

## Annex E

### Proposed Changes to Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

1. *The changes proposed to Companion Policy 81-101CP to National Instrument 81-101 Mutual Fund Prospectus Disclosure are set out in this Annex.*
2. *Part 7 is replaced with the following:*

#### **PART 7 Delivery**

**7.1 Delivery of the Simplified Prospectus and Annual Information Form** – The Instrument contemplates delivery to all investors of a fund facts document in accordance with the requirements in securities legislation. It does not require the delivery of the simplified prospectus, or any other documents incorporated by reference into the simplified prospectus, unless requested. Mutual funds or dealers may also provide investors with any of the other disclosure documents incorporated by reference into the simplified prospectus.

**7.2 Pre-Sale Delivery of the Fund Facts Document** – (1) The Instrument requires a fund facts document to be delivered before a dealer accepts an instruction for the purchase of a security of a mutual fund. The purpose of pre-sale delivery of a fund facts document is to provide a purchaser with key information about the mutual fund that will inform a purchase decision. What constitutes “before” is intended to be flexible, provided it occurs within a reasonable timeframe before the purchaser’s instruction to purchase. Accordingly, the Canadian securities regulatory authorities would generally expect that delivery of a fund facts document will occur within a timeframe that provides a purchaser with a reasonable opportunity to consider the information in the fund facts document before proceeding with the transaction. It should not be delivered or sent so far in advance of the purchase of a security of a mutual fund that the delivery cannot be said to have any connection with the purchaser’s instruction to purchase the mutual fund.

(2) Where a purchaser has already received a fund facts document for a particular class or series of securities of a mutual fund, it is not necessary to deliver or send to the purchaser another fund facts document for a subsequent purchase of that same class or series of securities of a mutual fund, unless a more recent version of the fund facts document has been filed.

**7.3 Post-Sale Delivery of the Fund Facts Document** – (1) While the Instrument generally requires pre-sale delivery of the fund facts document, it also sets out specific requirements that would permit post-sale delivery of the fund facts document in circumstances where the purchaser has indicated that they require the purchase of a security of a mutual fund to be completed immediately, or by a specified time, and it is not reasonably practicable for the dealer to effect pre-sale delivery of the fund facts document within the timeframe specified by the purchaser.

(2) The requirements for post-sale delivery of the fund facts document are set out in subsection 3.2.1.1(3) and must be interpreted consistently with the dealer's general duties to act fairly, honestly and in good faith and to establish and maintain a compliance system in accordance with securities legislation. Accordingly, the Canadian securities regulatory authorities expect dealers will adapt their business models to comply with the general requirement for pre-sale delivery of the fund facts document.

(3) Subsection 3.2.1.1(3) requires dealers to provide an overview of the information contained in the fund facts document. This should include describing the purpose of the fund facts document, the type of information it contains, and advising purchasers that they are entitled to receive and review the fund facts document before the purchase of a security of a mutual fund. Where the purchaser consents to post-sale delivery of the fund facts document, dealers are required to provide verbal disclosure of certain information contained in the fund facts document. This would include a description of the fundamental features of the mutual fund and what it primarily invests in, as well as the investment risk level of the mutual fund. The Canadian securities regulatory authorities would not generally consider it necessary to disclose the information included in the fund facts document under "Top 10 investments" or "Investment mix". In disclosing the suitability of the mutual fund for particular investors, dealers would be required to describe the characteristics of the investor for whom the mutual fund may or may not be an appropriate investment, and the portfolios for which the mutual fund is and is not suited. In terms of providing an overview of any costs associated with buying, selling and owning the mutual fund, the information provided should, at a minimum, include a discussion of any applicable sales charges, as well as ongoing fund expenses (e.g., MER and TER), and any applicable trailing commissions. Information related to sales charges and trailing commissions is also required as part of pre-trade disclosure requirements set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registration Obligations*. Finally, dealers would also be required to provide purchasers with a summary of any applicable right to withdraw from a purchase within two days after receipt of the fund facts document and to rescind a purchase within 48 hours after receipt of the trade confirmation for the purchase. This latter requirement is intended to alert purchasers to the fact that they will have an opportunity to consider the information in the fund facts document that will be delivered or sent post-sale and, based on that information, determine whether they want to cancel their purchase of the mutual fund securities at that time.

(4) Where a purchaser consents to receive delivery of the fund facts document after entering into the purchase of a security of a mutual fund, the consent will only be valid for the particular transaction. A dealer cannot rely on standing instructions from a purchaser to carry out post-sale delivery of the fund facts document for other purchases of mutual fund securities.

(5) In accordance with existing practices, dealers must establish internal policies and procedures to ensure delivery of the fund facts document occurs in accordance with section 3.2.1.1. Dealers must maintain evidence of delivery of the fund facts document, as well as receipt of purchaser consents to receive delivery of the fund facts document after entering into the purchase of a security of a mutual fund. Dealers must also maintain adequate records to evidence that satisfactory disclosure about the fund facts document has been

provided to purchasers in compliance with subsection 3.2.1.1(3). Such records should also indicate why delivery of the fund facts document was impracticable in the circumstances. The Canadian securities regulatory authorities expect that dealers will follow their current practices to maintain evidence of required disclosures to sufficiently document delivery of the fund facts document.

(6) The Instrument does not specify a particular manner of evidencing a purchaser's consent to allow delivery of the fund facts document after entering into the purchase of a security of a mutual fund. In particular, the Instrument does not require dealers to obtain written consent from clients. The Canadian securities regulatory authorities expect that dealers will follow their current policies and procedures for tracking and monitoring client instructions and authorizations.

(7) The Canadian securities regulatory authorities expect that dealers will remain faithful to the overall objective of ensuring that purchasers are provided with a fund facts document prior to accepting instructions to purchase a security of a mutual fund. Although the instrument allows for post-sale delivery of the fund facts document delivery in certain limited circumstances, the Canadian securities regulatory authorities expect that post-sale delivery of the fund facts document will be the exception rather than the norm. The Canadian securities regulatory authorities may examine practices or arrangements that raise the suspicion of being structured to permit dealers to do indirectly what they cannot do directly and that are inconsistent with the overall intent of providing key information to investors at a time that is most relevant to their purchase decision.

**7.4 Methods of Delivery** – (1) The methods of delivery of a fund facts document are consistent with methods of delivery of a prospectus under securities legislation. Although there is flexibility in the methods of delivery, the Canadian securities regulatory authorities do not consider making the fund facts document available on a website, or simply referring an investor to a general website address where the fund facts document can be found, as being sufficient to satisfy delivery requirements under the Instrument.

(2) In addition to the requirements in the Instrument and the guidance in this section, dealers may want to refer to National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Québec, Policy Statement 11-201 *Respecting Electronic Delivery of Documents* for additional guidance.

**7.5 Consolidation of Fund Facts Documents** – (1) For the purposes of pre-sale delivery, subsection 5.2(1) of the Instrument allows a fund facts document to be attached to, or bound with, one or more fund facts documents, provided the size of the document does not make the presentation of the information inconsistent with the principles of simplicity, accessibility and comparability. For example, a fund facts document may be attached to, or bound with, fund facts documents of other classes or series of securities of the same mutual fund, other mutual funds from the same fund family, or other mutual funds of a similar type from different fund families. In making this determination, mutual funds, managers and participants in the mutual fund industry should consider the ability of an investor to easily find and use the information that is relevant to the particular mutual funds securities they are

considering purchasing, and whether a reasonable person in the circumstances would come to the same conclusion. We think a document with more than 10 fund facts documents bound together may discourage an investor from finding and reading a fund facts document and obscure key information, which is inconsistent with the principles of simplicity, accessibility and comparability.

(2) When delivery of the fund facts document occurs after the purchase transaction, subsections 5.2(3) and (4) of the Instrument permit a fund facts document to be attached to, or bound with, certain other materials or documents provided the fund facts document is located first in any package.

**7.6 Preparation of Disclosure Documents in Other Languages** – Nothing in the Instrument prevents the simplified prospectus, annual information form or fund facts document from being prepared in other languages, provided that these documents are delivered or sent in addition to any disclosure document filed and required to be delivered in accordance with the Instrument. The Canadian securities regulatory authorities would consider such documents to be sales communications.

**7.7 Delivery of Documents by a Mutual Fund** – Section 3.3 of the Instrument requires that a mutual fund deliver or send to a person or company, upon request, a simplified prospectus or documents incorporated by reference. The CSA are of the view that compliance with this specifically-mandated requirement by an unregistered entity is not a breach of the registration requirements of securities legislation.

**7.8 Delivery of Separate Part A and Part B Sections** – Mutual fund organizations that create physically separate Part B sections are reminded that any obligation to provide the simplified prospectus would be satisfied only by the delivery of both the Part A and Part B sections of a simplified prospectus.

**7.9 Delivery of Non-Educational Material** – The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with either of the simplified prospectus and the annual information form. This type of material may, therefore, be delivered with, but cannot be included within, wrapped around, or attached or bound to, the simplified prospectus and the annual information form. The Instrument does not permit the binding of educational and non-educational material with the Fund Facts Document. The intention of the Instrument is not to unreasonably encumber the Fund Facts with additional documents..