

Annex A

Specific Questions of the CSA Relating to the Proposed Amendments

Definition of “member of the organization”

1. Under the Proposed Amendments, we propose to expand the definition of “member of the organization” in NI 81-105 to capture an “associate”, as defined under securities law, of the investment fund manager, of the principal distributor or the portfolio adviser of the mutual fund. Aside from potential future modernization amendments contemplated further below, are there additional immediate changes or updates we should consider making to the definition in connection with the implementation of the Proposed Amendments? For example, would paragraph (e) of the definition still be relevant further to the elimination of the DSC option?

Repeal of section 3.1 of NI 81-105

The proposed repeal of section 3.1 of NI 81-105 would prohibit fund organizations from paying any sales commissions to participating dealers. We expect the prohibition on fund organizations from paying upfront sales commissions to dealers for mutual fund sales made under the DSC option would effectively eliminate the DSC option, including its individual features, such as the redemption fee schedule and the related redemption fee.

2. Would the proposed repeal of section 3.1 of NI 81-105 have the expected effect of eliminating all forms of the DSC option? If not, what other measures should be taken to ensure that all forms of the DSC option are eliminated?
3. Would there be any sales practices and/or compensation arrangements with a redemption fee schedule and redemption fee that could exist despite the repeal of section 3.1 of NI 81-105? If so, are rule changes required to specifically prohibit redemption fees that are charged for purposes other than to deter excessive or short-term trading in funds?
4. We do not expect that the repeal of section 3.1 of NI 81-105 will have any impact on the availability and use of other sales charge options, including the front-end load option as it currently exists today.
 - (a) Are there any unintended consequences on the front-end load option with the repeal of section 3.1 that we should consider?
 - (b) Are there any other types of sales charge options that will be impacted by repealing section 3.1?

Amendment of section 3.2 of NI 81-105

Proposed subsection 3.2(4) of NI 81-105 would prohibit fund organizations from paying trailing commissions where the participating dealer is not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities.

5. We expect that fund organizations will make available a trailing commission-free class or series of securities of a mutual fund to participating dealers who do not make suitability determinations. Would fund organizations have any issues with making available a class or series of securities of a mutual fund without trailing commissions to such dealers?
6. Would fund organizations encounter any issues, including any operational challenges, in confirming whether a participating dealer has made a suitability determination, and is thus eligible to be paid a trailing commission in compliance with subsection 3.2(4) of NI 81-105? If so, please explain.

Transition Period

We anticipate that a transition period of 1 year from the date of publication of the final amendments is sufficient time for registrants to operationalize the Proposed Amendments.

7. Are there any transitional issues for fund organizations and participating dealers with implementing the Proposed Amendments within the proposed 1-year transition period? If so, please provide details of the relevant operational, technological, systems, compensation arrangements or other significant business changes required, and the minimum amount of time reasonably required to operationalize those changes and comply with the Proposed Amendments.
8. With the implementation of the Proposed Amendments, would the required changes to the disclosure in the simplified prospectus and fund facts documents within the proposed 1-year transition period necessitate amendments outside of a mutual fund's prospectus renewal period? Would these changes be considered to be material changes under NI 81-106?
9. By the effective date of the Proposed Amendments, the CSA expect that those dealers who do not make suitability determinations in respect of a client will have switched any existing mutual fund holdings of such client to a trailing commission-free class or series of the relevant mutual fund.
 - (a) Switching a client from a class or series of securities of a mutual fund that pays a trailing commission to one that does not pay a trailing commission would trigger the delivery requirement for the fund facts document. As a transitional measure, should there be an exemption from the fund facts document delivery requirement for such switches? Such an exemption would mean that the investor would not have the right of withdrawal from the purchase, however, the investor would

continue to have a right of action for rescission or for damages if there is a misrepresentation in the prospectus of the mutual fund, including any documents incorporated by reference into the prospectus, such as the fund facts document. In some jurisdictions, investors have a right of rescission with delivery of the trade confirmation for the purchase of mutual fund securities and this right would remain unchanged with such an exemption.

- (b) Are there any other types of exemptions from CSA or SRO rules that we should consider to facilitate switches to trailing commission-free classes or series of mutual funds? If so, please describe.
10. At this time, the CSA is allowing redemption schedules on existing DSC holdings as of the effective date of the Proposed Amendments to run their course until their scheduled expiry, and fund organizations to continue charging redemption fees on those existing holdings that are redeemed prior to the expiry of the applicable redemption schedule. Should the CSA propose amendments to require existing DSC holdings as of the effective date of the Proposed Amendments to be converted to the front-end load option or other sales charge option? If so, are there any transitional issues for fund organizations and participating dealers with converting existing DSC holdings to another sales charge option? What would be an appropriate transition period?

Regulatory arbitrage

11. We understand that the elimination of the DSC option may give rise to the risk of regulatory arbitrage to similar non-securities financial products, such as segregated funds, where such purchase option and its associated dealer compensation are still available. Please provide your thoughts on controls and processes that registrants may consider using, and on specific measures or initiatives that the relevant regulators should undertake, to mitigate this risk.

Modernization of NI 81-105

After the implementation of the Proposed Amendments, the CSA may consider future amendments to modernize NI 81-105, an instrument that has been in place since May 1998. The following questions will help inform the CSA's initiative to modernize NI 81-105.

12. Given that NI 81-105 aims to restrict compensation arrangements that can conflict with registrants' fundamental obligations to their investor clients, and given that the proposed Client Focused Reforms introduce the requirement for registrants to address conflicts of interests, including conflicts arising from third-party compensation, in the best interests of clients or avoid them, should the modernization of NI 81-105 entail a consolidation of its requirements into the registrant conduct obligations of NI 31-103?
13. NI 81-105 currently applies only to the distribution of prospectus qualified mutual funds. In our view, the conflicts arising from sales practices and compensation arrangements that are addressed by the provisions in NI 81-105 are not unique to the distribution of

prospectus qualified mutual funds and also arise in the distribution of other investment products, either sold under a prospectus or a prospectus exemption. Are there other types of investment products that are not currently subject to NI 81-105, such as non-redeemable investment funds, certain labour-sponsored investment funds, structured notes and pooled funds that should also be subject to NI 81-105? If not, why should these investment products, their investment fund managers and the dealers that distribute them, remain outside the scope of NI 81-105?

14. We seek feedback on whether we should change the term “trailing commission” to a plain language term that investors would better understand and would better describe what a trailing commission is. If so, what are some suggested terms?
15. The definition of “participating dealer” in NI 81-102 carves out a principal distributor. As a result, principal distributors are not subject to the provisions of NI 81-105 that apply to participating dealers. Should the modernization of NI 81-105 contemplate the inclusion of principal distributors in the application of all the provisions of NI 81-105? Alternatively, are there specific provisions in NI 81-105 that should also apply to principal distributors? Please explain.