

**Implementation of the Final Stage of
Point of Sale Disclosure for Mutual Funds:
*Pre-Sale Delivery of Fund Facts***

**CSA Notice of Amendments to
National Instrument 81-101
Mutual Fund Prospectus Disclosure
and to
Companion Policy 81-101CP
to National Instrument 81-101
*Mutual Fund Prospectus Disclosure***

December 11, 2014

Introduction

The Canadian Securities Administrators (the CSA or we) are making amendments (the Amendments) to implement pre-sale delivery of the fund facts document (the Fund Facts) for conventional mutual funds.

The Amendments are to:

- National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the Rule or NI 81-101); and
- Companion Policy 81-101CP *to National Instrument 81-101 Mutual Fund Prospectus Disclosure* (the Companion Policy).

Subject to Ministerial approval requirements for rules, the Amendments come into force on March 11, 2015.

Adopting the Amendments completes the CSA's implementation of the point of sale disclosure framework for mutual funds (the Framework) articulated in October 2008 by the CSA and the Canadian Council of Insurance Regulators, as members of the Joint Forum of Financial Market Regulators (the Joint Forum).¹

¹ The goal of the Joint Forum is to continuously improve the financial services regulatory system through greater harmonization, simplification and co-ordination of regulatory activities. Under the Framework, investors would receive more meaningful information about a mutual fund or segregated fund at a time that is relevant to their investment decision.

This is an important investor-focused initiative.

Currently under securities legislation, a Fund Facts is required to be delivered to investors within two days of buying a mutual fund. The Amendments change the timing of delivery by requiring delivery of the most recently filed Fund Facts to a purchaser before a dealer accepts an instruction for the purchase of a mutual fund.

The Amendments put into effect the principles which have been guiding the CSA, as first articulated in the Framework:

- provide investors with key information about a fund;
- provide the information in a simple, accessible and comparable format; and
- provide the information before investors make their decision to buy.

The text of the Amendments is included in annexes to this Notice and is available on the websites of members of the CSA.

We expect the Amendments to be adopted in each jurisdiction of Canada.

The CSA remains committed to continuing the other point of sale initiatives currently underway:

- (i) consideration of a mandated risk classification methodology, to be used by fund managers to identify the mutual fund's risk level on the risk scale prescribed in the Fund Facts;
- (ii) development of a summary disclosure document akin to Fund Facts for exchange-traded mutual funds and its delivery.

Background

The CSA is implementing the point of sale disclosure Framework in stages.²

Stage 1, which came into force January 1, 2011, requires mutual funds to produce and file the Fund Facts and for it to be available on the mutual fund's or mutual fund manager's website. As of July 2011, every mutual fund has had a Fund Facts for each class and series of the mutual fund.

Stage 2 final amendments were published on June 13, 2013. As of June 13, 2014, the Fund Facts is required to be delivered within two days of buying a mutual fund. Fund Facts delivery in turn satisfies the requirement to deliver a prospectus under securities legislation.

Stage 3 will be completed with the coming into force of the Amendments, which implement pre-sale delivery of the Fund Facts.

² See CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds* published on June 18, 2010.

You can find additional background information on the point of sale disclosure Framework and the CSA's staged implementation for mutual funds on the websites of members of the CSA.

Substance and Purpose

The Amendments will benefit both investors and market participants by helping address the information asymmetry that exists between participants in the mutual fund industry and investors. Unlike industry participants, investors often do not have key information about a mutual fund before they make their investment decision, and may not know where to find the information. Pre-sale delivery of the Fund Facts will help bridge the information gap by providing investors with the opportunity to make more informed investment decisions by giving them key information about a mutual fund, in a language they can easily understand, at a time that is most relevant to their investment decision. With the move to pre-sale delivery, dealer representatives can use the Fund Facts as a tool to help explain a mutual fund's main features and attributes.

While research suggests that certain behavioral biases of investors may impact the effectiveness of policy initiatives that are designed to encourage better choices about financial products,³ research on investor preferences for mutual fund information, including our own testing of the Fund Facts, indicates investors prefer a concise summary of key information before the sale so that they can use the information to make a decision.⁴

The CSA designed the Fund Facts to make it easier for investors to find and use key information. It is in plain language, no more than two pages double-sided and highlights key information important to investors. The format provides investors with basic information about the mutual fund, followed by a concise explanation of mutual fund expenses and fees, dealer compensation and investor rights. Introductory text specifies that more detailed information about the mutual fund is available in its prospectus.

The Amendments further keep pace with developing global regulatory standards,⁵ including the International Organization of Securities Commissions (IOSCO) Principles on Point of Sale

³ Financial Services Authority, July 2008 *Financial Capability: A Behavioural Economics Perspective* – Consumer Research 69.

⁴ CSA, September 2012 *CSA Point of Sale Disclosure Project: Fund Facts Document Testing*; OSC, October 2006 *Fund Facts Document Research Report*; Investment Company Institute, August 2006 *Understanding Investor Preferences for Mutual fund Information*; Securities and Exchange Commission, April 2004 *Results of Focus Groups with Individual Investors to Test Proposed Rules 15c2-2 and 15c2-3*.

⁵ In the United Kingdom, Australia, Hong Kong and Malaysia, disclosure documents must generally be provided before a product is purchased.

Disclosure published in February 2011.⁶

Summary of Written Comments Received by the CSA

Proposed amendments to the Rule and the Companion Policy introducing pre-sale delivery of the Fund Facts for mutual funds were first published for comment by the CSA on June 19, 2009 (the 2009 Proposal). The 2009 Proposal included proposed amendments aimed at implementing all of the elements of the point of sale disclosure regime set out in Framework, including pre-sale delivery of the Fund Facts. In accordance with the staged approach to implementation, the CSA next published proposals related to pre-sale delivery of the Fund Facts on March 26, 2014 (the 2014 Proposal).

The 2014 Proposal, informed by the regulatory regimes of other jurisdictions that have implemented pre-sale delivery requirements,⁷ by IOSCO principles⁸ and by the comments received on the 2009 Proposal, revisited the approach taken in the 2009 Proposal. Specifically, to address feedback we received on the complexity and cost of compliance, the 2014 Proposal contemplated a simpler, more consistent approach to pre-sale delivery of the Fund Facts.

We received 26 comment letters on the 2014 Proposal. Generally, commenters were supportive of the more streamlined approach to pre-sale delivery of Fund Facts and for allowing for a limited exception to pre-sale delivery in certain circumstances. However, we were asked to clarify and simplify the prescribed verbal delivery requirement in the instances where the pre-sale delivery exception is utilized, as well as provide greater guidance on what types of electronic delivery would be acceptable. In response to consultation questions posed in the 2014 Proposal, we also received significant comments related to the timeline and implementation of pre-sale delivery of the Fund Facts.

Copies of the comment letters have been posted on the Ontario Securities Commission website at www.osc.gov.on.ca and on the Autorité des marchés financiers website at www.lautorite.qc.ca. You can find the names of the commenters and a summary of the comments and our responses to those comments in Annex B to this Notice.

⁶ See, for example: Principles on Point of Sale Disclosure, Final Report, Technical Committee of the IOSCO, February 2011; G20 High-level Principles on Financial Consumer Protection, Organization for Economic Co-operation and Development (OECD), October 2011; and Regulation of Retail Structured Products, Consultation Report, IOSCO, April 2013.

Principle 2 of the IOSCO Principles on Point of Sale Disclosure specifies: “*key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.*”

⁷ See footnote 5 above.

⁸ See footnote 6 above.

Summary of Changes to the 2014 Proposal

After considering the comments received, we have changes to the 2014 Proposal. See Annex A to this Notice for a summary of the key changes made to the 2014 Proposal. Those revisions are reflected in the Amendments that we are publishing as Annexes to this Notice. As these changes are not material, we are not republishing the Amendments for a further comment period.

Summary of the Amendments

Application

The Amendments apply only to mutual funds subject to NI 81-101.

Pre-Sale Delivery

In keeping with the 2014 Proposal, the Amendments require delivery of the most recently filed Fund Facts to a purchaser before a dealer accepts an instruction for the purchase. Subject to certain exceptions outlined further below, the delivery requirement applies to all purchases, without any distinction based on the type of mutual fund security purchased or the distribution channel. This means that pre-sale delivery of the Fund Facts will apply to both full service accounts and order execution-only accounts. This is consistent with the approach to the pre-trade cost disclosure requirements in the Client Relationship Model - Phase 2 (CRM2) amendments to NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (NI 31-103). Also consistent with securities legislation in some jurisdictions today, the Amendments do not require delivery of the Fund Facts if the purchaser has already received the most recently filed Fund Facts.

The method for delivery of the Fund Facts is consistent with the method for delivery of a prospectus under securities legislation. For example, it can be in person, by mail, by fax, electronically or by other means. Electronic delivery includes providing an electronic copy of the Fund Facts to the purchaser in the form of an email attachment or a hyperlink. For online transactions related to order execution service accounts, pre-sale delivery can be executed through the use of a “pop-up” screen that directs the investor to the relevant Fund Facts or by requiring the purchaser to “click through” the Fund Facts before the purchase order is accepted. Access will not equal delivery, nor will a referral to the website on which the Fund Facts is posted.

Exception where Delivery Impracticable

The Amendments allow for an exception to pre-sale delivery of the Fund Facts in limited circumstances where the purchaser indicates that they want the purchase to be completed immediately, or by a specified time, and it is not reasonably practicable for the dealer to complete pre-sale delivery of the Fund Facts within the timeframe specified by the purchaser. In such circumstances, the dealer would be required to inform the purchaser of the existence and purpose of the Fund Facts and explain the dealer’s obligation of pre-sale delivery of the Fund Facts. The dealer must also provide a verbal summary of some of the main disclosure elements

contained in the Fund Facts including the applicable rights of withdrawal or rescission that the purchaser is entitled to under securities legislation.

In such circumstances, the Fund Facts would then be required to be delivered or sent to the purchaser within two days of buying the mutual fund. This exception is on a purchase-by-purchase basis. A dealer cannot rely on blanket consent from the purchaser to effect post-sale delivery of the Fund Facts.

Exception for Pre-Authorized Purchase Plans

For pre-authorized purchase plans, the requirement for pre-sale delivery of the Fund Facts would not apply to subsequent purchases of securities of a mutual fund provided certain conditions are met. In particular, the purchaser must be provided with an initial notice indicating that they will not receive the Fund Facts for subsequent purchases under the plan, unless they specifically request it, and that they will not have a right of withdrawal for those subsequent purchases. Together with this initial notice, the purchaser must be provided with the most recently filed Fund Facts for the applicable class or series of mutual fund security. The purchaser must also be provided with subsequent annual notices that include information on how to access and request the Fund Facts. The information required in both the initial notice and the subsequent annual notices should be presented in a clear, comprehensible and prominent manner. A purchaser of a pre-authorized plan will continue to have a right of action for rescission or for damages if there is a misrepresentation in the prospectus of the mutual fund, including any documents incorporated by reference into the prospectus, such as the Fund Facts.

The pre-sale delivery exception for pre-authorized purchase plans is intended to codify blanket relief in some jurisdictions, and exemptive relief that has been granted to certain pre-authorized purchase plans (the PPP Relief). The Amendments, therefore, contain a provision that allows those pre-authorized purchase plans that have received the PPP Relief to continue with their current annual notice delivery schedule. Specifically, for pre-authorized purchase plans established prior to May 30, 2016 that have already provided an annual reminder notice regarding the availability of the Fund Facts to purchasers within the last 12 months, the first purchase of a mutual fund security made under the plan on or after May 30, 2016 will not be considered to be the first purchase transaction under the plan. As a result, the first purchase that occurs after the Amendments come into effect will not immediately trigger an initial notice to be delivered.

Exception for Managed Accounts and Permitted Clients

The Amendments allow for exceptions to the pre-sale delivery requirement of Fund Facts for purchases of mutual fund securities made in managed accounts or by permitted clients that are not individuals. For these purchases, the Fund Facts would be required to be delivered or sent to the purchaser within two days of buying the mutual fund.

These exceptions are consistent with the approach to the pre-trade cost disclosure requirements in the CRM2 amendments to NI 31-103.

No Effect on Investor Rights

The Amendments do not change existing investor rights under securities legislation.

If the investor does not receive the Fund Facts, the investor has a right to seek damages or to rescind the purchase. The rights of the investor for failure of pre-sale delivery of the Fund Facts are the same rights under securities legislation today for failure to deliver the Fund Facts within two days of purchasing securities of a mutual fund.

The investor's right of withdrawal of purchase within two business days after receiving the Fund Facts remains unchanged. Consistent with securities legislation today, depending on the timing of delivery of the Fund Facts and the timing of the trade, the investor may or may not have the right of withdrawal of purchase.

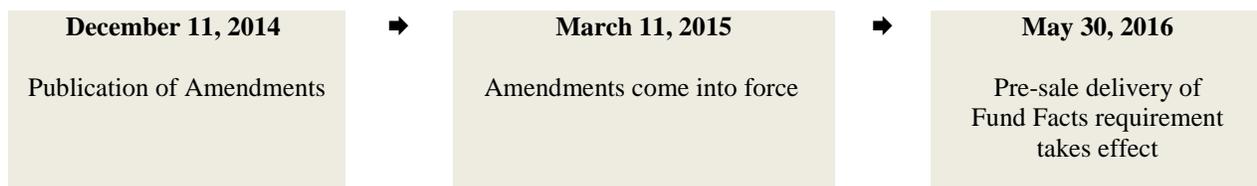
The right for misrepresentation related to the Fund Facts has also not changed. The Fund Facts is incorporated by reference into the prospectus. This means that the existing statutory rights of investors that apply for misrepresentations in a prospectus also apply to misrepresentations in the Fund Facts.

In some jurisdictions, investors also currently have a right of rescission with delivery of the trade confirmation for the purchase of mutual fund securities. This right also remains unchanged under the Proposed Amendments.

Transition Timeline

The Amendments come into effect on May 30, 2016.

This means, from the time of publication of this Notice, a conventional mutual fund will have approximately 18 months to make changes to compliance and operational systems and to arrange for training necessary to provide pre-sale delivery of Fund Facts to its investors.



Alternatives Considered

The earlier publications by the Joint Forum outlined the alternatives we considered, as members of the Joint Forum, in developing the point of sale disclosure Framework as contemplated by the Amendments. These publications also set out the pros and cons of each alternative. You can find these documents on the Joint Forum website and on the websites of the members of the CSA.

Anticipated Costs and Benefits

The earlier publications by the Joint Forum and CSA outlined some of the anticipated costs and

benefits of implementation of the point of sale disclosure Framework. We consider these costs and benefits to still be valid.

Overall, we continue to believe that the potential benefits of the move to pre-sale delivery of the Fund Facts as contemplated by the Amendments are proportionate to the costs of making the change. We consider the transition timeline contemplated by the Amendments to be responsive to the comments we received regarding the time needed to change compliance and operational systems, as well as for training.

Local Matters

Annex E to this Notice is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Some jurisdictions may require amendments to local securities legislation, in order to implement the Amendments. If statutory amendments are necessary in a jurisdiction, these changes will be initiated and published by the local provincial or territorial government.

Materials Published

The text of the Amendments is contained in the following annexes to this Notice and is available on the websites of members of the CSA:

Annex A – Summary of Changes to 2014 Proposal

Annex B – Summary of Public Comments and CSA Responses

Annex C – Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

Annex D – Changes to Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

Annex E – Local Matters

Questions

Please refer your questions to any of the following:

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