

Annex C

Summary of Public Comments on Proposed Delivery Framework Implementation of Point of Sale (POS) Disclosure for Mutual Funds (June 19, 2009)

Table of Contents	
PART	TITLE
Part 1	Background
Part 2	Comments on: I) Issues for comment in the Notice and Request for Comment II) Issues for comment on the Instrument
Part 3	Comments on pre-sale delivery
Part 4	Comments on the Instrument
Part 5	List of commenters

Part 1 – Background

Summary of Comments

On June 19, 2009, the Canadian Securities Administrators (CSA) published a notice (Notice and Request for Comment) entitled *Implementation of Point of Sale (POS) Disclosure for Mutual Funds*, which proposed amendments (the 2009 Proposal) to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), Forms 81-101F1 and 81-101F2 (the Forms) and Companion Policy 81-101CP (the Companion Policy) (NI 81-101, the Forms and the Companion Policy, collectively, the Instrument) aimed at providing investors with more meaningful and effective disclosure. The comment period expired on October 17, 2009. We received submissions from 54 commenters, which are listed in Part 5.

The 2009 Proposal was designed to implement all of the elements of the point of sale disclosure regime set out in Framework 81-406 *Point of Sale Disclosure for Mutual Funds and Segregated Funds* (the Framework) published by the Joint Forum of Financial Market Regulators on October 24, 2008. The Instrument initially proposed, among other things, requirements for the production and filing of the fund facts document, investor rights in connection with the fund facts document and delivery of the fund facts document before or at the point of sale to an investor.

After considering all of the comments received on the 2009 Proposal, the CSA concluded to proceed with a staged implementation of the Framework, as set out in CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds* (the Status Report) published on June 18, 2010, and addressed only those comments related to the relevant stage at that time.

This document contains a summary of the comments and the CSA's responses relating to the parts of the 2009 Proposal that deal with pre-sale delivery of fund facts documents for mutual funds.

We have considered all comments received relating to pre-sale delivery of fund facts documents for mutual funds from the 2009 Proposal. We have taken these comments into account in our new proposal for pre-sale delivery of fund facts documents for mutual funds (the Proposed Amendments).

We note that, in comments responding to more recent CSA consultations related to mutual fund fees and standards of conduct for advisers and dealers, we have recently heard from a number of industry commenters that they are in favour of implementing POS principles to enhance consumer-focused regulation in advance of the CSA proceeding with those other policy initiatives. In particular, we have heard from some of these commenters that the POS disclosure initiative should be fully implemented and operational and assessed as to its success before additional regulatory change is introduced as potentially contemplated by the CSA consultations.

Part 2 - Comments on issues for comment

I) Comments on issues for comment in the Notice and Request for Comment

<u>Issue</u>	<u>Comments</u>	<u>Responses</u>
<p>1. We seek feedback on whether you agree or disagree with our perspective on the benefits of the Instrument.</p> <p>We particularly seek feedback from investors.</p>	<p><i>Support for the benefits of the 2009 Proposal</i> Investor advocate commenters told us they strongly support the goal of the CSA to provide investors with clear, meaningful and simplified information when the investor needs it most: before or at the time they make their decision to invest their savings in a mutual fund.</p> <p>Only a few industry commenters agreed with the benefit of investors obtaining information about a prospective investment prior to making an investment decision.</p> <p><i>Disagreement with benefits of the 2009 Proposal</i> Many industry commenters told us there is limited benefit to delivering the fund facts document to an investor before a trade.</p> <p>A number of industry commenters remarked that the assumed benefits of pre-sale delivery are not supported by the research about the</p>	<p>We continue to be of the view that pre-sale delivery of the fund facts document will provide investors with the opportunity to make more informed investment decisions by giving investors key information about a mutual fund, in a language they can easily understand, at a time that is most relevant to their investment decision.</p> <p>We disagree with the commenters who indicated that pre-sale delivery for mutual funds will result in investors being sold alternative products. We expect that dealers, in complying with their suitability obligations, will continue to recommend mutual funds to investors and will not simply recommend other products instead of mutual funds on assumptions related to the level of compliance burden in the sales process for a particular product.</p> <p>In terms of creating a level playing field</p>

	<p>investor’s decision making process.</p> <p>Another industry commenter remarked that the benefit of pre-sale delivery will ultimately be determined by investors, who will simply seek out substitute products if they find that pre-sale delivery of a fund facts document obstructs their ability to complete a transaction.</p> <p>Many commenters urged us to consider pre-sale delivery for other riskier investment products rather than focussing on the mutual fund industry, which is a comparatively safe and regulated industry.</p>	<p>in the disclosure delivery regime for different types of investment products, we expect that disclosure for all types of investment products will evolve with time, and we anticipate that point of sale disclosure for mutual funds may provide a platform for further future regulatory reform.</p>
<p>2. We seek feedback on whether you agree or disagree with our perspective on the cost burden of the Instrument.</p> <p>Specifically, we request specific data from the mutual fund industry and service providers on the anticipated costs and savings of complying with the Instrument for the mutual fund industry.</p>	<p><i>Costs and complexity of compliance</i></p> <p>Many industry commenters stressed that the compliance procedures and back-office systems of most mutual funds managers and dealers do not presently facilitate tracking the various delivery obligations and options contemplated in the Instrument.</p> <p>While one industry commenter remarked it may be relatively straightforward for many dealers to implement the delivery of the fund facts document with the trade confirmation, most said the proposed Instrument with its selective waivers and</p>	<p>Our original proposal was designed to be responsive to comments that a “one-size-fits-all” delivery model could not appropriately reflect the different types of relationships that dealers have with their clients and the various business models of dealers. The 2009 Proposal, therefore, sought to accommodate the various differences while still meeting investor needs. In response to comments, however, we have simplified the delivery regime by eliminating the various decision points that would need to be tracked in order to determine when delivery would need to occur. We are of</p>

	<p>exemptions requires the implementation of costly compliance and audit systems to accommodate such processes.</p> <p>For example, a dealer association remarked that the Instrument will require its members to query and track, among other things:</p> <ul style="list-style-type: none"> • Was the trade advisor recommended or client initiated? • Was the trade an initial or subsequent purchase? • Is the purchase a money market fund? • Was the fund facts document delivered at or before the point of sale? • Was delivery waived? • Was the fund facts document brought to the attention of the investor? <p>According to one commenter, the creation and maintenance of such systems will result in significant costs including: training, monitoring for compliance, record keeping and producing and updating the fund facts document. All of these requirements will disrupt the sales process, increase compliance costs and ultimately disadvantage the mutual fund industry and increase cost to investors.</p>	<p>the view that this more streamlined and simplified delivery regime should address some of the cost and complexity concerns that were previously raised. Please see Annex A for further information regarding the changes that are being proposed in the delivery model.</p> <p>We also note that technology has advanced considerably since the 2009 Proposal. These innovations have increased the means by which fund facts documents can be delivered or sent to, and received by, investors.</p> <p>There are also a number of service providers who have been actively engaged in developing solutions aimed at assisting dealers in complying with pre-sale delivery requirements. We understand that these service providers are able to offer technology solutions that allow for that creation, production, distribution, delivery, tracking and auditing of fund facts documents.</p> <p>In our view, these technological advances should help further mitigate factors affecting the cost and complexity of compliance.</p>
--	--	---

	<p>We were further told that the ability to deliver electronically will not sufficiently mitigate delivery costs, as dealers and advisers will still be required to compile and maintain lists of hundreds of links in order to have them readily available to send to clients. Furthermore, another commenter remarked that they expect the electronic delivery mechanisms contemplated by the Instrument will have a high fixed cost and a very low variable cost, resulting in significant economies of scale for larger mutual fund manufacturers that will create an unfair competitive disadvantage for independent mutual fund manufacturers.</p> <p><i>Disagreement with stated cost burden</i> Many industry commenters told us that, although they are unable to provide detailed information about costs at this time, they believe the CSA has underestimated the systems infrastructure, development costs and administrative process that will be involved in moving to pre-sale delivery requirement for mutual funds.</p> <p>A few commenters went on to say that any minimal benefit that pre-sale delivery of the fund facts document would provide is eclipsed by the costly overhaul of the sale</p>	<p>It is important to note that, as we have throughout the various stages of the POS disclosure initiative, we will continue to meet with the representatives of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) to discuss compliance issues and to identify possible implementation issues.</p>
--	--	--

	<p>process which would be required.</p> <p><i>Agreement with stated cost burden</i> A service provider stated that orienting manufacturers towards digital production as a more expeditious means of delivery may reduce print, distribution and environmental costs over the longer term. This same service provider also suggested compliance costs could be contained through the outsourcing of the delivery obligation outside existing dealer systems as well as minimizing integration into back office protocols for the purposes of compliance.</p> <p><i>Specific cost estimate data</i> Based on the proposed Instrument, one industry commenter, a mutual fund manufacturer and dealer, gave the following cost estimates:</p> <ul style="list-style-type: none"> • Distribution costs to develop or enhance the information delivery systems would be \$1,800,000. The ongoing costs to maintain the new system would cost approximately \$200,000 per year. • Compliance/staff costs in overseeing and maintaining the delivery regime could initially cost our related dealers \$500,000. On-going compliance costs would include increased staffing and expenses required to manage the new 	
--	--	--

	systems and would cost such dealers approximately \$150,000 per year.	
II. – Comments on issues for comment on the Instrument		
<u>Issue</u>	<u>Comments</u>	<u>Responses</u>
<p>2. The intention of the requirement to ‘bring the fund facts document to the attention of the purchaser’ is to allow the investor to link 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?</p>	<p><i>Compliance with requirement</i> A number of industry commenters told us that the Instrument and the Companion Policy provide insufficient guidance on how to evidence that the fund facts document has been “brought to the attention of” investors, or what constitutes “adequate records” for this purpose.</p> <p>These commenters said the concept of “bringing to the attention” is problematic because there is no precedent.</p> <p>One commenter indicated that the requirement and the guidance would introduce a whole new compliance process at an unnecessary cost. Another commenter added that the requirement diverges greatly from the current standard of delivery and will pose huge challenges in developing appropriate standards for tracking and proving compliance with the requirement.</p>	<p>We do not propose to proceed with this element of the 2009 proposal. However, we do expect that compliance with fund facts delivery will not be a perfunctory process and that clients will be made aware that they are being provided with a fund facts document.</p> <p>As we have stated throughout the various stages of the POS disclosure initiative, we do not anticipate proceeding with an access equals delivery approach.</p>

	<p>If the requirement is retained, commenters said the CSA and the self-regulatory organizations (SROs) must be more specific about what is contemplated by the requirement and better identify how the CSA envisions dealers satisfying the requirement.</p> <p><i>Requirement is not necessary and should be removed</i></p> <p>A number of industry commenters told us that delivery of the fund facts document, coupled with suitability requirements (including know-your-client and know-your-product), should be sufficient. As a result, many of these commenters recommended the requirement to “bring to the attention of the purchaser” be removed.</p> <p>It was further suggested that advisors should only have to provide information on the existence of the fund facts document when a client waives pre-sale delivery and chooses to receive the fund facts document with the trade confirmation.</p> <p>To address the CSA's concern about investors understanding the purpose of the fund facts document, one commenter further suggested dealers could include general disclosure explaining the purpose</p>	
--	--	--

	<p>of the fund facts document in client account opening documentation.</p> <p>We were also told that where dealers are required to provide investors with the fund facts document, delivery itself should constitute bringing the fund facts document to the client's attention.</p> <p><i>Adds complexity and increases liability for dealers</i></p> <p>We were told that the extra layer of complexity at the time of an initial purchase will increase the risk of the transaction not meeting the requirements and therefore increase liability for the dealer.</p> <p>One industry commenter remarked that implementation of this requirement will become a significant supervisory and compliance issue.</p> <p>Another commenter added that they believe that there will be many circumstances in which evidence of “bringing to the attention of the purchaser” will be very difficult to document and verify, and can only envisage evidence being in the form of a written client acknowledgement which will further delay a trade, or through a taped phone trading line, which is only practical for the larger brokers</p>	
--	---	--

	<p><i>Specific suggestions</i></p> <p>One industry commenter suggested that whether the fund facts document is delivered prior to or following the sale, investors should be provided with similar information, which should be set out in the Companion Policy, if not in the Instrument itself, so that there will be no confusion as to what is required. This commenter suggested the information to investors include:</p> <ul style="list-style-type: none">• the existence of the fund facts document (and the investor’s right to receive it prior to the trade),• basic information in the fund facts document, and• the cancellation right. <p>Other commenters told us the meaning of ‘linking’ the fund facts document to the purchase set out in the Companion Policy is unclear, and similarly suggested the dealer’s responsibility be more clearly set out.</p> <p>Still another commenter suggested the requirement “to bring the fund facts document to the attention of the purchaser” be satisfied by an ‘access equals delivery’ approach, achieved by directing an investor’s attention to the relevant fund facts</p>	
--	--	--

	documents on the fund manager’s website.	
<p>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?</p> <p>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?</p>	<p>A few commenters asked the CSA to outline the reasoning behind choosing delivery of the fund facts document with trade confirmations for subsequent purchases and an annual option to receive the fund facts document.</p> <p><i>Support for delivery of the fund facts document for subsequent purchases</i></p> <p>We received support from service providers for the fund industry, as well as some investor advocate and industry commenters, for delivery of the fund facts document for subsequent purchases with the confirmation of trade.</p> <p>One investor advocate commenter told us that the fund facts document should be delivered for all purchases, in addition to annual delivery of all fund facts document held, to address changes in the product and in the personal risk tolerance/ circumstances of the investor.</p> <p>An industry commenter agreed, noting that while delivery of an updated fund facts document with trade confirmation for subsequent purchases would be more practical, investors should still be able to receive a fund facts document if they wish</p>	<p>We do not propose to proceed with this element of the 2009 Proposal. Instead, we propose to require delivery with subsequent purchases unless the investor has already received the most recent fund facts document. This is consistent with the current prospectus delivery requirement. It will also ensure that investors have the most up-to-date information in connection with the purchase of securities of a mutual fund. We also propose that delivery of the fund facts document not be required in respect of subsequent purchases under a pre-authorized purchase plan provided that the dealer provides initial and subsequent annual notices to the purchaser that includes information on how to access and request the fund facts document. This is consistent with existing exemptive relief that has been granted in respect of prospectus delivery for pre-authorized purchase plans. We are not proposing a similar exception for money market fund purchases, switches under asset allocation plans, or for fund mergers and reorganizations. We do not think that commenters have provided sufficient rationale for such requests.</p>

	<p>to see it again. This commenter suggested the Instrument provide that either method of providing an updated fund facts document to investors be permitted.</p> <p>Two service providers who commented said that following a process similar to the current standard practice of suppressing delivery of the simplified prospectus for subsequent trades where an investor has already received the current version would simplify the implementation of fund facts document delivery and achieve cost efficiencies provided, as one of these commenters noted, that compliance around delivery is left at simple receipting of physical or electronic documents.</p> <p>While a commenter stated that setting up similar systems to deliver the fund facts document with trade confirmations for subsequent purchases would present steep operational challenges , a key service provider disagreed, stating that, if adopted, this approach would:</p> <ul style="list-style-type: none"> • provide investors with meaningful current information associated with a mutual fund purchase, • eliminate the annual delivery option and save the industry the substantial investment that would be required to 	
--	---	--

	<p>build a new fulfillment process, and</p> <ul style="list-style-type: none"> • simplify implementation of the proposed rules as only minimal infrastructure changes related to the suppression process would be required to support the existing subsequent purchase suppression logic (i.e. current system for the simplified prospectus) based on the delivery history of a fund facts. <p><i>Opposition to delivery of the fund facts document for subsequent purchases</i> A number of industry commenters as well as some investor advocate commenters told us that they agreed with the existing requirements and did not support delivery of the fund facts document for subsequent purchases.</p> <p>One industry commenter told us that varying delivery obligations depending on the type of account held, how the purchase is initiated and whether the purchase is an initial or subsequent investment, are positive changes to the original proposals, and expressed disappointment that the CSA is re-opening whether the fund facts document should be delivered for subsequent purchases.</p> <p><i>No additional benefit</i> A number of other industry commenters</p>	
--	--	--

	<p>stated investors are often overwhelmed and annoyed by the number of unwanted documents they receive, which will be exacerbated by a subsequent purchase delivery requirement.</p> <p>One commenter told us that if investors have already received the fund facts document and are sufficiently pleased with the performance of the fund as to make an additional purchase, there is no reason to provide the fund facts document with the trade confirmation for each subsequent purchase.</p> <p>Another industry commenter added that absent a material change or an updated fund facts document, delivery of the fund facts document for all subsequent purchases would provide little additional benefit.</p> <p>Several industry commenters told us that a delivery requirement for subsequent purchases of the same securities of a fund would be excessive and would overlap with existing continuous disclosure requirements.</p> <p>Also a few industry commenters noted that the annual delivery option seems somewhat inconsistent with the objective of delivering the fund facts document, which is to assist in</p>	
--	---	--

	<p>the purchase decision process, and is not intended to be a continuous disclosure document. One of these commenters encouraged the CSA to educate investors on how to receive continuous disclosure information about mutual funds.</p> <p>Other industry commenters remarked that they are not convinced that an annual delivery option will be very useful to investors, given that very few investors request annual mailings of its management reports of fund performance (MRFP) and/or financial statements. Some of these commenters suggested the annual option should be removed entirely.</p> <p>One of the commenters additionally noted that removal of the annual option to receive the fund facts document should not be tied to the inclusion of the subsequent purchase requirement.</p> <p><i>Preference for annual delivery option</i> Several industry commenters expressed that, if they had to choose, they preferred an annual delivery option to delivery for subsequent purchases, consistent with the current requirements in National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i> with respect to the delivery of the</p>	
--	---	--

	<p>annual and interim financial statements and MRFPs.</p> <p>One of these commenters stated that the annual option to receive the fund facts document will sufficiently raise investor awareness of their ability to obtain a further copy of the fund facts document.</p> <p>One investor advocate commenter added that an annual update should be adequate in the absence of material changes.</p> <p><i>Compliance</i> We were told that should we require delivery for subsequent purchases, in order to facilitate compliance with such a requirement, delivery should be with the trade confirmation rather than pre-sale..</p> <p>Several industry commenters also remarked that, should delivery for subsequent purchases be required, there should be exemptions for pre-authorized purchase plans and other similar plans, money market fund purchases, switches under asset allocation plans and for fund mergers and reorganizations.</p> <p>We were also asked to clarify whether, in the context of subsequent purchases, delivery</p>	
--	--	--

	<p>would be required following the filing of an amendment of the fund facts document or the annual renewal.</p>	
<p>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.</p> <p>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?</p> <p>Are there alternatives to this approach?</p>	<p>A commenter noted that based on research, almost 63% of Canadian mutual fund investors would rather have the choice to receive fund information before or after a new fund purchase.</p> <p>An investor advocate and a SRO commenter stated they do not believe that investors should be permitted to waive delivery of the fund facts document, which is an essential source of important information for investors.</p> <p>Another investor advocate commenter remarked that they hoped the number of instances where an investor would express a need to complete a purchase immediately would be a rare, given that mutual funds are long-term investments.</p> <p>A service provider commented that delivery of the fund facts document should be made as close as possible to the point of sale in order to capture the spirit under which the 2009 Proposal is being implemented, and so</p>	<p>As part of Stage 2 of the POS disclosure initiative, we tested the proposed changes to the fund facts document with investors in Fall 2012. In the final report, “<i>CSA Point of Sale Disclosure Project: Fund Facts Document Testing</i>,” prepared by Allen Research Corporation, half of the mutual fund investors tested indicated that they would like the fund facts document sent to them before meeting with their advisers and a third of them indicated that they would like it presented by their adviser during the meeting but before purchase.¹ These findings would suggest that there is strong preference for pre-sale disclosure.</p> <p>We acknowledge that there may be circumstances that make pre-sale delivery of the fund facts document impracticable. As a result, similar to what we set out in our consultation question contained in the 2009 Proposal, we are proposing an exception to pre-sale delivery that would</p>

¹ The final report, “*CSA Point of Sale Disclosure Project: Fund Facts Document Testing*,” is available on the websites of the Ontario Securities Commission and the Autorité des marchés financiers at www.osc.gov.on.ca and www.lautorite.qc.ca, respectively.

	<p>as to not dilute the benefit of investor disclosure.</p> <p>Most industry commenters were in favour of this approach, telling us they were encouraged by the CSA’s recognition that some investors will want their purchase completed in a timely manner.</p> <p>Many industry commenters told us this modification will reduce the level of frustration that would otherwise exist for many investors. Telephone sales or order instructions via electronic means are examples where there should be an exemption at the option of the investor.</p> <p>One industry commenter said the option for an oral waiver to be completed and then clearly documented for all types of mutual fund purchases, with delivery of the fund facts document with the trade confirmation to follow, is reasonable.</p> <p><i>Increased complexity</i> We were told by a number of industry commenters that it will be difficult for an advisor to establish and record that (i) it was not reasonably practicable for the dealer to deliver the fund facts document prior to the trade; (ii) the investor “expressly</p>	<p>permit post-sale delivery of the fund facts document in circumstances where the purchaser indicates that the purchase has to be completed immediately, or by a specified time, and it is not reasonably practicable for the dealer to complete delivery of the fund facts document within the timeframe specified by the purchaser. In such circumstances, the dealer would be required to provide certain information, including verbal disclosure of certain information contained in the fund facts document. We are seeking specific feedback on whether the information to be conveyed to investors is adequate or whether any modifications are necessary. The fund facts document must then be provided to the purchaser within two days of purchase.</p> <p>We agree with investor advocates that the number of instances where it would be necessary to rely on this exception should be limited. Accompanying guidance in the Companion Policy highlights our expectation that pre-sale delivery would be the primary mechanism of delivery and that post-sale delivery would be used only in instances where pre-sale delivery is impracticable.</p>
--	--	--

	<p>communicated” that they wanted the purchase to be completed immediately; and (iii) that the investor then received oral communication about the fund facts document.</p> <p>The evidentiary process for waivers, said one of these commenters, is likely to be complex, cumbersome and will result in a lack of appropriate evidence due to the number of steps now incorporated into the trading process. This will significantly increase the implementation challenges that dealers and advisors will face.</p> <p>We were told further guidance on compliance from the SROs would be needed.</p> <p><i>Information to be conveyed</i> Most industry commenters recommended that investors be informed of the existence of the fund facts document, the ways in which it can be reviewed and delivered, an explanation of the rescission right, as well as basic information about a fund, such as its objective, strategies, nature of its holdings, fees and recent performance, that can easily be communicated orally by an advisor.</p> <p>One commenter even suggested that the</p>	<p>Although we anticipate that this exception is most likely to be used in instances where the dealer and the client are not meeting face-to-face, we have kept the exception broad since we cannot anticipate all the circumstances that might arise which would make pre-sale delivery impracticable. We note, however, that we are not of the view that it will always be impracticable to deliver the fund facts document where methods of distance communication, such as telephone and e-mail, are being used. We expect that dealers will make an effort to determine whether pre-sale delivery is possible and will not automatically default to post-sale delivery in such circumstances.</p> <p>We recognize dealers will express concerns regarding compliance with the proposed requirements to utilize the exception to pre-sale delivery. As noted in the Companion Policy, dealers will be required to maintain adequate records relating to fund facts delivery generally, whether pre-sale or post-sale. In respect of post-sale delivery, the expectation will be that dealers will maintain adequate records to evidence that satisfactory disclosure about the fund</p>
--	---	---

	<p>general disclosure regarding the fund facts document could be included in the account opening documentation.</p> <p>We were told that the information should be allowed to be conveyed in the same manner that the request by the investor is made (i.e., in an e-mail reply).</p> <p>A few industry commenters further suggested that the information that should be required to be conveyed should be similar to what is required with respect to the proposed waiver provisions for money market funds and client-initiated purchases.</p> <p>If a waiver with each purchase is required, one commenter stressed that information about the fund facts document should be communicated orally, since requiring the waiver in written form would undermine the rationale for this exception. We were also told by another industry commenter that oral disclosure should not be prescribed. Rather, dealers should be able to determine what they believe to be sufficient oral disclosure in each circumstance.</p> <p>Still another industry commenter said consistent with National Instrument 31-103</p>	<p>facts document has been provided to purchasers. As noted in the Companion Policy, such records should indicate why delivery of the fund facts document was impracticable in the circumstances. It is our expectation, however, that dealers will follow their current practices to maintain evidence of required disclosures to sufficiently document delivery of the fund facts document. As a result, written consent from a client will not be necessary in connection with post-sale delivery. A dealer may decide of its own initiative, however, to adopt such a practice.</p> <p>As noted earlier, as we have throughout the various stages of the POS disclosure initiative, we will continue to meet with the representatives of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) to discuss compliance issues and to identify possible implementation issues. Based on conversations to date, we expect that dealers will be able to follow their current practices of maintaining evidence of required disclosures to document delivery of the fund facts</p>
--	---	---

	<p><i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i> (NI 31-103), dealers should only be required to maintain notes to document whether a client waived receipt of the fund facts document.</p> <p>We also heard from an investor advocate commenter who recommended that investors be given an oral description of the fund and how it fits into the portfolio, including the initial and ongoing costs of the fund, its worst 12 month performance, any liquidity constraints and the advisor's position on investor suitability for the portfolio</p> <p>Alternatives</p> <p>One industry commenter thought that satisfaction of either of the two conditions, not both, would be appropriate, i.e. where the investor expressly communicates they want the purchase to be completed immediately or it is not reasonably practicable for the dealer to deliver or send the fund facts document before the purchase is completed. .</p> <p>Most industry commenters, however, suggested that if an investor wishes to use the waiver, it should be the investor's right to waive, and the test for the waiver should be based solely upon the investor wishing to</p>	<p>document.</p> <p>We disagree with the suggestion that it should be sufficient to include disclosure in the account agreement to indicate that, in situations where it is possible for post-sale delivery of the fund facts document to occur, delivery will automatically occur with the trade confirmation. As a result, we continue to make clear in the Proposed Amendments that a dealer cannot rely on standing instructions from the purchaser to effect post-sale delivery of the fund facts document.</p>
--	--	--

	<p>complete the transaction immediately, regardless of immediacy or practicality of delivery. This approach, said the commenters, would place the right to choose solely in the hands of investors.</p> <p>Other industry commenters proposed that, in lieu of the requirement to solicit a waiver for each and every such transaction, there should be an obligation to include in the account agreements disclosure that delivery of the fund facts document in these circumstances will always be with the trade confirmation, thereby eliminating the need to ask the client for each and every trade.</p>	
<p>6. Is the transitional period for delivery of the fund facts document appropriate? If not, what period would be appropriate and why?</p>	<p>The investor advocate commenters we heard from urged the CSA to move forward as expeditiously as possible with pre-sale delivery so that investors can benefit from disclosure that is clear, streamlined, and user-friendly.</p> <p>Another commenter recommended that the transition period for pre-sale delivery of the fund facts document be moved from two years to six months.</p> <p>Still, the majority of industry commenters told us that adopting and complying with the</p>	<p>In response to comments, we decided to implement the POS disclosure initiative in stages as set out in the Status Report. We believe that such an approach has provided industry with ample time to prepare for pre-sale delivery of the fund facts document, which represents the final stage of the POS disclosure initiative. In addition, modifications that we have made to the 2009 Proposal to simplify the delivery regime should make it easier for dealers to make any necessary changes to compliance procedures and back-office systems.</p>

	<p>various elements of the Instrument will take time to accomplish, irrespective of how the manufacturer or dealer approaches its operational implementation and we must give them sufficient time to come up with the compliance and technological systems that are necessary to ensure compliance.</p> <p>One industry commenter expressed support for the proposed transition period and indicated that two years is a reasonable estimate as to how long it would take the industry to be ready.</p> <p>Many industry commenters remarked that until the pre-trade delivery issues are resolved, including the establishment of compliance procedures and back-office systems that will enable interfaces with third party service providers to facilitate delivery in accordance with the pre-sale delivery exemptions, it is uncertain whether two years will be sufficient. One of these commenters remarked that it was premature to comment on whether the proposed transition period is sufficient.</p> <p>Some industry commenters, including a national trade association for the investment funds industry, went on to say that discussions regarding a transition period</p>	<p>We propose a one year transition period for pre-sale delivery of fund facts documents following the effective date of the Proposed Amendments. This will provide dealers with one year from the time of publication of the Proposed Amendments in final form to make any systems changes necessary to comply with the Proposed Amendments.</p>
--	--	---

	<p>should be deferred until such a time as the final form of the Instrument is known and a fully functioning, universally available, cost effective fund facts documents clearing house / central repository/delivery mechanism has been established. We were told a central industry electronic warehouse for fund facts documents is critical before the transition period expires.</p> <p>Yet, there were a few industry commenters who generally supported the two-year transition period for pre-sale delivery of the fund facts documents, although they noted it may be too short given the significant costs and technological issues that are associated with implementation.</p> <p>One of these commenters said there has not been sufficient study of the technology that would need to be developed and implemented for all market participants to comply with the Instrument. Accordingly, they cannot definitively comment on whether the transition period is sufficient.</p> <p>Another industry commenter remarked that a two year transition period would be the minimum time that would be required.</p>	
--	--	--

Part 3 - Comments on pre-sale delivery			
<u>Issue</u>	<u>Sub-Issue</u>	<u>Comments</u>	<u>Responses</u>
General comments on delivery	<i>General comments</i>	<p>Support for pre-sale delivery of the fund facts document continues to be divided among industry and investor advocate commenters.</p> <p>Almost all industry commenters continued to express varying concerns with pre-sale delivery, particularly around cost and complexity, and the focus exclusively on mutual funds, with many endorsing the submissions made by their respective industry organizations on the Instrument.</p> <p>One commenter noted that the practicalities of the 2009 Proposal need additional exploration and various alternatives to be considered before a formal rule is developed.</p> <p>Investor advocate commenters, on the other hand, reiterated their strong support for providing investors with clear, meaningful and simplified information before or at the time they make their decision to invest.</p>	<p>We remain committed to the principles set out in the Framework for providing investors with key information, in language they can easily understand, about a mutual fund at a time that is most relevant to their investment decision.</p> <p>We have revisited the approach taken in the 2009 Proposal with respect to pre-sale delivery of the fund facts document, informed by the regulatory regimes of other jurisdictions, who have implemented pre-sale delivery requirements, and by the comments received on the 2009 Proposal.</p> <p>To address the feedback we received related to complexity and cost of compliance, the CSA has decided to proceed with a simpler, more consistent approach to pre-sale delivery of the fund facts document.</p>

		<p>We also heard from a service provider of plain language communications who remarked that the CSA's consideration to allow exceptions to the principle of delivery before the decision to buy a fund will cause the 2009 Proposal to fall short of a significant investor protection initiative.</p> <p>For further general comments on pre-sale delivery, see: Part 2, I. - Comments on issues for comment in the Notice and Request for Comment.</p>	
	<p><i>Disruption of the sales process</i></p>	<p>A number of industry commenters reiterated their earlier remarks that requiring pre-sale delivery of the fund facts document will significantly disrupt the ability of advisers to meet the needs of their clients and would be a complete overhaul of the sales process for mutual funds.</p> <p>One of these commenters noted that if the CSA requires pre-sale delivery of fund facts documents, broad exemptions should be allowed in situations where a client does not have immediate access to the fund facts document and wishes to complete a trade.</p> <p>A number of industry commenters further</p>	<p>As noted earlier, we recognize that there may be circumstances that make pre-sale delivery of the fund facts document impracticable. As a result, we are proposing an exception to pre-sale delivery that would allow the fund facts documents to be delivered within 2 days of the purchase provided certain requirements are met. This should help minimize the potential for disruptions to the sales process. We reiterate our expectation, however, that post-sale delivery of the fund facts document will be the exception rather than the norm.</p>

		<p>told us that many investors will object to the delay in placing their trade, the inconvenience of having to wait and the repeated interactions with their advisor to effect the trade under the 2009 Proposal. One commenter said, some of those investors may make their investments without the benefit of advice in order to trade immediately, or may choose alternative investments.</p> <p>We also heard that the Instrument will put significant administrative pressure on the client/advisor relationship and make it more cumbersome for investors in a business that is already administratively burdened.</p> <p>A few commenters noted that rural investors would be disproportionately impacted by the 2009 Proposal as electronic means are often either unavailable or expensive, rendering electronic delivery impractical for advisors in dealing with their rural based clients.</p>	
	<p><i>Regulatory arbitrage</i></p>	<p>We were asked by an investor advocate commenter to consider how pre-sale delivery of fund facts documents for mutual funds can provide a platform for future regulatory reform for other types of investment funds. This commenter urged</p>	<p>As noted earlier, we disagree with the notion that pre-sale delivery will cause mutual funds to become a less attractive product for both investors and for dealers and their representatives. With respect to investors, we think the</p>

		<p>us, however, to proceed with the 2009 Proposal for mutual funds, agreeing that it can provide a platform for future regulatory reform.</p> <p>Yet, industry commenters again stressed that they have significant concerns about pre-sale delivery of fund facts documents from a competitive standpoint, since the 2009 Proposal will not apply to ETFs, other investment funds not subject to NI 81-102, as well as other competitive products such as stocks, bonds, options, commercial paper including asset backed commercial paper and linked GIC's . This, noted one industry commenter, could prove to be the most significant cost of the initiative over time.</p> <p>We were told that pre-sale delivery will make purchasing mutual funds and segregated funds far more cumbersome to purchase, and ultimately will make mutual funds a far less attractive investment option. The same commenter stated that the 2009 Proposal will create an incentive for advisors and investors to take on a higher risk profile by investing in riskier non-mutual fund products.</p> <p>In fact, an independent review committee</p>	<p>Proposed Amendments will provide investors with the opportunity to make more informed investment decisions by giving them key information about a mutual fund, in language they can easily understand, at a time that is most relevant to their investment decision.</p> <p>With respect to dealers, we reiterate our view that dealers, in complying with their suitability obligations, will continue to recommend mutual funds to investors and will not simply substitute mutual funds for another product on the basis of assumptions related to the level of compliance burden associated with pre-sale delivery.</p> <p>As noted earlier, we expect disclosure for all types of investment products that fall within the securities regulatory regime will evolve with time, and we anticipate that point of sale disclosure for mutual funds may provide a platform for further future regulatory reform.</p>
--	--	---	--

		<p>asked for clarification on why the CSA believe that the additional step of delivery of a fund facts document is required before investors can make an initial investment in a mutual fund, when the securities regulatory regime for mutual funds far exceeds the regulation of other investment products. Some industry commenters agreed, noting that the disclosure requirements of many other investment products are not at the same level as the current mutual fund disclosure regime.</p> <p>Industry commenters told us that they expect the end result of the 2009 Proposal to be that dealers and advisors will favour non-mutual fund products that will be easier to sell, especially on short notice, and to discourage investors, diverting them to other delivery channels and products.</p> <p>Even a moderate shift of Canadian investor assets to alternative product choices as a result of the different requirements around the sale process, remarked one commenter, should be cause for regulatory concern.</p> <p>Many of these industry commenters requested that if the CSA proceeds, pre-sale delivery requirements should be simultaneously imposed on other types of</p>	
--	--	---	--

		<p>investment fund products.</p> <p>We were told imposing pre-sale delivery on other types of investment fund products would:</p> <ul style="list-style-type: none"> • prevent mutual funds from being used as a test case for the new legislation, • create a level playing field whereby all products are subject to the same disclosure requirements, which will in effect negate the competitive disadvantage placed on mutual funds, and • extend the benefits of this legislation to all products, thereby enhancing investor protection. 	
	<p><i>Reduced product choice</i></p>	<p>A number of industry commenters reiterated their earlier remarks that pre-sale delivery will make it more difficult for advisors and dealers to distribute a wide selection of mutual funds. In particular, a number of industry commenters told us that to ensure that they can effectively deliver the fund facts document and effect transactions on a timely basis for their clients, advisors will be forced to narrow their “product shelf”. This, said the commenters, will leave investors, especially for those who reside outside of urban centres, with fewer products from</p>	<p>We think the wide range of options available for delivering the fund facts document provides dealers with sufficient flexibility to accommodate existing business models. We were encouraged to hear from a service provider to the mutual fund industry that the technology is available to assist in the production, distribution and delivery of fund facts documents.</p>

		<p>fewer companies.</p> <p>Noted another industry commenter, the result of this is mutual fund manufacturers needing to consolidate their product offerings in a way that limits the options available to investors.</p> <p>It was further stressed that reduced product choice will particularly disadvantage smaller dealers and their advisors. This could limit the competitiveness of the mutual fund industry and the range and innovation of mutual fund products in the marketplace.</p> <p>Finally, one commenter questioned whether the resulting reduced product choice is consistent with the CSA's broader policy objectives.</p>	
	<p><i>Impact on independent fund companies</i></p>	<p>Independent fund managers reiterated their concern that they face the most risk from the 2009 Proposal, as independent dealers may not want to manage such a large volume of documents and therefore may reduce the number of funds or series they offer.</p> <p>We were reminded that a significant portion of Canadian mutual funds rely on</p>	<p>As noted earlier, technology has advanced considerably since the 2009 Proposal. There are a number of service providers that have created automated programs and applications for pre-sale delivery of fund facts documents. These innovations have increased the means by which fund facts documents can be delivered or sent to, and received by, investors. Overall, we continue to</p>

		<p>third party distributors, which often deal with their clients by telephone or via other non-face-to-face communications. These distributors, and the independent fund companies they are affiliated with, said a number of commenters, will be disproportionately impacted by the 2009 Proposal, since it will be more cumbersome for them to comply with pre-sale delivery than bank-owned distributors who have the benefit of meeting with clients and facilitating personal delivery much more readily.</p> <p>We were told that since banks have the ability to offer investors a variety of non-mutual fund financial services, independent fund companies will be put at a significant disadvantage. One commenter also noted that banks with branch networks can share overhead costs and facilitation costs.</p> <p>One of these commenters remarked that without additional, regulatory changes affecting other products, mutual funds risk becoming a product offered predominantly by providers who have captive distribution.</p> <p>Added one commenter, there will be a significant temptation for those who</p>	<p>believe that the potential benefits of the changes to the disclosure regime for mutual funds, as contemplated by the Proposed Amendments, are proportionate to the costs of making them.</p> <p>If you disagree with our view that the costs will be incremental and/or one-time costs, we request specific data from the mutual fund industry and service providers on any anticipated costs.</p>
--	--	--	---

		operate in the independent channel to reduce the number of mutual funds they offer and reduce the number of fund companies with whom they do business.	
	<i>Failure to recognize the role of advisers</i>	<p>A number of industry commenters again expressed concern that pre-sale delivery calls into question the merits/benefits of professional financial advice.</p> <p>One commenter said, the 2009 Proposal create an unlevel playing field with the advantage going to the non-advice distribution channels.</p> <p>Several commenters told us that disclosure about a particular product is important, but equally, if not more important, are the principles that dealers and their registered representatives must follow when making recommendations to their clients. As a result, the fund facts document may be less important to the client in situations when they are following their advisor's recommendations.</p> <p>We were further told that with the renewed emphasis on dealers in NI 31-103, the CSA puts far too high an importance on disclosure in the context of investors' decision-making and fails to acknowledge</p>	<p>We are no longer proposing an exemption from pre-sale delivery of the fund facts document for discount brokers so we anticipate that this should address concerns related to the possible creation of an uneven playing field between the advice distribution channel and the non-advice distribution channel.</p> <p>In response to commenters who said that we have failed to recognize the role of advisers, we stress that nothing in the Proposed Amendments is intended to detract from the role of the adviser. The focus of this initiative is to develop a more effective disclosure regime for mutual funds.</p> <p>We think pre-sale delivery builds on an adviser's existing obligation to determine suitability of all mutual fund purchases. We also anticipate that the fund facts document will become a tool used by advisers to assist in the sales process and will help encourage a better dialogue between clients and their</p>

		<p>the overall regulatory framework.</p> <p>One commenter stated investors may see the fund facts document as a substitute for qualified, professional investment advice and that this could lead them to take a “do-it-yourself” approach, since execution-only transactions and investor-initiated transactions do not require the proposed disclosure.</p> <p>A few industry commenters further queried why an exemption from pre-sale delivery was proposed for discount brokers, especially since they do not have a suitability obligation and it assumes the client has performed the necessary due diligence which may or may not be the case.</p> <p>Finally, we were asked to consult further with dealers of all sizes to better understand the practical impact of pre-sale delivery on the ability of advisors to service their clients, and the breadth of product offerings they will be able to make available to investors.</p>	<p>advisers. This in turn will provide investors with the opportunity to make more informed investment decisions.</p>
Compliance	<i>Cost and complexity of compliance</i>	<p>A few commenters said that the compliance systems of most fund managers and dealers do not presently catch all of the nuances set out in the 2009 Proposal, and these systems will not likely</p>	<p>We are proposing a more streamlined system for fund facts delivery. Fund facts documents will be required to be delivered or sent to the purchaser before a dealer accepts an instruction for all</p>

		<p>come on stream until costly system rebuilds are engaged.</p> <p>Industry commenters reiterated that the creation of an audit trail for pre-sale delivery will be particularly challenging for dealers and advisors, and may result in the wrong documents inadvertently being sent to investors. One commenter told us they expect the industry will struggle to achieve full compliance with the proposed Instrument.</p> <p>Another commenter added that it will be logistically difficult, time consuming and costly to prove delivery in every client situation where a transaction is completed.</p> <p>We were told the rate of compliance with regulations generally will decline, and investor complaints will increase, as a result of this added complexity.</p> <p>Finally, an industry commenter stated that the CSA's claim that existing audit requirements will be sufficient to evidence pre-sale delivery is unrealistic. We were asked to outline a detailed system for delivery and audit, as well as provide the necessary infrastructure to facilitate this system before any requirements are</p>	<p>purchases of mutual funds securities. An exception to pre-sale delivery of the fund facts document will be permitted but only in limited circumstances, subject to certain conditions.</p>
--	--	--	---

		imposed.	
	<i>Availability of technology solutions</i>	<p>A couple of service providers that are active in the fund industry reiterated their previous comments that increasingly advanced technology will be of tremendous assistance in meeting the 2009 Proposal.</p> <p>While acknowledging there will still be costs to the industry, one service provider told us that it expects to leverage its existing fulfilment infrastructure to have fund facts documents available for distribution to investors by e-mail, download, fax or print and mail on a timely basis and that its automated system ensures that only the current fund facts document is distributed.</p>	<p>We are encouraged to hear that technological solutions are available to address possible implementation challenges related to pre-sale delivery of fund facts documents.</p>
	<i>Need for CSA guidance and SRO consistency in approach</i>	<p>A few industry commenters again urged the CSA to work with the two SROs to develop proposals capable of practical implementation, given that significant new requirements will be imposed on dealers and their representatives.</p> <p>A few industry commenters asked us to ensure that SRO guidance on the 2009 Proposal will be made available to SRO members prior to the effective date of the Instrument.</p>	<p>As noted earlier, as we have throughout the various stages of the POS disclosure initiative, we will continue to meet with the representatives of the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA) to discuss compliance issues and to identify possible implementation issues. As part of these discussions, consideration will be given to what additional guidance, if any, is necessary.</p>

<p>Specific aspects of the 2009 Proposal</p>	<p><i>Delivery for money market funds</i></p>	<p>We received varying feedback on pre-sale delivery of fund facts documents for money market funds.</p> <p>Investor advocates questioned the implied view that money market funds are low risk and so may be exempt from pre-sale delivery, with one commenter reiterating their earlier recommendation that the fund facts document be delivered before or at the point of sale for all categories of funds, including money market funds, which, had some of the biggest issues due to the credit crisis.</p> <p>Yet, many industry commenters agreed with the principle of exempting money market funds from the pre-sale delivery requirement, and urged the CSA to remove the pre-sale delivery requirement altogether with respect to money market fund purchases.</p>	<p>We do not propose to move forward with pre-sale delivery regime that distinguishes between money market funds and non-money market funds. The Proposed Amendments apply to all mutual funds.</p>
	<p><i>Delivery for order execution-only accounts</i></p>	<p>A few industry commenters reiterated their earlier comments that differentiating delivery requirements for clients receiving advice and those trading through discount brokers was inappropriate.</p> <p>We were told that not requiring the</p>	<p>We do not propose to move forward with a pre-sale delivery regime that distinguishes between full service and discount brokerage.</p>

		<p>delivery of a fund facts document for trades through discount brokers was unfair to the dealer/advisor community, since it places them at a competitive disadvantage and encourages investors not to seek advice in order to trade immediately. These commenters questioned the justification for requiring a higher standard for investors who work with a fully licensed and regulated financial advisor, who is subject to know-your-client and product suitability obligations. One commenter noted that in the absence of an advisor, the need for these investors to be properly informed is even greater from a public policy perspective.</p>	
	<p><i>Adviser recommended vs. investor-initiated trades</i></p>	<p>A few industry and investor advocate commenters again expressed their view that it is presumptuous to think investors who do their own investing are more informed than other investors, and disagree with the distinction made for pre-sale delivery between dealer recommended and investor initiated sales.</p> <p>Noted one investor advocate commenter, the scale of who initiates a trade is a blurry continuum rather than a clear distinction and is not an appropriate distinction for pre-sale disclosure. The same commenter said this</p>	<p>We do not propose to move forward with a pre-sale delivery regime based on whether advice was provided in respect of a purchase.</p>

		<p>would raise significant legal, compliance and operational issues for dealers and investors. Another commenter said that there has been a lack of guidance as to when a trade has or has not been recommended.</p> <p>Another investor advocate suggested that the distinction between dealer recommended and investor initiated trades should be changed to a distinction premised on the degree of previous investing experience, which takes into account the varying degrees of sophistication and knowledge that individual investors have.</p>	
	<i>Delivery for accredited investors</i>	We heard from one industry commenter who told us that delivery of a fund facts document should not apply to accredited investors, since they are sophisticated enough to make an informed purchase decision without a fund facts document .	We are not proposing a specific exception from pre-sale delivery of fund facts documents for accredited investors.
	<i>Waiver of Pre-Sale Delivery</i>	A number of industry commenters have told us that investors should be able to avail themselves of the pre-sale delivery waiver at all times and should not be restricted by the requirements in subsection 3A.3(2) (i.e. money market funds, not dealer recommended, inform purchaser of the fund facts document) .	As noted earlier, we propose to provide an exception to pre-sale delivery of the fund facts document under certain conditions provided dealers comply with requirements to provide certain information to investors.

		<p>We've also been told that the waiver, as contemplated in the proposals, will add great complexity and increase implementation challenges as dealers will have to create policies and processes for the waiver of pre-sale delivery.</p>	
	<p><i>Annual delivery of Fund Facts</i></p>	<p>One industry commenter, a national dealer association, told us that the policies and procedures required for dealers to demonstrate that they have satisfied the annual delivery requirements would be impractical and costly, in comparison to the benefits.</p> <p>Furthermore, we've also heard that collecting investors' opt-in or opt-out preferences for the annual option in the Instrument to receive the fund facts document for all mutual fund securities held will create fairly significant additional procedural complexities for dealers, who currently have no mechanism in place to comply with this type of requirement, particularly smaller independent mutual fund dealers.</p> <p>In the alternative, these commenters suggested that the fund facts document direct clients to the fund manager should they wish</p>	<p>We do not propose to move forward with this element of the 2009 Proposal. We propose to require delivery with subsequent purchases unless the investor has already received the most recent fund facts document.</p>

		<p>to receive an annual fund facts document and, given that dealers do not have systems in place to support the annual option, a flexible approach should be introduced where either fund managers who deliver the fund facts document fulfill the annual delivery obligation on behalf of dealer or, dealers optionally provide investors with the fund facts document for subsequent purchases.</p>	
	<p><i>Delivery of simplified prospectus</i></p>	<p>An investor advocate commenter told us that the simplified prospectus should continue to be provided to investors, either at the point of sale or with the trade confirmation, since it provides vital information to investors, particularly retail investors. Setting non-delivery of the simplified prospectus as the default position, said this commenter, means that the simplified prospectus will not be delivered to the great majority of retail investors.</p>	<p>While we will continue to require that the simplified prospectus be delivered upon request, we do not propose to require delivery of the simplified prospectus with the fund facts document.</p> <p>Although we agree that the simplified prospectus contains useful information, we know that investors have trouble finding and understanding that information because the simplified prospectus is a long and complex document. We think the fund facts document provides key information about the mutual fund in a simple, accessible and comparable format for investors to use to inform their investment decision.</p>

			<p>We note that, during the development of the fund facts document, in response to comments, we revised the disclosure in the fund facts document to indicate that while the fund facts document contains key information about a fund, more detailed is available in the simplified prospectus.</p>
	<p><i>Electronic Delivery</i></p>	<p>One commenter noted that the Instrument will complicate and inhibit access to mutual fund products by rural investors and will have a disproportionate impact on such investors and the advisers who service them. In such locales, the electronic delivery methods are impractical for many advisers and their clients, and the long distances travelled by such advisers to service clients complicates even the paper delivery of fund facts documents at pre-sale.</p> <p>We were also told that the electronic delivery methods contemplated will also have a disproportionate negative impact on elderly investors who are poorly served by electronic delivery means.</p> <p>However, we were also told that adding an option for electronic delivery of fund facts documents eases some of the delivery</p>	<p>As noted earlier, technology has advanced considerably since the 2009 Proposal. There are now service providers who have created the automated programs and applications for pre-sale delivery of fund facts documents, which have increased the means by which fund facts documents can be delivered or sent to, and received by, investors.</p> <p>We continue to think electronic delivery provides dealers with flexibility to accommodate the needs of investors and their business models.</p> <p>We disagree with the comments that proof of electronic delivery will impede its use. We further disagree with the comment that electronic delivery negates the value of pre-sale delivery.</p>

		issues for investors who do not have physical access to an advisor or who wish to make a purchase quickly.	
	<i>Access equals delivery</i>	<p>A few industry commenters reiterated their earlier comments that the CSA should continue to explore “access equals delivery” for investors. Noted some industry commenters, making fund facts documents available on the manager's website should be sufficient to satisfy electronic delivery, especially where the investor consents to that method of delivery.</p> <p>One of these commenters further commented that the Instrument should reflect the possibility that technological solutions may be developed for posting fund facts documents online, making them available for access (and printing) by dealers, sales representatives and investors, alike. This commenter urged us to consider mandating availability and accessibility of all disclosure documents rather than mandating physical pre-sale delivery.</p>	We disagree with the comments. We do not consider ‘access equals delivery’ to meet the principles set out in the Framework. As a result, we have not included the concept of ‘access equals delivery’ in the Proposed Amendments.
Alternatives	<i>Deliver fund facts documents with trade</i>	An industry commenter suggested that a far less demanding alternative to pre-sale	We remain committed to the principles set out in the Framework. We continue

	<p><i>confirmation</i></p>	<p>delivery would be to allow fund facts documents to be provided with the trade confirmation in lieu of the prospectus or with the prospectus.</p> <p>A service provider of plain language communications stated that mutual fund investors pay attention to the trade confirmation, and recommended that key information about a purchase be incorporated into the trade confirmation.</p> <p>Allowing delivery of fund facts documents post trade, said one commenter, still furthers the goals of the CSA, but without severely limiting the manner in which mutual funds are sold or imposing arduous audit requirements which will be necessary to ensure pre-sale delivery.</p>	<p>to be of the view that pre-sale delivery of fund facts documents will provide investors with the opportunity to make more informed investment decisions by giving investors key information about a mutual fund, in a language they can easily understand, at a time that is most relevant to their investment decision.</p>
	<p><i>Key information at account opening</i></p>	<p>A few industry commenters suggested providing key information about mutual funds at the time the investor completes their account application, which would be before they buy any funds.</p>	<p>We disagree with this comment. Providing information at account opening cannot be a substitute for providing information at the time that an investor is actually making their investment decision. In addition, it is unclear how this concept would be applied in practice. In our view, it would not be feasible to provide anything more than general information about investing in mutual funds.</p>

Creation of central fund facts document repository		Many industry commenters, including a number of national trade associations for the investment fund/dealer industry, recommend the development of a clearing house/central repository/delivery mechanism to assist delivery by dealers and as noted previously, we were told that this repository should be established and fully functional before the 2009 Proposal is implemented.	Although we do not propose to create a central repository for fund facts documents, we understand that several service providers have already established one with the aim of facilitating fund facts delivery by dealers.
---	--	---	--

Part 4 – Comments on the Instrument			
<u>Issue</u>	<u>Sub-Issue</u>	<u>Comments</u>	<u>Responses</u>
Part 3A – Delivery of fund facts document	<i>Section 3A.1 – Definitions</i>	We were told by one industry commenter that the definition of “initial purchase” was over-inclusive and should be narrowed. In particular, this commenter suggested that if an investor held units of Fund A, Series A, redeemed those units and a month later decided to repurchase those units, the dealer should not be required to provide a fund facts document prior to that purchase, since as a previous holder of Fund A, Series A, it is fair to presume that the investor has full knowledge of that fund. In such cases, this commenter suggested that	Given the changes that we have made to the 2009 Proposal, these comments are no longer applicable.

		<p>the investor should be permitted to waive the requirement to receive a fund facts document.</p> <p>One SRO commented that, in order to avoid confusion, the definition of “order execution-only service” should be clarified so that it applies only to investment dealers and not to mutual fund dealers.</p>	
	<p><i>Section 3A.3 – Timing of delivery</i></p>	<p>One industry commenter told us that for trades initiated by the investor, paragraph 3A.3(2)(b) should be revised so that the dealer does not have to describe the fund facts document or obtain an explicit waiver from the client, in order to deliver the fund facts document with the confirmation of trade.</p> <p>We were also asked us to clarify whether delivery of a fund facts document “with the confirmation of trade” in subsection 3A.3(3) means delivery of the fund facts document within the timeframe of the confirmation mailing, or in the same envelope as the confirmation.</p> <p>Some commenters noted that, currently, the trade confirmation may be sent by the dealer (in a nominee name account) or by the fund manager (in a client name account) and</p>	<p>We are no longer proposing a delivery regime that contemplates differentiating between advisor-recommended and investor-initiated trades. We do, however, still contemplate an exception to pre-sale delivery where the fund facts document can be sent within 2 days of purchase. In those circumstances, we are not requiring that the fund facts document be delivered with the confirmation of trade. The provision related to what can be bundled or attached to a fund facts document, however, would not preclude a fund facts from being delivered with the confirmation of trade.</p>

		<p>recommended that the CSA not require the fund facts document be delivered with the confirmation of trade.</p> <p>We were also told by an investor advocate commenter that the trade confirmation identify the trade as either “advisor-recommended” or “investor-initiated”.</p> <p>One SRO commented that the instruction of the purchaser under paragraph 3A.3 (1) (b) should be evidenced in writing in order to avoid contestation of the instruction. That commenter also suggested that paragraph 3A.3 (2) (a)(ii) should read as follows: <i>(ii) is initiated by the purchaser</i>. It was noted that an adviser may still recommend a purchase that is initiated by the purchaser.</p>	
	<p><i>Section 3A.4 - Methods of delivery</i></p>	<p>One investor advocate and one SRO commenter told us that the delivery of a fund facts document should include a purchaser’s signature (and date) to confirm that the fund facts document was received, read and the content understood. Yet, another investor advocate commenter disagreed, stating that if delivery of the fund facts document satisfies the prospectus delivery requirement, and the simplified prospectus has no acknowledgement requirement, then they believe that an acknowledgment is also unnecessary for fund facts document.</p>	<p>The Proposed Amendments do not contain a requirement for purchasers to provide written acknowledgement confirming receipt of the fund facts document. We agree with the commenter that indicated if delivery of the simplified prospectus does not have an acknowledgement requirement then no such requirement should be required in respect of delivery of the fund facts document.</p>

		<p>One industry commenter further noted that section 3A.4 should be revised to create a deeming provision for electronic and fax delivery similar to the one that exists for prepaid or registered mail . An SRO commenter, however, suggested that no deeming provision should be included for any type of delivery.</p> <p>Finally, we also heard from a service provider in the mutual fund industry who told us that fund facts documents should be deemed ‘delivered’ and ‘accepted’ using receipting methodologies via existing physical or electronic protocols. This commenter told us that logs of these activities indexed to the investor’s account asynchronously could be kept to validate that the delivery occurred on or prior to purchase of the investment.</p>	
	<p><i>Section 3A.5 – Annual option to receive fund facts documents</i></p>	<p>One industry commenter made a number of recommendations with respect to the annual delivery option, suggesting:</p> <ul style="list-style-type: none"> • only the most recent fund facts document filed on SEDAR, or another central repository, at (or within a reasonable number of days prior to) the time of the annual mailing (and not necessarily the version filed - and receipted - with the 	<p>We do not propose proceeding with this element of the 2009 Proposal. We propose to require delivery of fund facts documents with subsequent purchases unless the investor has already received the most recent fund facts document.</p>

		<p>simplified prospectus) should be delivered,</p> <ul style="list-style-type: none"> • dealers should be permitted to select a date during the year for annual delivery that is most beneficial to both investors and the dealer, • annual delivery should apply at the client account level (as is the case for MRFPs and financial statements), and not at the individual fund (or series) level, and • annual delivery should not be implemented until after the transition period expires (to ensure that all fund facts documents are available). 	
Comments on Companion Policy 81-101CP to NI 81-101			
Part 7 Delivery	<i>Section 7.2 – Delivery of fund facts documents</i>	<p>A number of industry commenters asked the CSA to further explain what is expected of dealers in terms of evidencing compliance with pre-sale delivery of the fund facts document.</p> <p>A commenter indicated that it is unclear what “<i>in accordance with existing practices</i>” means with respect to dealer compliance with delivery.</p>	<p>In accordance with existing practices, dealers must establish internal policies and procedures to ensure delivery of the fund facts document occurs in accordance with Proposed Amendments.</p> <p>Dealers must maintain evidence of delivery of the fund facts document, as well as receipt of purchaser consent to receive delivery of the fund facts</p>

		<p>We were asked whether the CSA would be satisfied with contemporaneous notes to file. If client signatures are not required, we were asked to explicitly state this.</p>	<p>document after entering into the purchase of a security of a mutual fund. Dealers must also maintain adequate records to evidence that satisfactory disclosure about the fund facts document has been provided to purchasers. Such records should also indicate why delivery of the fund facts document was impracticable in the circumstances. We expect that dealers will follow their current practices to maintain evidence of required disclosures to sufficiently document delivery of the fund facts document.</p> <p>Finally, as noted above, the Proposed Amendments do not impose any requirement for written client acknowledgements of receipt of the fund facts document.</p>
	<p><i>Section 7.4 – Subsequent purchases</i></p>	<p>A number of industry commenters recommended that the existing waiver of delivery obligations for subsequent purchases be extended to include trades that result from fund merger activity that occur from time to time.</p>	<p>As mentioned above, although we propose that delivery of the fund facts document not be required in respect of subsequent purchases under a pre-authorized purchase plan provided that certain requirements are met, we do not propose a similar exception for money market fund purchases, switches under asset allocation plans, or for fund mergers and reorganizations.</p>

	<i>Section 7.5 – Dealer recommended and non-recommended purchases</i>	<p>We heard from one investor advocate commenter who agreed with the CSA’s view that an investor should not be able to waive receipt of the fund facts document on a blanket basis on account opening.</p> <p>An SRO commenter asked us to indicate that mutual fund dealer representatives need to review suitability of a proposed purchase, even if the trade is initiated by the investor.</p>	<p>Although we are no longer proceeding with a delivery regime that distinguishes between dealer recommended and non-recommended purchases, in circumstances where the requirements for the exception to pre-sale delivery are met, we have retained the requirement that such consent be obtained for each purchase of a security of a mutual fund and that it cannot be in the form of standing instructions from the purchaser.</p>
	<i>Section 7.7 – Electronic delivery</i>	<p>One investor advocate commenter told us that e-mail delivery seriously negates the value of pre-sale delivery and effectively amounts to “access equals disclosure”, with no client–adviser discussion on costs, risks or suitability.</p> <p>Yet, we were also asked by another investor advocate to clarify in the Companion Policy that electronic delivery is satisfied by either sending (i) an electronic copy of the fund facts document, or (ii) an email with a direct link to the fund facts document.</p>	<p>The methods of delivery of a fund facts document are consistent with methods of delivery of a prospectus under securities legislation. We are not providing specific guidance around how delivery can be achieved using the various methods of delivery that are available. As noted in the Companion Policy, however, we do not consider making the fund facts document available on a website, or simply referring an investor to a general website address where the fund facts document can be found, as being sufficient to satisfy delivery</p>

		Other commenters further asked for greater clarification of the phrase “ <i>or directing the investor to a specific fund facts document on a website</i> ”. These commenters noted it would be impossible for a dealer to prove that real time instructions were given by the advisor to the investor in the manner contemplated in the Companion Policy.	requirements under the Proposed Amendments. We would consider such methods to be akin to access-equals-delivery, which we have consistently rejected throughout the various stages of the POS disclosure initiative.
	<i>Section 7.8 – Annual Option to receive Fund Facts</i>	An SRO commenter stated that the absence of a response from an investor should not allow a dealer to determine if a fund facts document is to be delivered. The dealer should be required to receive as an express waiver of the annual option to receive fund facts document from the investor.	We do not propose proceeding with an annual delivery option. We propose to require delivery with subsequent purchases unless the investor has already received the most recent fund facts document.
	<i>Section 7.10 – Delivery of Non-Educational Material</i>	An SRO commenter suggested that allowing delivery of non-educational material with the fund facts document can create confusion for the investor since it could potentially obscure the fund facts document, which goes against the principles of point of sale disclosure.	For the purposes of pre-sale delivery, we are proposing that the fund facts document only be allowed to be attached to, or bound with, other fund facts fund facts documents, provided the size of the overall document does not make the presentation of the information inconsistent with the principles of simplicity, accessibility and comparability. When delivery of the fund facts document occurs after the purchase transaction, we are proposing permitting the fund facts document to be attached to, or bound with, certain other

			materials or documents provided the fund facts document documents are located first in any package. We are of the view that the limitations on binding that are being considered will ensure that the investors will not be confused and that the information in the fund facts document will not be obscured.
--	--	--	--

<p>Part 5 – List of commenters</p> <p style="text-align: center;"><u>Commenters</u></p> <ul style="list-style-type: none"> • Advocis • AGF Management Limited • Anderson, James • Banque Nationale Groupe financier • BMO Guardian Group of Funds Ltd. • BMO Investments Inc. • Board of Governors for CI Investments Inc. and United Financial Corporation • Borden Lardner Gervais LLP • Brandes Investment Partners • Broadridge Investor Communication Solutions, Canada • Canadian Bankers Association • Canadian Foundation for Advancement of Investor Rights • i International Asset Management (Canada), Inc. • Chambre de la sécurité financière • CI Financial Group
--

- CIBC
- Durnin, James S.
- Fédération des caisses du Québec - Desjardins
- Fidelity Investments Canada ULC
- Franklin Templeton Investments Corp.
- Fugal Bugle
- Gauthier, Jean-Francois
- Harvey, Ronald P.
- Horan, Chris
- Independent Financial Brokers
- Independent Planning Group Inc, IPG Insurance
- Invesco Trimark Ltd.
- Investment Funds Institute of Canada
- Investment Industry Association of Canada
- Investment Planning Counsel, IPC Investment Corporation, IPC Securities Corporation
- Investors Group Inc.
- Keybase Financial Group Inc.
- Mackenzie Financial Corporation
- Manulife Securities, Manulife Investments Mutual Funds
- MGI Financial Inc.
- MGI Funds Inc.
- MGI Securities Inc.
- Miller Thomson LLP
- Mouvement d'éducation et de défense des actionnaires
- PFSL Investments Canada Ltd.
- Quirt Brown, Jeanie
- RBC Asset Management Inc., Phillips, Hager & North Investment Management Ltd.
- RBC Dominion Securities Inc. Royal Mutual Funds Inc, Philips, Hager & North Investment Funds Ltd.
- RESP Dealers Association of Canada

- RocheBanyan
- Rogers Group Financial
- Scotia Securities Inc.
- Simplified Communications Group Inc.
- Small Investor Protection Association
- TD Bank Financial Group
- Tradex
- Qtrade Financial Group
- VAULT Solutions Inc.
- Williams, Bill