

British Columbia Securities Commission

BC Instrument 81-522

Temporary Exemption from Delivery of Fund Facts and ETF Facts Documents For No-Trailing-Commission Switches

Definitions

1. Terms defined in the *Securities Act*, National Instrument 14-101 *Definitions*, 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) and National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105) have the same meaning in this Instrument.

2. In this Instrument:

“suitability determination” means a determination or other assessment required to be made under any of the following:

- (a) section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103);
- (b) the rules of the Investment Industry Regulatory Organization of Canada (IIROC) named in Appendix G of NI 31-103 that are in effect, as amended from time to time, and that correspond to section 13.3 of NI 31-103;
- (c) a rule or policy of the Mutual Fund Dealers Association of Canada (MFDA) named in Appendix H of NI 31-103 that are in effect, as amended from time to time, and that correspond to section 13.3 of NI 31-103.

“no-trailing-commission switch” means, in respect of a client of a participating dealer, a purchase of securities of a class or series of a mutual fund in respect of which an investment fund manager does not pay the participating dealer a trailing commission immediately following a redemption of securities of another class or series of the mutual fund in respect of which the investment fund manager pays the participating dealer a trailing commission, if all of the following apply:

- (a) the aggregate value of the securities purchased is the same as the aggregate value of the securities redeemed;
- (b) there are no material differences between the class or series of securities purchased and the class or series of securities redeemed other than the rate of management fees charged in respect of the two classes or series;

- (c) the participating dealer, who executed the purchase and redemption of the securities, was not required by securities legislation or the rules of IIROC or the MFDA applicable to the dealer to make a suitability determination in respect of the client in connection with those securities;

“no-trailing commission ETF switch” means, in respect of a client of a participating dealer, a purchase of securities of a class or series of an ETF in respect of which an investment fund manager does not pay the participating dealer a trailing commission immediately following a redemption of securities of another class or series of the ETF in respect of which the investment fund manager pays the participating dealer a trailing commission, if all of the following apply:

- (a) the aggregate value of the securities purchased is the same as the aggregate value of the securities redeemed;
- (b) there are no material differences between the class or series of securities purchased and the class or series of securities redeemed other than the rate of management fees charged in respect of the two classes or series;
- (c) the dealer, who executed the purchase and redemption of the securities, was not required by securities legislation or the rules of IIROC or the MFDA applicable to the dealer to make a suitability determination in respect of the client in connection with those securities.

Background

1. On September 17, 2020, the Commission together with other Canadian Securities Administrators published advance notice of final amendments to NI 81-105, NI 81-101 and NI 41-101 (collectively, the OEO Amendments). The OEO Amendments will effectively prohibit the payment of mutual fund trailing commissions by fund organizations to, and the solicitation or receipt of trailing commissions by, dealers who are not required to make a suitability determination. Such dealers include order-execution-only (OEO) dealers and dealers acting on behalf of a permitted client that has waived suitability requirements.
2. The amendments to NI 81-101 and NI 41-101 (collectively, the Consequential Amendments) provide exemptions from the fund facts delivery requirement and the ETF facts delivery requirement, respectively, for all switches from a trailing commission series or class of a mutual fund to a no-trailing commission series or class of the same mutual fund for existing holdings, transfers and pre-authorized purchase plans.
3. The advance notice stated that provided that all necessary ministerial approvals were obtained, the Consequential Amendments were to be effective in all Canadian jurisdictions on December 31, 2020.

4. The Commission will not obtain ministerial approval for the Consequential Amendments by December 31, 2020 as a result of the general election in BC.
5. It is appropriate for the Commission to temporarily implement the outcome achieved in the Consequential Amendments in BC through an order, to harmonize with other Canadian jurisdictions.

Exemption from fund facts delivery requirement in NI 81-101

6. The Commission, considering that to do so would not be prejudicial to the public interest, orders under section 76 of the Act that a dealer is exempt from the requirement in subsection 3.2.01(1) of NI 81-101 to deliver to the purchaser of a security of a mutual fund the most recently filed fund facts document for the applicable class or series of securities of the mutual fund in connection with a no-trailing-commission switch.

Exemption from ETF facts delivery requirement in NI 41-101

7. The Commission, considering that to do so would not be prejudicial to the public interest, orders under section 76 of the Act that a dealer is exempt from the requirement in subsection 3C.2(2) of NI 41-101 to deliver or send to the purchaser of a security of an ETF the most recently filed ETF facts document for the applicable class or series of securities of the ETF in connection with a no-trailing-commission ETF switch.

Effective date

8. This order is effective December 31, 2020.

Dated December 21, 2020

Brenda M. Leong
Chair

(This part is for administrative purposes only and is not part of the Order)

Authority under which Order is made:

Act and sections: *Securities Act*, section 76