

## APPENDIX C

### Schedule 1

#### National Instrument 81-101 *Mutual Fund Prospectus Disclosure*

#### AMENDMENT INSTRUMENT

This is an unofficial consolidation of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*. The proposed amendments are shown by blackline. No part of this document represents an official statement of law.

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.

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**National Instrument 81-101**  
***Mutual Fund Prospectus Disclosure***

**PART 1 DEFINITIONS, INTERPRETATION AND APPLICATION**

**1.1 Definitions** - In this Instrument

“business day” means any day other than a Saturday, a Sunday or a statutory holiday;

“commodity pool” means a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to use

(a) specified derivatives other than as permitted by National Instrument 81-102 *Mutual Funds*, or

(b) physical commodities other than as permitted by ~~National Instrument 81-102~~ National Instrument 81-102;

“educational material” means material containing general information about one or more of investing in general, mutual funds, portfolio management, capital markets, retirement savings, income or education saving plans and financial planning, if the material does not promote a particular mutual fund or mutual fund family or the products or services offered by a particular mutual fund or mutual fund family;

“executive officer” means, for a mutual fund, a manager of a mutual fund or a promoter of a mutual fund, an individual who is

(a) a chair, vice-chair or president,

(b) a vice-president in charge of a principal business unit, division or function including sales, finance or product development, or

(c) performing a policy-making function;

“financial year” includes the first completed financial period of a mutual fund beginning with the inception of the mutual fund and ending on the date of its first financial year end;

“fund facts document” means a completed Form 81-101F3 *Contents of Fund Facts Document*;

“independent review committee” means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“material contract” means, for a mutual fund, a contract listed in the annual information form of the mutual fund in response to Item 16 of Form 81-101F2 *Contents of Annual Information Form*;

“multiple AIF” means a document containing two or more annual information forms that have been consolidated in accordance with section 5.45.3;

“multiple SP” means a document containing two or more simplified prospectuses that have been consolidated in accordance with subsection 5.1(1);

~~“NI 81-107” means National Instrument 81-107 *Independent Review Committee for Investment Funds*;~~

“Part A section” means the section of a simplified prospectus that contains the disclosure required by Part A of Form 81-101F1 *Contents of Simplified Prospectus*;

“Part B section” means the section of a simplified prospectus that contains the disclosure required by Part B of Form 81-101F1; *Contents of Simplified Prospectus*;

“Personal Information Form and Authorization” means the Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information set out in Appendix A to National Instrument 41-101 *General Prospectus Requirements*;

“plain language” means language that can be understood by a reasonable person, applying a reasonable effort;

“precious metals fund” means a mutual fund that has adopted fundamental investment objectives, and received all required regulatory approvals, that permit it to invest in precious metals or in entities that invest in precious metals and that otherwise complies with National Instrument 81-102 *Mutual Funds*;

“single AIF” means an annual information form that has not been consolidated with another annual information form under section 5.45.3; and

“single SP” means a simplified prospectus that has not been consolidated with another simplified prospectus under subsection 5.1(1).

**1.2 Interpretation** - Terms defined in National Instrument 81-102 *Mutual Fund* or National Instrument 81-105 *Mutual Fund Sales Practices* and used in this Instrument have the respective meanings ascribed to them in those Instruments.

**1.3 Application** - This Instrument does not apply to mutual funds that are

(a) labour-sponsored venture capital corporations;

(b) commodity pools; or

(c) listed and posted for trading on a stock exchange or quoted on an over-the-counter market.

## PART 2 DISCLOSURE DOCUMENTS

### 2.1 Filing of Disclosure Documents ~~---~~(1) A mutual fund

(a) that files a preliminary prospectus ~~shall~~must file the preliminary prospectus in the form of a preliminary simplified prospectus prepared in accordance with Form 81-101F~~1~~1, ~~and shall~~ concurrently file

(i) a preliminary annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a preliminary fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(b) that files a *pro forma* prospectus ~~shall~~must file the *pro forma* prospectus in the form of a *pro forma* simplified prospectus prepared in accordance with Form 81-101F~~1~~1 and ~~shall~~ concurrently file

(i) a *pro forma* annual information form prepared in accordance with Form 81-101F2; and

(ii) a *pro forma* fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(c) that files a prospectus ~~shall~~must file the prospectus in the form of a simplified prospectus prepared in accordance with Form 81-101F~~1~~1 and ~~shall~~ concurrently file

(i) an annual information form prepared and certified in accordance with Form 81-101F2; and

(ii) a fund facts document for each class or series of securities of the mutual fund prepared in accordance with Form 81-101F3;

(d) that files an amendment to a prospectus

(i) ~~shall~~must either

(A) file an amendment to athe simplified prospectus and ~~shall~~ concurrently file an amendment to the related annual information form, or

(B) in circumstances in which changes are made only to an annual

information form, ~~shall~~ file an amendment to the annual information form;

(ii) must, if the amendment relates to a matter that requires a change to the disclosure in the fund facts document, concurrently file an amendment to the fund facts document; and;

(iii) must, if the amendment relates to a new class or series of securities of the mutual fund that is referable to the same portfolio of assets, concurrently file a preliminary fund facts document for the new class or series; and

(e) must file an amendment to a fund facts document if a material change occurs that requires a change to the disclosure in the fund facts document.

(2) A mutual fund must not file a prospectus more than 90 days after the date of the receipt for the preliminary prospectus that relates to the prospectus.

## **2.2 Amendments to Disclosure Documents**

(1) An amendment to a simplified prospectus or to an annual information form may consist of either

(a) an amendment that does not fully restate the text of the simplified prospectus or annual information form; or

(b) an amended and restated simplified prospectus or annual information form.

(2) Despite subsection (1), an amendment to the Part B section that is separately bound from the Part A section of a simplified prospectus ~~shall~~must be effected only by way of an amended and restated Part B section.

(2.1) An amendment to a fund facts document must be effected only by way of an amended and restated fund facts document.

(3) An amendment to a simplified prospectus or to an annual information form ~~shall~~must be identified and dated as follows:

1. For an amendment that does not restate the text of a simplified prospectus or annual information form:

“Amendment No. [insert amendment number] dated [insert date of amendment] to [identify document] dated [insert date of document being amended].”

2. For an amended and restated simplified prospectus, other than an amendment to which subsection (2) applies, or annual information form:

“Amended and Restated [identify document] dated [insert date of amendment],

amending and restating [identify document] dated [insert date of document being amended].”

(4) An amendment to a fund facts document must be prepared in accordance with Form 81-101F3 without any further identification and dated as of the date the fund facts document is being amended.

**2.2.1 Amendment to a Preliminary Simplified Prospectus** – (1) Except in Ontario, if, after a receipt for a preliminary simplified prospectus is issued but before a receipt for the simplified prospectus is issued, a material adverse change occurs, an amendment to the preliminary simplified prospectus must be filed as soon as practicable, but in any event within 10 days after the change occurs.

*[Note: In Ontario, subsection S.57(1) of the Securities Act (Ontario) imposes a similar requirement to file an amendment to a preliminary prospectus]<sup>1</sup>*

(1.1) If the amendment to the preliminary simplified prospectus referred to in subsection (1) relates to a matter that is disclosed in the preliminary fund facts document, an amendment to the preliminary fund facts document must be filed concurrently with the amendment to the preliminary simplified prospectus.

#### **Note to Reader**

**In Ontario, consideration will be given to recommending amendments to the *Securities Act* (Ontario) that would implement, or facilitate the implementation of, this and other fund facts document related requirements in this Part.**

(2) The regulator must issue a receipt for an amendment to a preliminary simplified prospectus as soon as practicable after the amendment is filed.

**2.2.2 Delivery of Amendments** — (1) Except in Ontario, a mutual fund must deliver an amendment to a preliminary simplified prospectus as soon as practicable to each recipient of the preliminary simplified prospectus according to the record of recipients required to be maintained under securities legislation.

*[Note: In Ontario, subsection 57(3) of the Securities Act (Ontario) imposes similar requirements regarding the delivery of amendments to a preliminary prospectus]*

(2) If, under subsection 2.2.1(1.1), an amendment to a preliminary fund facts document is required to be filed concurrently with an amendment to the preliminary simplified prospectus,

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<sup>1</sup> In Ontario, a number of prospectus related requirements in this Instrument are set out in the *Securities Act* (Ontario). We have identified carve-outs from the Instrument where a similar requirement is set out in the *Securities Act* (Ontario). Notes included in this Instrument have been inserted for convenience of reference only and do not form part of this Instrument or have any force or effect as a rule or policy.

the requirement in securities legislation to deliver an amendment to the preliminary simplified prospectus must be satisfied by delivering the amended and restated fund facts document.

**2.2.3 Amendment to a Simplified Prospectus** – (1) Except in Ontario, if, after a receipt for a simplified prospectus is issued but before the completion of the distribution under the simplified prospectus, a material change occurs, a mutual fund must file an amendment to the simplified prospectus as soon as practicable, but in any event within 10 days after the day the change occurs.

*[Note: In Ontario, subsection 57(1) of the Securities Act (Ontario) imposes a similar obligation to file an amendment to a final prospectus where there has been a material change]*

(1.1) If the amendment to the simplified prospectus referred to in subsection (1) relates to a matter that is disclosed in the fund facts document, an amendment to the fund facts document must be filed concurrently with the amendment to the simplified prospectus.

(2) Except in Ontario, if, after a receipt for a simplified prospectus or an amendment to a simplified prospectus is issued but before the completion of the distribution under the simplified prospectus or the amendment to the simplified prospectus, securities in addition to the securities previously disclosed in the simplified prospectus or the amendment to the simplified prospectus are to be distributed, an amendment to the simplified prospectus disclosing the additional securities must be filed, as soon as practicable, but in any event within 10 days after the decision to increase the number of securities offered.

*[Note: In Ontario, subsection 57(2) of the Securities Act (Ontario) imposes a similar requirement to file an amendment to a prospectus at any time there is a proposed distribution of securities in addition to that disclosed under the prospectus.]*

(2.1) If the amendment to the simplified prospectus referred to in subsection (2) relates to a matter that is disclosed in the fund facts document, an amendment to the fund facts document must be filed concurrently with the amendment to the simplified prospectus.

(3) Except in Ontario, the regulator must issue a receipt for an amendment to a simplified prospectus filed under this section unless the regulator considers that there are grounds set out in securities legislation that would cause the regulator not to issue the receipt for a simplified prospectus.

*[Note: In Ontario, subsection 57(2.1) of the Securities Act (Ontario) imposes a similar obligation for the Director to issue a receipt for an amendment to a prospectus unless there are proper grounds for refusing the receipt.]*

(4) Except in Ontario, the regulator must not refuse to issue a receipt under subsection (3) without giving the mutual fund that filed the simplified prospectus an opportunity to be heard.

[Note: In Ontario, subsections 57(2.1) and 61(3) of the Securities Act (Ontario) impose a similar restriction on the Director to refuse to issue a receipt for a prospectus without first giving an issuer an opportunity to be heard.]

## 2.3 Supporting Documents

(1) A mutual fund ~~shall~~must

(a) (a)-file with a preliminary simplified prospectus and, a preliminary annual information form and a preliminary fund facts document

(i) a copy of the preliminary annual information form certified in accordance with Part 5.1,

(ii) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101 *General Prospectus Requirements*, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada,

(iii) a copy of any material contract and a copy of any amendment to a material contract that have not previously been filed, other than a contract entered into in the ordinary course of business,

(iv) a copy of the following documents and a copy of any amendment to the following documents that have not previously been filed:

(A) by-laws or other corresponding instruments currently in effect,

(B) any securityholder or voting trust agreement that the mutual fund has access to and that can reasonably be regarded as material to an investor in securities of the mutual fund, and

(C) any other contract of the mutual fund that creates or can reasonably be regarded as materially affecting the rights or obligations of the mutual fund's securityholders generally, and

(v) any other supporting documents required to be filed under securities legislation; and

(b) at the time a preliminary simplified prospectus and, preliminary annual information form and preliminary fund facts document are filed, deliver or send to the securities regulatory authority

(i) for

~~(A)~~ ~~(A)~~-a new mutual fund, a copy of a draft opening balance sheet of the mutual fund, and

~~(B)~~ ~~(B)~~-an existing mutual fund, a copy of the latest audited financial statements of the mutual fund,

(ii) personal information in the form of the Personal Information Form and Authorization for:

(A) each director and executive officer of the mutual fund,

(B) each director and executive officer of the manager of the mutual fund,

(C) each promoter of the mutual fund, and

~~(D)~~ ~~(D)~~-if the promoter is not an individual, each director and executive officer of the promoter,

unless

(E) a completed Personal Information Form and Authorization,

(F) before March 17, 2008, a completed authorization in

(I) the form set out in Appendix B of NI 44-101,

(II) the form set out in Ontario Form 41-501F2 *Authorization of Indirect Collection of Personal Information*, or

(III) the form set out in Appendix A of Québec Regulation Q-28 *Respecting General Prospectus Requirements*, or

(G) before March 17, 2008, a completed personal information form or authorization in a form substantially similar to a personal information form or authorization in clause (E) or (F), as permitted under securities legislation,

was previously delivered in connection with the simplified prospectus of another mutual fund managed by the manager of the mutual fund,

(iii) a signed letter to the regulator from the auditor of the mutual fund prepared in accordance with the form suggested for this circumstance by the Handbook, if a financial statement of the mutual fund incorporated by reference in the preliminary simplified prospectus is accompanied by an unsigned auditor's report,  
~~and~~

(iv) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and

(v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(2) A mutual fund ~~shall~~must

(a) file with a *pro forma* simplified prospectus ~~and~~, a *pro forma* annual information form and a *pro forma* fund facts document

(i) a copy of any material contract of the mutual fund, and a copy of any amendment to a material contract of the mutual fund, not previously filed,

(ii) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101 *General Prospectus Requirements*, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada and if that document has not already been filed, and

(iii) any other supporting documents required to be filed under securities legislation; and

(b) at the time a *pro forma* simplified prospectus ~~and~~, *pro forma* annual information form and *pro forma* fund facts document are filed, deliver or send to the securities regulatory authority

(i) a copy of the *pro forma* simplified prospectus, blacklined to show changes and the text of deletions from the latest simplified prospectus previously filed,

(ii) a copy of the *pro forma* annual information form, blacklined to show changes and the text of deletions from the latest annual information form previously filed,

(ii.1) a copy of the *pro forma* fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document.

(iii) a copy of a draft of each material contract of the mutual fund, and a copy of each draft amendment to a material contract of the mutual fund, in either case not yet executed but proposed to be executed by the time of filing of the simplified prospectus,

(iv) personal information in the form of the Personal Information Form and Authorization for:

- (A) each director and executive officer of the mutual fund,
- (B) each director and executive officer of the manager of the mutual fund,
- (C) each promoter of the mutual fund, and
- (D) if the promoter is not an individual, each director and executive officer of the promoter,

unless

- (E) a completed Personal Information Form and Authorization,
- (F) before March 17, 2008, a completed authorization in
  - (I) the form set out in Appendix B of NI 44-101,
  - (II) the form set out in Ontario Form 41-501F2 *Authorization of Indirect Collection of Personal Information*, or
  - (III) the form set out in Appendix A of Québec Regulation Q-28 *Respecting General Prospectus Requirements*, or
- (G) before March 17, 2008, a completed personal information form or authorization in a form substantially similar to a personal information form or authorization in clause (E) or (F), as permitted under securities legislation,

was previously delivered in connection with a simplified prospectus of the mutual fund or another mutual fund managed by the manager of the mutual fund, ~~and~~

(v) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and

(vi) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(3) A mutual fund ~~shall~~must

(a) file with a simplified prospectus ~~and~~, an annual information form and a fund facts document

(i) a copy of any material contract, and a copy of any amendment to a material contract, of the mutual fund and not previously filed,

(ii) for a new mutual fund, a copy of the audited balance sheet of the mutual fund,

- (iii) a copy of the annual information form certified in accordance with Part 5.1,
- (iv) a submission to the jurisdiction and appointment of an agent for service of process of the manager of the mutual fund in the form set out in Appendix C to National Instrument 41-101 *General Prospectus Requirements*, if the manager of the mutual fund is incorporated, continued or organized under the laws of a foreign jurisdiction or resides outside of Canada and if that document has not already been filed,
- (v) any consents required by section 2.6,
- (vi) a copy of each report or valuation referred to in the simplified prospectus, for which a consent is required to be filed under section 2.6 and that has not previously been filed, and
- (vii) any other supporting documents required to be filed under securities legislation; and

(b) at the time a simplified prospectus is filed, deliver or send to the securities regulatory authority

- (i) a copy of the simplified prospectus, blacklined to show changes and the text of  
~~(i) a copy of the simplified prospectus, blacklined to show changes and the text of~~ deletions from the preliminary or *pro forma* simplified prospectus,
- (ii) a copy of the annual information form, blacklined to show changes and the text of deletions from the preliminary or *pro forma* annual information form,
- (ii.1) a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document,
- (iii) details of any changes to the personal information required to be delivered under subparagraph ~~2.3(1)(b)(ii)~~ or ~~2.3(2)(b)(iv)~~, in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager, ~~and~~
- (iv) a signed letter to the regulator from the manager of the mutual fund specifying the Flesch-Kincaid grade level of the fund facts document, and
- (v) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(4) A mutual fund ~~shall~~must

(a) file with an amendment to a simplified prospectus and an amendment to the annual information form

(i) a copy of the amendment to the annual information form certified in accordance with Part 5.1,

(ii) any consents required by section 2.6,

(iii) a copy of any material contract of the mutual fund, and a copy of any amendment to a material contract of the mutual fund, not previously filed,

(iii.1) if the amendment relates to a matter that requires a change to the disclosure in the fund facts document, an amendment to the fund facts document, and

(iv) any other supporting documents required to be filed under securities legislation;

(b) at the time an amendment to a simplified prospectus is filed, deliver or send to the securities regulatory authority

(i) if the amendment to the simplified prospectus is in the form of an amended and restated simplified prospectus, a copy of that document blacklined to show changes and the text of deletions from the simplified prospectus,

(ii) if the amendment to the annual information form is in the form of an amended and restated annual information form, a copy of the amended annual information form, blacklined to show changes and the text of deletions from the annual information form,

(ii.1) if an amendment to the fund facts document is filed, a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document,

(iii) details of any changes to the personal information required to be delivered under subparagraph 2.3(1)(b)(ii), 2.3(2)(b)(iv) or 2.3(3)(b)(iii), in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager, and

(iv) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(5) A mutual fund ~~shall~~must

(a) file with an amendment to an annual information form in circumstances in which the corresponding simplified prospectus is not amended

(i) a copy of the amendment to the annual information form certified in accordance with Part 5.1,

(ii) any consents required by section 2.6,

(iii) a copy of any material contract of the mutual fund, and a copy of any amendment to a material contract of the mutual fund, not previously filed,

(iii.1) if the amendment relates to a matter that requires changes to the disclosure in the fund facts document, an amendment to the fund facts document, and

(iv) any other supporting documents required to be filed under securities legislation; and

(b) at the time an amendment to an annual information form is filed, deliver or send to the securities regulatory authority

(i) details of any changes to the personal information required to be delivered under subparagraph ~~2.3(1)(b)(ii)~~, ~~2.3(2)(b)(iv)~~ or ~~2.3(3)(b)(iii)~~, in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager,

(ii) if the amendment is in the form of an amended and restated annual information form, a copy of the amended and restated annual information form blacklined to show changes and the text of deletions from the annual information ~~form; and~~ form.

(ii.1) if an amendment to a fund facts document is filed, a copy of the fund facts document, blacklined to show changes and the text of deletions from the most recently filed fund facts document, and

(iii) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(5.1) A mutual fund must

(a) in circumstances in which the corresponding simplified prospectus is not amended, file with an amendment to a fund facts document

(i) an amendment to the corresponding annual information form, certified in accordance with Part 5.1, and

(ii) any other supporting documents required to be filed under securities legislation; and

(b) at the time an amendment to a fund facts document is filed, deliver or send to the securities regulatory authority

(i) details of any changes to the personal information required to be delivered under subparagraph (1)(b)(ii), (2)(b)(iv) or (3)(b)(iii), in the form of the Personal Information Form and Authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager,

(ii) a copy of the amended and restated fund facts document blacklined to show changes and the text of deletions from the most recently filed fund facts document; and

(iii) any other supporting documents required to be delivered or sent to the securities regulatory authority under securities legislation.

(6) Despite any other provision of this section, a mutual fund may

(a) omit or mark to be unreadable certain provisions of a material contract or an amendment to a material contract filed under this section

(i) if the manager of the mutual fund reasonably believes that disclosure of those provisions would be seriously prejudicial to the interests of the mutual fund or would violate confidentiality provisions, and

(ii) if a provision is omitted or marked to be unreadable under subparagraph (i), the mutual fund must include a description of the type of information that has been omitted or marked to be unreadable immediately after the provision that is omitted or marked to be unreadable in the copy of the material contract or amendment to the material contract filed by the mutual fund; and

(b) delete commercial or financial information from the copy of an agreement of the mutual fund, its manager or trustee with a portfolio adviser or portfolio advisers of the mutual fund filed under this section if the disclosure of that information could reasonably be expected to

(i) prejudice significantly the competitive position of a party to the agreement, or

(ii) interfere significantly with negotiations in which parties to the agreement are involved.

### **2.3.1 Voluntary Updating of Fund Facts Document**

(1) A mutual fund may file an updated fund facts document that brings up to date the disclosure in the fund facts document at regular intervals of either six months or three months following the

date of the fund facts document that is filed with the simplified prospectus.

(2) If a mutual fund files an updated fund facts document under subsection (1), the mutual fund must file a fund facts document for each class or series of securities of the mutual fund.

(3) A fund facts document filed in accordance with this section must be filed by the mutual fund within 30 days of the end of the period for which the updated fund facts document was prepared.

#### **Issues for Comment**

**1. We are considering allowing fund managers greater flexibility to provide more current information to investors, by not restricting how frequently a fund manager may file an updated fund facts document. What are your views? How would this impact compliance with the requirement to deliver the most recently filed fund facts document?**

**2.3.2 Websites** – If a mutual fund, the mutual fund’s family, or the manager has a website, the mutual fund must post to the website of the mutual fund, the mutual fund’s family or the manager a fund facts document filed under this Part no later than the date that the document is filed.

**2.4 Simplified Prospectus** - A simplified prospectus is a prospectus for the purposes of securities legislation.

#### **2.5 Lapse Date**

(1) This section does not apply in Ontario.

(2) In this section, “lapse date” means, with reference to the distribution of a security that has been qualified under a simplified prospectus, the date that is 12 months after the date of the most recent simplified prospectus relating to the security.

(3) A mutual fund must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the mutual fund files a new simplified prospectus that complies with securities legislation and a receipt for that new simplified prospectus is issued by the regulator.

(4) Despite subsection (3), a distribution may be continued for a further 12 months after a lapse date if,

(a) the mutual fund delivers a *pro forma* simplified prospectus not less than 30 days before the lapse date of the previous simplified prospectus;

(b) the mutual fund files a new final simplified prospectus not later than 10 days after the lapse date of the previous simplified prospectus; and

(c) a receipt for the new final simplified prospectus is issued by the regulator within 20 days after the lapse date of the previous simplified prospectus.

(5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.

(6) Subject to any extension granted under subsection (7), if a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.

(7) The regulator may, on an application of a mutual fund, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

*[In Ontario, section 62 of the Securities Act (Ontario) imposes similar requirements regarding refiling of prospectuses.]*

## **2.6 Consents of Experts**

(1) A mutual fund must file the written consent of

(a) any solicitor, auditor, accountant, engineer, or appraiser;

(b) any notary in Québec; and

(c) any person or company whose profession or business gives authority to a statement made by that person or company

if that person or company is named in a simplified prospectus or an amendment to a simplified prospectus, directly or, if applicable, in a document incorporated by reference,

(d) as having prepared or certified any part of the simplified prospectus or the amendment;

(e) as having opined on financial statements from which selected information included in the simplified prospectus has been derived and which audit opinion is referred to in the simplified prospectus directly or in a document incorporated by reference; or

(f) as having prepared or certified a report, valuation, statement or opinion referred to in the simplified prospectus or the amendment, directly or in a document incorporated by reference.

(2) The consent referred to in subsection (1) must

(a) be filed no later than the time the simplified prospectus or the amendment to the

simplified prospectus is filed or, for the purposes of future financial statements that have been incorporated by reference in a simplified prospectus, no later than the date that those financial statements are filed;

(b) state that the person or company being named consents

(i) to being named, and

(ii) to the use of that person or company's report, valuation, statement or opinion;

(c) refer to the report, valuation, statement or opinion stating the date of the report, valuation, statement or opinion; and

(d) contain a statement that the person or company being named

(i) has read the simplified prospectus, and

(ii) has no reason to believe that there are any misrepresentations in the information contained in it that are

(A) derived from the report, valuation, statement or opinion, or

(B) within the knowledge of the person or company as a result of the services performed by the person or company in connection with the report, financial statements, valuation, statement or opinion.

(3) In addition to any other requirement of this section, the consent of an auditor or accountant must also state

(a) the dates of the financial statements on which the report of the auditor or accountant is made; and

(b) that the auditor or accountant has no reason to believe that there are any misrepresentations in the information contained in the simplified prospectus that are

(i) derived from the financial statements on which the auditor or accountant has reported, or

(ii) within the knowledge of the auditor or accountant as a result of the audit of the financial statements.

(4) Subsection (1) does not apply to an approved rating organization that issues a rating to the securities being distributed under the simplified prospectus.

## **2.7 Language of Documents**

(1) A mutual fund must file a simplified prospectus and any other document required to be filed under this Instrument in French or in English.

(2) In Québec, a simplified prospectus and any document required to be incorporated by reference into a simplified prospectus must be in French or in French and English.

(3) Despite subsection (1), if a mutual fund files a document only in French or only in English but delivers to a securityholder or prospective securityholder a version of the document in the other language, the mutual fund must file that other version not later than when it is first delivered to the securityholder or prospective securityholder.

**2.8 Statement of Rights** – Except in Ontario, a simplified prospectus must contain a statement of the rights given to a purchaser under securities legislation in case of a failure to deliver the simplified prospectus or in case of a misrepresentation in the simplified prospectus.

*[Note: In Ontario, section 60 of the Securities Act (Ontario) imposes a similar requirement for the inclusion of a statement of rights in a prospectus.]*

## **2.9 Cancellation Right**

(1) The rights described in this subsection do not apply to a purchase of a security of a mutual fund:

(a) the right given under securities legislation other than in this Instrument to withdraw from a purchase within a specified time following receipt of the prospectus by the purchaser; and

(b) except in Ontario, the right given under securities legislation other than in this Instrument to rescind a purchase within a specified time following receipt of the confirmation of trade for the purchase by the purchaser.

*[Note : In Québec, the right to withdraw a purchase will be facilitated by the coming into force of proposed changes to section 30 of the Securities Act (Québec) as proposed by the Targeted Act Amendments.]*

(2) Except in Ontario, a purchaser of a security of a mutual fund may cancel a purchase by giving notice to the dealer from whom the purchase was made within two business days of receipt of the confirmation of trade for the purchase.

(3) A purchaser who cancels a purchase under subsection (2) is entitled to receive the lesser of the net asset value of the securities at the time of purchase and the net asset value of the securities at the time the right is exercised.

*[Note: In Ontario, the Securities Act (Ontario) provides a similar right that allows a purchase of a mutual fund security to be rescinded for purchases not exceeding \$50,000.]*

(4) The notice required by subsection (2) must be in writing, and may be given in person, by prepaid mail, by fax, electronically or other means.

[Note: In Ontario, the Securities Act (Ontario) imposes similar requirements regarding the notice of rescission.]

(5) Except in British Columbia, a trade confirmation sent by prepaid or registered mail shall be deemed conclusively to have been received 7 business days after being sent by the person or company to whom it was addressed.

[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia), respectively, impose a similar deemed receipt provision.]

(6) Every dealer from whom a purchase of a security of a mutual fund was made must within a reasonable period reimburse the purchaser who has exercised the cancellation right under this section for all sales charges and fees arising from the purchase that was cancelled.

[Note: In Ontario, the Securities Act (Ontario) imposes a similar obligation on the dealer to reimburse to the purchaser any costs associated with the transaction.]

(7) Except in British Columbia and Québec, no action may be commenced to enforce the right to cancel a purchase created by this section more than 180 days after the date of the transaction that gave rise to the cancellation right.

[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia), respectively, set out a similar limitation to rescind a purchase. In Québec, the Securities Act (Québec) provides no authority to include a limitation period regarding a civil action in a regulation.]

#### **Note to Reader**

**We intend to recommend the harmonization of cancellation rights in all jurisdictions. Some jurisdictions may require legislative amendments in order to achieve this harmonization.**

### **PART 3 DOCUMENTS INCORPORATED BY REFERENCE AND DELIVERY TO SECURITYHOLDERS**

**3.1 Documents Incorporated by Reference** - The following documents ~~shall~~**must**, by means of a statement to that effect, be incorporated by reference into, and ~~shall~~ form part of, a simplified prospectus:

1. The most recently filed fund facts document for the mutual fund, filed either concurrently with or after the date of the simplified prospectus.

2. The annual information form that is filed concurrently with the simplified prospectus.

~~2. The most recently filed comparative annual financial statements of the mutual fund, together with the accompanying report of the auditor, filed either before or after the date of the simplified prospectus.~~

3. The most recently filed interim comparative annual financial statements of the mutual fund ~~that were, together with the accompanying report of the auditor, filed either before or after the date of the simplified prospectus and that pertain to a period after the period to which the annual financial statements then incorporated by reference in the simplified prospectus pertain.~~

4. The most recently filed annual management report of fund performance interim financial statements of the mutual fund that ~~was~~were filed before or after the date of the simplified prospectus and that pertain to a period after the period to which the annual financial statements then incorporated by reference in the simplified prospectus pertain.

5. The most recently filed annual management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus.

6. The most recently filed interim management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus and that pertains to a period after the period to which the annual management report of fund performance then incorporated by reference in the simplified prospectus pertain.

**3.1.1 Audit of Financial Statements** – Any financial statements, other than interim financial statements, incorporated by reference in a simplified prospectus must meet the audit requirements in Part 2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

**3.1.2 Review of Unaudited Financial Statements** – Any unaudited financial statements incorporated by reference in a simplified prospectus at the date of filing of the simplified prospectus must have been reviewed in accordance with the relevant standards set out in the Handbook for a review of financial statements by the mutual fund's auditor or a review of financial statements by a public accountant.

**3.1.3 Approval of Financial Statements and Related Documents** – A mutual fund must not file a simplified prospectus unless each financial statement and each management report of fund performance incorporated by reference in the simplified prospectus has been approved in accordance with the requirements in Part 2 and Part 4 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

## **3.2 Delivery of Preliminary Simplified Prospectus and Simplified Prospectus Fund Facts Document**

(1) The requirement under securities legislation other than in this Instrument to deliver or send a

preliminary prospectus of a mutual fund to a person or company ~~is~~must be satisfied by delivering or sending ~~at~~the preliminary simplified prospectus~~fund facts document~~ for the mutual fund filed under this Instrument, prepared in accordance with Form 81-101F1, either with or without the documents incorporated by reference Part 3A.

(2) The requirement under securities legislation other than in this Instrument to deliver or send a prospectus of a mutual fund to a person or company ~~is~~must be satisfied by delivering or sending a ~~simplified prospectus for the mutual fund filed under this Instrument, prepared in accordance with Form 81-101F1, either with or without the documents incorporated by reference~~the most recently filed fund facts document for the mutual fund in accordance with Part 3A.

#### Note to Reader

**Some jurisdictions may require legislative amendments if the delivery of the fund facts document is to take the place of delivery of the simplified prospectus. An alternative approach may be to require the simplified prospectus to be delivered with the fund facts document, or for the fund facts document to become the simplified prospectus.**

(3) Except in Ontario, any dealer distributing a security during the waiting period must

(a) send a copy of the preliminary simplified prospectus to each prospective purchaser who indicates an interest in purchasing the security and requests a copy of such preliminary simplified prospectus; and

(b) maintain a record of the names and addresses of all persons and companies to whom the preliminary simplified prospectus has been forwarded.

*[Note: in Ontario, sections 66 and 67 of the Securities Act (Ontario) impose similar requirements regarding the distribution of a preliminary prospectus and maintaining a distribution list.]*

(3.1) If a dealer is required to send a copy of the preliminary simplified prospectus during the waiting period as described in subsection (3), delivery of the preliminary simplified prospectus must be satisfied by delivering the preliminary fund facts document for the mutual fund in accordance with Part 3A.

**3.2.1 Liability of Dealer** – (1) Except in Ontario, the right of rescission or damages against a dealer given to a purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with securities legislation does not apply to a purchase of a security of a mutual fund.

*[Note: In Ontario, the Securities Act (Ontario) imposes a similar requirement regarding the liability for failure to deliver or send a prospectus.]*

(2) Except in Ontario, a purchaser of a security to whom a fund facts document was required to be sent or delivered but was not sent or delivered in compliance with securities legislation has a right of rescission or damages against the dealer who failed to comply with the requirement.

(3) In the case of an action for rescission under subsection (2),

(a) a purchaser of a security of a mutual fund may rescind a purchase by giving notice to the dealer from whom the purchase was made;

(b) the notice required by paragraph (a) must be in writing, and may be given in person, by prepaid mail, by fax, electronically or other means; and

(c) every dealer from whom a purchase of a security of a mutual fund was made must within a reasonable period reimburse the purchaser who has exercised the rescission right under this section for all sales charges and fees arising from the purchase that was rescinded.

(4) Except in British Columbia and Québec, no action may be commenced to enforce a right under this section more than,

(a) in the case of an action for rescission, 180 days after the date of the transaction that gave rise to the cause of action; or

(b) in the case of an action for damages, the earlier of

(i) 180 days after the purchaser first had knowledge of the facts giving rise to the cause of action, or

(ii) three years after the date of the transaction that gave rise to the cause of action.

[Note: In Ontario and in British Columbia, the Securities Act (Ontario) and the Securities Act (British Columbia) set out a similar limitation to commence an action for rescission or damages for failure to deliver or send a prospectus. In Québec, the Securities Act (Québec) provides no authority to include a limitation period regarding a civil action in a regulation.]

#### **Note to Reader**

**If delivery of the fund facts document is to satisfy the prospectus delivery requirements under securities legislation, some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or to rescind a purchase, in the event that the fund facts document is not sent or delivered.**

**In Ontario, consideration will be given to recommending changes to the *Securities Act* (Ontario) to implement, or facilitate the implementation of, the new fund facts document related requirements under this Part.**

### **3.3 Documents to be Delivered or Sent upon Request**

(1) A mutual fund ~~shall~~must deliver or send to any person or company that requests the fund facts document or simplified prospectus of the mutual fund or any of the documents incorporated by reference into the simplified prospectus, a copy of the fund facts document, simplified prospectus or requested document.

(2) A mutual fund ~~shall~~must deliver or send, to any person or company that requests the annual information form of the mutual fund, the most recently filed fund facts document and the current simplified prospectus of the mutual fund with the annual information form, unless the mutual fund has previously delivered or sent that fund facts document and simplified prospectus to that person or company.

(3) A mutual fund ~~shall~~must deliver or send all documents requested under this section within three business days of receipt of the request and free of charge.

**3.4 Toll-Free Telephone Number or Collect Telephone Calls** - A mutual fund ~~shall~~must have a toll-free telephone number for, or accept collect telephone calls from, persons or companies that want to receive a copy of the simplified prospectus of the mutual fund and any or all documents incorporated by reference into the simplified prospectus.

**3.5 Soliciting Expressions of Interest Prohibited** - Neither a multiple SP that includes both a *pro forma* simplified prospectus and a preliminary simplified prospectus nor a multiple AIF that includes both a *pro forma* annual information form and a preliminary annual information form shall be used to solicit expressions of interest.

## **PART 3A DELIVERY OF FUND FACTS DOCUMENT**

### **3A.1 Definitions – In this Part,**

“initial purchase” means an order or subscription for a security of a class or series of securities of a mutual fund if, immediately before the purchase, that class or series of securities of the mutual fund is not held by the purchaser; and

“order execution-only service” means the acceptance and execution by a dealer of an order to purchase or subscribe for a security that the dealer has not recommended and that the dealer has made no determination as to the appropriateness or suitability of such purchase for the purchaser.

**3A.2 Delivery of Fund Facts Document** – (1) A dealer who receives an order or subscription for an initial purchase of a security of a mutual fund must, before entering into an agreement with the purchaser resulting from the order or subscription,

(a) deliver or send to the purchaser the most recently filed fund facts document for the

mutual fund; and

(b) bring the fund facts document to the attention of the purchaser.

(2) For greater certainty, a dealer who receives an order or subscription for a purchase of a security of a mutual fund that is not an initial purchase is not required to deliver or send a fund facts document before entering into an agreement with the purchaser resulting from the order or subscription.

#### **Issues for Comment**

**2. The intention of the requirement to ‘bring the fund facts document to the attention of the purchaser’ is to link for the investor the information in the fund facts document to a particular purchase. In subsection 7.3(3) of the Companion Policy we have provided guidance on this requirement. Is this guidance sufficient?**

**3. In response to comments, we are considering requiring delivery of the fund facts document for subsequent purchases – either in instances where the investor does not have the most recently filed fund facts document, or in all instances with the confirmation of trade. What are your views? Would this approach make it easier to comply with the delivery requirements?**

**What if this could result in the removal of the annual option to receive a fund facts document? Would this approach be more useful for investors? More practical for dealers?**

**3A.3 Timing of Delivery – (1) Subsection 3A.2(1) does not apply to an initial purchase if**

(a) the purchase is through an order execution-only service; or

(b) the conditions in subsection (2) are satisfied in respect of the purchase and the purchaser has expressly communicated to the dealer that the purchaser does not want to receive the fund facts document before entering into the agreement to purchase.

(2) The conditions in this subsection are satisfied in respect of a purchase if

(a) the purchase

(i) is of a security of a money market fund; or

(ii) is not recommended by the dealer; and

(b) prior to the communication referred to in paragraph (1)(b), the dealer has informed the purchaser of the existence and purpose of the fund facts document and has explained that the purchaser may choose to receive it before entering into the agreement to purchase.

(3) If a fund facts document is not delivered or sent to the purchaser before an initial purchase, the dealer must deliver or send to the purchaser the most recently filed fund facts document for the mutual fund with the confirmation of trade for the purchase.

#### **Issues for Comment**

**4. In response to comments, we are considering allowing delivery of the fund facts document with the confirmation of trade in instances where the investor expressly communicates they want the purchase to be completed immediately, and it is not reasonably practicable for the dealer to deliver or send the fund facts document before the purchase is completed. We request comment on this approach.**

**If we made this change, what information should an investor receive before the purchase? In addition to delivery of the fund facts document with the trade confirmation, we think that at least some type of oral communication about the fund facts document would be necessary. What specific information should be conveyed in each instance to satisfy this aspect of delivery?**

**Are there alternatives to this approach?**

**3A.4 Methods of Delivery** – (1) The requirement under this Part to deliver or send a fund facts document is satisfied by a dealer by giving the fund facts document in person or delivering or sending the fund facts document by prepaid or registered mail, by fax, electronically or other means.

(2) In subsection (1) “other means” does not include oral delivery.

(3) For the purpose of this section, except in British Columbia, if the fund facts document is sent by prepaid or registered mail, the fund facts document is deemed conclusively to have been received 7 business days after being sent by the dealer to whom it was addressed.

**3A.5 Annual Option to Receive Fund Facts Document** – (1) A dealer must obtain instructions from each of the dealer’s clients as to whether the client wants to receive a copy of the most recently filed fund facts document for each class or series of securities of the mutual fund held in the client’s account with the dealer.

(2) A dealer must deliver or send on an annual basis to a client the most recently filed fund facts document for each security of a mutual fund held in the client’s account with the dealer in accordance with the instructions referred to in subsection (1).

(3) A dealer must not charge a fee for delivering or sending the fund facts document under this section and must ensure that clients can respond without cost to any solicitations of instruction.

(4) Despite section 5.4, for the purposes of delivery under this section, a dealer may bind a fund

facts document of a mutual fund with one or more fund facts document of other mutual funds if the client holds each of those mutual funds.

#### **Note to Reader**

**If we move to requiring delivery of the fund facts document for some or all subsequent purchases, as canvassed in Issue for Comment 2, we would consider removing the requirement of the annual option to receive the fund facts document.**

## **PART 4 PLAIN LANGUAGE AND PRESENTATION**

### **4.1 Plain Language and Presentation**

(1) A simplified prospectus ~~and~~, annual information form ~~shall~~ and fund facts document must be prepared using plain language and in a format that assists in readability and comprehension.

(2) A simplified prospectus

(a) ~~shall~~ must present all information briefly and concisely;

(b) ~~shall~~ must present the items listed in the Part A section of Form 81-101F1 and the items listed in the Part B section of Form 81-101F1 in the order stipulated in those parts;

(c) may, unless the Part B section is being bound separately from the Part A section as permitted by subsection ~~5-35.2~~(1), place the Part B section of the simplified prospectus in any location in the simplified prospectus;

(d) ~~shall~~ must use the headings and sub-headings stipulated in Form 81-101F1, and may use sub-headings in items for which no sub-headings are stipulated;

(e) ~~shall~~ must contain only educational material or the information that is specifically mandated or permitted by Form 81-101F1; and

(f) ~~shall~~ must not incorporate by reference into the simplified prospectus, from any other document, information that is required to be included in a simplified prospectus.

(3) A fund facts document must

(a) be prepared for each class and each series of securities of a mutual fund;

(b) present the items listed in the Part I section of Form 81-101F3 and the items listed in the Part II section of Form 81-101F3 in the order stipulated in those parts;

(c) use the headings and sub-headings stipulated in Form 81-101F3;

(d) contain only the information that is specifically required or permitted to be in Form 81-101F3;

(e) not incorporate by reference information that is required to be included in a fund facts document;

(f) present the information required by Form 81-101F3 at a grade level of 6.0 or less on the Flesch-Kincaid grade level scale; and

(g) not exceed three pages in length.

**4.2 Preparation in the Required Form** - Despite provisions in securities legislation relating to the presentation of the content of a prospectus, ~~the~~ simplified prospectus and annual information form ~~shall~~ and fund facts document must be prepared in accordance with this Instrument.

## **PART 5 PACKAGING**

### **5.1 Combinations of Documents**

(1) A simplified prospectus ~~shall~~ must not be consolidated with one or more other simplified prospectuses to form a multiple SP unless the Part A sections of each simplified prospectus are substantially similar.

(2) A multiple SP ~~shall~~ must be prepared in accordance with the applicable requirements of Form 81-101F1.

(3) ~~A simplified prospectus or a multiple SP may only be~~ If materials or documents are attached to, or bound with, one or more of the following documents: a simplified prospectus or a multiple SP

~~1. Documents incorporated by reference.~~

~~2. Educational material.~~

~~3. Account application documents.~~

~~4. Registered tax plan applications and documents.~~

~~5. Any point of sale disclosure documents required by securities legislation.~~

(a) the simplified prospectus or multiple SP must be the first document contained in the package; and

(b) no pages must come before the simplified prospectus or multiple SP in the package other than, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.

## **5.2 Order of Contents of Bound Documents**

~~(1) If the material or documents referred to in paragraphs 1 to 5 of subsection 5.1(3) are attached to, or bound with, a single SP or multiple SP~~

~~(a) the single SP or multiple SP shall be the first document contained in the package; and~~

~~(b) no pages shall come before the single SP or multiple SP in the package other than, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.~~

~~(2) The general front cover referred to in paragraph 1(b) may contain only the names of the mutual funds to which the package relates, trademark or tradenames identifying those mutual funds or other members of the organization of those mutual funds, and artwork.~~

### **5.3 Separate Binding of Part B Sections of a Multiple SP**

(1) The Part B sections of a multiple SP may be bound separately from the Part A section of that document.

(2) If a Part B section of a multiple SP is bound separately from the Part A section of the multiple SP

(a) all of the Part B sections of the multiple SP ~~shall~~must be bound separately from the Part A section; and

(b) all or some of the Part B sections may be bound together with each other or separately.

### **5.45.3 Annual Information Forms**

(1) An annual information form ~~shall~~must be consolidated with one or more other annual information forms into a multiple AIF if the related simplified prospectuses are consolidated into a multiple SP.

(2) A multiple AIF ~~shall~~must be prepared in accordance with the applicable requirements of Form 81-101F2.

## **5.4 Combinations of Fund Facts Documents**

(1) For the purposes of delivering a fund facts document under securities legislation, a fund facts document of a mutual fund may only be attached to or bound with one or more fund facts

documents of other mutual funds if the binding is not so extensive as to cause a reasonable person to question whether the binding prevents the information from being presented in a simple, accessible and comparable format.

**Issue for Comment**

**5. In response to comments, we are proposing some limited binding of fund facts documents. In section 4.1.5 of the Companion Policy we have provided guidance on this provision. Is this guidance sufficient? Do you agree with this approach?**

(2) Despite subsection (1), if a fund facts document is delivered electronically, a fund facts document must not be attached to or bound with another fund facts document.

(3) If delivered with the confirmation of trade, a fund facts document of a mutual fund may be attached to, or bound with, one or more of the following documents:

(a) Confirmation of trade.

(b) Simplified prospectus.

(c) Documents incorporated by reference in the simplified prospectus.

(d) Educational material.

(e) Account application documents.

(f) Registered tax plan applications and documents.

(g) One or more fund facts.

(4) If any of the material or documents referred to in subsection (3) is attached to, or bound with, one or more fund facts documents

(a) the fund facts document for the mutual fund or mutual funds purchased must be the first document or documents contained in the package; and

(b) no pages must come before the fund facts documents in the package other than the confirmation of trade and, at the option of the mutual fund, a general front cover and a table of contents pertaining to the entire package.

(5) For the purposes of filing a fund facts document under securities legislation, a fund facts document may only be attached to, or bound with, other fund facts documents of a mutual fund in a simplified prospectus, or, if a multiple SP, other fund facts documents of mutual funds combined in the multiple SP.

## **PART 5.1 CERTIFICATES**

### **5.1.1 Interpretation** – For the purposes of this Part,

“manager certificate form” means a certificate in the form set out in Item 20 of Form 81-101F2 and attached to the annual information form,

“mutual fund certificate form” means a certificate in the form set out in Item 19 of Form 81-101F2 and attached to the annual information form,

“principal distributor certificate form” means a certificate in the form set out in Item 22 of Form 81-101F2 and attached to the annual information form, and

“promoter certificate form” means a certificate in the form set out in Item 21 of Form 81-101F2 and attached to the annual information form.

**5.1.2 Date of Certificates** – The date of the certificates required by this Instrument must be within 3 business days before the filing of the preliminary simplified prospectus, the simplified prospectus, the amendment to the simplified prospectus, the amendment to the annual information form or the amendment to the ~~annual information form~~ fund facts document, as applicable.

### **5.1.3 Certificate of the Mutual Fund**

(1) Except in Ontario, a simplified prospectus of a mutual fund must be certified by the mutual fund.

*[Note: In Ontario, section 58 of the Securities Act (Ontario) imposes a similar requirement that a prospectus contain a certificate of the issuer.]*

(2) A mutual fund must certify its simplified prospectus in the form of the mutual fund certificate form.

**5.1.4 Certificate of Principal Distributor** – A simplified prospectus of a mutual fund must be certified by each principal distributor in the form of the principal distributor certificate form.

**5.1.5 Certificate of the Manager** – A simplified prospectus of a mutual fund must be certified by the manager of the mutual fund in the form of the manager certificate form.

### **5.1.6 Certificate of Promoter**

(1) Except in Ontario, a simplified prospectus of a mutual fund must be certified by each promoter of the mutual fund.

*[Note: In Ontario, subsection 58(1) of the Securities Act (Ontario) imposes a similar*

*requirement that a prospectus contain a certificate signed by each promoter of the issuer.]*

(2) A prospectus certificate required under this Instrument or other securities legislation to be signed by a promoter must be in the form of the promoter certificate form.

(3) Except in Ontario, the regulator may require any person or company who was a promoter of the mutual fund within the two preceding years to sign a certificate in the promoter certificate form.

*[Note: In Ontario, subsection 58(6) of the Securities Act (Ontario) provides the Director with similar discretion to require a person or company who was a promoter of the issuer within the two preceding years to sign a prospectus certificate, subject to such conditions as the Director considers proper.]*

(4) Despite subsection (3), in British Columbia, the powers of the regulator with respect to the matters described in subsection (3) are set out in the *Securities Act* (British Columbia).

(5) Except in Ontario, with the consent of the regulator, a certificate of a promoter for a simplified prospectus may be signed by an agent duly authorized in writing by the person or company required to sign the certificate.

*[Note: In Ontario, subsection 58(7) of the Securities Act (Ontario) provides the Director with similar discretion to permit the certificate to be signed by an agent of a promoter.]*

### **5.1.7 Certificates of Corporate Mutual Funds**

(1) Except in Ontario, if the mutual fund is a company, the certificate of the mutual fund required under section 5.1.3 must be signed

(a) by the chief executive officer and the chief financial officer of the mutual fund; and

(b) on behalf of the board of directors of the mutual fund, by

(i) any two directors of the mutual fund, other than the persons referred to in paragraph (a) above, or

(ii) if the mutual fund has only three directors, two of whom are the persons referred to in paragraph (a) above, all the directors of the mutual fund.

(2) Except in Ontario, if the regulator is satisfied that either or both of the chief executive officer or chief financial officer cannot sign a certificate in a simplified prospectus, the regulator may accept a certificate signed by another officer.

*[Note: In Ontario, section 58 of the Securities Act (Ontario) imposes similar requirements regarding who must sign the issuer certificate.]*

## PART 6 EXEMPTION

### 6.1 Grant of Exemption

(1) The regulator or the securities regulatory authority may grant an exemption from the provisions of this Instrument, in whole or in part, subject to such conditions or restrictions as that may be imposed in the exemption.

(2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

**6.2 Evidence of Exemption by Securities Regulatory Authority** - ~~Without~~(1) subject to subsection (2) and without limiting the manner in which the granting of an exemption under section 6.1 may be evidenced, an exemption from a provision of this Instrument other than from subsection 2.7(2) is evidenced by the issuance by the regulator of a receipt for a simplified final prospectus and annual information form, or an amendment to a simplified prospectus and annual information form, is evidence of the granting of the exemption from any form or content requirements relating to a simplified prospectus or annual information form if, a final fund facts document or an amendment to a final prospectus.

(2) The issuance of a receipt for a final prospectus or an amendment to a final prospectus is not evidence that an exemption has been granted unless

(a) the person or company that sought the exemption sent to the regulator, with the filing of a pro forma or preliminary simplified prospectus, fund facts document and annual information form, or at least 10 days before the issuance of the receipt in the case of an amendment, a letter or memorandum describing the matters relating to the exemption and indicating why consideration should be given to the granting of the exemption; and

(b) the regulator has not ~~sent written notice to the contrary to the person or company that sought the exemption before, or concurrent~~concurrently with, the issuance of the receipt; notice to the person or company that sought the exemption, that the exemption sought may not be evidenced in the manner set out in subsection (1).

**6.3 Existing Exemptions** – (1) Except in British Columbia, any exemption or waiver from, or approval under, securities legislation relating to the prospectus delivery requirements under securities legislation expires two years after the date that this Instrument comes into force.

(2) For greater certainty, subsection (1) applies only in relation to the prospectus delivery of mutual funds to which this Instrument applies.

#### Note to Reader

**In British Columbia, it is anticipated that any existing exemptions or waivers from, or approvals under, securities legislation relating to the prospectus delivery of mutual funds to which this Instrument applies will be revoked by order.**

## **PART 7 EFFECTIVE DATE AND TRANSITION**

**7.1 Effective Date** – This Instrument comes into force on ●.

**7.2 Transition** – (1) A mutual fund for which a preliminary simplified prospectus or *pro forma* simplified prospectus is filed, or for which a receipt is obtained, before the date that this Instrument comes into force is exempt from the filing requirements of this Instrument if it complies with the filing requirements under securities legislation in effect

(a) at the date of the issuance of a receipt for a preliminary simplified prospectus or the date of filing the *pro forma* simplified prospectus, as applicable, or

(b) at the date of issuance of a receipt for the final prospectus.

(2) For greater clarity, subsection (1) applies only in relation to the one time filing and receipt for a security of a mutual fund which occurs before the date that this Instrument comes into force.

(3) Despite section 7.1, the prospectus delivery requirements under securities legislation in effect before the date that this Instrument comes into force continue to apply to the distribution of a security of a mutual fund until two years after the date this Instrument comes into force.

(4) A simplified prospectus that is delivered or sent under subsection (3) must comply with the packaging requirements under Part 5 of the Instrument in effect before the date that this Instrument comes into force.

(5) Despite section 7.1, the withdrawal and rescission rights under securities legislation in effect before the date that this Instrument comes into force continue to apply to the distribution of a security of a mutual fund until two years after the date this Instrument comes into force.

(6) Despite section 7.1, the cancellation right under section 2.9 does not apply until two years after the date this Instrument comes into force.

### **Issues for Comment**

**6. Is the transitional period for delivery of the fund facts document appropriate? If not, what period would be appropriate and why?**

**7. Depending on the comments we receive, we may decide to proceed with finalizing some parts of the Instrument while continuing to consult on other parts. For example, we may be able to move forward sooner with the requirement to prepare and file a fund facts document and have it posted to the website. If this were to occur, we would provide a reasonable transition period before anyone has to comply with the fund facts document requirements and we would consider a shorter transitional period for delivery. What are your views on this approach? What period would be appropriate?**

**7.3 Transitional Delivery of Fund Facts Document** - (1) The prospectus delivery requirements under securities legislation that apply for a period of two years after the date that this Instrument comes into force may be satisfied by delivering or sending the most recently filed fund facts document prepared in accordance with Form 81-101F3 in the time prescribed under securities legislation.

(2) The withdrawal and rescission rights in effect before the date that this Instrument comes into force continue to apply to a fund facts document delivered or sent under subsection (1) until two years after the date this Instrument comes into force.

(3) For greater certainty, a fund facts document that is delivered or sent under subsection (1) must comply with the packaging requirements under subsection 5.4(3) of this Instrument.

**Note to Reader**

**If the necessary legislative amendments in some jurisdictions to preserve investor rights for delivery of the fund facts document are not in place for this transitional period, an alternative transitional approach may be to allow the fund facts document to be delivered with the simplified prospectus.**

**7.4 Initial Delivery of Fund Facts Document** - Despite Part 3A, a dealer must deliver or send the most recently filed fund facts document to a purchaser of a security of a mutual fund with the confirmation of trade for the first purchase of the class or series of securities of the mutual fund following the date the prospectus delivery requirements under the Instrument come into force.

**Note to Reader**

**If we decide to require delivery of the fund facts document for subsequent purchases with the confirmation of trade, this section will be removed.**

2. \_\_\_\_\_ This Instrument comes into force on ●.