Appendix B

Summary of Comments and CSA Responses

On June 1, 2007, the CSA published for comment revised versions of the Instrument, Companion Policy and other consequential amendments. The comment period expired on August 31, 2007. The CSA received submissions from these commenters:

AIMA Canada (Phil Schmitt)
Borden Ladner Gervais LLP (Investment Management Practice Group)
Desjardins Group (Yves Morency)
Fidelity Investments Canada Limited (Peter S. Bowen)
The Investment Funds Institute of Canada (Joanne De Laurentiis)
IGM Financial Inc. (Charles R. Sims)
PFSL Investments Canada Ltd. (John A. Adams)
Robson Capital Management Inc. (Jeffrey C. Shaul)
Tradex Management Inc. (Robert C. White)

We have summarized the comments received and provided our responses.

NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE	
Part 1 – Definitions and Applications	
Comment	**1.1 Definitions** *Definition of "net asset value"* We received two comments on this proposed amendment. Both commenters believe that the use of the term "net assets" as reference to net assets in accordance with Canadian GAAP as presented in the financial statements of the investment fund, and "net asset value" (NAV) as reference to NAV as determined in accordance with Part 14 of the Rule would be confusing to readers since the terms are too similar. (This is the case in English only, as the French terms are not similar.) Both commenters believe that "net asset value" should continue to represent NAV for pricing and/or transaction purposes. One commenter stated that this would avoid having to change a wide variety of rules, policies and procedures. One commenter preferred the term "accounting NAV" for accounting purposes while the other commenter suggested "GAAP net asset value".
Response	We agree that the term "net asset value" should continue to be used for pricing purposes, as this is the term that investors are familiar with. This is also the term used in securities rules, so maintaining this term eliminates the need for numerous consequential amendments.

	We have used the term “net assets” for the financial statements as this is the term already used in the Handbook. We are of the view that the similarity between the two terms assists readers of the financial statements in understanding the connection between “net assets” and “net asset value”.
Part 2 – Financial Statements	
Comment	**2.2 Filing Deadline for Annual Financial Statements** *Filing deadline for non-reporting issuers* Two commenters pointed out that it is a challenge for non-reporting issuers to meet the 90 day deadline for annual financial statements because many of them invest in underlying funds that are domiciled in jurisdictions where the regulatory filing requirements are in excess of 90 days. Both commenters suggested the adoption of a 180 day deadline for fund of funds non-reporting issuers.
Response	We are not extending the deadline for annual financial statements for non-reporting issuers. Not all non-reporting issuers are invested offshore or are a fund of funds. The majority of mutual funds that are non-reporting issuers appear to be able to comply with the 90 day deadline. In circumstances where an issuer has demonstrated that this is not possible, we have granted exemptive relief.
Comment	**2.6 Acceptable Accounting Principles** *Canadian GAAP* One commenter stated that the new valuation treatment of using bid (ask) prices for long (short) positions, as required by Handbook Section 3855 *Financial Instruments – Recognition and Measurement* (Section 3855) will result in audited financial statements that do not properly reflect reality, since, in this commenter’s view, the result will be materially undervalued portfolio investments. The commenter pointed out that audited financial statements for other public entities serve a different purpose than an investment fund’s statements and, by applying the same Canadian GAAP to both entities, the Canadian Institute of Chartered Accountants is doing a disservice to Canadian investors and the investment fund industry.
Response	As explained in our Notice and Request for Comment published June 1, 2007, we considered alternatives to Canadian GAAP, including allowing investment funds to file a qualified audit opinion or using another basis of accounting, such as U.S. GAAP. However, we concluded that these alternatives created practical issues and potentially greater confusion. We also concluded that the industry should be permitted to maintain its current valuation practices for other purposes such as pricing. Our approach to resolving the issues created by Section 3855 is to develop a valuation standard for investment funds that is not directly linked to Canadian GAAP, but allows for the same fair valuation principles.

Part 3 – Financial Disclosure Requirements	
Comment	**3.2 Statement of Operations** *Revenue from repurchase and reverse repurchase transactions* Three commenters said that the disclosure of revenue from repurchase and reverse repurchase transactions on a separate line in the statement of operations adds little value and leads to investor confusion. Two of these commenters said that most fund managers do not currently have systems to isolate these types of transactions. One of these commenters clarified that the income on a repurchase transaction is generated by the use of the cash received on these types of transactions, and that there is a corresponding expense related to repurchase transactions.
Response	We are not making the proposed amendment to the statement of operations to require separate line disclosure of repurchase and reverse repurchase transactions. The proposed amendment was meant to clarify the requirements which already exist in s. 3.9(3) and s. 3.10(3) of the Rule. However, we agree that mandating separate disclosure of these types of transactions would add little value for the users of the financial statements of the majority of investment funds. If these transactions are significant for an investment fund, they must be appropriately presented on the financial statements as required by Canadian GAAP.
Comment	**3.2 Statement of Operations** *Commissions and other portfolio transaction costs* One commenter agreed with the inclusion of commissions and other portfolio transaction costs as a separate line item on the statement of operations, but requested that transitional provisions not require the disclosure of comparative figures for this item for periods prior to the adoption of Section 3855. The commenter also required confirmation that the order of line item presentation, as listed under section 3.2 of the Rule, is not mandated.
Response	As this new line item is the result of changes to Canadian GAAP, investment funds should look to the transitional provisions in the Handbook to determine whether this disclosure must be presented for prior periods. We confirm that there is no requirement in the Rule to present the mandated line items in a particular order. We acknowledge that the requirement in the Handbook is to recognize transaction costs in net income, which may be interpreted in different ways by different investment funds.
Comment	**3.5 Statement of Investment Portfolio** *Fund on fund look-through* Seven commenters did not support the proposed change to disclose the holdings of the underlying investment fund, when an investment fund invests substantially all of

	its assets in one underlying fund. Two commenters asked for clarification that the requirement only applies to a one on one relationship where the top fund owns a substantial portion of the underlying fund. Commenters believe that the look-through provision will be unworkable, as it may be difficult to obtain the complete holdings of the underlying fund in certain situations (for example, the underlying fund is at arm's length to the top fund, has a different year-end, has different reporting deadlines or is a non-reporting issuer, or there are contractual limitations that restrict the disclosure of the underlying fund's portfolio). The commenters are also concerned that it may be difficult to audit the complete portfolio holdings of the underlying fund.
Response	We are not making the proposed amendment to the statement of investment portfolio to require disclosure of the portfolio of the underlying fund when the top fund has substantially all of its assets invested in one underlying fund. The proposed amendment was intended to mirror the requirement in the Form to provide the top 25 holdings of the underlying fund in this type of fund on fund structure. However, we acknowledge that adding this requirement to the Rule would create unintended difficulties for some investment funds that may not be able to provide this audited disclosure. We have added guidance to the Companion Policy indicating that if an investment fund invests substantially all of its assets (directly or indirectly) in *one* underlying fund, the statement of investment portfolio (or the notes to that statement) should provide additional disclosure about the underlying fund so that investors understand the actual portfolio to which the investment fund is exposed.
Comment	**3.6 Notes to Financial Statements** *Net assets/net asset value reconciliation* We received responses from five commenters. None supported the proposed change. They believe that the reconciliation should only be required if the difference between net assets and NAV is material. Three commenters stated that the proposal to reconcile net assets to NAV on a per security and a per series basis was redundant and added a significant volume of information to the financial statements with little or no benefit to users. One commenter went further and stated that typically notes to financial statements draw users' attention to important items and this additional information would not be useful to investors when the differences are immaterial. One commenter stated that the reconciliation should be limited to NAV per series (and exclude NAV per security per series), while another commenter stated that the reconciliation should be limited to NAV per security per series (and exclude NAV per series), since NAV per security per series is of the most interest to investors.

	Two commenters suggested that the reconciliation only be provided for total net assets at the fund level. Three commenters stated that the financial statements should only disclose net assets, not NAV. However, two commenters suggested that both net assets and NAV be disclosed on the statement of net assets, with a note explaining the cause of the difference. Two commenters suggested an approach in which there would be disclosure in the notes to the financial statements that differences between net assets and NAV are a result of the difference between bid and closing prices except as noted, and only reconciliations for those exceptions would be provided.
Response	We are of the view that the differences between net assets and NAV should be explained in the financial statements, but have amended our original proposal in order to simplify this requirement. Investment funds must disclose their NAV per security in the notes to the financial statements, as we think it is important that this number continues to form part of the audited financial statements. We have maintained the requirement to show NAV on a per security basis as this number is most relevant to securityholders. We have amended our original proposal so as not to require NAV at the fund level. Investment funds must also compare the NAV per security to the net assets per security and explain each of the differences between these amounts. Based on the submissions which we have received, we currently anticipate that the only difference will be the use of bid/ask prices for financial statement purposes, and fair value as defined in Part 14 of the Rule for NAV purposes, which can be explained once for all investment funds included in the set of financial statements. Given the existing requirements in Parts 3 and 7 of the Rule, the disclosure of net assets per security and NAV per security must be provided for each class or series, if applicable.
Part 14 – Calculation of Net Asset Value	
Comment	**Section 14.2 Calculation, Frequency and Currency** *Use of fair value* Eight commenters support our approach of replacing the requirement to calculate net asset value in accordance with Canadian GAAP with a requirement to use fair value, as defined in the Rule. They believe that the proposed amendment is in the best interest of investors and, in particular, addresses the industry's central issues and concerns relating to the effect that Section 3855 would have on NAV calculation.
Response	None required.

Comment	**Section 14.2 Calculation, Frequency and Currency** *Accrual of income and expenses* Our proposed amendments require the NAV of an investment fund to include income and expenses of the investment fund accrued up to the date of calculation. Two commenters requested that the Companion Policy make reference to the fact that the accrual is made within the rules of Canadian GAAP, thereby subject to the use of estimates and materiality.
Response	We have determined that it is unnecessary to add this guidance to the Companion Policy as the concept of "accrual" is sufficiently understood to include the use of estimates and materiality.
Comment	**Section 14.2 Calculation, Frequency and Currency** *Maintaining records* One commenter believes that an investment fund manager already has a fiduciary duty to exercise a standard of care which supersedes the proposed recordkeeping requirement. As such, the commenter believes that the Rule should not be prescriptive, rather require the manager to establish reasonable protocols for record maintenance, which are included in a written policy. Another commenter believed that this requirement related to the determination of fair value for each holding in a non-active market and suggested wording to accommodate existing fair value practices better.
Response	We think the record-keeping requirement is an appropriate compliance standard for all investment funds. The requirement applies to the determination of "fair value", as that term is defined in the Rule – that is, for both active markets and circumstances where market value is unavailable or unreliable.
Part 15 – Calculation of Management Expense Ratio	
Comment	**Section 15.1 Calculation of Management Expense Ratio** *Expenses included in management expense ratio (MER)* Three commenters suggested that interest costs be removed from the calculation of MER to align Canada's calculation of the ratio with Europe and Australia. Two commenters suggested that issue costs also be excluded from MER as Canadian GAAP treats them as a reduction to share capital rather than an expense.
Response	These comments are beyond the scope of the current amendments. We did not revisit the calculation of MER. We are of the view that charges which reduce NAV should be included in MER (see s. 10.1 of the Companion Policy). When disclosing MER, investment funds can provide an explanation of what is included in MER. Our position on the question of including issue costs in MER remains as set out in CSA Staff Notice 81-315 – Frequently Asked Questions on NI 81-106 Investment Fund Continuous Disclosure, question B-7.

FORM 81-106F1 CONTENTS OF ANNUAL AND INTERIM MANAGEMENT REPORT OF FUND PERFORMANCE	
Part B – Content Requirements for Annual Management Report of Fund Performance	
Comment	**Item 3.1 Financial Highlights** *The Fund’s Net Assets per [Unit/Share] table* Three commenters believe that the “Fund’s Net Assets per Unit/Share” table should be based on NAV per security, not net assets per security, because NAV is more meaningful to investors. The use of net assets in this table, while all other information in the management report of fund performance (MRFP) is derived from NAV, will cause confusion.
Response	The “Fund’s Net Assets per Unit/Share” table highlights some of the information presented in the financial statements, on a per security basis. In order to maintain consistency within this table, the information should all be derived from values that are based on Canadian GAAP. In our view, it would be confusing to mix financial statement values with NAV, which is no longer calculated in accordance with Canadian GAAP.
Comment	**Item 3.1 Financial Highlights** *Commissions and other portfolio transaction costs* One commenter suggested adding a new line to the “Fund’s Net Asset per Unit/Share” table to report brokerage commissions, as these will now be shown as a separate line item on the statement of operations.
Response	We have not added a separate line to the “Fund’s Net Asset per Unit/Share” table for commissions and other portfolio transaction costs. The impact to investors of the commissions and other portfolio transaction costs is already disclosed by way of the trading expense ratio. As noted above, the requirement to recognize transaction costs in net income may be interpreted differently among investment funds, which may also affect whether the transaction costs are captured in the “Fund’s Net Asset per Unit/Share” table, and if so, how.
Comment	**Item 3.1 Financial Highlights** *Calculation of trading expense ratio (TER)* Three commenters indicated that it would be extremely difficult to calculate a TER for a top fund in a fund of funds structure if: the underlying fund has a different year end; the underlying fund is not a reporting issuer; there are multiple underlying funds; or the underlying fund has a different manager. One commenter explained that while these issues also exist for the calculation of a fund of funds’ MER, they

	are not as material to that calculation. The MER is usually predictable within a certain range, while the TER may fluctuate more widely. Two commenters suggested that there be disclosure of the TER range for the underlying funds, or that the use of simplifying assumptions be permitted. Two commenters also asked that further guidance be provided.
Response	The calculation and disclosure of a TER has applied to all investment funds required to prepare an MRFP, including a fund of funds, since the Instrument came into force. The amendment as originally proposed was intended to assist top funds in a fund of funds structure in calculating their TER. The amendment has been modified to permit the use of reasonable assumptions or estimates for the fund of funds TER calculation, as we acknowledge that the components of this ratio may vary more than the components of MER.
COMPANION POLICY 81-106CP INVESTMENT FUND CONTINUOUS DISCLOSURE	
Part 9 – Net Asset Value	
Comment	**Section 9.5 Fair Value Techniques** *Approval by manager's board of directors* One commenter stated that having the fair value techniques used by an investment fund approved by the manager's board of directors is not reasonable and practical, since it will be difficult for the board of directors to convene each time a new fair value technique is used. The commenter requested guidance as to the specific items that would require board approval, and suggested that the board of directors should approve the valuation policy which gives permission to use fair value techniques as appropriate.
Response	We have modified the amendment to the Companion Policy to indicate that the manager's board of directors should approve the investment fund's valuation policy.
NATIONAL INSTRUMENT 81-101 MUTUAL FUND PROSPECTUS DISCLOSURE – FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM **NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS – FORM 41-101F2 INFORMATION REQUIRED IN AN INVESTMENT FUND PROSPECTUS**	
Comment	**Form 81-101F2, Item 6 - Valuation of Portfolio Securities and Form 41-101F2, Item 20.2 - Valuation Policies and Procedures** *Valuation principles and practices* One commenter stated that the proposed requirement to disclose the differences between the valuation principles and practices established by the manager and Canadian GAAP would lead to various levels of disclosure because of the lack of

	specificity in the requirement. The commenter recommended that guidance be provided on the level of detail expected.
Response	We are of the view that further specificity is unnecessary. This disclosure requirement is consistent with the requirements already contained in this part of each Form. At this point in time, the main difference which the investment fund industry generally has identified between its valuation practices and Canadian GAAP is the one created by Section 3855, more specifically, the use of closing price instead of bid/ask prices. We are of the view that the requirement as drafted is sufficient to mandate disclosure of this difference, and any other differences that may exist now or in the future.
CSA STAFF NOTICE 81-315 FREQUENTLY ASKED QUESTIONS ON NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE	
Comment	**C. Management Reports of Fund Performance** *Management Fees, Question C-8* One commenter suggested incorporating the guidance in CSA Staff Notice 81-315 (the FAQ) into the Instrument and Companion Policy, in particular, the guidance on the breakdown of management fees.
Response	We have incorporated some of the guidance in the FAQ into the Form or Companion Policy. The guidance on management fee breakdown has been included as an instruction in the Form.
Comment	**E. Binding and Presentation** *Filing on SEDAR, Question E-2* One commenter suggested that fund managers should be able to file combined MRFPs on SEDAR under an individual investment fund. The commenter explained that certain fund managers have funds that invest in several underlying funds. It would be useful to be able to access all of the underlying funds' information together with the top fund.
Response	The Rule prohibits the binding together of more than one MRFP. In a fund of funds structure, the MRFP of the top fund should provide the investors in the top fund with all of the material information needed to understand the activities and performance of the top fund. While the top fund's disclosure should advise investors of how they can obtain additional information about the underlying funds, the top fund remains obligated to provide full disclosure in its own MRFP.