Annex B

Summary of Public Comments on Proposed Amendments to NI 81-102 (Phase I)

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Part I – Background

Summary of Comments

On June 25, 2010, the Canadian Securities Administrators (CSA) published proposals relating to the first phase of the Modernization of Investment Fund Product Regulation Project (the Modernization Project). The proposals include amendments to National Instrument 81-102 *Mutual Funds* (NI 81-102), National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106), and related consequential amendments to investment fund prospectus disclosure rules. The amendments codify exemptive relief that has frequently been granted by the CSA to recognize market and product developments in recent years, and also include updates to the requirements for money market funds. The comment period expired September 24, 2010. We received submissions from 24 commenters, which are listed in Part VI.

We have considered all comments received and have made some changes in response to the comments. We wish to thank all those who took the time to comment. The comments we received, and our responses, are summarized below.

Part II - Comments on proposed amendments to NI 81-102			
Issue	**Sub-Issue**	**Comments**	**Responses**
Amendments Relating to Exchange-Traded Mutual Funds (ETFs) in Continuous Distribution	***Payment for Purchases and Redemptions (ss. 9.4(2), 10.4(3))***	One commenter supported the ability for investors to use cash and/or securities to purchase units of open-end ETFs, but expressed some concern with permitting the delivery of portfolio assets as redemption proceeds. This commenter further asked for clarification of the "prior written consent" requirement in subsection 10.4(3)(b). If the consent contemplated is contemporaneous with the redemption request, the commenter would support the ability of investors to choose to receive redemption proceeds as portfolio assets. Another commenter suggested that the requirement that a fund obtain the prior written consent of the securityholder to deliver portfolio assets as redemption proceeds should only apply to redemptions other than exchanges of a 'manager-prescribed number of units'. This commenter remarked that open-end ETFs should be allowed to deliver securities in a	NI 81-102 currently allows mutual funds to pay redemption proceeds in kind. The proposed amendments are intended to allow mutual funds to pay redemption proceeds in a combination of cash and portfolio assets. We propose to maintain the current "prior written consent" requirement in subsection 10.4(3)(b). The CSA expect that "prior written consent" for redemptions in kind, other than an exchange of a manager-prescribed number of units, be obtained contemporaneously with the redemption request. Change made. See our revised amendment to subsection 10.4(3)(b). This change is consistent with exemptive relief that has been granted to many open-end ETFs from the "prior written consent" requirement.

		cost-effective manner and avoid the transaction costs associated with selling portfolio assets in circumstances where certain securityholders do not provide written consent.	
	Determination of Redemption Price (s. 10.3)	One commenter generally agreed with permitting open-end ETFs to pay a redemption price based on the market price of units to be redeemed, but expressed concern that changes in regulation have increasingly made it more difficult for investors to exercise their rights to redeem their units, in particular to redeem at the net asset value (NAV) of their securities.	The exemption in subsection 10.3(3), allowing open-end ETFs to pay a redemption price based on market price when less than a manager-prescribed number of units is redeemed, is specifically intended to recognize the unique features and operations of open-end ETFs. It allows them to exist and operate within the NI 81-102 regime without having to first obtain exemptive relief. The exemption is not intended to have a broader application. The CSA are providing such an exemption in consideration of the two primary features of an ETF's structure that promote trading of an ETF's securities at a price that approximates the ETF's NAV: portfolio transparency and the ability for designated brokers to purchase or redeem ETF securities at NAV at the end of each trading day. The transparency of an ETF's holdings enables market participants to observe

			discrepancies between the market price of the ETF's securities and its NAV during the trading day and to attempt to profit from such arbitrage opportunities. This, together with the ability of designated brokers to purchase and redeem ETF securities at the end of each trading day in exchange for the underlying basket of securities, help to keep the market price of an ETF's securities close to the underlying market value (or NAV) of the portfolio.
	Transmission and Receipt of Purchase and Redemption Orders (ss. 9.1, 10.2)	Several commenters questioned why routinely granted relief permitting the purchase and sale of securities of open-end ETFs to be transmitted to the exchange on which the securities are listed, instead of to the order receipt offices of the fund was not included in the proposed amendments. Some commenters believe this was an oversight and urged us to consider codifying this relief.	Change made. See new subsections 9.1(0.1) and 10.2(0.1) which provide that the requirements for the transmission and receipt of purchase and redemption orders under sections 9.1 and 10.2 do not apply to ETFs. We further have added new section 9.0.1 which provides that the whole of Part 9 of NI 81-102 does not apply to ETFs that are not in continuous distribution. The CSA recognize that the process for the transmission of purchase orders contemplated under Part 9 is of no relevance to ETFs not in continuous distribution that offer their securities to the public under an initial public offering.

Amendments Relating to ETFs Not in Continuous Distribution	***Organizational Costs (s. 3.3)***	One commenter noted that exempting ETFs not in continuous distribution from the prohibition on reimbursing organizational costs would hurt initial investors of the fund if the fund were to make a second offering.	Section 3.3 prohibits the costs of incorporation, formation or initial organization of a mutual fund, or of the preparation and filing of any of the preliminary offering documents, from being borne by the mutual fund or its securityholders. These costs consist mainly of legal and regulatory costs associated with the *start-up* of the fund. The prohibition in section 3.3 addresses the regulatory concern associated with the first investors bearing most or all of the start-up costs of the fund. It does not preclude a fund from bearing the cost of renewal prospectuses or other regulatory or legal costs. As all investors in an ETF not in continuous distribution bear the start-up costs equally at the time they purchase under the initial public offering, the regulatory concern addressed by section 3.3 is not present and we believe a carve-out is appropriate for these types of funds. In the case of follow-on offerings, current industry practice appears to be for ETFs not in continuous distribution to similarly pay the legal and regulatory costs associated with the follow-on

			offering out of the proceeds of that offering, and to disclose this in the prospectus for the offering. As a result, those initial investors who purchased securities of the ETF solely under the initial public offering are not in practice made to bear the additional costs of the subsequent offering.
	Determination and Payment of Redemption Price (s. 10.3)	One commenter expressed concern that codifying the exemption that permits funds to pay redemption proceeds at a redemption price less than the fund's net asset value per unit contributes to the gradual trend within the industry to make the redemption option less and less attractive to investors. This commenter proposed a lower limit of 95% of net asset value as the lowest allowable fraction of net asset value at which an ETF not in continuous distribution will be permitted to redeem units.	The exemption in subsection 10.3(2), allowing ETFs not in continuous distribution to pay a redemption price that is less than the NAV, recognizes the non-conventional features of those ETFs. It allows them to exist and operate within the NI 81-102 regime without having to first obtain exemptive relief. ETFs not in continuous distribution issue a finite number of securities from treasury under an initial public offering. A redemption price at a discount to net asset value is intended to encourage investors to trade on the exchange at market price, rather than redeem from the fund as this would reduce the ETF's asset base. Frequent redemptions would cause the fund to incur administrative costs which would be borne by the remaining investors in the fund.

			The CSA will not at this time limit the fraction of net asset value at which an ETF not in continuous distribution will be permitted to redeem units.
	Compliance Reports (s. 12.1)	A few commenters suggested that routine relief exempting ETFs not in continuous distribution from the requirement to file compliance reports under section 12.1 be codified.	Change made. See the amendment to subsection 12.1(1) which excepts exchange-traded mutual funds not in continuous distribution from the compliance reporting requirements.
Amendments Relating to Fixed Portfolio Exchange-Traded Mutual Funds	***Concentration Restriction (s. 2.1)***	One commenter questioned why the exemption from the concentration restriction for purchases of equity securities by a fixed portfolio ETF does not also apply to purchases of debt securities by such fund, given that the rationale for waiving the limits on equity investments would apply equally to fixed income investments in the same circumstances. This commenter added that they expect an increase in fixed portfolio exchange-traded mutual funds that invest in fixed income securities as investors have become increasingly concerned with yield.	We are not at this time aware of fixed portfolio ETF's investing in fixed income securities. Should such filings be made, we will consider any relief they request on a case-by-case basis.
Investments in Other Mutual Funds	***Definition of Index Participation Unit***	Most commenters welcomed the expansion of a mutual funds' ability to hold index participation units traded on a stock exchange in the United Kingdom in addition to those in Canada or the United States. These commenters also	After reviewing the comments received, we have decided not to go forward with adding index participation units traded on a stock exchange in the U.K. to the definition of index participation unit. We acknowledge the commenters'

		recommended that the definition of index participation unit be further expanded to include stock exchanges in other developed markets that are well recognized and similarly regulated, such as those in Japan, Hong Kong, Singapore, Germany, Italy, France, Ireland, and other European countries. One commenter suggested including the "designated stock exchanges" prescribed in the *Income Tax Act* (Canada).	views that there are many other developed markets that are well recognized and similarly regulated. However, as markets evolve, the list of markets captured by the definition would also likely have to evolve. As a result, it would be difficult for the CSA to maintain this list on a go forward basis. Furthermore, the CSA has recently become aware of concerns expressed by certain international regulatory bodies regarding the complex swap-based synthetic index replication strategies frequently used by European ETFs. With that in mind, the CSA has opted at this time to continue to deal with exemptive relief requests to invest in foreign ETFs that are not index participation units on a case by case basis.
		One commenter questioned, however, the substantive rationale behind expanding the ability of mutual funds to hold index participation units in the United Kingdom. This commenter also expressed concern that the regulatory regime in the United Kingdom is currently undergoing tremendous change.	See response above.
		Another commenter recommended that the	No change has been made. The

		definition be further amended to be consistent with the definition of "index mutual fund". This commenter asked us to clarify the rationale behind the different definitions and any differences in treatment.	definition of 'index participation unit' and 'index mutual fund' were created for different purposes. The definition of 'index participation unit' was created for the purpose of allowing funds subject to NI 81-102 to invest in index participation units. The definition of 'index mutual fund' was created to permit funds subject to NI 81-102 to track an index beyond the concentration restriction.
	Investment Restriction Amendments – Clone Funds (s. 2.5(4)(a))	Several industry commenters generally supported the change of the multi-layered fund exception to apply to clone funds rather than to RSP clone funds, but remarked that the exception should be expanded further. One of these commenters recommended that the exception be expanded to allow inclusion of mutual funds that are attempting to replicate the performance of another mutual fund, but for one or more factors, such as variances in performance due to movements in foreign exchange rates. For instance, a mutual fund whose fundamental investment objective is to replicate the performance of another mutual fund, and use derivatives to seek to maintain a currency neutral performance in Canadian dollars should be included in the	We have made a minor change to the proposed definition of 'clone fund' such that it now contemplates a mutual fund that *tracks* the performance of another fund. We consider that tracking the performance of another mutual fund does not necessarily equate to replicating the performance of that fund. It allows for minor variances in performance between the clone fund and the fund whose performance is being tracked on account of the clone fund's use of derivatives or other investment strategies for a specified purpose. Accordingly, we view the exception to be sufficiently broad to include a mutual fund that replicates the performance of another fund, but for the use of derivatives to maintain a currency neutral performance in Canadian

		exception. A number of commenters remarked that this exception is unnecessarily narrow and would preclude a number of three-tier fund-of-funds scenarios that have been granted relief, in particular a middle fund that invests in multiple bottom funds. These commenters remarked that greater flexibility should be provided to fund managers in structuring three-tiered mutual fund investments. A few of these commenters suggested that the multi-tiering restriction in paragraph 2.5(2)(b) be removed altogether since the current requirements of section 2.5 sufficiently address concerns regarding tiered mutual fund structures. These commenters noted that three-tiered structures may be beneficial to investors as they provide investors with improved diversification and provide fund managers with more flexibility and efficiencies in structuring portfolio solutions for the fund. One commenter, on the other hand, expressed the concern that tiered mutual funds provide no additional benefits either	dollars. No change at this time. We will continue to consider exemptive relief requests to permit three-tier structures on a case-by-case basis. In Phase 2 of the Modernization Project, we intend to re-examine the current investment restrictions in Part 2 of NI 81-102, including the fund-on-fund provision in section 2.5, in light of market and product developments. Any additional changes to the multi-tiering restriction would be considered at that time. The CSA are of the view that the multi-tier prohibition should be maintained. The regulatory concerns with multi-tier structures have not changed. The CSA continue to believe that fund of fund structures should be permitted subject to the conditions in section 2.5.

		in terms of performance or risk, and carry significantly higher erosion to the investor in the form of tiered fees. We were asked to study the issue of fees charged in tiered mutual fund structures and to adopt measures that require or encourage low-fee approaches to the tiering of mutual funds.	Section 2.5 continues to prohibit duplicate fees in fund-on-fund structures.
	Suspension of Redemptions – Clone Funds (s. 10.6)	Two commenters proposed that the amendment to subsection 10.6(1) to allow a clone fund to suspend redemptions when the underlying fund to which the clone fund has linked its performance has suspended redemptions be expanded to include other funds-of-funds arrangements, such as asset allocation funds that invest in a number of underlying funds. These commenters proposed that funds-of-funds be permitted to suspend redemptions if redemptions of securities of other mutual funds held by them are suspended and these securities represent more than 50% of total assets without allowance for liabilities.	No change at this time. We will consider requests for such relief on a case-by-case basis as the need arises.
	Investing in mutual funds that are not reporting issuers (s. 2.5(2)(a))	One commenter urged us to consider permitting mutual funds to invest in privately offered pooled funds to allow them to more efficiently meet their investment objective. This commenter proposed that this be permitted where the	No change at this time. We will continue to consider requests for exemptive relief on a case-by-case basis.

		underlying pooled fund is managed by the same portfolio manager, is only offered to accredited investors, and is subject to the same investment restrictions as mutual funds subject to NI 81-102.	
	Exemption from mutual fund conflict of interest provisions (s. 2.5(7))	A few commenters asked us to confirm that a fund does not need to seek additional relief from the mutual fund conflict of interest investment restrictions and the mutual fund conflict of interest reporting requirements under applicable securities legislation where a fund has obtained exemptive relief from any of the fund-of-fund investment requirements in section 2.5. One commenter proposed that we insert the words "or in accordance with exemptive relief granted from this section" at the end of the provision.	Change made. While we have not amended the wording in subsection 2.5(7), we have added guidance under subsection 3.4(2) of 81-102CP which confirms that a mutual fund that invests in other mutual funds in accordance with the terms of an exemption from the requirements of s.2.5 of NI 81-102 can rely on the exemption from the mutual fund conflict of interest provisions in subsection 2.5(7) of NI 81-102.
Short Selling	***Short Sales (s. 2.6.1)***	One commenter questioned why the total exposure to any one issuer that could be achieved through short selling is limited to 5% of the net asset value of the fund, rather than the normal concentration restriction of 10%. We were told this restriction would prohibit a fund that has an existing long position in an issuer from employing a strategy of adding a short position, unless the existing long position is less than 5% of the market value of the	The 5% issuer-specific short selling limit represents one quarter of the overall short-selling limit of 20% of a fund's net asset value. Also, the 5% limit reflects the conditions imposed in the standard exemptive relief that has been granted. We believe that the 5% limit provides mutual funds with sufficient flexibility to implement a short selling strategy while maintaining a level of diversification across such

		fund. Another commenter questioned whether the 150% cash cover requirement is higher than strictly necessary for a value that is calculated on a daily basis. This commenter expressed concern that the substantial amount of cash required for cash cover may be better put to other investment uses within the fund.	short sales. The 150% cash cover requirement reduces the risks associated with not having sufficient proceeds to purchase the securities that have been sold short when closing the position. Further, it is intended to limit the leverage that short selling could create. This requirement is consistent with the requirement under IIROC Dealer Member Rules to maintain margin of 150% on short sales of equity securities (selling at $2.00 or more), and similar U.S. rules (see Federal Reserve Board Regulation T) requiring all short sale accounts to have 150% of the value of the short sale at the time the sale is initiated.
		Another commenter questioned why the condition in previous short selling relief orders requiring the Fund to place a stop-loss order to immediately close a position once the trading price of the security exceeds 108% of the price at which the securities was sold short, was not included in the proposed amendment.	We chose not to codify the stop-loss condition in light of the requirement to maintain 150% cash cover against the aggregate market value of all securities sold short by the mutual fund on a daily mark-to-market basis. Also, we note that NI 81-102 does not impose stop-loss requirements for long positions. Portfolio managers may continue to use stop-loss orders if they deem it advisable.

		This commenter also did not support the increased cap on short selling of 20% of the mutual fund's net asset value, despite that routine relief has been granted in this regard for several years. The commenter expressed concern that the proposed amendment will permit the cap on short selling to gradually increase further and that the cap does not include look-through to short sale exposure in any underlying fund a mutual fund may be invested in.	The CSA has for the last 5 years granted exemptive relief allowing conventional mutual funds to short sell up to 20% of their net asset value, and expect to continue to maintain that limit for such funds going forward. A mutual fund is not required to look-through to short sale exposure in an underlying fund, consistent with the current fund-of-fund rule in section 2.5 of NI 81-102 which does not require a look-through to the investments of an underlying fund. We note that each underlying fund must be subject to NI 81-102. The fund-of-fund provisions are based on the view that the top fund is holding securities of an underlying fund just as it would hold another investment. We do not require top funds to look through to the business assets held by corporate issuers that they invest in.
		This commenter also stated that subparagraph 2.6.1(1)(b)(iii) requires clarification, such as to read "an investment fund other than an index participation unit."	Change made.

	Notice Requirement (s. 2.11)	Two commenters asked us to clarify by way of transitional provisions whether mutual funds that have received exemptive relief to short sell and that have provided disclosure and notice under that exemption would be required to comply with the revised disclosure and notice requirements of section 2.11 in order to transition to the new short-selling requirements. One of these commenters recommended that mutual funds not be required to amend the current disclosure in their prospectus until the earlier of the next renewal or amendment date of the prospectus.	We do not expect mutual funds that have received exemptive relief to short-sell a specified percentage of net asset value, and that have provided disclosure and notice under that exemption, to provide a second notice to securityholders. We expect mutual funds that currently short-sell under prior exemptive relief to amend their current disclosure in their prospectus so as to comply with any new short-selling disclosure requirements at the earlier of the next renewal or next amendment of the prospectus. Mutual funds intending to increase their current short-selling activities up to the prescribed limit in new s.2.6.1 should consider whether such increase would be a material change triggering the requirement to file an amendment prior to implementing the new limit.
	Custodial Provisions Relating to Short Sales (s. 6.8.1)	One commenter questioned whether the $50 million net worth requirement for dealers who act as a borrowing agent for short sale transactions made outside of Canada is a sufficiently high threshold.	The proposed $50 million net worth requirement for dealers who act as borrowing agent for short sale transactions made outside of Canada is consistent with the current $50 million

		This commenter noted that the $50 million threshold has not changed since 2003.	net worth requirement for dealers under paragraph 6.8(2)(b) in respect of certain derivative transactions outside Canada.
	Short selling of index exchange-traded mutual funds	One commenter proposed that the definition of "specified derivative" include index exchange-traded funds so that mutual funds may short sell these types of funds for hedging purposes. This commenter remarked that the short sale of index exchange-traded funds is an effective, liquid, and low-cost hedging alternative and these transactions should not be limited to speculative purposes.	Note that proposed subparagraph 2.6.1(1)(b)(iii) permits short-selling of investment funds that are index participation units, subject to the same conditions as other securities.
Derivatives	***Cash Cover***	A few commenters expressed support for the amended definition of cash cover. One commenter proposed that marked-to-market gains from specified derivatives be included in the definition of cash cover, provided such amounts arise solely from derivatives used for hedging purposes, and from derivatives that are settled no less frequently than every 185 days. This commenter suggested that excluding these marked to market gains for purposes of cash cover would, in certain circumstances, result in the fund's investment exposure being less than the fund's net asset value, and therefore, result in the fund being under-invested to the	Acknowledged. We are not considering such a change at this time. Exemptive relief has not been granted to permit this and codification of such a change is outside the scope of this first phase of the Modernization Project.

		detriment of its investors.	
	Definition of Floating Rate Evidence of Indebtedness	One commenter asked us to provide guidance on the term "widely accepted market benchmark interest rate", as what is considered a widely accepted benchmark is subject to change.	We have changed the term "widely accepted market benchmark interest rate" to "commonly used benchmark interest rate". Such a rate is one that is commonly used and quoted in an active financial market and that is broadly indicative of the overall level of interest rates attributable to high-credit quality obligors in that market. It is widely used as an underlying basis for determining the interest rates of individual financial instruments and commonly referenced in interest rate related transactions. We expect that industry participants will generally have consistent views on what qualifies as a "commonly used benchmark interest rate" in a given financial market.
	Transactions in Specified Derivatives for Hedging and Non-Hedging Purposes	A few commenters expressed support for the removal of term limits on specified derivatives.	Acknowledged.
Money Market Funds	***General Comments***	We received a number of comments regarding the proposed amendments to money market funds. Most commenters agreed with moving the investment restrictions applicable to money market funds out of the definitions	The CSA have been closely following international developments regarding money market funds. The recent market turmoil and the pressures that it put on credit quality and liquidity demonstrated the challenges for money market funds of maintaining a stable NAV while

		section and into a new section of the Instrument. Most commenters expressed concern with the new investment restrictions, in particular the liquidity requirements and revised dollar-weighted average term to maturity limit. These commenters viewed these restrictions on money market funds to be unnecessary and believed they may instead cause unintended negative consequences. Many commenters questioned the rationale behind the proposed amendments given that the CSA had not identified any problems with the current rules governing money market funds in Canada and further that Canadian funds withstood the liquidity crisis of 2008-2009. Some commenters expressed concern that the proposed changes are an overreaction to an extraordinary market downturn. These commenters strongly urged us to further consult with industry about the potential consequential risks of any changes we choose to implement. One commenter suggested that rather than additional regulation, part of the CSA's focus should be on investor education such	holding portfolio assets that may trade below expected levels. In addition, experiences in other jurisdictions highlighted the risks that large redemptions could have on a money market fund trying to maintain a stable NAV in difficult markets. The CSA do not believe that the fact that a money market fund did not collapse in Canada should prevent a review and updating of the current money market fund rules. While no Canadian money market fund failed to maintain a stable NAV throughout the credit crisis, the freezing up of the non-bank asset-backed commercial paper in August 2007 did cause certain Canadian money market funds to require sponsor support for troubled assets in order to maintain a stable NAV. The proposed amendments represent a change that takes into account the particular nature of the Canadian money market and provides Canadian money

		that the general public better understand that an investment in a money market mutual fund is not the same as placing money in a bank account or GIC. We heard from a few commenters, on the other hand, who welcomed the additional regulation of money market funds and believed that the new requirements will better protect investors. One commenter noted that adding requirements in Canada would be more consistent with the regulation of money market funds globally.	market funds with some additional flexibility to manage their assets, relative to U.S. money market funds.
	Investing in Other Money Market Funds (s. 2.18(1)(a)(v))	While two commenters expressly welcomed this new investment option for money market funds, two other commenters were generally of the view that it would be of no advantage to investors. Concern was expressed over the potential for the stacking of fees, especially management fees, and over investor returns and investor risk not being well served by allowing money market managers to avoid undertaking their own investment objectives by relying on other managers to invest for them.	The CSA believe it is appropriate to codify relief it has routinely granted over the last several years which allows money market funds to invest in other money market funds. Such investments must be made in accordance with the existing fund-of-fund requirements of section 2.5, including the requirement that there be no duplication of management fees. This amendment is consistent with existing U.S. rules (see Rule 2a-7 under the Investment Company Act of 1940) permitting U.S. money market funds to invest up to 100% of their assets in securities of money market funds.

	Dollar-Weighted Average Term to Maturity Limit (s. 2.18(1)(b))	We received feedback from many commenters on the revised dollar-weighted average term to maturity limit. The majority of these commenters were fund managers and manufacturers. They opposed the introduction of the 120-day limit that is calculated based on the actual term to maturity of all securities in a money market portfolio including floating rate notes (FRNs), for the following reasons: • It will remove risk management duties from the portfolio manager and artificially and unnecessarily force the portfolio managers hand; • It will reduce the availability of investments and will decrease diversification in a market that is already highly concentrated; • Decreased demand for longer-term FRNs could impact the FRN market in Canada and ultimately increase the cost of funding for issuers; • A rush to sell longer term FRNs would generate a liquidity issue which in turn	We acknowledge the comments. Based on the comments received, and after considering the alternatives proposed by the commenters, we are extending the initially proposed 120-day dollar-weighted average term to maturity limit to 180 days. See revised paragraph 2.18(1)(b). We consider that this change appropriately recognizes the differences in our Canadian money market fund industry, including the nature and use of money market funds in Canada (relative to the U.S.) and the depth of the short-term debt market in Canada. To ease Canadian money market funds' transition to the new restrictions and requirements of s.2.18, including the new term limit, we are providing a 6-month transition period during which money market funds may gradually realign their portfolios as necessary to comply with the new requirements. See the transition provision in the Instrument amending National Instrument 81-102 *Mutual Funds*.

		would impair FRN values when fund managers are forced to sell and may increase trading costs and the risk that money market funds may incur capital gains; • FRNs offer a premium for investors due to their longer term to maturity and the performance of money market funds would be negatively affected. Unitholders would see their already modest returns diminish which may lead them to resort to riskier alternatives; • Many of the FRNs issued by large investment grade corporations or those that are guaranteed have little credit risk. Commenters proposed the following alternatives to shortening the term to maturity limit: • Extend the proposed 120-day limit calculated based on the actual term to maturity of all securities to 180 days; • Maintain the current term-to-maturity limits because, given the other	

		proposed liquidity restrictions, only a small percentage of a money market fund would be eligible to invest in FRNs in any event; • Include a concentration limit of 20% on FRNs and limit their maximum term to maturity to 4 or 5 years; • Address concerns regarding liquidity and declining net asset values per unit by providing money market fund managers with greater flexibility to suspend redemptions in extraordinary circumstances; • To improve the ability of the investment fund manager to respond quickly to a future crisis, consider expanding the role of the Independent Review Committee (IRC) to permit the manager to purchase a security from a money market fund for cash; • Limit credit risk by restricting the ability to hold poor quality FRNs and allow unrestricted investment in FRNs issued by governments or Canadian financial institutions, and those with minimum credit ratings.	

		In the event the new term-to-maturity limit is implemented by the CSA, certain commenters requested the following improvements/clarifications: • Allow the grandfathering of the current holdings or at least provide a transition period. Recommended transition periods included a minimum of 3 months, up to 2 years; • Clarify the treatment of short-term floating rate securities for purposes of calculating a money market fund's weighted average portfolio maturity, in particular the differences between variable and floating rate securities. The Securities and Exchange Commission in the United States has provided a similar necessary clarification.	As stated above, we are providing a 6-month transition period.
	Should the 90-day dollar-weighted average term to maturity limit be shortened to 60 days? (s. 2.18(1)(b)(ii))	Many commenters were concerned with the proposed shortening of the dollar-weighted average term to maturity limit for the following reasons: • It would increase short-term rollover risk, which may be one of the systemic risks that exacerbated the problems in the debt markets in 2008;	We acknowledge your comments. We confirm that the amendments maintain the current 90-day dollar-weighted average term to maturity limit. By maintaining the current 90-day average term to maturity, Canadian money market funds will have additional flexibility to manage their

		• Canada's money market is significantly smaller than that of the U.S. (whose money market funds are subject to the shorter 60-day limit), and the supply of highly rated short-term debt is limited; • It would be to the benefit of all unitholders that greater flexibility is maintained to meet large redemption requests, for example, through the less restrictive 90-day limit; • In extreme market conditions, treasury yields drop either due to flight to quality or because central banks have cut administered interest rates, or both. The proposed change would do little to decrease these risks; • Holding longer-dated treasury bills in a money market portfolio can provide an additional valuation cushion. One commenter suggested that the current 90-day dollar-weighted average term to maturity limit should actually be extended to 120 days so that money market funds could have the flexibility to improve yields by moving to a longer term to maturity.	portfolio, relative to U.S. money market funds. In deciding not to adopt the shorter 60-day limit adopted in the U.S. and Europe, the CSA took into account the differences in the money market fund product in Canada compared to that in the U.S. and Europe. Such differences include the different investor composition. The considerable institutional investor segment present in U.S. and European money market funds presents higher risk of significant and immediate redemptions generated by a small number of large investors, which in turn requires greater liquidity. By contrast, Canadian money market funds assets are predominantly held by retail investors. Based on our focused reviews, we understand that money market funds typically monitor the holdings of individual securityholders to monitor the risk of having large securityholders redeem, and often use large securityholder agreements to require specified advance notice for a large redemption. We expect such prudent management practices to continue.

		A number of commenters, including some from industry however, expressed support for reducing the existing dollar-weighted average term to maturity limit to 60 days for the following reasons: • The shortened limit would better protect investors by reducing risks such as interest rate and credit spread risk; • The lower level of volatility provided by shorter maturities would provide greater assurance that the fund can maintain a stable net asset value; • A reduced limit of 60 days would be more consistent with international industry standards, including the Committee of European Securities Regulators' definition of short-term money market funds, and the standards imposed by credit rating agencies.	
	Liquidity Requirements (s. 2.18(1)(d))	Commenters expressed the following concerns over the new liquidity provisions that would require a money market fund to have at least 5% of its assets in cash or readily convertible to cash within one day and 15% of its assets in cash or readily convertible to cash within one week:	The CSA considered whether the more strict U.S. requirements should be adopted here. The proposed amendments reflect a solution that is appropriate for the Canadian market given: (i) the nature and use of money market

		• It would require money market funds to hold on a continuous basis, overnight deposits or very short-term money market instruments. Such securities are typically expensive and have limited availability in the market place, and would unduly reduce returns to investors; • As money market funds move towards short-term holdings, the reduced yield generated by these funds may increase the risk that a fund might "break the buck"; • It will adversely impact the financial services industry as a whole. The increased demand for these instruments will force financial institutions to shorten the duration of their offerings and endure additional duration risk; • In extreme market conditions, any securities position might change from "readily convertible to cash" to "not readily convertible to cash" and complying with the proposed amendment would force a fund to (i) sell securities in an illiquid market	funds in Canada; (ii) the depth of the short-term debt market in Canada; and (iii) the need to ensure that money market funds continue to monitor the liquidity of their portfolio on a regular basis. In addition, due to the high level of liquid and readily marketable investments held by money market funds in Canada, we do not believe that these new requirements will significantly alter the current make-up of their portfolios.

		(likely at a substantial discount) and (ii) sell its more liquid positions and hold on to illiquid positions, solely to raise cash to meet the 5% and/or 15% threshold; • A money market fund that has suffered a string of large withdrawals would be forced under the proposed amendment to sell longer-dated securities and reinvest the proceeds into short-dated ones, instead of letting the longer-dated securities roll down in term with the passage of time. This could lock in paper losses that otherwise might not come to be or could increase reinvestment risks. In the event the new liquidity provisions are implemented by the CSA, certain commenters requested the following improvements/clarifications: • Clarify that the 5% and 15% liquidity requirements are not mutually exclusive, such that the assets allocated by a portfolio manager to satisfy the 5% liquidity provision would also satisfy in part, the 15% liquidity provision;	We confirm that the 5% and 15% liquidity requirements are not mutually exclusive. The mutual fund can include the 5% in the 15% requirement.

		• Clarify or define the term "readily convertible into cash" and in particular, the criteria that would determine whether securities would fall under that term, as this would largely determine the impact of the liquidity provisions. It was suggested that we refer to the similar liquidity requirement adopted in the U.S. for this purpose; • Clarify that assets readily convertible into cash within one day include funds sourced from the overnight market, treasury bills with a maturity of up to 365 days, and direct obligations of the federal government. Assets readily convertible within one week should include the above items, in addition to debt obligations of a federal government agency, direct obligations of a provincial government or provincial government guarantees with a term to maturity of 90 days or less, and any other eligible instrument with a maturity of up to 5 business days;	See the guidance with have added under new section 3.7.1 of 81-102CP. Assets that are "readily convertible to cash" would generally be short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value. Such assets can be sold in the ordinary course of business within 1 business day (in the case of the daily liquidity requirement) or within 5 business days (in the case of the weekly liquidity requirement) at approximately the value ascribed to them by the money market fund. To clarify, the securities do not have to mature within the 1 or 5 business day periods. For example, government paper that matures after 1 or 5 business days that can be readily converted to cash within 1 or 5 business days would likely be eligible for the 5% or 15% liquidity requirements.

		• Qualify the term "readily convertible to cash" such that the conversion to cash must be at a fair and reasonable price. A few commenters, however, supported additional liquidity requirements for money market funds. Some of these commenters also expressed concern over whether the restrictions go far enough in light of the stricter liquidity requirements recently implemented by the U.S. (namely a 10% overnight threshold and a 30% one-week threshold), and asked that the CSA explain their reasons for not adopting them.	
	Reset Interval of Floating Rate Note (s.2.18(1)(a)(iv))	One commenter stated the view that the focus on the reset interval (proposed to be every 185 days) does not address the increased liquidity risk premium of longer-term obligations. Changes to credit premiums can have a material impact to the value of floating rate obligations and can limit their ability to reset near par value [as required under subparagraph (iv)(B)].	We agree with the commenter that the credit margin on long-term obligations must be taken into account. The new weighted average term to maturity of 180 days will restrict a money market fund's ability to fill its portfolio with long-term floating debt.
	Transactions in Derivatives and Short Selling (s. 2.18(2))	Two commenters expressed strong support for the prohibition on short selling and the use of specified derivatives by a money market fund.	Acknowledged.

		We were asked by one commenter to consider adding new restrictions to money market fund assets with embedded derivatives or options. This commenter stressed that options and derivatives should not be exercised other than with agreement of the fund and noted that it is surprisingly common for Canadian money market funds to hold notes commonly known as ‘fixed-to-floaters’, which may have final floating rate terms of up to 100 years if the call option is not exercised by the issuer at the end of the fixed coupon period. One commenter expressed concern about removing the flexibility of money market funds to hold derivative instruments to hedge losses associated with rising interest rates, to gain exposure to money market instruments without investing in them directly (which is more efficient than directly owning the instrument), as well as to reduce the risk of fluctuation in income streams. This commenter stated that it would be inappropriate to impose such a restriction given the current environment where high quality and highly liquid securities are scarce.	If a debt security has a default conversion feature to extend the maturity without input from the fund, the fund must use the later date as the term of the debt for the weighted average term to maturity calculation. No change. The CSA consider the use of derivatives to be incompatible with the investment objectives of money market funds and the current practice of maintaining a stable NAV by holding assets on a cost plus accrued interest basis.

	Additional Comments	One commenter proposed the following additional restrictions in the interest of keeping regulatory global consistency of money market funds: • Remove the ability of a money market fund to hold 5% of its assets in a currency other than that which the net asset value of the fund is calculated since allowing foreign currency exposure introduces additional risks to the fund such as foreign currency risk, counterparty risk and liquidity risk while providing limited benefit to securityholders; • Limit a money market fund's investments in any one issuer to 5% of net assets, as the increased diversification would bring more stability to the net asset value of the portfolio; • Introduce a requirement for money market funds that maintain a constant net asset value to internally monitor and compare at least weekly the market price of the fund and of each security with the corresponding amortized cost valuation and have internal procedures in place to address any meaningful	We acknowledge that a portfolio manager of a money market fund should consider appropriate diversification, currency risks, stress testing and monitoring of "shadow" NAV on a regular basis. We do not believe that codification of such prudent practices is necessary at this time. We are not adding a 397-day maturity maximum for FRNs. The current restrictions provide money market funds with sufficient flexibility to manage their portfolio.

		deviations; • Add a maximum term to maturity of 397 days consistent with SEC Rule 2a-7 for all securities inclusive of FRNs. Another commenter suggested that the CSA require periodic stress testing of money market fund portfolios and monthly public reporting of holdings so that risk can be better assessed and portfolios are more transparent.	
Mutual Fund Dealers	***Commingling Restrictions (ss. 11.1(1)(b), 11.2(1)(b) and 11.4(1))***	Several commenters expressed support for the amendments extending the exemption from the commingling restrictions to MFDA members and mutual fund dealers in Québec. These commenters agreed that there is no rationale for treating MFDA and IIROC members on a different basis.	Acknowledged.
	Interest Determination and Allocation (ss. 11.1(1)(a), 11.2(1)(a), 11.1(4), 11.2(4) and 11.4(1))	Several commenters expressed support for including MFDA members and mutual fund dealers in Québec in the exemption from the interest determination and allocation requirements. One commenter, however, disagreed with the proposed amendment and recommended that, at a minimum, interest be paid on the minimum monthly cash	Acknowledged. The proposed exemption for MFDA members and mutual fund dealers in Québec from the requirements of sections 11.1 and 11.2 is intended to

		balance in the trust account unless the interest payable is less than $1.00.	eliminate unnecessary duplication between the requirements of NI 81-102 and MFDA Rules. Accordingly, while an MFDA member may be exempt from the requirements of sections 11.1 and 11.2, that member will remain subject to the relevant MFDA rules on segregation of client property. On June 25, 2010, the MFDA published proposed amendments to its Rule 3.3.2 *Segregation of Client Property – Cash* and to its *Internal Control Policy Statement 4 – Cash and Securities* (together, the MFDA's Proposed Requirements) which, if approved, would maintain existing requirements to segregate client cash held in trust from member property. They would also give members discretion as to whether they pay interest on client cash held in trust, subject to conditions, including a disclosure requirement on account opening, as to whether or not such interest will be paid and if so, at what rate.
		One commenter noted that the exemption under section 11.4 should also include an exemption from the requirement in subsection 11.3(b) that a trust account bear interest. This would be consistent with	An exemption from the requirement in subsection 11.3(b) is not necessary as section 11.3 applies only to the extent section 11.1 or 11.2 applies. As the amendment proposed to section 11.4

		amendments proposed by the MFDA to their corresponding rules. This commenter also asked us to confirm that MFDA members may, at their option, place client moneys into an interest bearing trust account and that if they elect to do so, any interest earned may be used to cover any charges imposed by the financial institution against the trust account, contrary to section 11.3(c).	will exempt MFDA members from the requirements of sections 11.1 and 11.2, the requirement in subsection 11.3(b) will therefore not apply. MFDA members would nevertheless be subject to the MFDA's Proposed Requirements in respect of the payment of interest on trust accounts, as discussed above. As already discussed above, the requirements of section 11.3 would not apply to a member of the MFDA or mutual fund dealer in Québec that is exempted from the application of section 11.1 or 11.2 under the amendment proposed to section 11.4. As noted above, the MFDA's Proposed Requirements would maintain certain requirements pertaining to the segregation of client cash held in trust. We also refer commenters to the MFDA's Proposed Requirements for the purpose of determining what changes have been proposed pertaining to the permitted use of interest earned on client trust accounts.
	Mutual Fund Managers	One commenter requested clarification on whether the proposed exemption in subsection 11.4(1) would also apply to mutual fund managers of mutual funds that do not have a principal distributor. This	We confirm that mutual fund managers that have neither a principal distributor nor a participating dealer that is a member of the MFDA or a mutual fund dealer in Québec would remain subject

		commenter suggested that these mutual fund managers should benefit from the exemption on the same basis as participating dealers.	to the requirements of Part 11. The exemption proposed in section 11.4 would not extend to mutual fund managers that consider themselves to be service providers (i.e. persons or companies providing services to a mutual fund). The CSA will at this time continue to consider applications for exemptive relief from such service providers on a case by case basis.

Mutual Fund Ratings	***Use of Mutual Fund Ratings in Sales Communications (s. 15.3(4))***	A number of commenters requested that the proposed disclosure requirements for mutual funds that use performance ratings or rankings in sales communications be changed or clarified as follows:
		
		• The sales communication should contain only the following disclosure proposed under paragraph 15.3(4)(e):
		  • the name of the category within which the mutual fund is rated or ranked, including the name of the organization that maintains the category (15.3(4)(e)(i));
		  • the name of the mutual fund rating entity that provided the rating or ranking (15.3(4)(e)(iii)); and
		  • a statement that the rating or ranking is subject to change every month (15.3(4)(e)(v)).
			We continue to believe that the various disclosure items proposed in paragraph 15.3(4)(e) are essential to bring sufficient context to a mutual fund rating or ranking, and minimize the risk that the public may be misled by a sales communication containing such a rating or ranking. The disclosure requirements are quite consistent with those mandated under similar U.S. rules (see NASD Rule 2210) governing the use of mutual fund ratings in retail communications.
			
			We are proposing a few changes to paragraph 15.3(4)(e) that are generally intended to clarify the disclosure requirement and simplify the required disclaimer language. We propose to replace the requirement in clause 15.3(4)(e)(vi) to disclose the key elements of the methodology used by

		The remaining disclosure proposed under paragraph 15.3(4)(e) should be made on the website of the 'mutual fund rating entity' instead of in the sales communication itself because this disclosure is lengthy, very technical, unlikely to be read by the majority of investors, and is not conducive for use in advertisements or other more time-sensitive sales communications. Investors should instead be referred to the additional information via a reference (or, in a live document, a link) to the specific page of the rating organization's website where the methodology is discussed. The link could be displayed prominently, outside of the standard disclaimer and close in proximity to where the rating is first used in the sales communication;	the rating entity with the requirement to disclose the criteria on which the rating or ranking is based (e.g. total return, risk-adjusted performance). We no longer propose to require a reference to the mutual fund rating entity's website for details of the rating methodology. We are replacing the requirement in subparagraph 15.3(4)(e)(vii) to disclose the *significance* of a rating or ranking with a requirement to disclose the *meaning* of a rating or ranking where it is a symbol rather than a number (for e.g., a five-star rating indicates the fund is in the top 10% of all mutual funds in the category).
		• Clarify the level of detail with which the "significance" of the rating or ranking should be disclosed in accordance with subparagraph 15.3(4)(e)(vii);	As stated above, we are replacing the requirement in subparagraph 15.3(4)(e)(vii) with a requirement to disclose the *meaning* of a symbol that is used as a rating or ranking.
		• Clarify whether a fund has to disclose the category and number of funds separately for each period of standard	Yes, in order to give proper context to a rating, a fund has to disclose the category and number of funds separately

		performance data (since fund categories and the number of funds being rated in a category change over time) or whether it would be sufficient to disclose the current name and size of the category at the time that the sales communication is first used;	for each period of standard performance data. While we wouldn't expect the category to typically change over time, we recognize that the number of funds being rated in a category will change over time. In order to avoid involved or lengthy text disclosure, particularly where a sales communication may pertain to more than one fund, we encourage fund managers to consider presenting the information in a table or other format that assists in presenting the required disclosure clearly and concisely.
		• Provide guidance or a prescribed form on how we would expect a disclaimer to read;	We have not prescribed the disclaimer language in the amendment in order to provide fund managers with flexibility given the many ways that this information can be used and presented.
		• Define the term 'published category' as used in paragraph 15.3(4)(d).	We do not propose to define the term 'published category' as the CSA do not want to limit the establishment of categories that may provide a reasonable basis for evaluating the performance of a mutual fund. Note that a 'published category' may not, under clause 15.3(4)(d)(ii), be one that is established by a member of the organization of the mutual fund. Currently, an example of

			such independently established 'published categories' would include those maintained and made available to the public by the Canadian Investment Fund Standards Committee (CIFSC).
		Three commenters, on the other hand, expressed support for the additional disclosure requirements surrounding the use of mutual fund ratings in sales communications. One of these commenters encouraged us to require further transparency of the methodologies used by mutual fund rating agencies and suggested that all data used in the calculation of such ratings, and the complete methodology used to establish the ratings, be made available.	We believe that a requirement to disclose all data used in the calculation of a rating/ranking, and the complete methodology used to establish the rating/ranking would make the disclosure too lengthy, very technical, and not conducive for use in sales communications. We however understand that the public may wish to review the data and methodology used for the purpose of ensuring that the results are verifiable. To provide this assurance to the public without necessarily requiring detailed disclosure of the methodology in the sales communication, we are proposing a minor change to the definition of "mutual fund rating entity" to require that the rating/ranking methodology used by it be not only objective, but also based on quantifiable factors, and disclosed to the public on the mutual fund rating entity's website.
		One commenter recommended that we	The CSA believe that the use of third

		revisit the policy of utilizing star ratings as there is little evidence that such ratings provide value to long-term investors. This commenter further recommended against permitting the use of overall ratings or rankings in addition to the ratings or rankings based on standard periods of performance as this would further confuse retail investors and would add unnecessary risk.	party ratings in sales communications is an acceptable practice if it is done in accordance with the requirements as proposed in the amendments.
Drafting Changes	***Definition of Permitted Supranational Agency***	Two commenters recommended adding the European Investment Bank in the proposed definition of permitted supranational agency.	Change made.

Part III – Comments on proposed amendments to NI 81-106

Issue	Sub-Issue	Comments	Responses
Aggregation of Short-Term Debt	***Statement of Investment Portfolio (ss. 3.5(4) and 3.5(5))***	Three commenters expressed concern with the elimination of an investment fund's ability to aggregate certain types of short-term debt in the fund's statement of investment portfolio. We were told that any benefit of increased transparency would not outweigh the increased administrative costs. One of these commenters noted that with	No change. We continue to believe that this amendment is essential to increase the transparency of investment fund portfolio holdings and allow investors to better evaluate the risks associated with an investment fund's short-term debt holdings. When the non-bank asset-backed commercial paper market froze in August 2007, it was difficult

		respect to mutual funds that are not money market funds, short-term debt holdings are generally transitory assets moving in or out of the fund and would not be particularly useful information for an investor. This commenter proposed an exception in the proposed amendment such that short-term debt in aggregate amounts of less than 10% of the net assets of the fund be permitted to continue to be aggregated in financial reporting. With respect to scholarship plans, one commenter felt that, given the restricted nature of the types of investments that can be made by scholarship plans, detailing each specific holding of short-term debt would not really add anything of relevance or substance to an investor. This commenter remarked, however, that the current requirement in subsection 3.5(5) to break out information about a specific debt instrument if the aggregate for that instrument exceeds 5% of the short-term debt holdings of the fund is relevant and useful disclosure for investors. One commenter expressed approval for this proposed amendment.	for investors to determine if funds they owned held such paper. We do not believe that such lack of transparency of holdings is appropriate. We are not prepared to make exceptions for funds that are not money market funds. All funds should provide the same level of transparency, irrespective of the extent of their short-term debt holdings.

Limited Life Funds	***Definition of Limited Life Fund***	One commenter suggested that the definition of limited life fund be broadened to capture limited life funds that cannot be terminated within 24 months of its formation such as where there is a delay in commencing the offering of the fund or a fund that remains in existence after liquidation for tax purposes. This commenter proposed that the definition should read "…whose prospectus discloses that the investors in the investment fund (other than the manager, promoter or any affiliates thereof) will cease to be investors in the investment fund within 24 months following the completion of the initial public offering by the investment fund."	The CSA have decided at this time not to proceed with the codification of relief from the annual information form requirements of s.9.2 for limited life funds. In light of the rapid market development and innovation of investment fund products, including changes in structure and complexity, the CSA are of the view that the exemption, as originally proposed, could have the unintended consequence of allowing certain investment funds that weren't specifically contemplated by the exemption, to benefit from the exemption. The CSA will therefore continue to review such requests for relief on a case-by-case basis.
	Annual Information Form (s. 9.2)	One commenter proposed that the exemption from the requirement to file an annual information form for limited life funds be extended to all investment funds that no longer have securityholders and intend to terminate. We were told that since these investment funds exist solely to maintain their status for tax purposes, there is no benefit in requiring these funds to continue to prepare continuous disclosure documents since there are no arm's length investors in the fund and no intention to distribute any securities by the fund.	See response above.

	Proxy Voting Record Requirements (ss. 10.3 and 10.4)	One commenter proposed that previous exemptive relief granted to limited life funds from the requirement to maintain, prepare and post on its website a proxy voting record on an annual basis and to send securityholders the proxy voting record on request, be codified on the same basis as the proposed exemption to file an annual information form. We were told that given the short lifespan of limited life funds, the proxy voting records have little practical utility since securityholders would have little or no opportunity to act on information contained in the proxy voting record.	See response above.
Calculation of Net Asset Value	***Public Disclosure of Net Asset Value (s. 14.2(8))***	One commenter remarked that the cost of system changes to post net asset value information on a website daily is likely greater than the benefit to investors of having this information daily, rather than weekly or longer.	We have renumbered proposed subsection 14.2(8) as new subsection 14.2(6.1), and added to it the requirement for an investment fund to make available to the public its net asset value *per security*, in addition to its net asset value, as originally proposed. We have made corresponding amendments to the related disclosure requirements under Item 20.3 of Form 41-101F2 and new Item 7(2.1) of Form 81-101F2. The proposed requirement to make the net asset value and net asset value per security of an investment fund available to the public at no cost does not

			necessarily equate to an obligation to ensure that this information is disseminated on various public mediums, including websites. The requirement is merely intended to give interested members of the public a way to access this information at no cost. The fund manager may select the means through which it intends to make its investment funds' net asset value/net asset value per security available to the public at no cost.
		Certain commenters proposed the following changes or clarifications to the proposed requirement to make a fund's net asset value available to the public:	
		• Exempt scholarship plans from this requirement given their "non-unitized" nature and the fact that they generally do not carry out "net asset value" calculations;	The CSA understand that scholarship plans can and do produce a net asset value in their financial statements. We however recognize their "non-unitized" nature which does not enable them to produce a net asset value per security. Accordingly, new subsection 14.2(6.1), requires scholarship plans to make available their net asset value on a non-unitized basis only.
		• Exempt investment funds and classes or series of investment funds that are only available to investors who have	No change. We consider that investment funds that are reporting issuers should make their net asset

		discretionary managed accounts from this requirement as those investors do not choose the funds in their portfolios and are not likely interested in their net asset values. Alternatively, modify the requirement such that those series of a fund or funds that are only available to institutional clients, discretionary managed accounts or otherwise are not available to the general public, be required to make the net asset value available only to these specific clients, and not to the general public; • Clarify whether an investment fund is required to make the net asset value per security available to the public at no cost in addition to the net asset value of the fund; • Clarify the types of public access that would satisfy the requirement to make the net asset value "available to the public". In particular, is publication on a website required or is making the net asset value available via mail, telephone/fax, or email sufficient?	value available to the general public notwithstanding the fact that their securities may be held by, or available to, only a select class of investors (e.g. institutional clients or discretionary managed account client etc.). And as stated above, we are not proposing that the net asset value be published, but rather only be made available at no cost to those who request it. As mentioned above, new subsection 14.2(6.1) requires that an investment fund make both its net asset value and net asset value per security available to the public at no cost. Scholarship plans are excepted from the requirement to make available a net asset value per security. Publication on a website is not required. See response above.

Part IV – Comments on related consequential amendments			
Issue	**Sub-Issue**	**Comments**	**Responses**
NI 41-101	***Calculation of Net Asset Value***	One commenter noted that NI 41-101 does not contain the same disclosure requirement as the proposed Item 7(2.1) of Form 81-101F2, that the offering document describe how the net asset value of the mutual fund will be made available to the public at no cost.	We refer you to existing Item 20.3 of Form 41-101F2 which already requires investment funds to describe in their long form prospectus how the net asset value of the investment fund will be made available at no cost. Our final amendments include an amendment to that Item in connection with the requirement in new subsection 14.2(6.1) of NI 81-106 (discussed above) to also make available the net asset value *per security*. A similar change has been made to new Item 7(2.1) of Form 81-101F2.
Form 81-101F1	***Disclosure Relating to Short Selling (Item 9(7) of Part B)***	One commenter remarked that substantial amounts of short selling may make some mutual funds completely inappropriate for some investors and recommended that strict disclosure be required on the risks of short selling under Item 4 of Part A of this form in addition to the risk disclosure required under Item 9 of Part B. Another commenter, on the other hand, questioned the effectiveness of the additional	The risk disclosure under Item 4 of Part A is intended to describe the risk factors that are associated with investing in mutual funds *generally*. It may not be appropriate to discuss the risks associated with short-selling under Item 4 of Part A of a multiple SP where only a small minority of mutual funds in that SP have incorporated short-selling into their overall investment strategy. The specific short-selling risk disclosure

		requirement to disclose applicable risks under this disclosure item if a mutual fund engages in short selling or derivatives for non-hedging purposes. This commenter noted that common practice engaged in by industry and accepted by staff with respect to the risk disclosure required by Item 9 of Part B is simply to refer back to the risks described in Part A of the prospectus, which is no different than the disclosure of other risks of investing in the fund. It was proposed that this subsection be repealed.	would instead be made in each of the relevant funds' Part B. Where however most of the funds in a multiple SP intend to short-sell (as disclosed in their respective investment strategies), we would expect short-selling risk to be discussed both generally under Item 4 of Part A and specifically under Item 9(7) of Part B. In that case, the Part B short-selling risk disclosure may, as per Item 9(3) of Part B, be provided through a cross-reference to the short-selling risk disclosure in Part A.
		This commenter also suggested that a qualification be added to this provision such that the risk disclosure would only be required if the fund had entered into any of the specified transactions by a date within 30 days of the date of the simplified prospectus.	No change. Even though a fund may not actually short-sell securities or use derivatives as at the date of a prospectus, its investment strategies may contemplate the use of such strategies at any future point in time. Given the specific risks associated with short-selling and the use of derivatives, the possibility of using such investment strategies in the future is material information that must be disclosed to investors ahead of any such activity. This prospectus disclosure obligation is consistent with the advance notice requirement in section 2.11 which requires a mutual fund to provide to its securityholders 60 days prior written

			notice before it begins short-selling securities or using derivatives. This notice is however not required where the fund's prospectus has, since the fund's inception, disclosed the intent to engage in such activities along with the associated risks.
		A third commenter proposed that due to the additional risk involved in short selling, a mutual fund should indicate in its name that it may engage in short selling.	Under the amendments to NI 81-102, a mutual fund is limited to short-selling no more than 20% of its net asset value. Short-selling is one of many other strategies that a fund may use under NI 81-102. While we consider that the use of short-selling constitutes material information that must be specifically disclosed in the prospectus as part of the fund's investment strategy, along with disclosure of the related risk, we do not believe that limited short-selling necessarily needs to be reflected in a fund name, over all other investment strategies which the fund may potentially use.
	Transition	We were asked by one commenter to clarify that the proposed amendments apply only to simplified prospectuses and annual information forms issued after the effective date of the proposed amendments.	We expect mutual funds that currently short-sell under prior exemptive relief to amend their current disclosure in their prospectus so as to comply with any new short-selling disclosure requirements at the earlier of the next renewal or next amendment of the

			prospectus. Mutual funds intending to increase their current short-selling activities up to the prescribed limit in new s.2.6.1 should consider whether such increase would be a material change triggering the requirement to file an amendment prior to implementing the new limit.

Part V – Other comments

Issue	Sub-Issue	Comments	Responses
(i) Other comments relating to NI 81-102			
Definitions	***Cash Equivalent***	One commenter proposed amending the definition of "cash equivalent" so as to contemplate a term to maturity of five years or less, rather than the 365 days currently referred to, but with the amount of the evidence of indebtedness which may be used for purposes such as 'cash cover' being 80% of par for a term to maturity of five years increasing on a straight-line basis so as to be par for a term to maturity of 365 days or less. This would provide further flexibility to mutual funds in determining the optimal maturity mix of government or guaranteed debt instruments	No change at this time.

		while still meeting the policy objectives underlying the requirements to hold cash cover or similarly liquid securities.	
	Mutual Fund Conflict of Interest Investment Restrictions	One commenter recommended that the definition of "mutual fund conflict of interest restrictions" be amended to be consistent and/or identical to the definition of the term in NI 31-103.	No change. The term "mutual fund conflict of interest restrictions" is not defined in NI 31-103.
	Net Assets vs Net Asset Value	One commenter suggested that we clarify, throughout NI 81-102 and NI 81-101, the use of the terms "net assets" and "net asset value". This commenter noted that the definition of "net assets" can only be found in Form 81-106F1, which likely ascribes a different meaning to the term as used in NI 81-102 and NI 81-101.	Change made. With our final publication, we are making amendments throughout NI 81-102 and NI 81-101 to replace references to "net assets of the mutual fund, taken at market value at the time of the transaction" with "net asset value".
Investment Restrictions	***Concentration Restrictions for Government Securities (s. 2.1)***	Two of these commenters proposed that the definition of "government security" be expanded to include evidences of indebtedness issued and guaranteed by governments in the G7 member countries or countries where the government debt is rated AAA, such as Austria, Finland, Netherlands and Sweden. In the alternative, two commenters proposed that we codify previous exemptive relief granted to mutual funds	No change. No change at this time. Since the credit crisis of 2008-2009, certain countries, such as the U.S., have been

		with global fixed income mandates to invest up to 35% of net asset value in AAA-rated foreign government debt and up to 20% of net asset value in AA-rated foreign government debt.	reconsidering references to credit ratings in their regulation with a view to eliminating over-reliance on such ratings by both regulators and investors. In such an environment, the CSA is not prepared to codify relief premised on the maintenance of certain credit ratings. The CSA will continue to consider such exemptive relief requests on a case-by-case basis.
	Investments in Gold and other Precious Metals (ss. 2.3, 2.5)	Four commenters suggested that we codify recently granted exemptive relief that provides mutual funds with more flexibility to invest in gold and other commodities, including relief permitting: • investments in precious metals other than gold such as silver and palladium; • up to 100% of net assets to be invested in gold; • investments in gold and silver exchange-traded mutual funds; • investments in leveraged gold exchange-traded mutual funds and inverse gold exchange-traded mutual funds.	No change at this time. In Phase 2 of the Modernization Project, we intend to re-examine the current investment restrictions in Part 2 of NI 81-102 in light of market and product developments. Any potential changes would be considered at that time.
	Exemption from Concentration and Control Restrictions for Fund-on-Fund	One commenter expressed concern about exempting mutual funds from the concentration restrictions when investing in other mutual funds. We were told that	These exemptions from the concentration and control restrictions for funds-of-funds are not new as they have been in place since Dec. 31, 2003.

	Investments (s .2.1, 2.2, 2.5)	mutual funds can potentially be used to "cascade" holdings in particular securities to a greater extent than could be generated directly. This commenter proposed that hard concentration limits be made to apply to funds-of-funds on a look-through basis so that concentration restrictions that are in place for investor protection are not disregarded as a result of tiering.	Amendments were made to NI 81-102 at that time to permit mutual funds to invest without restriction in other mutual funds, subject to conditions prescribed in section 2.5 of NI 81-102. We are not aware of any issues brought about by these exemptions and therefore consider that no changes are necessary.
	Investments in Exchange-Traded Funds other than Index Participation Units (s. 2.5)	Two commenters proposed codifying routinely granted relief permitting mutual funds to invest up to 10% of net assets in Canadian and U.S. exchange-traded funds which do not qualify as index participation units. These include exchange-traded funds that invest in a manner that replicates the performance of a widely quoted market index by a multiple of 200% or an inverse multiple of 200%, that replicates the performance of a commodity, or provides exposure to a sector or geographic area not represented by a widely quoted market index. One of these commenters recommended capturing these funds in a new definition of "reference-based ETF" and creating an exception to s. 2.5(a) and (c). One commenter also recommended that	No change at this time. In Phase 2 of the Modernization Project, we intend to re-examine the current investment restrictions in Part 2 of NI 81-102, including the fund-on-fund provision in section 2.5, in light of market and product developments. Any potential changes would be considered at that time.

		the CSA eliminate the technical distinction between exchange-traded funds that fall within the definition of "mutual fund" and those that do not, as there is no rationale for allowing mutual funds to invest in certain exchange-traded funds and not in others based solely on the fund's ability to satisfy redemptions on demand at net asset value. Rather, it was suggested that funds be permitted to invest in exchange-traded funds like any other exchange traded issuer. We were told that concerns such as undue leveraging risks can be addressed through concentration restrictions and extension of cash cover requirements.	No change at this time. See response above.
	Use of Derivatives for Non-Hedging Purposes (s. 2.8)	One commenter suggested that the CSA address the following two issues in light of changes in market practice relating to requirements for collateral and the requirements of the Dodd-Frank financial reform legislation in the U.S.: 1. Clarify whether funds are able to pledge cash as collateral under a specified derivative contract. While cash is ascribed full value when posted as collateral, other securities may be discounted. As such, allowing a fund to post cash collateral would enable the fund to invest a greater proportion of its	A mutual fund is able to pledge cash as collateral under a specified derivative contract, subject however to the requirement in subsection 6.8(4) that the agreement by which portfolio assets of a mutual fund (whether cash or securities) are deposited with the counterparty require the counterparty to ensure that

		assets when using derivatives; 2. Address the fact that net assets used as cash cover cannot also be used to post collateral under an ISDA agreement. As a result, where a fund is required to make payments under a specified derivative, it must have cash cover for that amount under NI 81-102 and also post collateral with the counterparty under its Credit Support Annex. This results in the payment obligation being double-secured, at a cost to unitholders of the fund. This also makes the use of derivatives uneconomic.	its records show that the mutual fund is the beneficial owner of the portfolio assets. We understand from your comment that there are practical implications in complying with this requirement when cash is posted as collateral with a counterparty because the cash is no longer beneficially owned by the mutual fund, but rather the counterparty becomes a conditional debtor of the fund. In such circumstances, in order to ensure that the mutual fund retains beneficial ownership of the cash collateral, we understand that individual *Personal Property Security Act* (PPSA) registrations must be made on the cash collateral. This added burden currently discourages mutual funds from posting cash collateral. While we recognize the practical implications of complying with subsection 6.8(4) where cash collateral is concerned, we are not prepared to except cash collateral from the application of that section as we believe the policy basis for that requirement to be sound. We suggest that amendments to the PPSA may provide a more

			effective way of dealing with the current impracticalities of posting cash collateral.
	Securities Lending Transactions of 100% of a Fund's Portfolio (ss. 2.12(1)1, 2.12(1)2, 2.12(1)12, 2.12(3), 2.15(3), 2.16, 6.8(5))	One commenter proposed that we codify relief granted to mutual funds that are clone funds and utilize a capital yield structure through a forward agreement, to engage in securities lending transactions with respect to 100% of the net assets of the fund.	No change. Staff will continue to consider this type of exemptive relief request on a case-by-case basis.
Conflicts of Interest	***Purchases of Mortgages from a Related Party (ss. 4.2, 4.3)***	One commenter suggested codifying relief that was granted to a mortgage mutual fund to make a one-time purchase of mortgages from a related party that was pooling mortgages for the purpose of transferring them to the fund.	No change at this time. We may consider this comment in the context of future amendments to NI 81-107.
	Self-Dealing Exception where Bid and Ask Price Reported by Available Public Quotation (ss. 4.3(1), 4.3(2))	One commenter proposed that we extend the exception for the purchase and sale of securities between related mutual funds where the bid and ask price for the security is reported on a public quotation system in common use, to the purchase and sale of securities between related mutual funds where the bid and ask prices are not publicly available, but the current fair market valuation may be readily obtained through an independent arm's length valuation and the IRC of the fund recommends the transaction on that basis.	No change at this time. We may consider these comments in the context of future amendments to NI 81-107.

		This commenter also proposed extending the exception for purchases and sales of securities between related public mutual funds to purchases and sales of securities between a related public mutual fund and a privately offered pooled fund made on the same basis, and where the pooled fund has set up an IRC in accordance with NI 81-107.	
Fundamental Changes	***Mergers (ss. 5.1(f), 5.1(g), 5.3(2), 5.6(1))***	A few commenters suggested the following changes to the merger pre-approval provision and the merger approval process: • Remove the pre-approval requirement in paragraph 5.6(1)(b) that the transaction must be a "qualifying exchange" or a tax-deferred transaction under the *Income Tax Act* as this requirement could result in capital gains being imported into the continuing fund; • Codify the most common circumstances in which merger approvals are granted by the CSA under paragraph 5.5(1)(b), including: 1. where the fundamental investment	No change at this time. No change at this time.

		objectives, valuation procedures and fee structures of the terminating fund and continuing fund are not substantially similar (5.6(1)(a)(ii)), provided the information circular contains sufficient information concerning the differences in the fundamental investment objectives, valuation procedures or fee structures to permit securityholders of the mutual fund to make an informed decision concerning the merger;	
		2. where the transaction is not a qualifying exchange (5.6(1)(b)), provided the information circular contains sufficient information concerning the tax consequences of the merger to permit securityholders of the mutual fund to make an informed decision concerning the merger;	No change at this time.
		3. where the prospectus and financial statements of the continuing fund are not sent to securityholders of the terminating fund (5.6(1)(f)(ii)), provided that securityholders of the terminating fund are instead sent a tailored prospectus containing the	As of January 1, 2011, subparagraphs 5.6(1)(f)(ii) & (iii) of NI 81-102 require that the materials sent to securityholders in connection with a merger approval include either the current prospectus or the most recently filed fund facts document of the continuing fund, and a

		Part A and relevant Part B of the continuing fund's prospectus and an information circular describing how an investor may access the continuing fund's financial statements;	statement advising securityholders on how the most recently filed financial statements and other filed documents of the continuing fund may be obtained by them at no cost. On August 12, 2011, the CSA proposed an amendment to subparagraph 5.6(1)(f)(ii) which, once finalized, would going forward require that only the most recently filed fund facts document of the continuing fund be included with the materials sent to securityholders (along with the statement required under subparagraph 5.6(1)(f)(iii)).
		• Require an application for approval of a fund merger to include the draft information circular to be sent to securityholders of the terminating fund since it appears to be staff's practice to review this information prior to approving the merger. This would provide fund managers with sufficient notice to alter their timelines for filing these types of applications;	No change. Staff appreciates the continued opportunity to review the draft information circular as part of the merger approval process.
		• Permit the IRC of a continuing fund, in connection with a fund merger that is considered a material change for the continuing fund, to approve the merger without obtaining the approval of	No change. We believe that securityholders of the continuing fund should have the right to vote on a material change to their fund, resulting from a reorganization or merger.

		securityholders of the continuing fund, on the same basis that the IRC of a terminating fund may approve a merger of the fund without the approval of securityholders of the terminating fund under subsection 5.3(2);	
		• Revise the pre-approval requirement under paragraph 5.6(1)(e) to have obtained securityholder approval so that it contemplates the situation where IRC approval under subsection 5.3(2) may apply, in which case securityholder approval is not required to be obtained.	Change made. See the amendment to subparagraph 5.6(1)(e)(i) which recognizes that securityholder approval is not necessary where IRC approval under subsection 5.3(2) applies.
		A different commenter, however, expressed concern with authorizing IRCs to approve mergers on behalf of terminating mutual funds under subsection 5.3(2) altogether. The commenter felt that these types of changes are material to an investor and the investor should retain the right to approve them. In the alternative, it was suggested that the 60 days' notice requirement be accompanied with a redemption right where the redemption fees are waived.	No change.

	Change in Control of Manager and Change of Manager (ss. 5.1(b), 5.5(1)(a), 5.5(2))	One commenter expressed concern with OSC staff's view, as set out in Staff Notice 81-710, that a change in control of a fund manager shortly followed by an amalgamation of the acquired manager with the acquiring manager would be considered a change of manager. We were told that some post-consolidation efforts to streamline the operations of an acquiring and an acquired fund manager would have no material impact on securityholders. This commenter asked for guidance on circumstances in which parties may contemplate a post-closing merger without the change of control transaction being re-characterized as a change of manager of a mutual fund. The commenter also asked whether OSC Staff's view is adopted by the other CSA members. This commenter remarked that the application of the staff notice has potentially far-reaching ramifications for mutual fund managers and strongly urged us to revisit the issues in a proposed amendment to NI 81-102 so that they can be submitted for public consultation as part of the rule-making process.	The concern relates to views expressed by OSC Staff only. Any necessary guidance on this issue should accordingly be sought directly with OSC Staff, rather than be expressed in this CSA document.
Purchases and Redemptions of	***Rejection of Purchase and Redemption***	One commenter recommended that the wording regarding the timing for rejecting	No change. Under subsection 10.2(6), a mutual fund must notify a

Securities	***Orders (ss. 9.2(a) and 10.2(6))***	a purchase order and for rejecting a redemption order be made consistent. We were told that it was unclear whether "no later than one business day after" and "no later than the close of business on the business day after" referred to the same time (i.e. 6:30 p.m).	securityholder when the mutual fund is in receipt of an incomplete redemption order. There is no similar securityholder notification requirement in respect of the rejection of purchase orders under paragraph 9.2(a). We believe the different wording used in respect of redemption orders in subsection 10.2(6) is intended to make clear not only the day, but also the time (i.e. no later than the close of business) by which the securityholder must be notified of the incomplete redemption order.
	Incomplete Purchases and Redemptions (ss. 9.4(4)(a) and 10.5(1)(a))	One commenter questioned why a forced redemption of securities upon an incomplete purchase order would occur on the day following the settlement period of 3 days, whereas a forced purchase of securities upon an incomplete redemption order would occur on the final day of the settlement period of 10 days. This commenter recommended that these sections be made consistent such that both transactions are required to occur on the next business day following the end of the settlement period.	No change. We point out that the 1997 and 1999 drafts of NI 81-102 initially proposed that failed purchase orders be redeemed *on the last day* of the settlement period of 3 days. This was consistent with the requirement to make a forced purchase of securities upon an incomplete redemption *on the last day* of the redemption settlement period of 10 days. Commenters on the 1999 draft requested that the timing of forced redemptions under paragraph 9.4(4)(a) follow the same approach as under NP 39 which contemplated that the forced redemption be required to occur *on the next business day* following the settlement period (which was then T+5).

			To be consistent with the approach under NP 39, and also to take into account the shorter settlement cycle of T+3 under NI 81-102, the CSA extended the date for forced redemptions under the final draft of paragraph 9.4(4)(a) to the fourth business day after the pricing date.
	Lapping (ss. 11.1(3), 11.2(3) and 11.3)	Two commenters suggested that the prohibitions on lapping, whereby cash of a mutual fund client held for a trade which has not yet settled is used to settle a trade for another mutual fund client, are harmful to investors. We were urged to consider permitting lapping by mutual funds in limited circumstances. One of these commenters noted that the lapping prohibitions may cause severe dilution when large purchases of a mutual fund are made and in fund-of-fund situations. Given the concerns behind the prohibition that lapping may cause a fund to bear the liability from a trade not settling, this commenter proposed that the manager of the mutual fund be required to guarantee the amount "lapped" to the fund such that the risk would be borne by the manager. In addition, this commenter proposed that lapping be permitted only in circumstances where it is extremely rare	No change at this time.

		for a trade to be cancelled, for example, where the value of units subscribed by an investor is greater than 10% of the net asset value of the fund, the investor is a top fund that is affiliated to the bottom fund, or the investor is hedging its exposure under a clone fund structure.	
(ii) Other comments relating to NI 81-106			
Financial Disclosure Requirements	***Notes to Financial Statements (s. 3.6)***	One commenter suggested that with the coming into force of NI 23-102 - *Use of Client Brokerage Commissions*, the soft dollar disclosure requirement under section 3.6 of NI 81-106 should be amended such as to use terminology consistent with that used under NI 23-102. The current inconsistency in the language used can lead to potentially different disclosure in the notes to the financial statements depending on the fund manager's interpretation of this provision.	Change made. See amendment to paragraph 3.6(1)3. of NI 81-106 which now uses terms consistent with those defined and used under NI 23-102.
(iii) Other comments relating to NI 81-101			
NI 81-101	***Disclosure Reform***	In light of the proposed amendments and the introduction of the Fund Facts document, one commenter encouraged us to prioritize meaningful disclosure reform, in particular combining the simplified prospectus with the annual information form into an expanded prospectus and	No change. A rationalization of the mutual fund disclosure regime is not within the scope of the Modernization Project.

		subsequently reviewing specific disclosure requirements with a view to rationalizing the disclosure regime.	
Form 81-101F1	***Large Redemption Risk (Item 9(1.1) of Part B)***	One commenter suggested that this provision be clarified such that disclosure of the risks of large redemptions be required only when one securityholder holds more than 10% of the market value of the fund, and not when one securityholder holds more than 10% of the number of securities in any one class or series of the fund.	Change made. See the amendment to Item 9(1.1) of Part B which requires disclosure of the risk of large redemptions when a securityholder holds securities of a mutual fund representing more than 10% of the net asset value of the mutual fund.
	Disclosure Relating to Concentration Risk (Item 9(6) of Part B)	One commenter recommended that the risk disclosure requirement that is triggered when more than 10% of a mutual fund's net asset value is invested in a security of an issuer, other than a government security or a security issued by a clearing corporation, also not apply when the security is issued by another mutual fund pursuant to s. 2.5 of NI 81-102. This commenter felt that the rationale for the required risk disclosure does not apply where the issuer is itself a mutual fund governed by the same set of rules. This commenter also suggested that a qualification be added to this provision to allow the measurement of the 10%	No change. Change made. See amended Item 9(6) which now contemplates a cut off date for the requested information that is 30

		threshold within a 12 month period to be as of a date within 30 days of the date of the simplified prospectus, similar to the qualification in subsection (1.1) of Item 9 that requires certain risk disclosure if more than 10% of the securities of the fund are held by one securityholder.	days prior to the date of the prospectus.

Part VI – List of commenters
<u>**Commenters**</u> Borden Ladner Gervais LLP Canadian Bankers Association Canadian Foundation for Advancement of Investor Rights Canadian Imperial Bank of Commerce Cassels Brock & Blackwell LLP CI Investments Inc. Fasken Martineau DuMoulin LLP Fédération des caisses Desjardins du Québec Fidelity Investments Canada ULC Franklin Templeton Investments Corp. Goodman & Company HSBC Global Asset Management IA Clarington Investments Inc. Invesco Trimark Investment Funds Institute of Canada Kenmar & Associates McCarthy Tétrault LLP National Bank Financial Group Osler, Hoskin & Harcourt LLP on behalf of BlackRock Asset Management Canada Limited RESP Dealers Association of Canada Scotia Asset Management L.P. Small Investor Protection Association TD Asset Management Inc. Tradex Management Inc.