay to permit a bottom fund to execute massive redemption orders. However, one commenter argued that this issue should be dealt by agreements between the top fund and bottom fund. The other commenter argued that the rule should provide a bottom fund with sufficient time to sell its assets in an orderly manner.	No change.
18.	Disclosure re: Significant Fund	Five commenters stated that a disclosure requirement for changes to a significant bottom fund would defeat the purpose of active management. These commenters argued that if the removal of a significant bottom fund is a "significant change", then the top fund would have to provide timely disclosure which is currently addressed in NI 81-102.	No change. The comments were supportive of the approach taken in the proposed amendments.
19.	Concentration and Control Restrictions	Three commenters expressed agreement with the removal of the concentration and control restrictions for fund of fund investing.	In response to comments receive relating to IPUs, the rule has been modified to also exclude investments in IPUs from the control, concentration and from the self-dealing prohibitions.
20.	Grandfathering Existing Orders	Three commenters expressed concern that old orders would not be "grandfathered" under the new rule. It was argued that existing fund of fund structures (and their investors) with established business models for delivery of investment management services would be unfairly prejudiced by the proposed amendments. The fund companies may not have a legal right to change the way those units have been structured and third party financial relationships with limited partnerships will be impacted. One commenter also expressed concern that the current approach will potentially prejudice existing securityholders currently relying on existing decisions. In particular, a real property fund, which is	No change. The CSA note that the new rule is more permissive than the standard fund of funds conditions currently in place through exemption orders and believe that most parts of the existing orders will become obsolete. If an existing order includes unique provisions that would not be permitted in the proposed amendments, fund companies may make an application for new discretionary relief. Because the proposed amendments will permit much more flexibility to fund managers when operating fund of fund structures, we expect these applications to be rare.

#	Theme	Comments	CSA Response
		currently permitted, would not qualify as a bottom fund as it does not comply with NI 81-101.	
21.	Section 13.1 of NI 81-102 – Compatible Valuation Dates	One commenter asked for clarification as to whether the valuation dates must be "consistent", rather than "compatible". In particular, this commenter was concerned with different holidays in different geographic markets. Another commenter argued that its understanding of "compatible valuation date" means on a consistent basis, but not necessarily the same frequency. For example, a fund which has weekly valuation (and redemption) dates which are co-incidental with daily valuation (and redemption) dates for top funds should be permitted under the rule.	No change. The CSA believe that the rule is appropriate and would permit a mutual fund to invest in other mutual funds which invest in different geographic markets.
22.	Section 5.1 of NI 81-102 – Increasing Fees and Expenses	Four commenters expressed concern that the changes to section 5.1 of NI 81-102 were overly broad and would give rise to unintended results. It was submitted that fees charged outside the control of the mutual fund manager may be caught by the requirement. For example, it will require unitholder approval for changes to fees charged within dealer accounts. Two of the commenters highlighted that clause 5.1(a)(ii) did not include "could result in an increase in charges", as does clause 5.1(a)(i). The commenters express concern that a fund could create a new fee, while removing an old fee, that could not increase the charges payable by securityholders and a vote would be required for the change. One of the commenters expressed concern that the new language would catch funds which disclose a maximum fee, which increase their fees subject to the disclosed maximum.	To address the comments received, the drafting has been revised to include a reference to increasing fees and to ensure that fees outside the control of the manager are not caught by section 5.1 of NI 81-102.

#	Theme	Comments	CSA Response
		One of the commenters expressed concerns that proposed section 5.1(a) would necessitate security holder's vote at all times even if fees were negotiated directly on an individual basis.	To address the comment received, section 6.3 of the Companion Policy has been modified to indicate non-application of the section 5.1(a) in such circumstances.
23.	Section 5.8 of NI 81-102	Two commenters submitted the requirement to provide a securityholder list should be modified to read "upon the occurrence of a *bona fide* or *successful* offer". Another commenter argued that the CSA should reconsider the 60 day notice requirement for the change of control of a manager. The requirement creates unwanted negative effects, such as investors receiving several notices creating much confusion. This requirement could deter alternative bids to a mutual fund manager.	The proposed amendments to this section have been deleted for further consideration.
24.	Section 11.3 of NI 81-102	One commenter questioned why it is necessary to provide an annual notice to financial institutions that an account is a trust account.	No change. This change was made in response to unsatisfactory field compliant checks of mutual funds.
25.	Swap Provisions	One commenter made specific drafting comments on the proposed amendments to the swap provisions. The commenter did not disagree with the focus of the swap provisions.	These Amendments have been deleted for further consideration.