CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of Amendments

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

October 7, 2021

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are adopting amendments to all of the following rules in order to implement Phase 2, Stage 1 of the CSA initiative to reduce the regulatory burden on investment fund issuers:

- National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**);
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**);
- National Instrument 81-102 *Investment Funds* (**NI 81-102**);
- National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**);
- National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**)

together with related consequential amendments to all of the following:

- National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;
- Multilateral Instrument 13-102 *System Fees for SEDAR and NRD*;
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**);
- National Instrument 45-106 *Prospectus Exemptions*

(collectively, the **Amendments**).

The CSA are also publishing changes to all of the following:

- National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*;
- Companion Policy 41-101 *General Prospectus Requirements* (**41-101CP**);
- Companion Policy 81-101 *Mutual Fund Prospectus Disclosure* (**81-101CP**);
- Companion Policy 81-102 *Investment Funds* (**81-102CP**);
- Companion Policy 81-106 *Investment Fund Continuous Disclosure* (**81-106CP**);
- Commentary in National Instrument 81-107 *Independent Review Committee for Investment Funds*

(collectively, the **Related Changes**).

Subject to Ministerial Approval where required, the Amendments and Related Changes will come into force on January 5, 2022 in respect of Workstreams 3-8 and January 6, 2022 in respect of Workstreams 1 and 2. An

exemption from compliance with Workstreams 1 and 2 has also been provided for the period before September 6, 2022. See the Coming into Force/ Exemption section at the end of this Notice.

Background

The CSA identified reviewing regulatory burden as a key priority for the 2016-2019[1] and 2019-2022[2] periods. The focus of the CSA's review is to identify areas that would benefit from a reduction of any undue regulatory burden and to streamline those requirements without negatively impacting investor protection or efficiency of the capital markets.

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

Phase 1

In Phase 1, CSA Staff conducted a comprehensive review of the current investment fund disclosure regime, evaluated disclosure elements borrowed from the non-investment fund reporting issuer regime, gathered information on relevant regulatory reforms conducted by other regulators internationally, and received feedback from stakeholders. Based on these efforts, CSA Staff identified potential areas of focus for the development of proposals aimed at reducing regulatory burden for investment fund issuers while maintaining investor protection and efficiency of the capital markets. On May 24, 2018, CSA Staff published CSA Staff Notice 81-329 *Reducing Regulatory Burden for Investment Fund Issuers*, which provided an overview of the CSA's work to that date.

Phase 2

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

On September 12, 2019 the CSA published for comment proposed amendments (**Proposed Amendments**) and proposed changes (**Proposed Changes**) representing the first stage of the CSA's initiative to reduce the regulatory burden on investment fund issuers. The objectives of the Proposed Amendments and Proposed Changes were to

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

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

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

Substance and Purpose

[1] https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_Business_Plan_2016-2019.pdf
[2] https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_Business_Plan_2019-2022.pdf

CSA Staff have organized the Amendments and Related Changes into eight separate workstreams. A summary of each workstream is set out below. In response to comments received from the CSA's publication for comment of the Proposed Amendments and Proposed Changes, we may have made some non-material changes to the Workstreams, which are summarized in Annex A to this Notice. Drafting changes were also made to modernize the drafting in the Proposed Amendments and Proposed Changes, even where such drafting was adopted from existing, published provisions. CSA Staff consider the changes arising from such efforts to also be non-material.

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

Currently, a simplified prospectus and an annual information form (**AIF**) must each be filed with regulators annually by conventional mutual funds in continuous distribution. The Amendments repeal the requirement for a mutual fund in continuous distribution to file an AIF. In lieu of an AIF, the Amendments repeal Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and replace it with a new Form 81-101F1 that includes unique requirements of Form 81-101F2 *Contents of Annual Information Form* (**Form 81-101F2**). The Amendments also streamline the new Form 81-101F1 by repealing, on a case-by-case basis, difficult-to-produce requirements that are not meaningful to investors, and requirements to produce disclosure that is available in other regulatory documents, among other things. Repealing the AIF filing requirement and moving Form 81-101F2 requirements into Form 81-101F1 eliminates the requirement to file two separate disclosure documents (the simplified prospectus and the AIF) and replaces it with a requirement to file one (the simplified prospectus).

Investment Funds Not in Continuous Distribution

An investment fund that has not obtained a receipt for a prospectus during the last 12 months preceding its financial year-end has an obligation to file an AIF under section 9.2 of NI 81-106. The Amendments permit an investment fund to meet this obligation by filing a document prepared in accordance with Form 81-101F1 if the investment fund last distributed securities using a prospectus prepared in accordance with that form, Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**) if the investment fund last distributed securities using a prospectus prepared in accordance with that form, or Form 81-101F2. The Amendments set out certain modifications that should be made to these forms when they are used in such circumstances.

Workstream Two: Mandate that each Reporting Issuer Investment Fund have a Designated Website

We have added Part 16.1 to NI 81-106 to require reporting investment funds to designate a qualifying website on which an investment fund intends to post regulatory disclosure. This qualifying website is referred to as a designated website. Under section 16.1.2 of NI 81-106, a qualifying website has to meet two requirements, namely that it is (i) publicly accessible, and (ii) established and maintained by the investment fund or on behalf of the investment fund by the investment fund manager or a person designated by the investment fund manager. This person may include a third-party service provider, or an affiliate or associate of the investment fund manager. This requirement provides future opportunities for investment funds to leverage their websites to reduce regulatory burden, while also improving investor access to disclosure.

The Amendments have been structured to reduce any burden arising from the creation of the designated website concept, by considering how investment funds currently structure their websites. For example, the Amendments allow a reporting investment fund to post its regulatory disclosure on either a stand-alone website or the website of another investment fund managed by the same investment fund manager (or affiliate or associate of the investment fund manager). We note, however, that in all cases, the website needs to clearly identify and differentiate between the documents and information specific to a particular investment fund.

We have added Part 11 in 81-106CP to provide guidance to investment funds and their investment fund managers on how a designated website should be maintained.[3] Among other things, we clarify that supervision of the website and its content should be taken into account in the existing compliance systems of the investment fund and its investment fund manager. We note that under section 11.1 of NI 31-103, an investment fund manager has an obligation to establish and maintain a compliance system.

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

The Amendments introduce, in sections 12.2.1 to 12.2.6 of NI 81-106, a notice-and-access system for the solicitation of proxies under subsection 12.2(2) of NI 81-106 and section 2.7 of National Instrument 54-101 *Communication with*

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

Beneficial Owners of Securities of a Reporting Issuer (**NI 54-101**). This follows earlier CSA implementation of a notice-and-access system for non-investment fund reporting issuers.

In 2012, the CSA adopted amendments for non-investment fund reporting issuers to improve the investor voting communication process by which proxies and voting instructions are solicited.[4] These amendments came into force in 2013.[5] The introduction of a notice-and-access system was one of the most significant features of the amendments. Notice-and-access permits delivery of proxy-related materials by sending a notice providing registered holders or beneficial owners, as the case may be, with summary information about the proxy-related materials and instructions on how to access them. The 2013 amendments applied to both management and non-management solicitations.[6] Following receipt of comments that recommended enabling the use of notice-and-access by investment funds, the CSA determined that it would consider the issue at a later date.[7]

In 2016, the CSA began granting exemptive relief from the requirement in paragraph 12.2(2)(a) of NI 81-106 to deliver an information circular (a completed Form 51-102F5 *Information Circular*), to permit use of notice-and-access for solicitation of proxies by or on behalf of management of an investment fund.[8] This exemptive relief was drafted with reference to the notice-and-access system set out for non-investment fund reporting issuers in sections 9.1.1 to 9.1.4 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) and sections 2.7.1 to 2.7.8 of NI 54-101, with adaptations for investment funds. In this way, the exemptive relief placed investment funds with relief in a similar position as non-investment fund reporting issuers, with respect to proxy-related materials.

The Amendments codify this frequently granted exemptive relief and extend its availability to non-management solicitation of proxies, consistent with the notice-and-access system set out for non-investment fund reporting issuers. The Amendments and Related Changes are consistent with the conditions of recently granted notice-and-access exemptive relief and the notice-and-access provisions of NI 51-102 and NI 54-101. The Amendments do not change the requirement to prepare an information circular.

Workstream Four: Minimize Filings of Personal Information Forms

The Amendments eliminate the PIF requirements for specified individuals in NI 41-101 and NI 81-101 for investment fund issuers. Specified individuals are individual registrants and permitted individuals who have already submitted a Form 33-109F4 *Registration of Individuals and Review of Permitted Individuals*. This eliminates the need for similar information to be provided to securities regulators in both a PIF and a Form F4 to achieve regulatory oversight of such individuals.

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

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

The CSA have finalized amendments to NI 81-102 and NI 81-107 to codify frequently granted exemptive relief in respect of conflict of interest prohibitions contained under securities legislation.

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

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

[4] http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20121129_54-101_amendments.htm
[5] https://www.osc.gov.on.ca/en/SecuritiesLaw_ni_20130214_54-101_nma-amendments.htm
[6] See section 2.7.7 of NI 54-101 and CSA Notice of Amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and Companion Policy 54-101CP *Communication with Beneficial Owners of Securities of a Reporting Issuer* and Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Companion Policy 51-102CP *Continuous Disclosure Obligations* (November 29, 2012) at page 10712 which notes that the notice-and-access provisions in NI 51-102 contain an equivalent concept.
[7] https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20121129_54-101_amendments.htm
[8] *In the Matter of Desjardins Investments Inc., Fiera Capital Corporation, IA Clarington Investments Inc., National Bank Investments Inc.*, September 8, 2016.

In the publication of the Proposed Amendments in September 2019, the CSA proposed to codify eight types of exemptions, subject to conditions, that would permit

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

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

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

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

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

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

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

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

Not Proceeding with Codification of Exemptive Relief to Engage in In Specie Transactions

We are not proceeding with the Proposed Amendments in (c) above, relating to *in specie* transactions. This is to accommodate the CSA's need to further consider the impact of CSA Staff Notice 81-333 *Guidance on Effective Liquidity Risk Management for Investment Funds* published on September 18, 2020, on the conditions that would accompany a codification of exemptive relief to engage in *in specie* transactions.

Grandfathering of Previously Granted Exemptive Relief

To the extent that filers have previously obtained exemptive relief in respect of the transactions that are being codified in the Amendments, filers can continue to rely on those decisions or can rely on the codified exemptions in the Amendments.

Our analysis of the terms of prior relief, as compared to the codified exemptions, would suggest that the differences are not significant or material. However, we acknowledge comments received expressing concern that not permitting prior relief to continue might necessitate significant time and expense to evaluate all affected relief and update internal processes to ensure compliance with the Amendments. We also acknowledge comments received expressing concern that not permitting prior relief to continue may cause disruption to existing fund investment strategies where such strategies must be realigned to comply with the Amendments.

The CSA note, however, that filers that have obtained prior relief concerning the matters now codified in the Amendments should note that for any future requests to amend, update, or revoke and replace such decisions, CSA staff will request that the conditions reflected in the Amendments for the applicable transaction also be reflected in any new decision.

Summary of the Amendments

The Amendments codify exemptions that are based on conditions the CSA have incorporated into numerous discretionary exemptive relief decisions. The conditions are designed to mitigate the investor protection concerns and potential risks associated with these transactions, largely by promoting transparency, objective pricing, and, in some cases, oversight by an independent review committee (**IRC**).

The Amendments codify exemptions to the "investment fund conflict of interest restrictions" defined in NI 81-102 and the "inter-fund self-dealing investment prohibitions" defined in NI 81-107. Those restrictions and prohibitions include certain restrictions for registered advisers set out in subsection 13.5(2) of NI 31-103. Consistent with the Proposed Amendments, we have maintained the extension of the scope of the "investment fund conflict of interest restrictions"

defined in NI 81-102 to include the restrictions for dealer managed investment funds set out in subsection 4.1(2) of NI 81-102.

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

The Amendments to NI 81-102 provide an exemption to permit investment funds that are not reporting issuers to invest in other related investment funds.

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

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

We did not proceed with the requirement for the underlying fund to be subject to, and to comply with, the requirements of NI 81-106. In its place, we added the requirement for an underlying fund that is not a reporting issuer to prepare audited annual financial statements and interim financial statements for the fund's most recently completed period. This change will permit Canadian investment funds that are not reporting issuers to invest in both Canadian and non-Canadian funds.

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

Subsection 4.1(4) of NI 81-102 provides an exemption from subsection 4.1(1) of NI 81-102 for dealer managed investment funds to invest in certain offerings that are underwritten by the fund's dealer manager (or an associate or affiliate of the dealer manager) if certain conditions are met. The Amendments to subsection 4.1(4) permit a dealer managed investment fund to invest in

- offerings of debt securities of reporting issuers that do not have an approved rating, if the offerings are underwritten by the fund's dealer manager, and

- offerings of reporting issuers underwritten by the fund's dealer manager that are made under an exemption from the prospectus requirement.

To rely on the exemptions in the Amendments, a dealer managed investment fund will need to have independent oversight provided by the fund's IRC as provided in paragraph 4.1(4)(a) of NI 81-102 and for debt securities, comply with a further pricing condition in subparagraph 4.1(4)(b)(ii) of NI 81-102 for purchases of debt securities that do not trade on an exchange and which are made during the 60-day period following the distribution.

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

As noted above, we are not proceeding with the Proposed Amendment for *in specie* transactions involving a mutual fund, a mutual fund that is not a reporting issuer and managed accounts. The recent publication of CSA Staff Notice 81-333 *Guidance on Effective Liquidity Risk Management for Investment Funds* necessitates a reconsideration of the conditions of *in specie* relief decisions and how liquidity management practices should align with the transfer of illiquid securities as part of an *in specie* transfer. The CSA will consider this issue on a case-by-case basis in connection with any future applications for exemptive relief to permit *in specie* transactions.

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

The Amendments expand the existing exemption from the inter-fund self-dealing investment prohibitions in subsection 6.1(2) of NI 81-107 so that it applies to inter-fund trades involving related investment funds that are not

reporting issuers, and managed accounts. The exemption would continue to apply to trades between related investment funds that are reporting issuers. The Amendments include updates to the conditions in section 6.1 of NI 81-107 that permit all inter-fund trades of exchange-traded securities to occur at last sale price. Collectively, these changes would also permit inter-fund trades in debt securities between an investment fund that is a reporting issuer and a related investment fund that is not a reporting issuer to comply with the inter-fund trading exemption in subsection 4.3(2) of NI 81-102.

We did not proceed with including a requirement for investment funds that are party to an inter-fund trade to keep records of the interfund transaction for five years after the end of the financial year, with the most recent two years of records to be kept in a reasonably accessible place. Instead, the Amendments include a requirement for each investment fund, or a portfolio manager on behalf of a managed account, to keep records of each interfund transaction in accordance with the record-keeping requirements applicable to registered firms set out in section 11.5 and 11.6 of NI 31-103.

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

The Amendments to section 6.2 of NI 81-107 permit investment funds that are not reporting issuers to invest in securities of related issuers if certain conditions are met. The exemption would continue to apply to investment funds that are reporting issuers.

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

The Amendments, which enact section 6.3 of NI 81-107, permit investment funds to invest in non-exchange traded debt securities of a related issuer in the secondary market if certain conditions are met.

We revised the Proposed Amendments to specifically refer to paragraph (b) of the definition of "designated rating" in National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**).

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

The Amendments, which enact section 6.4 of NI 81-107, provide an exemption from the investment fund conflict of interest investment restrictions to permit investment funds to purchase non-exchange traded long-term debt securities of a related issuer under a primary distribution by that issuer.

We revised the Proposed Amendments to specifically refer to paragraph (b) of the definition of "designated rating" in NI 44-101.

h) Permit Reporting Investment Funds, Investment Funds that are not Reporting Issuers and Managed Accounts to Trade Debt Securities with a Related Dealer

The Amendments, which enact section 6.5 of NI 81-107, provide exemptions from the inter-fund self-dealing investment prohibitions and the self-dealing restrictions set out in section 4.2 of NI 81-102 to permit investment funds and managed accounts to trade debt securities with a related dealer.

We did not proceed with including a requirement for investment funds that are party to a principal trade in debt securities with a related dealer to keep records of the interfund transaction for five years after the end of the financial year, with the most recent two years of records to be kept in a reasonably accessible place. Instead, the Amendments include a requirement for each investment fund, or a portfolio manager on behalf of a managed account, to keep records of each transaction in accordance with the record-keeping requirements applicable to clients of registered firms set out in Part 11 of NI 31-103.

<u>Workstream Six: Broaden Pre-Approval Criteria for Investment Fund Mergers</u>

The Amendments broaden the pre-approval criteria for investment fund mergers contained in section 5.6 of NI 81-102. Since implementation of the merger approval requirement under paragraph 5.5(1)(b) of NI 81-102, the CSA have approved numerous investment fund mergers that do not comply with the following pre-approval criteria in section 5.6:

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

- paragraph 5.6(1)(b) of NI 81-102, because the transaction is not a "qualifying exchange" within the meaning of section 132.2 of the *Income Tax Act* (Canada) (**ITA**) or tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA.

The Amendments broaden these pre-approval criteria, while continuing to require that the proposed merger comply with all other pre-approval criteria under section 5.6, as applicable. The above-noted pre-approval criteria were broadened based on conditions and representations found in past discretionary merger approval decisions. In particular, when granting discretionary merger approval, the CSA requires clear disclosure in an information circular that explains to investors why a proposed merger remains in the best interests of the investment fund despite the proposed merger not meeting the relevant pre-approval criteria.

Accordingly, the Amendments provide that subparagraph 5.6(1)(a)(ii) of NI 81-102 can also be satisfied where

- the investment fund manager reasonably believes that the transaction is in the best interests of the investment fund despite the differences, and

- the information circular discloses the differences and explains why the investment fund manager is of the belief that the transaction is in the best interests of the investment fund despite the differences.

In addition, the Amendments provide that paragraph 5.6(1)(b) of NI 81-102 can also be satisfied where

- the investment fund manager reasonably believes that the transaction is in the best interests of the investment fund despite the tax treatment of the transaction, and

- the information circular

    - discloses that the transaction is not a "qualifying exchange" within the meaning of section 132.2 of the ITA or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA,

    - discloses the reason why the transaction is not structured so that the pre-approval criterion applies, and

    - explains why the investment fund manager is of the belief that the transaction is in the best interests of the investment fund despite the tax treatment of the transaction.

<u>Workstream Seven: Repeal Regulatory Approval Requirements for a Change of Manager, a Change of Control of a Manager, and a Change of Custodian that Occurs in Connection with a Change of Manager</u>

The Amendments repeal the regulatory approval requirements in section 5.5 of NI 81-102 for a change of manager, a change of control of a manager, or a change of custodian that occurs in connection with a change of manager. Since the CSA's adoption of these requirements, NI 31-103 has implemented registration requirements for investment fund managers. The registration process provides an opportunity for the CSA to assess that new investment fund managers have sufficient integrity, proficiency and solvency to adequately carry out their functions. The registration processes include all of the following:

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

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

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

A change of manager will continue to be subject to securityholder approval and the requirement to prepare an information circular. In order to help investment funds meet their disclosure obligations, the Amendments add certain specific disclosure requirements that will apply to the information circular when there is a change of manager.

Workstream Eight: Codify Exemptive Relief Granted in Respect of the Fund Facts Delivery Requirement and Corresponding Exemptions from the ETF Facts Delivery Requirement

a) Managed Accounts and Permitted Clients

The Amendments provide an exemption from the fund facts document (**Fund Facts**) delivery requirement[9] for purchases of conventional mutual fund securities made in managed accounts or by permitted clients that are not individuals. The Fund Facts is a summary disclosure document that provides key information about a mutual fund to investors in a simple, accessible and comparable format, before investors make their investment decision.

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

Subsequent to the adoption of the POS Amendments, the CSA received feedback from portfolio managers that post-sale delivery of the Fund Facts was not necessary for purchases made in managed accounts or by permitted clients, and that an exemption from the Fund Facts delivery requirement should be provided. The Amendment to section 3.2.04 of NI 81-101 provides an exemption from the Fund Facts delivery requirement for purchases of mutual fund securities made in managed accounts or by permitted clients that are not individuals.

In response to stakeholder comments that exemptions from the Fund Facts delivery requirement should also be extended to the delivery requirement for exchange-traded mutual fund (**ETF**) facts documents (**ETF Facts**), we provided in the Amendments an exemption from the ETF Facts delivery requirement[10] for purchases of ETF securities made in managed accounts or by permitted clients who are not individuals.

b) Portfolio Rebalancing Plans

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

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

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

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

The Amendments to section 3.2.03 of NI 81-101 codify exemptive relief from the Fund Facts delivery requirement for subsequent purchases made in model portfolio products and portfolio rebalancing services. The Amendments

[9] Section 3.2.01 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure.*
[10] Section 3C.2 of National Instrument 41-101 *General Prospectus Requirements*.

expand the current PAC Exception to add “portfolio rebalancing plans”, which are defined to include both model portfolio products and portfolio rebalancing services.

In response to stakeholder comments that exemptions from the Fund Facts delivery requirement should also be extended to the ETF Facts delivery requirement, the Amendments also provide an exemption from the ETF Facts delivery requirement for subsequent purchases of ETF securities in pre-authorized purchase plans and portfolio rebalancing plans.

c) Automatic Switch Programs

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

Mutual funds in an automatic switch program offer two or more series, with the only differences between the classes or series being progressively lower management fees and progressively higher minimum investment thresholds. Automatic switch programs benefit investors because they automatically switch investors into another class or series of securities of the same mutual fund as soon as they meet the minimum investment threshold. The investor’s investment amount may change based on purchases, redemptions and changes in market value. Each automatic switch entails a redemption of a class or series of mutual fund securities, immediately followed by a purchase of another class or series of securities of the same mutual fund.

Each purchase made pursuant to an automatic switch triggers the Fund Facts delivery requirement. However, because the switches are automatic in nature, it is often very difficult or impractical for an investment fund manager to deliver the Fund Facts prior to an automatic switch. The Amendments to NI 81-101 codify exemptive relief from all of the following:

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

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

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

In response to stakeholder comments that exemptions from the Fund Facts delivery requirement should also be extended to the ETF Facts delivery requirement, we revised the Amendments to also provide an exemption from the ETF Facts delivery requirement for purchases of ETF securities made under automatic switch programs.

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

The Amendments to Form 81-101F3 conform that document with certain disclosure requirements in Form 41-101F4 *Information Required in an ETF Facts Document* (**Form 41-101F4**). The conforming Amendments to Form 81-101F3 set out the Fund Facts disclosure requirements under the sub-headings “Top 10 investments”, “Investment mix”, and “How has the fund performed?”, for each of the following:

- a newly established mutual fund;

- a mutual fund that has not yet completed a calendar year;

- a mutual fund that has not yet completed 12 consecutive months.

Additional Amendments

The CSA made consequential amendments to NI 41-101, NI 81-101 and NI 81-102 for reasons not directly related to efforts to reduce regulatory burden for investment funds.

The amendments to NI 81-101 and certain amendments to NI 41-101 were published for comment in the following parts of the September 2019 publication for comment: Appendix B – Schedule 8, sections 10-20; and Appendix B – Schedule 9. The former was described in the September 12, 2019 publication notice under Workstream Eight, part (d), "Proposed Amendments to Conform Form 81-101F3 *Contents of Fund Facts Document* with Form 41-101F4 *Information Required in an ETF Facts Document*." The latter was only a single consequential amendment to set out that in Saskatchewan the right of action where an ETF Facts is not delivered or sent to a purchaser as required by subsection 3C.2(2) of NI 41-101, is provided by subsection 141(1) of *The Securities Act, 1988* (Saskatchewan).

The amendments to NI 81-102 were not published for comment and are being made on final publication. They add "an ETF facts document or preliminary or *pro forma* ETF facts document" after Item 3 of paragraph (b) of the definition of "sales communication" in section 1.1. This provides a corresponding reference to Item 3, which references Fund Facts. Certain amendments to NI 41-101 were not published for comment and are being made to Items 3C.6 and 3C.7 pursuant to CSA Staff Notice 11-342 *Notice of Local Amendments and Changes in Certain Jurisdictions*.

Coming into Force/ Exemption

Subject to Ministerial Approval where required, the Amendments and Related Changes will come into force on January 5, 2022 in respect of Workstreams 3-8 and January 6, 2022 in respect of Workstreams 1 and 2. An exemption from compliance with Workstreams 1 and 2 has also been provided for the period before September 6, 2022. However, the exemption is no longer available where an investment fund prepares a prospectus (Form 41-101F2, Form 41-101F3 *Information Contained in a Scholarship Plan Prospectus* (**Form 41-101F3**)) in accordance with the Workstream 2 amendments or simplified prospectus (Form 81-101F1) in accordance with the Workstream 1 amendments. In such cases, the investment fund will be required to comply with the amendments set out in Workstreams 1 and 2. An investment fund need not rely on the exemptions where it does not wish to do so.

On or after September 6, 2022, the CSA expect that an investment fund will prepare a prospectus in accordance with Form 41-101F1 and Form 41-101F3 as amended by Workstream 2 and simplified prospectus in accordance with Form 81-101F1 as amended by Workstream 1, at the investment fund's next filing or regular renewal (where not already done). It is also expected that on or after September 6, 2022 an investment fund will comply with any applicable designated website requirements (where not already done).

Local Matters

Annex D is being published in any local jurisdiction that is making changes to local securities laws, including local notices or other policy instruments in that jurisdiction in connection with the Amendments. It also includes any additional information that is relevant to that jurisdiction only.

Summary of Comments

We received submissions from 22 commenters on the Proposed Amendments and Proposed Changes, and we thank each of those commenters for their submissions. A summary of those comments together with our responses is provided in Annex B to this Notice.

Summary of Changes to the Proposed Amendments and Proposed Changes

After considering the comments received, we made some revisions to the materials initially published for comment under the Proposed Amendments and Proposed Changes. These revisions are reflected in the Amendments and the Related Changes published in Annex C and Annex D to this Notice. We do not consider these changes to be material and accordingly, we are not publishing the Amendments for a further comment period. A summary of the key changes to the Proposed Amendments and Proposed Changes is provided in Annex A to this Notice.

Questions

Please refer your questions to any of the following CSA staff:

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Contents of Annexes

Schedule 2-B	-	Form 81-101F3 *Contents of Fund Facts Document*
Schedule 2-C	-	Companion Policy 81-101 *Mutual Fund Prospectus Disclosure*
Schedule 3-A	-	National Instrument 81-102 *Investment Funds*
Schedule 3-B	-	Companion Policy 81-102 *Investment Funds*
Schedule 4-A	-	National Instrument 81-106 *Investment Fund Continuous Disclosure*
Schedule 4-B	-	Companion Policy 81-106 *Investment Fund Continuous Disclosure*
Schedule 5	-	National Instrument 81-107 *Independent Review Committee for Investment Funds*