CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

# CSA NOTICE AND REQUEST FOR COMMENT

# MANDATING A SUMMARY DISCLOSURE DOCUMENT FOR EXCHANGE-TRADED MUTUAL FUNDS AND ITS DELIVERY

# PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS* AND TO COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS* AND RELATED CONSEQUENTIAL AMENDMENTS

**June 18, 2015**

## Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a comment period of 90 days proposed amendments to National Instrument 41-101 *General Prospectus Requirements* (the **Rule**), Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* (the **Companion Policy**) and related consequential amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Companion Policy 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure* (the **Consequential Amendments**). New Form 41-101F4 *Information Required in an ETF Facts Document* (**Form 41-101F4**) is part of the Rule. We refer to the proposed amendments to the Rule, the proposed changes to the Companion Policy and the Consequential Amendments together as the Proposed Amendments.

The Proposed Amendments are part of Stage 3 of the CSA's implementation of the point of sale disclosure project (the **POS Project**).

The Proposed Amendments will require mutual funds in continuous distribution, the securities of which are listed and traded on an exchange or an alternative trading system (**ETFs**), to produce and file a summary disclosure document called "ETF Facts", which must be made available on the ETF's or the ETF manager's website. The Proposed Amendments also introduce a new delivery regime which will require dealers that receive an order to purchase ETF securities to deliver an ETF Facts to investors within two days of the purchase. Delivery of the prospectus will not be required, but there will be a requirement for the prospectus to be made available to investors upon request, at no cost.

We think the introduction of the ETF Facts will help provide investors with access to key information about an ETF, in language they can easily understand. Delivery of the ETF Facts to investors will also help improve the consistency with which disclosure is provided to investors of ETFs, and help create a more consistent disclosure framework between conventional mutual funds and ETFs. Implementation of this initiative is also responsive to comments received throughout the course of the POS Project, from both industry and investor stakeholders, regarding the need to ensure greater consistency in terms of the disclosure regime for conventional mutual funds and ETFs, which are generally both sold to retail investors.

The text of the Proposed Amendments follows this Notice and is available on the websites of members of the CSA.

We expect the Proposed Amendments to be adopted in each jurisdiction of Canada. Some jurisdictions may need to seek legislative amendments, which will need to be enacted prior to implementing the Proposed Amendments.[1]

**Background**

CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds*[2] outlined the CSA's decision to implement the POS Project in three stages.

With the publication of final amendments on December 11, 2014, the POS Project for conventional mutual funds is now complete. Since July 2011, every mutual fund has been required to prepare a fund facts document[3] (**Fund Facts**) for each class and series. Since June 2014, every dealer has been required to deliver the Fund Facts instead of the prospectus in connection with the purchase of mutual fund securities. On May 30, 2016, dealers will be required to deliver the Fund Facts at or before the point of sale.

As part of final stage of the POS Project, two concurrent workstreams are under way:

1. ETF summary disclosure document and a new delivery model – The Proposed Amendments will require the filing of an ETF Facts and delivery of the ETF Facts within two days of an investor purchasing securities of an ETF; and

2. CSA risk classification methodology – The CSA is currently developing a CSA risk classification methodology to be applied in determining a fund's investment risk level on the scale in the Fund Facts and, now, the ETF Facts. *CSA Notice 81-324 and Request for Comment on Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts* was published for comment on December 12, 2013. A status update[4] was published on January 29, 2015.

[1] In Ontario, legislative amendments have been passed and are awaiting proclamation upon the effective date of the Proposed Amendments.
[2] Published on June 18, 2010.
[3] See Form 81-101F3 *Contents of Fund Facts Document*.
[4] CSA Staff Notice 81-325 *Status Report on Consultation under CSA Notice 81-324 and Request for Comment on Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts*.

**The ETF Distribution Model**

The Proposed Amendments recognize the differences in the distribution model for ETFs and conventional mutual funds. In particular, unlike mutual funds, individual investors seeking to purchase an ETF generally cannot subscribe directly for ETF securities. Instead, they must purchase ETF securities over an exchange. In addition, unlike conventional mutual funds where each purchase results in a distribution, in the case of ETFs, a purchase results in a distribution only when it is a trade in securities of the ETF that have not been previously issued (the **Creation Units**).

Since the prospectus delivery requirement under securities legislation is triggered by a distribution, prospectus delivery would generally only apply to an investor's purchase if the order is filled with Creation Units. Creation Units are issued by ETFs to dealers that are authorized to purchase newly issued securities directly from the ETF. The dealers, in turn, re-sell these Creation Units on an exchange.[5]

The first re-sale of a Creation Unit on an exchange or another marketplace in Canada will generally constitute a distribution. If, however, the ETF investor's purchase order is filled through a secondary market trade of previously issued existing ETF securities, the prospectus delivery requirement would not apply. This means that investors who purchase ETF securities that are trading in the secondary market may not be entitled to receive a prospectus under securities legislation unless they specifically request it.

**Exemptive Relief and the Delivery of an ETF Summary Disclosure Document**

To deal with issues arising from the ETF distribution model, in Fall 2013, the CSA granted exemptive relief (the **Exemptive Relief**) to ETF managers and a group of dealers from the existing prospectus delivery requirements under securities legislation in order to permit the delivery of a summary disclosure document (**Summary Document**) in place of the prospectus.[6]

The Exemptive Relief requires dealers that are parties to the relief to deliver to investors a Summary Document within two days of the investor buying an ETF, whether or not the

[5] This initial re-sale from a "creation unit" on an exchange would be considered a trade in the securities of an issuer that have not been previously issued and a purchase and re-sale by the dealer in the course of or incidental to a distribution.

[6] *In the Matter of BMO Nesbitt Burns Inc. and BMO Investorline Inc.* (July 19, 2013); *In the Matter of CIBC World Markets Inc. and CIBC Investor Services Inc.* (July 19, 2013); *In the Matter of ITG Canada Corp.* (November 18, 2014); *In the Matter of National Bank Financial Inc. and National Bank Direct Brokerage Inc.* (July 19, 2013); *In the Matter of RBC Dominion Securities Inc. and RBC Direct Investing Inc.* (July 19, 2013); *In the Matter of Scotia Capital Inc. and DWM Securities Inc.* (July 19, 2013); *In the Matter of TD Securities Inc. and TD Waterhouse Canada Inc.* (July 19, 2013); *In the Matter of Timber Hill Canada Co.* (November 5, 2014); *In the Matter of Blackrock Asset Management Canada Limited et. al.* (July 19, 2013); *In the Matter of BMO Asset Management Inc. et. al.* (July 19, 2013); *In the Matter of First Asset Investment Management Inc. et. al.* (July 19, 2013); *In the Matter of FT Portfolios Canada Co. et. al.* (July 19, 2013); *In the Matter of Horizons ETFs Management (Canada) Inc. and AlphaPro Management Inc. et. al.* (July 19, 2013); *In the Matter of Invesco Canada Ltd. et. al.* (July 19, 2013); *In the Matter of Purpose Investments Inc. et. al.* (August 6, 2013); *In the Matter of Questrade Wealth Management Inc. et. al.* (January 23, 2015); *In the Matter of RBC Global Asset Management Inc. et. al.* (July 19, 2013); and *In the Matter of Vanguard Investments Canada Inc. et. al.* (July 19, 2013).

investor's purchase order is filled with Creation Units.[7] This delivery obligation applies to dealers acting as agents of the purchaser on the "buy" side of the transaction, rather than to dealers acting in a distribution on the "sell" side of the transaction, as currently required under securities legislation.

The Proposed Amendments, along with related legislative amendments, codify the concepts of the Exemptive Relief, to make it applicable to all dealers who act as agent of the purchaser of an ETF security.

**Substance and Purpose**

Consistent with the principles of the POS Project, we think the Proposed Amendments will provide investors with the opportunity to make more informed investment decisions, by giving investors access to key information about an ETF, in language they can easily understand.[8] Furthermore, investors in conventional mutual funds and ETFs will be treated more equally with respect to the disclosure available in connection with a purchase of securities.

The proposed ETF Facts has been tested with investors and the content of the ETF Facts is informed by the results of the testing. The ETF Facts will allow investors to review key information about the potential benefits, risks and costs of investing in an ETF in an accessible format. It also highlights for investors where they can find further information about an ETF. We encourage advisors and investors to use ETF Facts as a tool in their conversations.

As was the case with the Exemptive Relief, the Proposed Amendments recognize the differences in the current ETF distribution model. In particular, as outlined above:

- not all ETF purchases are distributions;
- the dealer on the "sell" side of an ETF trade may not be able to readily discern whether a particular ETF trade is a distribution;
- there may be different dealers on the "sell" side and "buy" side of an ETF trade;
- the dealer on the "sell" side of an ETF trade that is a distribution cannot readily identify the purchaser over the exchange; and

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[7] Similar to delivery of the Fund Facts, delivery would only be required in instances where the investor has not previously received the latest Summary Document of the ETF.

[8] This is consistent with the International Organization of Securities Commission (IOSCO) Principles on Point of Sale Disclosure published in February 2011. See, for example: Principles on Point of Sale Disclosure, Final Report, Technical Committee of the IOSCO, February 2011; G20 High-level principles on Financial consumer protection, Organization for Economic Co-operation and Development (OECD), October 2011; and Regulation of Retail Structured Products, Consultation Report, IOSCO, April 2013.

Principle 2 of the IOSCO Principles on Point of Sale Disclosure specifies: "*key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.*"

- the dealer on the "buy" side of an ETF trade that is a distribution is not subject to the delivery obligation if it acts solely for the purchaser.

**Summary of the Proposed Amendments**

***Application***

The Proposed Amendments apply only to ETFs.

***ETF Facts***

The creation of a summary disclosure document that highlights key information that is important for investors to consider when they purchase an investment product has been a central component of the POS Project. As was the case for the Fund Facts, the ETF Facts is a critical element of the new delivery regime that is being proposed for ETFs.

The starting point for the development of the ETF Facts was the Fund Facts, which was the result of extensive research, consultation and testing. Like the Fund Facts, the ETF Facts is required to be in plain language, no more than two pages double-sided and highlights key information that is important to investors, including risks, past performance, and the costs of investing in an ETF.

Although ETFs are substantially similar to conventional mutual funds, they are different in one significant aspect. Individual investors cannot subscribe for ETF securities directly from the fund. Instead, ETF securities are bought and sold over an exchange like stocks. Therefore, we have included additional content in the ETF Facts that speaks to trading and pricing characteristics of ETFs. For example, we have proposed the inclusion of information related to market price, bid-ask spread, as well as premium/discount of market price to net asset value. We have also proposed the inclusion of content that explains some of the pricing issues to consider when trading ETFs.

The form requirements for the ETF Facts are set out in the Proposed Amendments as Form 41-101F4. A separate ETF Facts is required for each class or series of securities of an ETF. For illustrative purposes, a sample ETF Facts is set out as Annex A to this Notice.

The CSA is developing a CSA risk classification methodology for use in the Fund Facts and the ETF Facts. Once implemented, it is anticipated that the "risk rating" currently proposed in the ETF Facts will be determined according to the CSA risk classification methodology

Please see Annex B to this Notice which sets out some specific issues for comment relating to the specific content of the ETF Facts.

***Testing of the ETF Facts***

The CSA tested the proposed ETF Facts with investors during Summer/Fall 2014 using Allen Research Corporation of Toronto, Ontario.

The research was conducted in two phases: (1) qualitative research conducted through 28 one-on-one in-depth interviews and (2) quantitative research conducted through an online questionnaire with 533 retail investors, including 348 ETF investors. The ETF Facts was tested both in English and French.

The testing showed that investors generally find the ETF Facts contains important information, and that it is expressed in easy-to-read language. Other key findings included:

- investors generally considered the ETF Facts to be a useful document and were committed to using it as a major component of their decision-making process for ETF investing;
- investors generally understood the terms “currency”, “exchange”, “average daily volume” and “total value” in the “Trading information” section;
- investors generally did not understand that ETFs have both a market price and a “NAV”;
- investors found it hard to understand the concepts “bid-ask spread” and “premium and discount” in the “Trading ETFs” section and asked for examples;
- investors did not understand “CUSIP” in the “Trading information” section; and
- investors wanted to know about the trailing commission even if the trailing commission is zero.

The results of this testing helped to inform the content of the proposed ETF Facts form requirements in the Proposed Amendments. The following changes to the proposed ETF Facts were made in response to the testing results:

- the “Trading ETFs” section is replaced with the “How ETFs are priced” section, which describes the concepts of “market price” versus “NAV” with respect to pricing of ETFs;
- in the “How ETFs are priced” section, the concepts of “bid-ask spread” and “premium and discount” are discussed in the context of how ETFs are priced;
- metrics for “market price”, “NAV”, “average bid-ask spread” and “average premium/discount to NAV” are added to illustrate each of these concepts under a new “Pricing information” section;
- CUSIP is now identified as “for dealer use only” and moved out of the “Trading Information” section; and
- an explanation of “trailing commission” is added, which is consistent with the Fund Facts.

The final report, "*CSA Point of Sale Disclosure Project: ETF Facts Document Testing,"* is available on the websites of the Ontario Securities Commission and the Autorité des marchés financiers at www.osc.gov.on.ca and www.lautorite.qc.ca, respectively. Copies are also available from any CSA member.

***Filing Requirements***

Consistent with the Exemptive Relief, the ETF Facts must be filed concurrently with the ETF's prospectus. The certificate page for the ETF, which verifies the disclosure in the prospectus, applies to the ETF Facts just as it applies to all documents incorporated by reference into the prospectus.

If a material change to the ETF relates to a matter that requires a change to the disclosure in the ETF Facts, an amendment to the ETF Facts must be filed. If ETF managers want to update information in the ETF Facts at their discretion, they may choose to amend the ETF Facts at any time. In all instances, an amendment to an ETF Facts must be accompanied by an amendment to the ETF's prospectus. In cases where the ETF prospectus would not have any changes, it would be sufficient to simply file an updated certificate page.

Any ETF Facts filed after the date of the prospectus is intended to supersede the ETF Facts previously filed. Once filed, the ETF Facts must be posted to the ETF's or the ETF manager's website.

***Delivery of the ETF Facts Instead of the Prospectus***

The Proposed Amendments require delivery of the most recently filed ETF Facts to a purchaser within two days of purchase of ETF securities, pursuant to the proposed delivery requirement. The proposed delivery requirement shifts the current prospectus delivery obligation under securities legislation from the dealer acting as underwriter in an ETF distribution (the "sell" side of an ETF transaction) to the dealer when acting as agent of the purchaser of an ETF security (the "buy" side of an ETF transaction). The proposed delivery requirement also provides a carve-out from the existing prospectus delivery requirement for ETF securities.

Under the Exemptive Relief, a Summary Document is being delivered to investors that are clients of dealers that account for approximately 80% of all ETF assets under management held by retail investors in Canada today.[9] Implementation of the Proposed Amendments means that all investors, including those that are not clients of dealers that are parties to the Exemptive Relief, would receive an ETF Facts within two days of purchase.

Consistent with securities legislation in some jurisdictions today, the Proposed Amendments do not require delivery of the ETF Facts if the purchaser has already received the most recently filed ETF Facts.

[9] Source: Investor Economics.

The Proposed Amendments will restrict the documents that may be combined with the ETF Facts on delivery.

We have not made any changes to an ETF's obligation to file its prospectus. There will be a requirement to provide investors with a copy of the prospectus upon request, at no cost.

The delivery requirement in the Proposed Amendments is drafted to reflect current differences in the legislative authority of members of the CSA. While drafting may differ among the members of the CSA, each jurisdiction will achieve the same outcome of requiring delivery of the ETF Facts to ETF investors within 2 days of purchase. Prior to implementing the Proposed Amendments, legislative amendments may be sought and enacted in some jurisdictions to achieve a harmonized provision.

The method for delivery of the ETF Facts is expected to be consistent with the method for delivery of a prospectus under securities legislation. For example, it could be in person, by mail, by fax, electronically or by other means. Access will not equal delivery, nor will a referral to the website on which the ETF Facts is posted.

***Investor Rights***

**Right for failure to deliver the ETF Facts**

If the investor does not receive the ETF Facts, the investor has a right to seek damages or to rescind the purchase. The rights of the investor for failure of delivery of the ETF Facts will be enacted by legislative amendments and will be consistent with the rights under securities legislation today for failure to deliver the prospectus within two days of purchasing securities of an ETF.

**Right for withdrawal of purchase**

The Proposed Amendments do not extend the current right of withdrawal of purchase to investors of ETF securities. Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. As indicated, not all ETF purchases are distributions. Only purchase orders filled with Creation Units trigger a prospectus delivery requirement and would therefore also be subject to a withdrawal right. As a result, this right does not today apply to all ETF investors, nor is there a way for an ETF investor today to know whether they have received Creation Units and are therefore eligible for a withdrawal right.

In some jurisdictions, investors have a right of rescission with delivery of the trade confirmation for the purchase of mutual fund securities, including ETF securities.[10] This right remains

[10] See for example section 137 of the *Securities Act* (Ontario). In Ontario, this right only applies in respect of purchases that are less than $50,000. An investor that exercises this right is entitled to receive the lesser of their original investment amount and the net asset value of the shares/units at the time of exercise. The investor would also be entitled to receive all costs incurred in connection with their purchase.

unchanged under the Proposed Amendments.

Please see Annex B to this Notice which sets out specific issues for comment relating to this approach.

**Right for misrepresentation**

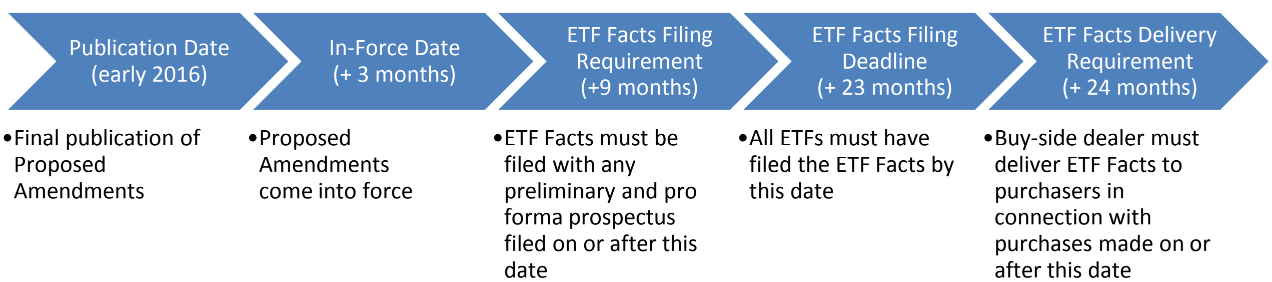
The ETF Facts is incorporated by reference into the prospectus. This means that the existing statutory rights of investors that apply for misrepresentations in a prospectus will also apply to misrepresentations in the ETF Facts. Furthermore, as most ETF purchases occur on the secondary market, investors may also have a right of action for civil liability for secondary market disclosure.

***Transition***

The Proposed Amendments have two transition periods. The first relates to the requirement for ETF managers to file and make available an ETF Facts for each class or series of securities of the ETF (the **ETF Facts Filing Requirement**). The second relates to the requirement for dealers to deliver an ETF Facts in connection with a purchase of an ETF security (the **ETF Facts Delivery Requirement**).

Subject to the nature of comments received, as well as the rule approval process, we anticipate publishing final rules aimed at implementing the Proposed Amendments in early 2016 (the Publication Date). We anticipate the Proposed Amendments will be proclaimed into force three months after the Publication Date (the **In Force Date**).

The proposed transition period timeline in the Proposed Amendments is illustrated below:




**ETF Facts Filing Requirement**

We are proposing the ETF Facts Filing Requirement would take effect 9 months after the Publication Date (the **ETF Facts Effective Date**) of the Proposed Amendments in final form. This means that ETF managers will have 6 months from the In-Force Date to make any changes to compliance and operational systems that are necessary to produce the ETF Facts.

As of the ETF Facts Effective Date, an ETF that files a preliminary or pro forma prospectus must concurrently file an ETF Facts for each class or series of securities of the ETF offered under the prospectus and post the ETF Facts to the ETF's or ETF manager's website. Until such time, ETF managers that are subject to the Exemptive Relief will continue to prepare and file the Summary Document.

In order to fully implement the Proposed Amendments within a reasonable time period, we propose that an ETF manager must, if it has not already done so, file an ETF Facts for each class or series of securities of the ETF within 14 months of the ETF Facts Effective Date. Based on the prospectus renewal cycle for ETFs, we anticipate that it would take approximately 13 months for ETF Facts to be filed for all ETFs. This final deadline date, however, will ensure that ETF Facts for all ETFs will be available prior to implementation of the ETF Facts Delivery Requirement.

**ETF Facts Delivery Requirement**

We are proposing the ETF Facts Delivery Requirement would take effect 24 months after the Publication Date (the **Delivery Effective Date**).

This means that dealers that are subject to Exemptive Relief will be required to deliver either the most recently filed ETF Facts, or until the initial ETF Facts is filed, the most recently filed Summary Document. The sunset provisions of the Exemptive Relief will generally expire by the end of the transition period for the Proposed Amendments. We do not anticipate that there will be any significant issues related to the transition from the delivery of the Summary Document to delivery of the ETF Facts.

Dealers that are not subject to the Exemptive Relief will have 21 months from the In-Force Date to make any changes to compliance and operational systems that are necessary to effect ETF Facts delivery.

Please see Annex B to this Notice which sets out some specific issues for comment relating to the two transition periods.

***Anticipated Costs and Benefits***

Similar to the delivery of Fund Facts for mutual funds, we think delivery of the ETF Facts, as set out in the Proposed Amendments, would benefit both investors and market participants by helping address the "information asymmetry" that exists between participants in the ETF industry and investors. Unlike industry participants, investors often do not have key information about an ETF and may not know where to find the information. We also know that many investors do not use the information in the prospectus because they have trouble finding and understanding the information they need. The CSA designed the ETF Facts to make it easier for investors to find and use key information, which should help bridge this information gap.

The earlier publications related to the POS Project outlined some of the anticipated costs and benefits of implementation of the point of sale disclosure regime for mutual funds. We consider the costs and benefits set out in prior publications to still be valid and we consider them to be equally applicable to ETFs.[11] You can find these documents on the websites of members of the CSA.

Overall, we continue to believe that the potential benefits of the changes to the disclosure regime for ETFs as contemplated by the Proposed Amendments are proportionate to the costs of making them.

***Benefits***

As stated throughout the POS Project, the benefits of a more effective disclosure regime can be subtle and difficult to measure. It is difficult to quantify the value of investors having the opportunity to make more informed investment decisions. Research suggests that certain behavioral biases of investors may impact the effectiveness of policy initiatives that are designed to encourage better choices about financial products. However, research on investor preferences for mutual fund information, including our own testing of the Fund Facts and ETF Facts, indicates investors prefer a concise summary of the information that they can use to make a decision. The Proposed Amendments would also improve the consistency with which disclosure is provided to investors of ETFs and help create a more consistent disclosure framework between conventional mutual funds and ETFs.

Some anticipated benefits of delivery of the ETF Facts include:

- less risk of investors buying inappropriate products;
- investors being in a position to better understand, discuss, and compare one ETF to another, particularly the costs of investing in the ETFs;
- greater transparency in areas such as charges and commissions, which may enhance the overall efficiency of the market; and
- investors becoming better informed overall, which reinforces investor confidence in ETFs.

***Costs***

We think the costs of a new disclosure regime for ETFs fall into two main categories: the one-time costs of change in moving to the new regime and the ongoing costs of maintaining the new system, in comparison with the cost of the existing regime.

We anticipate that costs to industry stakeholders will fall into the following general categories:

- preparation of the ETF Facts;
- reprogramming and updating information delivery systems;

[11] The costs and benefits of pre-sale delivery are not applicable as the Proposed Amendments only contemplate delivery of the ETF Facts within two days of purchase of ETF securities.

- regulatory filings; and
- compliance and staff costs in overseeing and maintaining the delivery regime.

As all ETF managers already prepare and file a Summary Document pursuant to the Exemptive Relief, we think the costs to prepare the ETF Facts will be incremental in nature and the costs for regulatory filings of the ETF Facts will be more or less the same.

For the dealers that already deliver a Summary Document to ETF investors under the Exemptive Relief, we think delivery systems are already in place and the compliance and staff costs in overseeing and maintaining the delivery regime should be more or less the same.

For the dealers that are not parties to the Exemptive Relief, we think there will be one-time costs to reprogram and update information delivery systems and ongoing costs relating to compliance and staff to oversee and maintain the delivery regime. However, there are a number of third party service providers that have expertise in creating automated programs and applications for delivery of disclosure documents. To the extent that affected dealers already have systems in place to accommodate post-sale delivery of the Fund Facts, it may also be possible for those dealers to leverage those existing systems to implement delivery of the ETF Facts. For these dealers, we request specific data on the anticipated costs of delivering the ETF Facts.

Please see Annex B to this Notice which sets out some specific issues for comment relating to the anticipated costs and benefits of the Proposed Amendments.

**Local Matters**

Annex G to this Notice is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdictions. It also includes any additional information that is relevant to that jurisdiction only.

Some jurisdictions may require amendments to local securities legislation, in order to implement the Proposed Amendments. If statutory amendments are necessary in a jurisdiction, these changes will be initiated and published by the local provincial or territorial government.

**Unpublished Materials**

In developing the Proposed Amendments, we have not relied on any significant unpublished study, report or other written materials.

**Request for Comments**

We welcome your comments on the Proposed Amendments. To allow for sufficient review, we are providing you with 90 days to comment. In addition to any general comments you may have, we also invite responses to the specific questions for comment identified in Annex B to this Notice.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Please submit your comments in writing on or before September 16, 2015. If you are not sending your comments by email, please send a CD containing your submissions (in Microsoft Word format).

**Where to Send Your Comments**

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumers Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA.

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**Contents of Annexes**

The text of the Amendments is contained in the following annexes to this Notice and is available on the websites of members of the CSA:

Annex A – Sample ETF Facts Template

Annex B – Issues for Comment

Annex C – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*

Annex D – Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements*

Annex E – Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*

Annex F – Proposed Changes to Companion Policy 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure*

Annex G – Local Information

**Questions**

Please refer your questions to any of the following:

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ANNEX A

# XYZ S&P/TSX 60 Index ETF

**ETF FACTS**
July 30, 20XX
XYZ



This document contains key information you should know about XYZ S&P/TSX 60 Index ETF. You can find more details about this exchange-traded fund (ETF) in its prospectus. Ask your representative for a copy, contact XYZ ETFs at 1-800-555-5555 or investing@xyzetfs.com, or visit www.xyzetfs.com.

**Before you invest, consider how the ETF would work with your other investments and your tolerance for risk.**

## Quick facts

| | |
|---|---|
| Date ETF started | March 31, 20XX |
| Total value on June 1, 20XX | $220.18 million |
| Management expense ratio (MER) | 0.20% |
| Fund manager | XYZ ETFs |
| Portfolio manager | Capital Asset Management Ltd. |
| Distributions | Quarterly |
| Dividend Reinvestment Plan (DRIP) | Yes |

## Trading information

(12 months ending June 1, 20XX)

| | |
|---|---|
| Ticker symbol | XYZ |
| Exchange | TSX |
| Currency | Canadian dollars |
| Average daily volume | 308,000 units |
| Number of days traded | 249 out of 251 trading days |

## Pricing information

(12 months ending June 1, 20XX)

| | |
|---|---|
| Market price | $9.50-$13.75 |
| Net asset value (NAV) | $9.52-$13.79 |
| Average bid-ask spread | 0.07% |
| Average premium/ discount to NAV | +/- 0.05% |

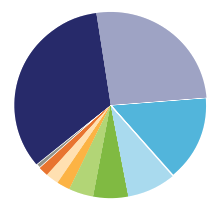
## What does the ETF invest in?

This ETF invests in the same companies and in the same proportions as the S&P/TSX 60 Index. The S&P/TSX 60 Index is made up of 60 of the largest (by market capitalization) and most liquid securities listed on the Toronto Stock Exchange (TSX), as determined by S&P Dow Jones Indices.

The charts below give you a snapshot of the ETF's investments on June 1, 20XX. The ETF's investments will change to reflect changes in the S&P/TSX 60 Index.

| Top 10 investments (June 1, 20XX) | |
|---|---|
| 1. Royal Bank of Canada | 7.5% |
| 2. Toronto-Dominion Bank | 7.1% |
| 3. Canadian Natural Resources | 5.8% |
| 4. The Bank of Nova Scotia | 4.1% |
| 5. Cenovus Energy Inc. | 3.7% |
| 6. Suncor Energy Inc. | 3.2% |
| 7. Enbridge Inc. | 3.1% |
| 8. Canadian Imperial Bank of Commerce | 2.9% |
| 9. Manulife Financial Corporation | 2.7% |
| 10. Canadian National Railway Company | 1.9% |
| **Total percentage of top 10 investments** | **42.0%** |
| **Total number of investments** | **60** |

**Investment mix (June 1, 20XX)**



| Industry | |
|---|---|
| Financial services | 33.9% |
| Energy | 26.1% |
| Materials | 15.0% |
| Industrials | 8.2% |
| Consumer discretionary | 5.9% |
| Telecommunication | 4.1% |
| Healthcare | 2.3% |
| Consumer staples | 2.0% |
| Information technology | 1.9% |
| Media | 0.6% |

## How risky is it?

The value of the ETF can go down as well as up. You could lose money.

One way to gauge risk is to look at how much an ETF's returns change over time. This is called "volatility". In general, ETFs with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and may have a greater chance of higher returns. ETFs with lower volatility tend to have returns that change less over time. They typically have lower returns and may have a lower chance of losing money.

### Risk rating

XYZ ETFs has rated the volatility of this ETF as **medium**. This rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future. The rating can change over time. An ETF with a low risk rating can still lose money.

| LOW | LOW TO MEDIUM | **MEDIUM** | MEDIUM TO HIGH | HIGH |
|---|---|---|---|---|

For more information about the risk rating and specific risks that can affect the ETF's returns, see the Risk section of the ETF's prospectus.

## No guarantees

ETFs do not have any guarantees. You may not get back the amount of money you invest.

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## How has the ETF performed?

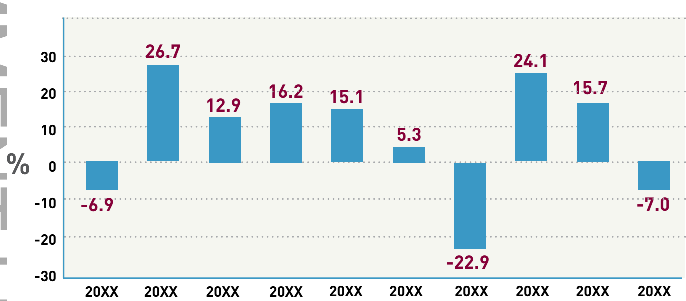
This section tells you how units of the ETF have performed over the past 10 years.

Returns[1] are after expenses have been deducted. These expenses reduce the ETF's returns. This means that the ETF's returns may not match the returns of the S&P/TSX 60 Index.

### Year-by-year returns

This chart shows how units of the ETF performed in each of the past 10 years. The ETF dropped in value in 3 of the 10 years.

The range of returns and change from year to year can help you assess how risky the ETF has been in the past. It does not tell you how the ETF will perform in the future.




### Best and worst 3-month returns

This table shows the best and worst returns for units of the ETF in a 3-month period over the past 10 years. The best and worst 3-month returns could be higher or lower in the future. Consider how much of a loss you could afford to take in a short period of time.

| | Return | 3 months ending | If you invested $1,000 at the beginning of the period |
|---|---|---|---|
| **Best return** | 32.6% | Apr. 30, 20XX | Your investment would rise to $1,326. |
| **Worst return** | -24.7% | Nov. 30, 20XX | Your investment would drop to $753. |

### Average return

The annual compounded return of the ETF was 6.8% over the past 10 years. A $1,000 investment in the ETF 10 years ago would now be worth $1,930.

## How ETFs are priced

ETFs are unique because they hold a basket of investments, like mutual funds, but trade on exchanges like stocks. For this reason, they have two sets of prices: market price and net asset value (NAV).

### Market price

- You buy and sell ETFs at the market price. The market price can change throughout the trading day. Factors like supply, demand and changes in the value of the ETF's investments can affect the market price.
- You can get price quotes any time during the trading day. Quotes have two parts: **bid** and **ask**.
- The bid is the highest price a buyer is willing to pay if you want to sell your units. The ask is the lowest price a seller will accept if you want to buy units. The difference between the two is called the "**bid-ask spread**".
- In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

### Net asset value (NAV)

- Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments.
- NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.
- If the market price is lower than the NAV, the ETF is trading at a **discount**. If the market price is higher than the NAV, the ETF is trading at a **premium**. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth.

## Who is this ETF for?

Investors who:

- are looking for a long-term investment
- want to invest in a broad range of stocks of Canadian companies
- can handle the ups and downs of the stock market.

Don't buy this ETF if you need a steady source of income from your investment.

## A word about tax

In general, you'll have to pay income tax on any money you make on an ETF. How much you pay depends on the tax laws where you live and whether or not you hold the ETF in a registered plan, such as a Registered Retirement Savings Plan or a Tax-Free Savings Account.

Keep in mind that if you hold your ETF in a non-registered account, distributions from the ETF are included in your taxable income, whether you get them in cash or have them reinvested.

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[1] Returns are calculated using the ETF's net asset value (NAV).

## How much does it cost?

This section shows the fees and expenses you could pay to buy, own and sell units of the ETF. Fees and expenses – including any trailing commissions – can vary among ETFs.

Higher commissions can influence representatives to recommend one investment over another. Ask about other ETFs and investments that may be suitable for you at a lower cost.

### 1. Brokerage commissions

You may have to pay a commission when you buy and sell units of the ETF.

### 2. ETF expenses

You don't pay these expenses directly. They affect you because they reduce the ETF's returns.

As of March 31, 20XX, the ETF's expenses were 0.21% of its value. This equals $2.10 for every $1,000 invested.

| | Annual rate (as a % of the ETF's value) |
|---|---|
| **Management expense ratio (MER)**<br>This is the total of the ETF's management fee and operating expenses. XYZ ETFs waived some of the ETF's expenses. If it had not done so, the MER would have been higher. | 0.20% |
| **Trading expense ratio (TER)**<br>These are the ETF's trading costs. | 0.01% |
| **ETF expenses** | **0.21%** |

### Trailing commission

The trailing commission is an ongoing commission. It is paid for as long as you own the ETF. It is for the services and advice that your representative and their firm provide to you.

This ETF doesn't have a trailing commission.

## What if I change my mind?

Under securities law in some provinces and territories, you have the right to cancel your purchase within 48 hours after you receive confirmation of the purchase.

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the prospectus, ETF Facts or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

## For more information

Contact XYZ ETFs or your representative for a copy of the ETF's prospectus and other disclosure documents. These documents and the ETF Facts make up the ETF's legal documents.

XYZ ETFs
456 Asset Allocation St.
Toronto, ON M1A 2B3

**Phone:** 416.555.5555
**Toll-free:** 1.800.555.5555
**Email:** investing@xyzetfs.com
**Website:** www.xyzetfs.com

# ANNEX B

## ISSUES FOR COMMENT

### Content of the ETF Facts

1. The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.

2. The "How ETFs are priced" section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.

3. Please comment on whether there are other disclosure items/topics that should be added to reflect the differences between ETFs and conventional mutual funds.

### Anticipated Costs of Delivery of the ETF Facts

4. We seek feedback on the anticipated costs of delivery of ETF Facts for those dealers who do not have Exemptive Relief and are not currently delivering ETF Facts; specifically, the anticipated one-time infrastructure costs and ongoing costs.

### Transition Period

5. We seek feedback from dealers on the appropriate transition period for ETF Facts delivery under the Proposed Amendments. We are specifically interested in feedback from dealers who are not subject to the Exemptive Relief. Please comment on the feasibility of implementing the delivery requirement under the Proposed Amendments within 21 months of the date the Proposed Amendments come into force. In responding, please comment on the impact a 21 month transition period might have in terms of cost, systems implications, and potential changes to current sales practices.

6. We seek feedback from ETF managers on the appropriate transition period to file the initial ETF Facts. We currently contemplate that 6 months after the date the Proposed

Amendments come into force, ETF managers will be required to file an initial ETF Facts concurrently with a preliminary or pro forma prospectus for their ETFs. Please comment on the feasibility of making the changes to compliance and operational systems that are necessary to produce the ETF Facts, instead of the summary disclosure document pursuant to the Exemptive Relief, within this timeline.

7. We seek feedback from ETF managers and dealers on whether they prefer a single switch-over date for filing the initial ETF Facts rather than following the prospectus renewal cycle as currently contemplated. The CSA implemented a single switch-over date for the Stage 2 Fund Facts, and recognize that there are challenges in doing so, especially for ETF managers, from a business planning and business cycle perspective. If a single switch-over date is preferred, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.

**Right for withdrawal of purchase**

8. Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. In the case of ETFs, today only purchases filled with Creation Units trigger a prospectus delivery requirement and are therefore subject to a withdrawal right.

Consistent with the approach taken in the Exemptive Relief, the Proposed Amendments do not extend the right of withdrawal of purchase to investors for the delivery of the ETF Facts. In some jurisdictions, investors will continue to have a right of rescission with delivery of the trade confirmation.[12]

We seek feedback on this proposed approach. Specifically, please highlight if any practical impediments exist to introducing a right of withdrawal for purchases made in the secondary market in connection with delivery of the ETF Facts, should we decide to pursue this.

[12] See footnote 10.

# ANNEX C

## PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

***1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.***

***2. Section 1.1 is amended by adding the following definitions:***

"ETF" means an exchange-traded mutual fund;

"ETF facts document" means a completed Form 41-101F4;

"exchange-traded mutual fund" means a mutual fund in continuous distribution, the securities of which are

(a) listed on an exchange, and

(b) trading on an exchange or an alternative trading system;

"Form 41-101F4" means Form 41-101F4 *Information Required in an ETF Facts Document* of this Instrument;

***3. Subsection 1.2(6) is amended by replacing "***and Form 41-101F3***" with*** ", Form 41-101F3 and Form 41-101F4***".***

***4. Subsection 2.1(1) is replaced with the following:***

(1) Subject to subsection (2), this Instrument applies to a prospectus filed under securities legislation, a distribution of securities subject to the prospectus requirement and a purchase of securities of an ETF.

***5. The Instrument is amended by adding the following Parts:***

**(a) PART 3B: ETF Facts Document Requirements**

**3B.1 Application**

This Part applies only to an ETF.

**3B.2 Plain language and presentation**

(1) An ETF facts document must be prepared using plain language and be in a format that assists in readability and comprehension.

(2) An ETF facts document must

(a) be prepared for each class and each series of securities of an ETF in accordance with Form 41-101F4,

(b) present the items listed in the Part I section of Form 41-101F4 and the items listed in the Part II section of Form 41-101F4 in the order stipulated in those parts,

(c) use the headings and sub-headings stipulated in Form 41-101F4,

(d) contain only the information that is specifically required or permitted to be in Form 41-101F4,

(e) not incorporate any information by reference, and

(f) not exceed four pages in length.

**3B.3 Preparation in the required form**

Despite provisions in securities legislation relating to the presentation of the content of a prospectus, an ETF facts document for an ETF must be prepared in accordance with this Instrument.

**3B.4 Websites**

(1) If an ETF or the ETF's family has a website, the ETF must post to at least one of those websites an ETF facts document filed under this Part as soon as practicable and, in any event, within 10 days after the date that the document is filed.

(2) An ETF facts document posted to the website referred to in subsection (1) must

(a) be displayed in a manner that would be considered prominent to a reasonable person; and

(b) not be combined with another ETF facts document.

(3) Subsection (1) does not apply if the ETF facts document is posted to a website of the manager of the ETF in the manner required under subsection (2).

**(b) PART 3C: Delivery of ETF Facts Documents for Investment Funds**

**3C.1 Application**

This Part applies only to an ETF.

**3C.2 Obligation to deliver ETF facts documents**

(1) The obligation to deliver or send a prospectus under securities legislation does not apply in respect of an ETF.

(2) A dealer acting as agent for a purchaser who receives an order for the purchase of a security of an ETF must, unless the dealer has previously done so, deliver or send to the purchaser the most recently filed ETF facts document for the applicable class or series of securities of the ETF not later than midnight on the second business day after entering into the purchase of the security.

(3) In Ontario, an ETF facts document is a disclosure document prescribed under subsection 71(1.1) of the *Securities Act* (Ontario).

(4) In Ontario, a security of an ETF is an investment fund security prescribed for the purposes of subsections 71(1.2) and (1.3) of the Securities Act (Ontario).

*Note: In Ontario, subsections 71(1.2) and (1.3) of the Securities Act (Ontario) come into force on proclamation.*

**3C.3 Combinations of ETF Facts Documents for Delivery Purposes**

(1) An ETF facts document delivered or sent under section 3C.2 must not be combined with any other materials or documents including, for greater certainty, another ETF facts document, except one or more of the following:

(a) a general front cover pertaining to the package of combined materials and documents;

(b) a trade confirmation which discloses the purchase of securities of the ETF;

(c) an ETF facts document of another ETF if that ETF facts document is also being delivered or sent under section 3C.2;

(d) the prospectus of the ETF;

(e) any material or document incorporated by reference into the prospectus;

(f) an account application document;

(g) a registered tax plan application or related document.

(2) If a trade confirmation referred to in subsection (1)(b) is combined with an ETF facts document, any other disclosure documents required to be delivered or sent to satisfy a regulatory requirement for purchases listed in the trade confirmation may be combined with the ETF facts document.

(3) If an ETF facts document is combined with any of the materials or documents referred to in subsection (1), a table of contents specifying all documents must be combined with the ETF facts document, unless the only other documents combined with the ETF facts document are the general front cover permitted under paragraph (1)(a) or the trade confirmation permitted under paragraph (1)(b).

(4) If one or more ETF facts documents are combined with any of the materials or documents referred to in subsection (1), only the general front cover permitted under paragraph (1)(a), the table of contents required under subsection (3) and the trade confirmation permitted under paragraph (1)(b) may be placed in front of those ETF facts documents.

**3C.4 Combinations of ETF Facts Documents for Filing Purposes**

For the purposes of sections 6.2, 9.1 and 9.2, an ETF facts document may be combined with another ETF facts document in a prospectus.

*Note: Implementation of this initiative is dependent on each jurisdiction enacting the necessary legislative changes. Since the legislative model adopted may vary from jurisdiction to jurisdiction, the following provisions that have been set out in this textbox have been included for illustrative purposes and may need to be varied depending on any legislative changes that are adopted. For example, in Ontario, these provisions are not necessary because it is expected that equivalent legislative amendments will be proclaimed contemporaneously with the coming-into-force of this initiative.*

**3C.5 Time of receipt**

(1) For the purpose of this Part, where the latest ETF facts document referred to in subsection 3C.2(2) is sent by prepaid mail, it shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.

(2) Subsection (1) does not apply in Ontario.

*[Note: In Ontario, the same time of receipt is reflected in an amendment to s. 71(4) of the Securities Act (Ontario) that comes into force on proclamation.]*

**3C.6 Dealer as agent**

(1) For the purpose of this Part, a dealer acts as agent of the purchaser if the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

(2) Subsection (1) does not apply in Ontario.

*[Note: In Ontario, the same agency rule is reflected in an amendment to s. 71(7) of the Securities Act (Ontario) in legislative amendments that comes into force on proclamation.]*

**3C.7 Purchaser's right of action for failure to deliver or send**

(1) A purchaser has a right of action if an ETF facts document is not delivered or sent as required by subsection 3C.2(2), as the purchaser would otherwise have when a prospectus is not delivered or sent as required under securities legislation and, for that purpose, an ETF facts document is a prescribed document under the statutory right of action.

(2) In Alberta, instead of subsection (1), section 206 of the *Securities Act* (Alberta) applies.

(3) In Manitoba, instead of subsection (1), section 141.2 of the *Securities Act* (Manitoba) applies and the ETF facts document is a prescribed document for the purposes of section 141.2.

(4) In Ontario, instead of subsection (1), section 133 of the *Securities Act* (Ontario) applies.

*[Note: In Ontario, the right of action is reflected in paragraph 2.1 of s. 133 of the Securities Act (Ontario) which comes into force on proclamation.*

*In Quebec, legislative changes are under consideration.]*

***6. Section 5.2 is amended by replacing "***or the amendment to the prospectus***" with*** ", the amendment to the prospectus or the amendment to the ETF facts document***".***

***7. Section 6.1 is amended by adding the following subsection:***

(4) An amendment to an ETF facts document must be prepared in accordance with Form 41-101F4 without any further identification, and dated as of the date the ETF facts document is being amended.

***8. Section 6.2 is amended by deleting "***and***" at the end of paragraph (c), by replacing*** "." ***at the end of paragraph (d) with ",*** and***" and by adding the following paragraph:***

(e) in the case of an ETF, if the amendment relates to information in the ETF facts document,

(i) file an amendment to the ETF facts document, and

(ii) deliver to the regulator a copy of the ETF facts document, blacklined to show changes, including text deletions, from the latest ETF facts document previously filed.

***9. The Instrument is amended by adding the following section:***

**6.2.1 Required documents for filing an amendment to an ETF Facts –** An ETF that files an amendment to an ETF facts document must, unless section 6.2 applies,

(a) file an amendment to the corresponding prospectus, certified in accordance with Part 5,

(b) deliver to the regulator a copy of the ETF facts document, blacklined to show changes, including text deletions, from the latest ETF facts document previously filed, and

(c) file or deliver any other supporting documents required under this Instrument or other securities legislation, unless the documents originally filed or delivered are correct as of the date the amendment is filed.

***10. Section 9.1 is amended:***

***(a) in paragraph (1)(a) by adding the following subparagraph:***

(iv.2) if the issuer is an ETF, in addition to the documents filed under subparagraph (iv), an ETF facts document for each class or series of securities of the ETF;

***(b) by replacing subparagraph (1)(b)(i) with the following:***

(i) Blackline Copy of the Prospectus – in the case of a pro forma prospectus, a copy of the pro forma prospectus blacklined to show changes from the latest prospectus filed;

(i.1) Blackline Copy of the ETF Facts Document – in the case of a pro forma prospectus for an ETF, a copy of the pro forma ETF facts document for each class or series of securities of the ETF blacklined to show changes from the latest ETF facts document previously filed;

***11. Section 9.2 is amended:***

***(a) by replacing “****9.1(a)(ii)****” with “****9.1(1)(a)(ii)****” in subparagraph (a)(ii),***

***(b) by replacing subparagraph (a)(iv) with the following:***

(iv) Investment Fund Documents – a copy of any document described under subparagraph 9.1(1)(a)(iv), (iv.1) or (iv.2) that has not previously been filed;

***(c) by replacing "****9.1(a)(v) or 9.1(a)(vi)****" with "****9.1(1)(a)(v) or (vi)****" in clause (a)(v)(B),***

***(d) by replacing subparagraph (b)(i) with the following:***

(i) Blackline Copy of the Prospectus – a copy of the final long form prospectus blacklined to show changes from the preliminary or pro forma long form prospectus;

(i.1) Blackline Copy of the ETF Facts Document **–** in the case of a final long form prospectus for an ETF, a copy of the ETF facts document for each class or series of securities of the ETF blacklined to show changes and the text of deletions from the preliminary or *pro forma* ETF facts document; and

***12. The Instrument is amended by adding the following section:***

**15.3 Documents to be delivered or sent upon request –** (1) An ETF must deliver or send to any person or company that requests the prospectus of the ETF or any of the documents incorporated by reference into the prospectus, a copy of the prospectus or requested document.

(2) An ETF must deliver or send all documents requested under this section within three business days of receipt of the request and free of charge.

***13. Form 41-101F2 Information Required in an Investment Fund Prospectus is amended***

***(a) by replacing item 1.15 under "*****Documents Incorporated by Reference*****" with the following:***

For an investment fund in continuous distribution, state in substantially the following words:

"Additional information about the fund is available in the following documents:

- the most recently filed ETF Facts for each class or series of securities of the ETF; *[insert if applicable]*
- the most recently filed annual financial statements;
- any interim financial reports filed after those annual financial statements;
- the most recently filed annual management report of fund performance;

- any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this prospectus which means that they legally form part of this prospectus. Please see the "Documents Incorporated by Reference" section for further details."

***(b)*** ***by adding the following item:***

**12.2 Investment Risk Classification Methodology**

For an ETF,

(a) briefly describe the methodology used by the manager for the purpose of identifying the investment risk level of the ETF as required by Item 4(2)(a) in Part I of Form 41-101F4;

(b) state how frequently the investment risk level of the ETF is reviewed; and

(c) disclose that the methodology that the manager uses to identify the investment risk level of the ETF is available on request, at no cost, by calling [toll-free/collect call telephone number] or by writing to [address].

*INSTRUCTIONS:*

*Include a brief description of the formulas, methods or criteria used by the manager of the ETF in identifying the investment risk level of the ETF.*

*Note: The CSA is currently working on the development of a CSA mutual fund risk classification methodology. Once that work is complete, we anticipate including an instruction to Form 41-101F2 regarding the use of the CSA mutual fund risk classification methodology.*

***(c)*** ***by replacing the first paragraph in item 36.2 under "*Mutual Funds*" with the following:***

If the investment fund is a mutual fund, other than an ETF, under the heading "Purchasers' Statutory Rights of Withdrawal and Rescission" include a statement in substantially the following form:

***(d)*** ***by adding the following item:***

**36.2.1 Exchange-traded Mutual Funds**

If the investment fund is an ETF, under the heading "Purchasers' Statutory Rights of Rescission" include a statement in substantially the following form:

Securities legislation in [certain of the provinces [and territories] of Canada/the Province of [insert name of local jurisdiction, if applicable]] provides purchasers with the right to withdraw from an agreement to purchase ETF securities within 48 hours after the receipt of a confirmation of a purchase of such securities. [In several of the provinces/provinces and territories], [T/t]he securities legislation further provides a purchaser with remedies for rescission [or [, in some jurisdictions,] revisions of the price or damages] if the prospectus and any amendment contains a misrepresentation, or non-delivery of the ETF Facts, provided that the remedies for rescission [, revisions of the price or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province [or territory].

The purchaser should refer to the applicable provisions of the securities legislation of the province [or territory] for the particulars of these rights or should consult with a legal adviser.

***(e)*** ***by replacing item 37.1 under "*****Mandatory Incorporation by Reference*****" with the following:***

**37.1 Mandatory Incorporation by Reference**

If the investment fund is in continuous distribution, incorporate by reference the following documents in the prospectus, by means of the following statement in substantially the following words under the heading "Documents Incorporated by Reference":

"Additional information about the fund is available in the following documents:

1. The most recently filed ETF Facts for each class or series of securities of the ETF, filed either concurrently with or after the date of the prospectus. *[insert if applicable]*

2. The most recently filed comparative annual financial statements of the investment fund, together with the accompanying report of the auditor.

3. Any interim financial reports of the investment fund filed after those annual financial statements.

4. The most recently filed annual management report of fund performance of the investment fund.

5. Any interim management report of fund performance of the investment fund filed after that annual management report of fund performance.

These documents are incorporated by reference into the prospectus, which means that they legally form part of this document just as if they were printed as part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted] or from your dealer.

[If applicable] These documents are available on the [investment fund's/investment fund family's] Internet site at [insert investment fund's Internet site address], or by contacting the [investment fund/investment fund family] at [insert investment fund's /investment fund family's email address].

These documents and other information about the fund are available on the Internet at www.sedar.com."

***14. The Instrument is amended by adding the following Form:***

## Form 41-101F4 — Information Required in an ETF Facts Document

**General Instructions:**

***General***

*(1) This Form describes the disclosure required in an ETF facts document for an ETF. Each Item of this Form outlines disclosure requirements. Instructions to help you provide this disclosure are in italic type.*

*(2) Terms defined in National Instrument 41-101 General Prospectus Requirements, National Instrument 81-102 Investment Funds, National Instrument 81-105 Mutual Fund Sales Practices or National Instrument 81-106 Investment Fund Continuous Disclosure and used in this Form have the meanings that they have in those national instruments.*

*(3) An ETF facts document must state the required information concisely and in plain language.*

*(4) Respond as simply and directly as is reasonably possible. Include only the information necessary for a reasonable investor to understand the fundamental and particular characteristics of the ETF.*

*(5) National Instrument 41-101 General Prospectus Requirements requires the ETF facts document to be presented in a format that assists in readability and comprehension. This Form does not mandate the use of a specific format or template to achieve these goals. However, ETFs must use, as appropriate, tables, captions, bullet points or other organizational techniques that assist in presenting the required disclosure clearly and concisely.*

*(6) This Form does not mandate the use of a specific font size or style but the text must be of a size and style that is legible. Where the ETF facts document is made available online, information must be presented in a way that enables it to be printed in a readable format.*

*(7) An ETF facts document can be produced in colour or in black and white, and in portrait or landscape orientation.*

*(8) Except as permitted by subsection (9), an ETF facts document must contain only the information that is specifically mandated or permitted by this Form. In addition, each Item must be presented in the order and under the heading or sub-heading stipulated in this Form.*

*(9) An ETF facts document may contain a brief explanation of a material change or a proposed fundamental change. The disclosure may be included in a textbox before Item 2 of Part I or in the most relevant section of the ETF facts document. If*

*necessary, the ETF may provide a cross-reference to a more detailed explanation at the end of the ETF facts document.*

*(10) An ETF facts document must not contain design elements (e.g., graphics, photos, artwork) that detract from the information disclosed in the document.*

***Contents of an ETF Facts Document***

*(11) An ETF facts document must disclose information about only one class or series of securities of an ETF. ETFs that have more than one class or series of securities that are referable to the same portfolio of assets must prepare a separate ETF facts document for each class or series.*

*(12) The ETF facts document must be prepared on letter-size paper and must consist of two Parts: Part I and Part II.*

*(13) The ETF facts document must begin with the responses to the Items in Part I of this Form.*

*(14) Part I must be followed by the responses to the Items in Part II of this Form.*

*(15) Each of Part I and Part II must not exceed one page in length, unless the required information in any section causes the disclosure to exceed this limit. Where this is the case, an ETF facts document must not exceed a total of four pages in length.*

*(16) For a class or series of securities of the ETF denominated in a currency other than the Canadian dollar, identify the other currency under the heading "Quick Facts" and provide the dollar amounts in the other currency, where applicable, under the headings "How has the ETF performed?" and "How much does it cost?".*

*(17) For items that must be as at a date within 60 days before the date of the ETF facts document or over a period ending within 60 days before the date of the ETF facts document, the same date within 60 days before the date of the ETF facts document must be used and disclosed in the ETF facts document.*

*(18) An ETF must not attach or bind other documents to an ETF facts document, except those documents permitted under Part 3C of National Instrument 41-101 General Prospectus Requirements.*

***Consolidation of ETF Facts Document into a Multiple ETF Facts Document***

*(19) ETF facts documents must not be consolidated with each other to form a multiple ETF facts document, except as permitted by Part 3C of National Instrument 41-101 General Prospectus Requirements. When a multiple ETF facts document is permitted under the Instrument, an ETF must provide information about each of*

*the ETFs described in the document on a fund-by-fund or catalogue basis and must set out for each ETF separately the information required by this Form. Each ETF facts document must start on a new page and may not share a page with another ETF facts document.*

***Multi-Class ETFs***

*(20) As provided in National Instrument 81-102 Investment Funds, each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund. Those principles are applicable to this Form.*

**Part I — Information about the ETF**

***Item 1 — Introduction***

Include at the top of the first page a heading consisting of:

(a) the title "ETF Facts";

(b) the name of the manager of the ETF;

(c) the name of the ETF to which the ETF facts document pertains;

(d) if the ETF has more than one class or series of securities, the name of the class or series described in the ETF facts document;

(e) specify the ticker symbol(s) for the class or series of securities of the ETF ;

(f) the date of the document;

(g) if the final prospectus of the ETF includes textbox disclosure on the cover page, provide substantially similar textbox disclosure on the ETF facts document;

(h) a brief introduction to the document using wording substantially similar to the following:

> This document contains key information you should know about [insert name of the ETF]. You can find more details about this exchange-traded fund (ETF) in its prospectus. Ask your representative for a copy, contact [insert name of the manager of the ETF] at [insert if applicable the toll-free number and email address of the manager of the ETF] or visit [insert the website of the ETF, the ETF's family or the manager of the ETF] [as applicable]; and

(i) state in bold type using wording substantially similar to the following:

> Before you invest, consider how the ETF would work with your other investments and your tolerance for risk.

*INSTRUCTIONS:*

*(1) The date for an ETF facts document that is filed with a preliminary prospectus or final prospectus must be the date of the preliminary prospectus or final prospectus, respectively. The date for an ETF facts document that is filed with a pro forma prospectus must be the date of the anticipated final prospectus. The date for an amended ETF facts document must be the date on which it is filed.*

*(2) If the investment objectives of the ETF are to track a multiple (positive or negative) of the daily performance of a specified underlying index or benchmark, provide textbox disclosure in bold type using wording substantially similar to the following:*

> This ETF is highly speculative. It uses leverage, which magnifies gains and losses. It is intended for use in daily or short-term trading strategies by sophisticated investors. If you hold this ETF for more than one day, your return could vary considerably from the ETF's daily target return. Any losses may be compounded. Don't buy this ETF if you are looking for a longer-term investment.

*(3) If the investment objectives of the ETF are to track the inverse performance of a specified underlying index or benchmark, provide textbox disclosure in bold type using wording substantially similar to the following:*

> This ETF is highly speculative. It is intended for use in daily or short-term trading strategies by sophisticated investors. If you hold this ETF for more than one day, your return could vary considerably from the ETF's daily target return. Any losses may be compounded. Don't buy this ETF if you are looking for a longer-term investment.

*(4) If the ETF is a commodity pool, and (2) or (3) do not apply, provide textbox disclosure in bold type using wording substantially similar to the following:*

> This ETF is a commodity pool and is highly speculative and involves a high degree of risk. You should carefully consider whether your financial condition permits you to participate in this investment. You may lose a substantial portion or even all of the money you place in the commodity pool.

***Item 2 — Quick Facts, Trading Information and Pricing Information***

(1) Under the heading "Quick Facts", include disclosure in the form of the following table:

| |
|---|
| **Date ETF started**<br>(see instruction 1) |
| **Total value on [date]**<br>(see instruction 2) |
| **Management expense ratio (MER)**<br>(see instruction 3) |
| **Fund manager**<br>(see instruction 4) |
| **Portfolio manager**<br>(see instruction 5) |
| **Distributions**<br>(see instruction 6) |
| **Dividend Reinvestment Plan (DRIP)**<br>(see instruction 7) |

(2) Under the heading "Trading Information (12 months ending [date])", include disclosure in the form of the following table:

| |
|---|
| **Ticker symbol**<br>(see instruction 8) |
| **Exchange**<br>(see instruction 9) |
| **Currency**<br>(see instruction 10) |
| **Average daily volume**<br>(see instruction 11) |
| **Number of days traded**<br>(see instruction 12) |

(3) Under the heading "Pricing Information (12 months ending [date])", include disclosure in the form of the following table:

| |
|---|
| **Market price**<br>(see instruction 13) |
| **Net asset value (NAV)**<br>(see instruction 14) |
| **Average bid-ask spread**<br>(see instruction 15) |
| **Average premium/discount to NAV**<br>(see instruction 16) |

(4) At the option of the ETF, include the Committee on Uniform Securities Identification Procedures (CUSIP) number for the class or series of securities of the ETF at the bottom of the first page by stating:

For dealer use only: CUSIP [insert CUSIP number]

*INSTRUCTIONS:*

*(1) Use the date that the securities of the class or series of the ETF described in the ETF facts document first became available to the public.*

*(2) Specify the net asset value of the ETF as at a date within 60 days before the date of the ETF facts document. The amount disclosed must take into consideration all classes or series that are referable to the same portfolio of assets. For a newly established ETF, state that this information is not available because it is a new ETF.*

*(3) Use the management expense ratio (MER) disclosed in the most recently filed management report of fund performance for the ETF. The MER must be net of fee waivers or absorptions and, despite subsection 15.1(2) of National Instrument 81-106 Investment Fund Continuous Disclosure, need not include any additional disclosure about the waivers or absorptions. For a newly established ETF that has not yet filed a management report of fund performance, state that the MER is not available because it is a new ETF.*

*(4) Specify the name of the fund manager of the ETF.*

*(5) Specify the name of the portfolio manager of the ETF. The ETF may also name the specific individual(s) responsible for portfolio selection and if applicable, the name of the sub-advisor(s).*

*(6) Include disclosure under this element of the "Quick Facts" only if distributions are a fundamental feature of the ETF. Disclose the expected frequency and timing of distributions. If there is a targeted amount for distributions, the ETF may include this information.*

*(7) Indicate whether the class or series of securities of the ETF are eligible for a dividend reinvestment plan.*

*(8) Specify the ticker symbol(s) for the class or series of securities of the ETF.*

*(9) Specify the exchange(s) on which the class or series of securities of the ETF are listed.*

*(10) Specify the currency that the class or series of securities of the ETF is denominated.*

*(11) Show the consolidated (all trading venues) average daily trading volume of the class or series of securities of the ETF over a 12 month period ending within 60 days before the date of the ETF facts document. Include non-trading (zero volume) days in the average daily trading volume calculation. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.*

*(12) Show the number of days the class or series of securities of the ETF has traded out of the total number of available trading days over a 12 month period ending within 60 days before the date of the ETF facts document. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.*

*(13) Show the range for the market price of the class or series of securities of the ETF by specifying the highest and lowest prices at which the class or series of securities of the ETF have traded on all trading venues over a 12 month period ending within 60 days before the date of the ETF facts document. The dollar amounts shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.*

*(14) Show the range for the net asset value per share or unit of the class or series of securities of the ETF by specifying the highest and lowest net asset value per share or unit of the class or series of securities of the ETF over a 12 month period ending within 60 days of the date of the ETF facts document. The dollar amounts shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.*

*(15) Show the daily average bid-ask spread based on the national best bid and offer (NBBO) for the class or series of securities of the ETF over a 12 month period ending within 60 days before the date of the ETF facts document. Daily bid-ask spreads must be calculated by taking the average of the quoted spreads based on NBBO for each day the primary market or exchange for the class or series of securities of the ETF is open for trading over a 12 month period ending within 60 days of the date of the ETF facts document. Each quoted spread must be calculated by taking the difference between the national best bid and best ask price, expressed as a percentage of the midpoint of those prices. The percentages shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not*

*available because the ETF has not yet completed 12 consecutive months.*

*(16) Show the average premium/discount to NAV for the class or series of securities of the ETF over a 12 month period ending within 60 days before the date of the ETF facts document. To calculate the average premium/discount to NAV, calculate and record daily the absolute value of the percentage difference between (i) the last NBBO midpoint price quoted before the NAV per share or unit of the class or series of securities of the ETF is calculated and (ii) the NAV per share or unit of the class or series of securities of the ETF. The average of all daily absolute premium/discount to NAV must then be calculated for the 12 month period ending within 60 days before the date of the ETF facts document. The average premium/discount to NAV must be shown with a "+/-" sign preceding it. The percentages shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.*

***Item 3 — Investments of the ETF***

(1) Briefly set out under the heading "What does the ETF invest in?" a description of the fundamental nature of the ETF, or the fundamental features of the ETF that distinguish it from other ETFs.

(2) For an ETF that replicates an index,

(a) disclose the name or names of the permitted index or permitted indices on which the investments of the index ETF are based, and

(b) briefly describe the nature of that permitted index or those permitted indices.

(3) For an ETF that uses derivatives, state using wording substantially similar to the following:

> It uses derivatives, such as options, futures and swaps, to get exposure to the [index/benchmark] without investing directly in the securities that make up the [index/benchmark].

(4) Include an introduction to the information provided in response to subsection (5) and subsection (6) using wording similar to the following:

> The charts below give you a snapshot of the ETF's investments on [insert date]. The ETF's investments will change.

(5) Unless the ETF is a newly established ETF, include under the sub-heading “Top 10 investments [date]”, a table disclosing the following:

(a) the top 10 positions held by the ETF, each expressed as a percentage of the net asset value of the ETF;

(b) the percentage of net asset value of the ETF represented by the top 10 positions; and

(c) the total number of positions held by the ETF.

(6) Unless the ETF is a newly established ETF, under the sub-heading "Investment mix [date]" include at least one, and up to two, charts or tables that illustrate the investment mix of the ETF's investment portfolio.

(7) For a newly established ETF, state the following under the sub-headings “Top 10 investments [date]” and “Investment mix [date]:

This information is not available because this ETF is new.

*INSTRUCTIONS:*

*(1) Include in the information under "What does this ETF invest in?" a description of what the ETF primarily invests in, or intends to primarily invest in, or that its name implies that it will primarily invest in, such as*

*(a) particular types of issuers, such as foreign issuers, small capitalization issuers or issuers located in emerging market countries;*

*(b) particular geographic locations or industry segments; or*

*(c) portfolio assets other than securities.*

*(2) Include a particular investment strategy only if it is an essential aspect of the ETF, as evidenced by the name of the ETF or the manner in which the ETF is marketed.*

*(3) If an ETF's stated objective is to invest primarily in Canadian securities, specify the maximum exposure to investments in foreign markets.*

*(4) The information under "Top 10 investments" and "Investment mix" is intended to give a snapshot of the composition of the ETF's investment portfolio. The information required to be disclosed under these sub-headings must be as at a date within 60 days before the date of the ETF facts document. The date shown must be the same as the one used in Item 2 for the total value of the ETF.*

*(5) If the ETF owns more than one class of securities of an issuer, those classes should be aggregated for the purposes of this Item, however, debt and equity securities of an issuer must not be aggregated.*

*(6) Portfolio assets other than securities should be aggregated if they have substantially similar investment risks and profiles. For instance, gold certificates should be aggregated, even if they are issued by different financial institutions.*

*(7) Treat cash and cash equivalents as one separate discrete category.*

*(8) In determining its holdings for purposes of the disclosure required by this Item, an ETF must, for each long position in a derivative that is held by the ETF for purposes other than hedging and for each index participation unit held by the ETF, consider that it holds directly the underlying interest of that derivative or its proportionate share of the securities held by the issuer of the index participation unit.*

*(9) If an ETF invests substantially all of its assets directly or indirectly (through the use of derivatives) in securities of one other mutual fund, list the 10 largest holdings of the other mutual fund and show the percentage of the other mutual fund's net asset value represented by the top 10 positions. If the ETF is not able to disclose this information as at a date within 60 days before the date of the ETF facts document, the ETF must include this information as disclosed by the other mutual fund in the other mutual fund's most recently filed ETF facts document or fund facts document, or its most recently filed management report of fund performance, whichever is most recent.*

*(10) Indicate whether any of the ETF's top 10 positions are short positions.*

*(11) Each investment mix chart or table must show a breakdown of the ETF's investment portfolio into appropriate subgroups and the percentage of the aggregate net asset value of the ETF constituted by each subgroup. The names of the subgroups are not prescribed and can include security type, industry segment or geographic location. The ETF should use the most appropriate categories given the nature of the ETF. The choices made must be consistent with disclosure provided under "Summary of Investment Portfolio" in the ETF's management report of fund performance.*

*(12) In presenting the investment mix of the ETF, consider the most effective way of conveying the information to investors. All tables or charts must be clear and legible.*

*(13) For new ETFs where the information required to be disclosed under "Top 10 investments" and "Investment mix" is not available, include the required sub-headings and provide a brief statement explaining why the required information is not available.*

**Item 4 — Risks**

(1) Under the heading "How risky is it?", state the following:

The value of the ETF can go down as well as up. You could lose money.

One way to gauge risk is to look at how much an ETF's returns change over time. This is called "volatility".

In general, ETFs with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and may have a greater chance of higher returns. ETFs with lower volatility tend to have returns that change less over time. They typically have lower returns and may have a lower chance of losing money.

(2) Under the sub-heading "Risk rating",

(a) using the investment risk classification methodology adopted by the manager of the ETF, identify the ETF's investment risk level on the following risk scale:

| Low | Low to medium | Medium | Medium to high | High |
|---|---|---|---|---|

(b) unless the ETF is a newly established ETF, include an introduction to the risk scale which states the following:

[Insert name of the manager of the ETF] has rated the volatility of this ETF as [insert investment risk level identified in paragraph (a) in bold type].

This rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future. The rating can change over time. An ETF with a low risk rating can still lose money.

(c) for a newly established ETF, include an introduction to the risk scale which states the following:

[Insert name of the manager of the ETF] has rated the volatility of this ETF as [insert investment risk level identified in paragraph (a) in bold type].

Because this is a new ETF, the risk rating is only an estimate by [insert name of the manager of the ETF]. Generally, the rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future.

The rating can change over time. An ETF with a low risk rating can still lose money.

(d) following the risk scale, state using wording substantially similar to the following:

For more information about the risk rating and specific risks that can affect the ETF's returns, see the [insert cross-reference to the appropriate section of the ETF's final prospectus] section of the ETF's prospectus.

*INSTRUCTIONS:*

*Based upon the investment risk classification methodology adopted by the manager of the ETF, identify where the ETF fits on the continuum of investment risk levels by showing the full investment risk scale and highlighting the applicable category on the scale. Consideration should be given to ensure that the highlighted investment risk rating is easily identifiable.*

*Note: The CSA is currently working on the development of a CSA mutual fund risk classification methodology. Once that work is complete, we anticipate including an instruction to Form 41-101F4 regarding the use of the CSA mutual fund risk classification methodology.*

**Item 5 — Guarantee**

(1) If the ETF does not have any guarantee or insurance, under the sub-heading "No guarantees", state using wording substantially similar to the following:

ETFs do not have any guarantees. You may not get back the amount of money you invest.

(2) If the ETF has an insurance or guarantee feature protecting all or some of the principal amount of an investment in the ETF, under the sub-heading "Guarantees":

(a) identify the person or company providing the guarantee or insurance; and

(b) provide a brief description of the material terms of the guarantee or insurance, including the maturity date of the guarantee or insurance.

**Item 6 — Past Performance**

(1) Unless the ETF is a newly established ETF, under the heading "How has the ETF performed?", include an introduction using wording substantially similar to the following:

This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed over the past [insert number of calendar years shown in the bar chart required under paragraph (3)(a)] years. Returns [add a footnote stating: Returns are calculated using the ETF's net asset value (NAV).] are after expenses have been deducted. These expenses reduce the ETF's returns. This means that the ETF's returns may not match the returns of the [index/benchmark].

(2) For a newly established ETF, under the heading "How has the ETF performed?", include an introduction using the following wording:

> This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed, with returns calculated using the ETF's net asset value (NAV). However, this information is not available because the ETF is new.

(3) Under the sub-heading "Year-by-year returns",

(a) for an ETF that has completed at least one calendar year:

(i) provide a bar chart that shows the annual total return of the ETF, in chronological order with the most recent year on the right of the bar chart, for the lesser of:

1. each of the 10 most recently completed calendar years, and

2. each of the completed calendar years in which the ETF has been in existence and which the ETF was a reporting issuer; and

(ii) include an introduction to the bar chart using wording substantially similar to the following:

> This chart shows how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF performed in each of the past [insert number of calendar years shown in the bar chart required under paragraph (a)]. The ETF dropped in value in [for the particular years shown in the bar chart required under paragraph (a), insert the number of years in which the value of the ETF dropped] of the [insert number of calendar years shown in the bar chart required in paragraph (a)] years. The range of returns and change from year to year can help you assess how risky the ETF has been in the past. It does not tell you how the ETF will perform in the future.

(b) for an ETF that has not yet completed a calendar year, state the following:

> This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed in past calendar years. However, this information is not available because the ETF has not yet completed a calendar year.

(c) for a newly established ETF, state the following:

> This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed in past calendar years. However, this information is not available because the ETF is new.

(4) Under the sub-heading "Best and worst 3-month returns",

(a) for an ETF that has completed at least one calendar year:

(i) provide information for the period covered in the bar chart required under paragraph (3)(a) in the form of the following table:

| | **Return** | **3 months ending** | **If you invested $1,000 at the beginning of the period** |
|---|---|---|---|
| Best return | (see instruction 7) | (see instruction 9) | Your investment would [rise/drop] to (see instruction 11). |
| Worst return | (see instruction 8) | (see instruction 10) | Your investment would [rise/drop] to (see instruction 12). |

(ii) include an introduction to the table using wording substantially similar to the following:

> This table shows the best and worst returns for the [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF in a 3-month period over the past [insert number of calendar years shown in the bar chart required under paragraph (3)(a)]. The best and worst 3-month returns could be higher or lower in the future. Consider how much of a loss you could afford to take in a short period of time.

(b) for an ETF that has not yet completed a calendar year, state the following:

> This section shows the best and worst returns for the [name of class/series of securities described in the ETF facts document]

[units/shares] of the ETF in a 3-month period. However, this information is not available because the ETF has not yet completed a calendar year.

(c) for a newly established ETF, state the following:

This section shows the best and worst returns for the [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF in a 3-month period. However, this information is not available because the ETF is new.

(5) Under the sub-heading "Average return", show the following:

(a) for an ETF that has completed at least 12 consecutive months:

(i) the final value of a hypothetical $1,000 investment in the ETF as at the end of the period that ends within 60 days before the date of the ETF facts document and consists of the lesser of:

(A) 10 years, or

(B) the time since inception of the ETF; and

(ii) the annual compounded rate of return that equates the hypothetical $1,000 investment to the final value.

(b) for an ETF that has not yet completed 12 consecutive months, state the following:

This section shows the value and annual compounded rate of return of a hypothetical $1,000 investment in [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF. However, this information is not available because the ETF has not yet completed 12 consecutive months.

(c) for a newly established ETF, state the following:

This section shows the value and annual compounded rate of return of a hypothetical $1,000 investment in [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF. However, this information is not available because the ETF is new.

*INSTRUCTIONS:*

*(1) In responding to the requirements of this Item, an ETF must comply with the relevant sections of Part 15 of National Instrument 81-102 Investment Funds as if those sections applied to an ETF facts document.*

*(2) Use a linear scale for each axis of the bar chart required by this Item.*

*(3) The x-axis and y-axis for the bar chart required by this Item must intersect at zero.*

*(4) An ETF that distributes different classes or series of securities that are referable to the same portfolio of assets must show performance data related only to the specific class or series of securities being described in the ETF facts document.*

*(5) The dollar amounts shown under this Item may be rounded up to the nearest dollar.*

*(6) The percentage amounts shown under this Item may be rounded to one decimal place.*

*(7) Show the best rolling 3-month return as at the end of the period that ends within 60 days before the date of the ETF facts document.*

*(8) Show the worst rolling 3-month return as at the end of the period that ends within 60 days before the date of the ETF facts document.*

*(9) Insert the end date for the best 3-month return period.*

*(10) Insert the end date for the worst 3-month return period.*

*(11) Insert the final value that would equate with a hypothetical $1,000 investment for the best 3-month return period shown in the table.*

*(12) Insert the final value that would equate with a hypothetical $1,000 investment for the worst 3-month return period shown in the table.*

***Item 7 — Pricing***

Under the sub-heading “How ETFs are priced”, state the following:

> ETFs are unique because they hold a basket of investments, like mutual funds, but trade on exchanges like stocks. For this reason, ETFs have two sets of prices: market price and net asset value (NAV).

Market Price [*in bold type*]

- You buy and sell ETFs at the market price. The market price can change throughout the trading day. Factors like supply, demand, and changes in the value of the ETF's investments can affect the market price.

- You can get price quotes any time during the trading day. Quotes have two parts: bid and ask.

- The bid is the highest price a buyer is willing to pay if you want to sell your units. The ask is the lowest price a seller will accept if you want to buy units. The difference between the two is called the "bid-ask spread".

- In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

Net Asset Value (NAV) [*in bold type*]

- Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments.

- NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.

- If the market price is lower than the NAV, the ETF is trading at a discount. If the market price is higher than the NAV, the ETF is trading at a premium. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth.

***Item 8 — Suitability***

Provide a brief statement of the suitability of the ETF for particular investors under the heading "Who is this ETF for?". Describe the characteristics of the investor for whom the ETF may or may not be an appropriate investment, and the portfolios for which the ETF is and is not suited.

*INSTRUCTION:*

*(1)* *If the ETF is particularly unsuitable for certain types of investors or for certain types of investment portfolios, emphasize this aspect of the ETF. Disclose both the types of investors who should not invest in the ETF, with regard to investments on both a short- and long-term basis, and the types of portfolios that should not invest in the ETF. If the ETF is particularly suitable for investors who have particular investment objectives, this can also be disclosed.*

*(2) If there is textbox disclosure on the cover page pursuant to Item 1(g) of Part I of this form, the brief statement of the suitability of the ETF in Item 8 of this form must be consistent with any suitability disclosure in the textbox.*

***Item 9 — Impact of Income Taxes on Investor Returns***

Under the heading "A word about tax", provide a brief explanation of the income tax consequences for investors using wording similar to the following:

> In general, you'll have to pay income tax on any money you make on an ETF. How much you pay depends on the tax laws where you live and whether or not you hold the ETF in a registered plan such as a Registered Retirement Savings Plan, or a Tax-Free Savings Account.
>
> Keep in mind that if you hold your ETF in a non-registered account, distributions from the ETF are included in your taxable income, whether you get them in cash or have them reinvested.

**Part II — Costs, Rights and Other Information**

***Item 1 — Costs of Buying, Owning and Selling the ETF***

*1.1 — Introduction*

Under the heading "How much does it cost?", state the following:

> This section shows the fees and expenses you could pay to buy, own and sell [name of the class/series of securities described in the ETF facts document] [units/shares] of the ETF. Fees and expenses – including trailing commissions – can vary among ETFs. Higher commissions can influence representatives to recommend one investment over another. Ask about other ETFs and investments that may be suitable for you at a lower cost.

*1.2 — Brokerage commissions*

Under the sub-heading "Brokerage commissions", provide a brief statement using wording substantially similar to the following:

> You may have to pay a commission when you buy and sell [shares/units] of the ETF.

*1.3 — ETF expenses*

(1) Under the sub-heading "ETF expenses" include an introduction using wording similar to the following:

You don't pay these expenses directly. They affect you because they reduce the ETF’s returns.

(2) Unless the ETF has not yet filed a management report of fund performance, provide information about the expenses of the ETF in the form of the following table:

| | **Annual rate (as a % of the ETF’s value)** |
|---|---|
| **Management expense ratio (MER)**<br>This is the total of the ETF’s management fee and operating expenses.<br>(If the ETF pays a trailing commission, state the following: “This is the total of the ETF’s management fee (which includes the trailing commission) and operating expenses.”)<br>(see instruction 1) | (see instruction 2) |
| **Trading expense ratio (TER)**<br>These are the ETF’s trading costs. | (see instruction 3) |
| **ETF expenses** | (see instruction 4) |

(3) Unless the ETF has not yet filed a management report of fund performance, above the table required under subsection (2), include a statement using wording similar to the following:

As of [see instruction 5], the ETF's expenses were [insert amount included in table required under subsection (2)]% of its value. This equals $[see instruction 6] for every $1,000 invested.

(4) For an ETF that has not yet filed a management report of fund performance, state the following:

The ETF’s expenses are made up of the management fee, operating expenses and trading costs. The [class’/series’/ETF’s] annual management fee is [see instruction 7]% of the [class’/series’/ETF’s] value. As this [class/series/ETF] is new, operating expenses and trading costs are not yet available.

(5) If the ETF pays an incentive fee that is determined by the performance of the ETF, provide a brief statement disclosing the amount of the fee and the circumstances in which the ETF will pay it.

(6) Under the sub-heading “Trailing commission”, include a description using wording substantially similar to the following:

> The trailing commission is an ongoing commission. It is paid for as long as you own the ETF. It is for the services and advice that your representative and their firm provide to you.

(7) If the manager of the ETF or another member of the ETF's organization does not pay trailing commissions, include a description using wording substantially similar to the following:

> This ETF doesn't have a trailing commission.

(8) If the manager of the ETF or another member of the ETF's organization pays trailing commissions, disclose the range of the rates of the trailing commission after providing a description using wording substantially similar to the following:

> [Insert name of the manager of the ETF] pays the trailing commission to your representative's firm. It is paid from the ETF's management fee and is based on the value of your investment.

(9) If the manager of the ETF or another member of the ETF's organization pays trailing commissions for the class or series of securities of the ETF described in the ETF facts document but does not pay trailing commissions for another class or series of securities of the same ETF, state using wording substantially similar to the following:

> This ETF also offers a [class/series] of [shares/units] that does not have a trailing commission. Ask your representative for details.

*INSTRUCTIONS:*

*(1) If any fees or expenses otherwise payable by the ETF were waived or otherwise absorbed by a member of the organization of the ETF, despite subsection 15.1(2) of National Instrument 81-106 Investment Fund Continuous Disclosure, only include a statement in substantially the following words:*

> *[Insert name of the manager of the ETF] waived some of the ETF's expenses. If it had not done so, the MER would have been higher*.

*(2) Use the same MER that is disclosed in Item 2 of Part I of this Form. If applicable, include a reference to any fixed administration fees in the management expense ratio description required in the table under Item 1.3(2).*

*(3) Use the trading expense ratio disclosed in the most recently filed management report of fund performance for the ETF.*

*(4) The amount included for ETF expenses is the amount arrived at by adding the MER and the trading expense ratio. Use a bold font or other formatting to*

*indicate that ETF expenses is the total of all ongoing expenses set out in the chart and is not a separate expense charged to the ETF.*

*(5) Insert the date of the most recently filed management report of fund performance.*

*(6) Insert the equivalent dollar amount of the ongoing expenses of the ETF for each $1,000 investment.*

*(7) The percentage disclosed for the management fee must correspond to the percentage shown in the fee table in the final prospectus.*

*(8) For an ETF that is required to include the disclosure under subsection (4), in the description of the items that make up ETF fees, include a reference to any fixed administrative fees, if applicable. Also disclose the amount of the fixed administration fee in the same manner as required for the management fee. The percentage disclosed for the fixed administration fee must correspond to the percentage shown in the fee table in the final prospectus.*

*(9) In disclosing the range of rates of trailing commissions, show both the percentage amount and the equivalent dollar amount for each $1,000 investment.*

*1.4 — Other Fees*

(1) If applicable, provide the sub-heading "Other Fees".

(2) Provide information about the amount of fees payable by an investor when they buy, hold, sell or switch units or shares of the ETF, substantially in the form of the following table:

| Fee | What you pay |
|---|---|
| Redemption Fee | [Insert name of the manager of the ETF] may charge you up to [see instruction 1]% of the value of your [units/shares] you redeem or exchange directly from [insert name of the manager of the ETF].<br><br>(see instruction 1) |
| Other fees *[specify type]* | *[specify amount]*<br><br>(see instructions 2 and 3) |

*INSTRUCTIONS:*

*(1) The percentage disclosed for the redemption fee must correspond to the percentage shown in the final prospectus.*

*(2) Under this Item, it is necessary to include only those fees that apply to the particular class or series of securities of the ETF. Examples include management fees and administration fees payable directly by investors. This also includes any requirement for an investor to participate in a fee-based arrangement with their dealer in order to be eligible to purchase the particular class or series of securities of the ETF. If there are no other fees associated with buying, holding, selling or switching units or shares of the ETF, replace the table with a statement to that effect.*

*(3) Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee. If the amount of the fee varies so that specific disclosure of the amount of the fee cannot be disclosed include, where possible, the highest possible rate or range for that fee.*

***Item 2 — Statement of Rights***

Under the heading "What if I change my mind?", state using wording substantially similar to the following:

> Under securities law in some provinces and territories, you have the right to cancel your purchase within 48 hours after you receive confirmation of the purchase.
>
> In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the prospectus, ETF Facts or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.
>
> For more information, see the securities law of your province or territory or ask a lawyer.

***Item 3 — More Information about the ETF***

(1) Under the heading "For more information", state using wording substantially similar to the following:

> Contact [insert name of the manager of the ETF] or your representative for a copy of the ETF's prospectus and other disclosure documents. These documents and the ETF Facts make up the ETF's legal documents.

(2) State the name, address and toll-free telephone number of the manager of the ETF. If applicable, also state the e-mail address and website of the manager of the ETF.

***15. Transition***

(1) An ETF must, on or before [23 months from date of final publication of this Instrument], file a completed Form 41-101F4 *Information Required in an ETF Facts Document* for each class or series of securities of the ETF that, on that date, are the subject of disclosure under a prospectus.

(2) The date of an ETF facts document filed under subsection (1) must be the date on which it was filed.

***16. Effective date***

(1) Subject to subsection (2), this Instrument comes into force on ● [*Note: 90 days after final publication of this Instrument*].

(2) The provisions of this Instrument listed in column 1 of the following table come into force on the date set out in column 2 of the table:

| **Column 1: Provisions of this Instrument** | **Column 2: Date** |
|---|---|
| 5(a), 6-14 | [9 months after date of final publication of this Instrument] |
| 5(b) | [24 months after date of final publication of this Instrument] |

**ANNEX D**

**PROPOSED CHANGES TO
COMPANION POLICY 41-101CP
TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS***

***1. The changes to Companion Policy 41-101CP To National Instrument 41-101 General Prospectus Requirements are set out in this Annex.***

***2. Section 2.10 is replaced by the following:***

**2.10 Lapse Date**

An amendment to a prospectus, even if it amends and restates the prospectus, does not change the lapse date under section 17.2 of the Instrument or other securities legislation. An amendment to an ETF facts document also does not change the lapse date for a prospectus of an ETF.

***3. Subsection 3.10(3) is changed by replacing the second paragraph with the following:***

Similarly, if an issuer wishes to add a new class of securities to a prospectus before the distribution under that prospectus is completed the issuer must file a preliminary prospectus for that class of securities and an amended and restated prospectus and obtain receipts for both the preliminary prospectus and the amended prospectus. Alternatively the issuer may file a separate preliminary prospectus and prospectus for the new class of securities. We interpret this requirement to also apply to mutual funds. If a mutual fund adds a new class or series of securities to a prospectus that is referable to a new separate portfolio of assets, a preliminary prospectus and preliminary ETF facts document must be filed. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by way of amendment to the prospectus. In this case, a preliminary ETF facts document for the new class or series must still be filed.

***4. The Companion Policy is changed by adding the following after Part 5:***

**PART 5A: ETF Facts Documents for ETFs**

**5A.1 General Purpose**

**(1)** The Instrument requires that the ETF facts document be in plain language, be no longer than four pages in length, and highlight key information important to investors, including performance, risk and cost. The ETF facts document is incorporated by reference into the prospectus. A sample ETF facts document is set out in Appendix B to this Policy. The sample is provided for illustrative purposes only.

**(2)** The Instrument and Form 41-101F4 set out detailed requirements on the content and format of an ETF facts document, while allowing some flexibility to accommodate different kinds of ETFs. The Instrument requires an ETF facts document to include only information that is specifically mandated or permitted by the required Form 41-101F4 and to use the headings and sub-headings stipulated in the Instrument and Form 41-101F4. The requirements are designed to ensure that the information in an ETF facts document of an ETF is clear, concise, understandable and easily comparable with information in the ETF facts documents of other ETFs.

**(3)** The CSA generally consider volatility to be a suitable basis for determining the investment risk rating of an ETF. For this reason, Form 41-101F4 prescribes specific disclosure in the ETF facts document explaining how volatility can be used as a measure to gauge the risk of an investment. If the disclosure is not compatible with the specific investment risk classification methodology that is used by the manager of the ETF, the CSA will consider applications for relief from Item 4 in Part I of Form 41-101F4. In making the application, the manager must demonstrate the suitability of using an alternative measure in determining the investment risk rating of its ETF. The application must also provide sample disclosure in place of the prescribed disclosure that would assist investors in understanding the investment risk rating of the ETF.

**(4)** The CSA encourages the use and distribution of the ETF facts document as a key part of the sales process in helping to inform investors about ETFs they are considering for investment.

**5A.2 Plain Language and Presentation**

**(1)** Section 3B.2 of the Instrument requires that an ETF facts document be written in plain language. Issuers should apply the plain language principles set out in section 4.1 when they prepare an ETF facts document.

**(2)** Section 3B.2 of the Instrument requires that an ETF facts document be presented in a format that assists in readability and comprehension. The Instrument and Form 41-101F4 also set out certain aspects of an ETF facts document that must be presented in a required format, requiring some information to be presented in the form of tables, charts or diagrams. Within these requirements, ETFs have flexibility in the format used for ETF facts documents.

The formatting of documents can contribute substantially to the ease with which the document can be read and understood.

**(3)** To help write the ETF facts document in plain language, the Flesch-Kincaid methodology can be used to assess the readability of an ETF facts document. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level and can be determined by the use of Flesch-

Kincaid tests built into commonly used word processing programs. The CSA will generally consider a grade level of 6.0 or less on the Flesch-Kincaid grade level scale to indicate that an ETF facts document is written in plain language. For French-language documents, ETF companies may wish to consider using other appropriate readability tools.

**5A.3 Filing**

**(1)** Subparagraph 9.1(1)(a)(iv.2) of the Instrument requires that an ETF facts document for each class and series of the securities of an ETF be filed concurrently with the prospectus.

**(2)** The most recently filed ETF facts document for an ETF is incorporated by reference into the prospectus under section 15.2 of the Instrument, with the result that any ETF facts document filed under the Instrument after the date of receipt for the prospectus supersedes the ETF facts document previously filed.

**(3)** Any amendment to an ETF facts document must be in the form of an amended and restated ETF facts document. Accordingly, the commercial copy of an amended and restated ETF facts document can only be created by reprinting the entire document

**(4)** An amendment to the ETF facts document should be filed when there is a material change to the ETF that requires a change to the disclosure in the ETF facts document. This is consistent with the requirement in paragraph 11.2(1)(d) of National Instrument 81-106 *Investment Fund Continuous Disclosure*. We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the ETF to be material changes. We would generally consider changes to the ETF's investment objective or risk level to be material changes under securities legislation.

**(5)** Subsection 6.2(e) of the Instrument requires an amendment to a prospectus to be filed whenever an amendment to an ETF facts document is filed. If the substance of the amendment to the ETF facts document would not require a change to the text of the prospectus, the amendment to the prospectus would consist only of the certificate page referring to the ETF to which the amendment to the ETF facts document pertains.

**(6)** General Instruction (9) of Form 41-101F4 permits an ETF to disclose a material change and proposed fundamental change, such as a proposed merger, in an amended and restated ETF facts document. We would permit flexibility in selecting the appropriate section of the amended and restated ETF facts document to describe the material change or proposed fundamental change. However, we also expect that the variable sections of the ETF facts document, such as the Top 10 investments and investment mix, to be updated within 60 days before the date of the ETF facts document. In addition, if an ETF completes a calendar year or files a management report of fund performance prior to the filing of the amended and restated ETF facts document, we expect the ETF facts document to reflect the updated information.

**5A.4 Website**

Section 3B.4 of the Instrument requires an ETF to post its ETF facts document to the website of the ETF, the ETF's family or the manager of the ETF, as applicable. An ETF facts document should remain on the website at least until the next ETF facts document for the ETF is posted. Only a final ETF facts document filed under this Instrument should be posted to a website. A preliminary or pro forma ETF facts document, for example, should not be posted. An ETF facts document must be displayed in an easily visible and accessible location on the website. It should also be presented in a format that is convenient for both reading online and printing on paper**.**

**5A.5 Delivery**

**(1)** The Instrument contemplates delivery to all investors of an ETF facts document in accordance with the requirements in securities legislation. It does not require the delivery of the prospectus, or any other documents incorporated by reference into the prospectus, unless requested. ETFs or dealers may also provide purchasers with any of the other disclosure documents incorporated by reference into the prospectus.

**(2)** For delivery of the ETF facts document, subsection 3C.3(1) of the Instrument permits an ETF facts document to be combined with certain other materials or documents. With the exception of a general front cover, a table of contents or a trade confirmation, subsection 3C.3(4) requires the ETF facts document to be located as the first item in the package of documents or materials.

**(3)** Nothing in the Instrument prevents an ETF facts document from being prepared in other languages, provided that these documents are delivered or sent in addition to any disclosure document filed and required to be delivered in accordance with the Instrument. We would consider such documents to be sales communications.

**(4)** The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with the prospectus. This type of material may, therefore, be delivered with, but cannot be included within, or attached to, the prospectus. The Instrument does not permit the binding of educational and non-educational material with the ETF facts document. The intention of the Instrument is not to unreasonably encumber the ETF facts document with additional documents.**.**

***5. The Companion Policy is changed by adding the following as Appendix B – Sample ETF Facts Document after Appendix A – Financial Statement Disclosure Requirements for Significant Acquisitions:***

*[insert Sample ETF Facts Document]*

***6. These changes become effective on [•].***

# ANNEX E

## PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

***1. National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.***

***2. Section 11.2 is amended by replacing paragraph (1)(d) with the following:***

**(d)** file an amendment to its prospectus, simplified prospectus, fund facts document or ETF facts document that discloses the material change in accordance with the requirements of securities legislation.**.**

***3. This Instrument comes into force on ●.***

**ANNEX F**

**PROPOSED CHANGES TO**
**COMPANION POLICY 81-106CP**
**TO NATIONAL IUNSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE***

***1.*** ***Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.***

***2.*** ***Subsection 10.1(1) is amended by replacing it with the following:***

**10.1 Calculation of Management Expense Ratio**

**(1)** Part 15 of the Instrument sets out the method to be used by an investment fund to calculate its management expense ratio (MER). The requirements apply in all circumstances in which an investment fund circulates and discloses an MER. This includes disclosure in a sales communication, a prospectus, a fund facts document, an ETF facts document, an annual information form, financial statements, a management report of fund performance or a report to securityholders.**.**

***3.*** ***These changes become effective on [•].***

# ANNEX G

## Local Matters

There are no local matters for Alberta to consider at this time.

**TD Securities**
TD Bank Group
TD Tower
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Toronto, Ontario M5K 1A2

September 16th, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
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Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

**Re: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange Traded Mutual Funds and its Delivery – Proposed Amendments to National Instrument 41-101 and to Companion Policy 41-101CP to National Instrument 41-101 and Related Consequential Amendments**

TD Securities welcomes the opportunity to provide comments regarding the requirement to prepare and deliver a summary disclosure document (the **ETF Facts**) for exchange traded mutual funds (**ETFs**) and the proposed amendments to National Instrument 41-101 *General Prospectus Requirements* (the **Rule** or **NI 41-101**) and Companion Policy 41-101CP *General Prospectus Requirements* (the **Companion Policy**). We refer to the proposed amendments to the Rule and the Companion Policy together as the **Proposed Amendments**.

TD Securities is a leading full-service securities dealer in Canada. TD Securities acts as an ETF market maker, designated broker and executing broker for a range of products in the Canadian ETF space for the benefit of both retail and institutional ETF investors.

**Executive Summary**

We support mandating a summary disclosure document which provides investors with important information about ETFs in a manner that is easy to understand. Our comments are intended to: (i) enhance the usefulness and accessibility of the enhanced disclosure contemplated under the Proposed Amendments, (ii) ensure that this enhanced disclosure is provided to those investors who will benefit from it, and (iii) ensure the enhanced disclosure is delivered to such investors in an efficient and cost-effective manner consistent with the Exemptive Relief (defined below). In summary, our comments are the following:

1. **The requirement to deliver the ETF Facts should be tied to the requirement to deliver a trade confirmation**: the Proposed Amendments require that all purchasers of an ETF receive an ETF Facts. This is inconsistent with the Exemptive Relief, which requires that only investors who are required to receive a trade confirmation must receive the ETF Facts. As a policy matter, Canadian securities law recognizes that not all investors stand to benefit from or require delivery of a prospectus and/or a trade confirmation. For example, investors with managed accounts are both exempt from the delivery of a trade confirmation and the delivery of a prospectus. While the Exemptive Relief is consistent with this policy, the Proposed Amendments are not. The Proposed Amendments should continue the delivery model established under the Exemptive Relief by linking delivery of the ETF Facts to the delivery of a trade confirmation.

   In addition, 'delinking' the delivery of the ETF Facts from the delivery of trade confirmations would require the creation of new delivery infrastructure which will involve significant additional costs and approximately 12 to 18 months to implement.

2. **Certain quantitative elements required to be disclosed in the ETF Facts are difficult to understand and may be misleading to investors**: the ETF Facts includes enhanced disclosure about quantitative items specific to ETFs to explain pricing, including (i) average daily trading volumes, (ii) bid-ask spreads, and (iii) average premium/discount to net asset value (**NAV**). These quantitative disclosure items are difficult to understand and may be misleading to investors. We recommend that the CSA lead the development of a standardized disclosure framework regarding factors affecting an ETF's price in the market which is based on the ETF's asset class (the **Standardized Framework**). The goal of the Standardized Framework is to provide investors with relevant pricing information in an accessible format to facilitate more informed investment decisions. We would be pleased to contribute to the CSA's development of the Standardized Framework. Prior to finalizing the Proposed Amendments, we recommend that the CSA conduct document testing to ensure the pricing factors disclosed pursuant to the Standardized Framework are meaningful to investors.

**Delivery of the ETF Facts**

The Proposed Amendments require delivery of the ETF Facts to all purchasers of ETFs. This is a departure from the delivery obligation currently in effect under the exemptive relief granted by the CSA from the prospectus delivery requirements in respect of ETFs (the **Exemptive Relief**). The Exemptive Relief requires that a summary document (a **Summary Document**) be sent only to a purchaser of an ETF to whom a trade confirmation is required to be sent under the *Securities Act* (Ontario).The Exemptive Relief took this approach because dealers face the difficulty of identifying purchasers of ETFs for the purpose of delivering a Summary Document, unlike when delivering mutual fund disclosure to purchasers of conventional mutual funds. The Exemptive Relief acknowledged and alleviated this challenge by linking delivery of the Summary Document to those investors for whom a trade confirmation is required to be delivered.

The delivery requirement for the ETF Facts in the Proposed Amendments should be consistent with the delivery requirement in the Exemptive Relief: only purchasers who are required to receive a trade confirmation should be delivered an ETF Facts. The delivery requirement under the Exemptive Relief (a) limits the class of investors who receive an ETF Facts to those investors who would stand to benefit from enhanced disclosure, and (b) would allow dealers that are subject to the Exemptive Relief to transition from the delivery of the Summary Document to the ETF Facts without incurring the significant costs or delays associated with moving to a new disclosure regime.

*Linking delivery of the ETF Facts to delivery of trade confirmations ensures that the ETF Facts reaches investors who will benefit from the disclosure*

Given the recent amendments to National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**), there is consistency between exemptions from the obligation to deliver a trade confirmation and exemptions from the requirement to deliver a prospectus in the context of "fully managed accounts", as such term is defined in NI 45-106 (**Managed Accounts**). The OSC has previously granted exemptive relief to various investment dealers from the obligation to deliver a trade confirmation to clients with Managed Accounts (provided certain conditions are satisfied)[1]. Similarly, NI 45-106 has expanded the definition of "accredited investor" to include registered advisors transacting on behalf of Managed Accounts, such that Managed Accounts are exempt from the prospectus delivery requirement.

Therefore, the purchase of an ETF made under a Managed Account would be exempt from the requirement to deliver both a trade confirmation and a prospectus. Further, under the Exemptive Relief, given that there is no requirement to deliver a trade confirmation, the purchase is exempt from the obligation to deliver a Summary Document.

The policy rationale behind the exemptions for Managed Accounts from the trade confirmation delivery and prospectus delivery requirements is the same. Investors who have granted investment authority to their advisor do not need to receive prompt confirmation of each purchase made in their account.

[1] See, for example, *In the TD Waterhouse Private Investment Counsel Inc. (December 31, 2008)*.

Similarly, such investors do not need to receive a prospectus for the purchased security because they are not making the investment decision: they have delegated management of their investments to their advisor.

By linking the requirement to deliver a Summary Document to the requirement to deliver a trade confirmation, the Exemptive Relief is consistent with the policy rationale described above, and recognizes that not all purchasers of ETFs have a need or would benefit from enhanced disclosure about the ETF, whether in the form of a prospectus or a summary disclosure document. In contrast, the Proposed Amendments, by requiring that all purchasers of ETFs receive an ETF Facts, provide additional disclosure to an overly broad class of investors who have delegated the authority to purchase investments to their advisor and have no need or interest in receiving an additional disclosure document. In these cases, there is no material benefit to investors that outweighs the significant cost of delivering the ETF Facts to such purchasers. The delivery requirement currently in effect under the Exemptive Relief strikes the appropriate balance between providing enhanced disclosure to certain purchasers of ETFs and exempting those purchasers who would derive little benefit from or have no interest in receiving such disclosure.

The discussion above may also apply to other circumstances where exemptive relief has been granted from the trade confirmation requirement, including in connection with: (1) employer-sponsored stock investment plans, (2) contributions to a self-determined scholarship plan, (3) rebalancing of “model portfolios", (4) trading matching for institutional customers, and (5) certain automatic plans. As with Managed Accounts, mandating delivery of the ETF Facts to purchasers in the above circumstances would unnecessarily broaden the class of investors receiving disclosure about the ETF.

*Linking delivery of ETF Facts to delivery of Trade Confirmations will allow dealers to transition to the Proposed Amendment's new disclosure regime without incurring unnecessary costs*

Maintaining the current delivery requirement under the Exemptive Relief would also allow dealers to transition from the delivery of the Summary Document to the ETF Facts without incurring significant costs or delays and maintaining a consistent investor experience. By requiring delivery of the ETF Facts to all purchasers, not just those who receive a trade confirmation, dealers subject to the Exemptive Relief, which together make up approximately 80% of all ETF assets under administration, will be obligated to create a new delivery infrastructure which identifies and delivers an ETF Facts to all purchasers.

Contrary to the CSA's assertion that dealers already have the requisite delivery systems in place, creating this infrastructure will involve considerable costs and time. Major system changes to delivery mechanisms entail substantial cost and take at least one year to execute. For illustrative purposes, implementation of Point of Sale 2 and delivery of the Summary Document pursuant to the exemptive relief was costly and took between 12 to 24 months to implement. These costs will be in addition to those costs previously incurred by dealers to build a delivery model in accordance with the terms of the Exemptive Relief.

**Content of the ETF Facts**

We agree with the CSA's view that ETF Facts should contain relevant information suitable for making investment decisions related to ETFs. While the ETF Facts is generally useful to investors and easy to understand, we believe that the ETF Facts includes certain quantitative disclosure items which may not be generally useful and may in fact prove to be misleading to investors. Our comments on specific elements of the ETF Facts are provided below. We also recommend an alternative approach to explaining ETF pricing which may be more helpful to investors.

*Disclosure of average daily trading volume and number of trading days*

We question the usefulness of this information to investors. Historical average daily trading volume and the number of trading days are backwards-facing metrics which tell investors very little about a particular ETF's liquidity or its suitability for investment in the future. Much like sales volumes for a mutual fund, which is not disclosed in a Fund Facts, trading volume for an ETF is not an accurate or reliable indicator of its future liquidity, or its inherent safety or risk. It is an indicator of net flows in and out of the fund among other investors rather than the investment capacity of the fund. Emphasizing trading volume data may cause investors to favour more established or popular ETFs with larger average trading volumes at the expense of newer ETFs with smaller trading volumes. This may have the effect of discouraging new entrants and innovative ETF products. Also, because the data provided in the ETF Facts will be in respect of a 12 month period 60 days before the ETF Facts' date and may significantly predate the delivery of the ETF Facts to a particular investor, it may no longer be relevant and accurate, and could be misleading.

*Disclosure of average bid-ask spread*

Bid-ask spread is a technical concept which, as noted in the Proposed Amendments, investors find difficult to understand. Moreover, much like data on trading volumes, bid-ask spreads may be misleading in determining an ETF's liquidity, future price, or its suitability as an investment. Quoted bid-ask must always be considered in the context of the arbitrage mechanism between the ETF and its underlying assets. Therefore, the most relevant metrics are the typical bid-ask spreads of the ETF's holdings, as compared to quoted prices of the ETF on the secondary market. These are difficult metrics to observe for any practitioner not directly involved or experienced in arbitrage, and may vary significantly with market conditions and time of day. Furthermore, a meaningful analysis of trading implementation cost is difficult to convey to retail investors who are not intimately familiar with arbitrage principles.

Conceptually, disclosing bid-ask spread may also cause investors to favour ETFs with lower price points (because such ETFs will have smaller absolute spreads in cents per share) as well as more established ETFs (which will potentially have a more active secondary market among current holders). Again, this would occur at the expense of new entrants or innovative ETF products and potentially to the detriment of investors.

Finally, as with daily trading volume data, because the average bid-ask spread disclosed will be in respect of a 6 month period 60 days before the ETF Facts' date and that may significantly predate the delivery of the ETF Facts to a particular investor, it may no longer be relevant or accurate, and could be misleading.

*Disclosure of Premium/Discount to NAV*

Disclosure of premium/discount to NAV may also be misleading to investors. Premium/discount to NAV is determined based on a comparison of the secondary market price of an ETF at any given time during the trading day with the published NAV of an ETF. While the ETF's market price fluctuates during the trading day, NAV is determined following the close of each trading day (similarly to the NAV of a comparable mutual fund). NAV is therefore a static figure during a trading day, even though the prices of the ETF's holdings (which make up the NAV) are fluctuating during such trading day, along with any premium or discount. The end-of-day disclosure of an ETF's premium/discount to NAV would be a point-in-time snapshot and may not be comparable with investor experience for the majority of the trading day.

Finally, we highlight that published ETF NAVs are frequently subject to measurement methodology variation related to the time at which asset prices are determined (which may be at a different time than the close of Canadian markets), or subject to proprietary fair value estimation for international holdings. Due to these factors, published NAVs are not comparable with observed market prices at the end of the Canadian trading day. Comparisons between the ETF price and the NAV may therefore mislead investors into thinking the ETF they are purchasing is expensive or a bargain, without providing investors with the full context about the actual price of the ETF's holdings on the secondary market. We therefore recommend against the blanket inclusion of premium/discount metrics, as we believe these numbers to be generally misleading in the absence of a rigorous, robust and very technical measurement approach. The required level of sophistication in quantifying an ETF's premium/discount would be prohibitively costly and difficult to implement for fund providers, particularly new entrants.

*Disclosure regarding "How ETFs are Priced"*

As noted above, the concept of bid-ask spread and ETF arbitrage is technical, complex and not generally well understood by retail investors. Providing an overly simplified explanation of these concepts may be misleading, in that it will cause investors to view certain information (i.e. average bid-ask spread) as a relevant factor to consider in making an investment decision, while not providing investors with the full context underlying such data. Providing metrics about the bid-ask spread of the ETF's underlying investments would be more relevant to understanding ETF liquidity than what is proposed to be disclosed in the ETF Facts, but this would entail additional complexity and technical detail that is not easily explained in a summary document intended for retail investors.

*Standardized Framework for disclosing ETF pricing*

We recommend that the CSA develop the Standardized Framework to ensure the ETF Facts contains consistent disclosure of relevant market pricing factors based on asset class. The Standardized Framework would seek to provide investors with relevant information about the factors which may affect an ETF's market price, in an accessible format to facilitate more informed investment decisions. For example, the price of an international fixed-income ETF may be affected by foreign bond prices, foreign exchange rates and the trading hours in foreign markets. In contrast, the pricing of a Canadian equity ETF may be primarily affected by Canadian equity market prices. Such distinctions by asset class are relevant to investors which may be selecting investments across ETF categories, and in our view would provide better context about the how ETFs are priced on the market than the quantitative factors referenced. We would be pleased to provide insights to help the CSA both develop and refine the Standardized Framework.

Prior to finalizing the Proposed Amendments, we recommend that the CSA conduct document testing to ensure the pricing factors disclosed pursuant to the Standardized Framework are meaningful to investors.

**Conclusion**

Thank you for providing us the opportunity to make comments on the Proposed Amendments. We would be pleased to provide any further explanations or submissions with respect to the matters discussed in this response and would gladly make ourselves available for any further discussion.

Yours truly,

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Investor | COM
Simple Compliant Communications

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September 16, 2015

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Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

Dear Sirs and Mesdames:

**Re: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery – Proposed Amendments to NI 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements and Related Consequential Amendments (the "Proposed Amendments")**

InvestorCOM appreciates the opportunity to provide comments on the Proposed Amendments, comprising part of Stage 3 of the implementation of the point of sale disclosure project of the Canadian Securities Administrators (the "**CSA**").

InvestorCOM is an investor communication solutions company that leverages technology to address the evolving disclosure and communication needs of the financial services industry. As a solutions provider for the investment funds industry, our comments reflect both the business and technical implications of the CSA's proposed amendments.

We have introduced several hosted solutions including the InvestorPOS™ repository, the only industry repository that contains the universe of most recently SEDAR-filed Fund Facts and ETF summary documents. This repository was launched in 2011 and is currently used by dealers representing thousands of advisors to compliantly deliver Fund Facts, ETF summary documents and other disclosure documents to investors in compliance with stages 2 and 3 of Point of Sale and CRM2 regulations.

We fully support the CSA's plan which will require dealers to deliver an ETF Facts to investors within two days of purchase. We also support a more consistent disclosure framework between mutual funds and Exchange Traded Funds. The InvestorPOS repository has been used by ETF managers and dealers who were granted exemptive relief in the fall of 2013, to deliver the ETF summary disclosure document in place of the prospectus. The InvestorPOS™ repository will continue to make available the new ETF Facts as they are filed on SEDAR during the proposed transition period.

We defer our comments concerning the actual content proposed in the new ETF Facts to those industry stakeholders with a better appreciation for the information and advice sought by investors.

**Anticipated Costs of Delivery of the ETF Facts**

One of the benefits of hosted Software as a Service (SaaS) solutions such as ours is the cost and time savings vs. traditional installed and legacy IT systems. We developed our InvestorPOS™ delivery platform on a hosted basis so that all asset managers and dealers (IIROC and MFDA) can meet their compliance obligations and take advantage of the cost and time savings advantages associated with a product that has already been developed, tested and in production for a number of years.

Our clients license our InvestorPOS™ delivery solution to compliantly deliver Fund Facts and ETF summary documents today. As many dealers are currently implementing solutions to deliver Fund Facts for May 2016, it is fair to assume that adding the ETF Facts sheet as an additional document type can potentially leverage the same delivery solutions, thereby saving substantial costs. SaaS solutions require far less involvement from IT and business sponsors at the client, so the overall costs of ownership are considerably less than alternative approaches to meeting the regulation. This is of great importance to ETF manufacturers and dealers in particular, where total cost of ownership is a competitive advantage of the ETF industry relative to other investment fund products.

Thank you for this opportunity to provide our perspective. If you would like to discuss further, please don't hesitate to contact me.

Sincerely,

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September 16, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumers Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
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**RE: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery**

FAIR Canada is pleased to offer comments on the Canadian Securities Regulators ("**CSA**") Notice and Request for Comment regarding Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery (the "Notice") which will require a short summary disclosure document known as "ETF Facts" to be made available to investors and that will be required to be delivered to investors within two days of the purchase ("ETF Facts").

FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

**EXECUTIVE SUMMARY**

1. FAIR Canada supports the development of concise, meaningful, plain language documents for various types of investment funds, including exchange traded funds ("ETFs"), that highlight key information of importance to investors so they can make more informed investing decisions. We have urged securities regulators to develop such documents and are pleased to see that this has been done for ETFs.

2. FAIR Canada also fully supports the requirement for delivery of the fund facts documents to retail investors so they can make more informed investing decisions. In order to be meaningful, delivery of ETF Facts should occur ***before*** the sale of the fund as is the case for mutual funds. If ETF Facts are to reach investors before the sale, securities regulators need to mandate the delivery of ETF Facts before sales occur.

3. We also encourage investor testing of the ETF Facts document after implementation of the ETF Facts (including the delivery requirement) in order to ensure that the ETF Facts document is meeting its disclosure objectives and that it is understood and used by investors as anticipated and expected. We recommend that any necessary changes be made in light of the findings.

4. FAIR Canada believes disclosure is important and the point of sale initiative is a worthwhile endeavour. However, disclosure is not a panacea for the existing gaps in financial consumer protection. We caution regulators against relying solely on disclosure and encourage continued progress on initiatives aimed at bolstering protection for retail financial consumers such as implementing a statutory best interest standard and banning embedded trailing commissions and other forms of conflicted remuneration. FAIR Canada recommends that members of the CSA consider the findings made in the area of behavioural economics, both in terms of designing ETF Facts and designing summary disclosure for other types of investment funds and also in considering how to ensure adequate investor protection.

5. FAIR Canada recommends that the CSA provide an unbiased brochure "Understanding Investment Funds" for ETFs, mutual funds and other commonly held investment funds that would replace the existing "Understanding Mutual Funds" brochure in light of the investor testing which, not surprisingly, found that investors have a low level of understanding of investment products including ETFs. The brochure should be designed so that it can be used to help investors understand what are mutual funds, exchange traded funds and other common investment funds sold to retail investors, how they are created and structured and their key differences, including the fact that, unlike mutual funds, ETFs are traded over an exchange. In addition, the brochure could help investors understand the information contained in the mutual fund facts and ETF Facts documents as well as provide, in plain language, information explaining compensation structures, different fee models, and any potential inherent conflicts of interest.

6. FAIR Canada makes specific comments on the ETF Facts document at section 3 below and on leveraged and inverse ETFs at section 4 below.

7. FAIR Canada recommends that rules be reformed so that ETF Fund managers cannot close the ETF or make material changes to the fund without a shareholder vote, similar to mutual funds.

8. FAIR Canada urges securities regulators to police fund names so that they are not misleading.

## 1. Require Delivery Prior to Point of Sale

1.1. In the Joint Forum Proposed Framework 81-4065[1] , the Fund Facts document for mutual funds was to be delivered "when [investors] need it most – before they make their decision to invest". Under the current proposal, the focus is on "providing investors with the opportunity to make more informed investment decisions, by giving investors *access* to key information about an ETF, in language they can easily understand"[2]. The purpose of delivery of the ETF Facts appears to be to "help improve the consistency with which disclosure is provided to investors of ETFs and help create a more consistent disclosure framework between conventional mutual funds and ETFs"[3] and "...investors in conventional mutual funds and ETFs will be treated more equally with respect to the *disclosure available* in connection with a purchase of securities"[4] (our emphasis).

1.2. FAIR Canada does not believe that access amounts to delivery and does not believe that delivery any time following the sale is a time that is relevant to the investor's decision, since the decision has already been made. The testing of summary disclosure or "fund facts" documents with investors has consistently confirmed that investors want to receive such disclosure (both Mutual Fund Facts and ETF Facts) before they make a decision to invest in a fund[5]. As the CSA is well aware, "[i]nvestors want to receive the Fund Facts sheet prior to the sale or have their financial adviser go over it with them. **It would not be useful to receive it after the sale.**"[6] [emphasis added] It is seemingly obvious that, in order to improve an investor's decision-making, the ETF Facts document needs to be provided before the sale. Given the reliance retail investors place on the individuals who provide them with advice, receiving the ETF Facts at or prior to the point of sale is essential for the document to be used as intended. Once the investor has had a recommendation provided to him or her and made an investment decision, they will not be able to use the ETF Facts document to inform their decision.

1.3. Furthermore, investors' behavioural biases also "...decrease the likelihood that they will... exercise their right to cancel their purchase even after receiving information that tells them their original purchase decision was unwise."[7] It is expected that confirmation bias will affect the investor's reading of the ETF Facts document after the investment decision has been made, thus rendering it useless for its intended purpose. Receiving it after the sale is not helpful.

1.4. FAIR Canada sees no reason (including the differences in the distribution model for ETFs as described in the Notice) that justifies not requiring delivery of the ETF Facts prior to sale as the CSA has mandated for the mutual fund facts document. From the perspective of the investor, it is

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1 Joint Forum of Financial Market Regulators, "Proposed framework 81-406: Point of sale disclosure for mutual funds and segregated funds" (June 15, 2007), online: http://www.jointforum.ca/en/init/point_of_sale/proposed_framework_81-406.pdf .

2 CSA Notice (2015) 38 OSCB 5509 at page 5511.

3 CSA Notice (2015) 38 OSCB 5509 at page 5509.

4 CSA Notice (2015) 38 OSCB 5509 at page 5511.

5 For mutual fund facts document, see: the Research Strategy Group, "Fund Facts Document Research – Report" (October 25, 2006), at 141 (Appendix 5), online: http://www.jointforum.ca/en/init/point_of_sale/Appendices_4-5.pdf. For the ETF Facts, "87% of investors want ETF Facts prior to purchase" and "52%...would read ETF Facts completely if considering investing in the ETF. See: CSA Point of Sale Disclosure Project - ETF Facts Document Testing, Prepared by: Allen Research Corporation, (January 2015) at page 28, online: https://www.osc.gov.on.ca/documents/en/InvestmentFunds/etf-facts-document-testing.pdf .

6 Fund Facts Document Research – Report, at page 68.

7 Joint Forum of Financial Market Regulators, "Proposed framework 81-406: Point of sale disclosure for mutual funds and Segregated Funds", prepared by: Canadian Securities Administrators and Canadian Council of Insurance Regulators ( June 15, 2007) , at page 6, online: http://www.jointforum.ca/en/init/point_of_sale/proposed_framework_81-406.pdf.

just as important that the ETF Facts be delivered before the sale as it is the mutual fund facts document be so delivered. We urge the CSA to be consistent and require pre-sale delivery of the ETF Facts. If this requires other changes to securities laws and/or regulations, then those amendments should be sought.

**Require Pre-Sale Delivery to All Retail Investors**

1.5. FAIR Canada supports the requirement for pre-sale delivery of ETF Facts to all retail investors whether utilizing the services of a representative or a discount broker. The intended purpose of the ETF Facts document is to provide a plain language document to assist investors in their decision-making process and this should result in delivery before sale for all investors. Technology makes this easy for on-line purchases.

**Make Prospectuses More Readable and Require Delivery**

1.6. We continue to be concerned about non-delivery of the prospectus to investors. In FAIR Canada's view, the prospectus provides important information that is not available in a fund facts document. A fund facts document is not intended to be a comprehensive disclosure document; instead, it is meant to highlight key information that is important to investors. We encourage the CSA to require delivery of the prospectus following the sale of an investment fund, and to reform the prospectus into a more meaningful disclosure document for investors, which will compliment the key information provided in the fund facts document. We take issue with the CSA's response to evidence that investors do not read the prospectus. Instead of responding by not requiring delivery of the prospectus, we would prefer to see the CSA take steps to make the prospectus a more readable, and thus an actually useful, document for investors.

**Access to the ETF Facts**

1.7. The proposed amendments set out in the Notice include requiring that the ETF Facts be posted to the website of the ETF or ETF's family and "be displayed in a manner that would be considered prominent to a reasonable person." FAIR Canada strongly recommends that the CSA require ETF providers to post the ETF Facts on their websites as the primary document that investors will reference rather than require investors to navigate the ETF provider's website to find the document buried under "legal and regulatory documents". FAIR Canada notes that it is often very difficult to locate the fund facts document for mutual funds or the plan summaries for group scholarship plans on the provider's website.

1.8. Additionally, ETF providers should not be permitted to call marketing documents "Fact Sheets" or similar names that could easily be confused for the ETF Facts.

**2. <u>General Comments on Approach</u>**

2.1. Investor testing of the ETF Facts reflects the low standard of financial literacy in Canada and highlights the challenges inherent in trying to help retail investors make better investment decisions through the use of a summary document. FAIR Canada is concerned that some of the findings from the testing of the document have been ignored rather than reflected in the final draft ETF Facts or elsewhere in the regulatory regime for ETFs. For example, the findings demonstrate that certain sections such as the highlighted textbox at the top of the ETF Facts were not read and were ignored and that a significant number of investors do not know what an ETF is (even after reviewing the document), do not understand what an index is, and do not understand how the investments for an index ETF are chosen. Such findings need to be addressed in the ETF Facts itself or through the creation of a separate "Understanding Exchange Traded Funds" brochure or through other means. If the CSA determined that the findings cannot be addressed in the ETF Facts but may be done elsewhere, it should discuss this approach in the Notice.

2.2. FAIR Canada believes that disclosure is important and that the point of sale initiative is a worthwhile endeavour. However, disclosure is not a panacea for the existing gaps in financial consumer protection. We caution regulators against relying solely on disclosure and encourage continued progress on initiatives aimed at bolstering protection for retail financial consumers such as implementing a statutory best interest standard and banning embedded trailing commissions. FAIR Canada recommends that members of the CSA consider the findings made in the area of behavioural economics, both in terms of designing summary disclosure documents (i.e. improving disclosure) and also in considering how to ensure investors are adequately protected.

2.3. It is our expectation that the ETF Facts and mutual fund facts documents will encourage retail investors to ask more questions about their investments, and we endorse the idea of the CSA providing an unbiased brochure for more information. FAIR Canada recommends that the CSA provide such an unbiased brochure in the form of "Understanding Investment Funds" for ETFs, mutual funds and other commonly held investment funds. This would replace the existing "Understanding mutual funds" brochure in light of the investor testing. The brochure should be designed so that it can be used to help investors understand what are mutual funds, exchange traded funds and other common investment funds sold to retail investors, how they are created and structured, and their key differences. In addition, the brochure could help investors understand the information contained in the mutual fund facts and ETF Facts documents as well as provide, in plain language, information explaining compensation structures, different fee models, and any potential inherent conflicts of interest. Likewise it should explain that mutual funds and ETFs are not insured by the Canadian Deposit Insurance Corporation, how costs impact the risk of a fund, and how costs impact long term performance (the best predictor of an investment fund's returns is its expense ratio rather than its past performance[8] ). The brochure's use of language should be consistent with that of the fund facts disclosure documents - for example, the term "representative" should be used rather than "advisor" as is currently used.

## 3. Comments on the ETF Facts Document (Form 41-101F4)

### Passive ETFs

3.1. Qualitative investor testing revealed that "some investors" did not know what the Index is or what ETF stands for and that only "a few investors understood this ETF is a passive fund."[9] Quantitative testing demonstrated that, of ETF investors, 4 out of 10 incorrectly believed the Index is made up of all the stocks on the TSX and 3.4 out of 10 incorrectly thought the fund manager chooses stocks to make up the ETF.[10] Both ETF investors and non-ETF investors did not fully understood the core principles behind the choice of investments for the XYZ S7P/TSX 60 Index ETF.[11]

3.2. In light of the level of investor understanding, FAIR Canada makes the following recommendations to assist investors:

(i) The "Quick facts" section of the ETF Facts should state whether the given ETF is active or passive. The fact that the name of the ETF includes the word "xyz index" is not sufficient to convey this information to investors.

(ii) The rules should require that the ETF Facts specify how the index works, including how it is comprised (whether it is based on market capitalization, equal weighted, an asset class

8 Russel Kinnel, "How Expense Ratios and Star Ratings Predict Success" (August 9, 2010), available online at: http://news.morningstar.com/articlenet/article.aspx?id=347327.

9 CSA Point of Sale Disclosure Project ETF Facts Document Testing, at page 39.

10 *Ibid* at page 69.

11 *Ibid* at page 68.

or some other basis)[12]. It should be pointed out that the composition of the index may change in the future and that the composition of the index is not determined by the fund manager. It should explain how the fund attempts to replicate the index (by direct investment in the constituents of the index, by stratified sampling or by synthetic exposure through a derivative). It is important to note that an investor cannot understand the fund if they don't understand the index it tracks.

(iii) The "Quick facts" section should state when the index was created. There are well-established indices that are referenced by many in the industry, but there also are many indices that are created nearly at the same time as a given ETF meant to track that new index.

**Actively Managed ETFs**

3.3. For actively managed ETFs, it should be clearly stated in the "What does the ETF invest in?" section, that the manager exercises discretion over the composition of the invested portfolio in an attempt to outperform a chosen benchmark and can adjust the portfolio composition without being subject to the set rules of an index.

**Synthetic versus Physical Replication ETFs**

3.4. While we recognize that, at present, most ETFs in Canada are not synthetic, nonetheless, the "Quick facts" section should indicate whether the ETF is synthetic or is a physical ETF. Under the section "What does the ETF invest in?", a brief explanation of the synthetic nature of the ETF, if applicable, should be provided along with a clear statement that it involves the use of derivatives. For synthetics, it should also be made clear that the ETF will <u>not</u> receive dividends.

**Risk Section**

3.5. FAIR Canada believes the risk section of ETF Facts should be reformed in accordance with our comments made by letter dated March 12, 2014 on the proposed risk calculation methodology[13]. Fund Facts for any type of investment fund should follow the principles and best practices of the International Organization of Securities Commissions ("IOSCO"), including IOSCO's Principle 1[14]. If a synthetic indicator such as volatility risk is used it should be supplemented by (a) a narrative explanation of the indicator and its main limitations, and (b) a narrative explanation of risks which are materially relevant to the mutual fund and which are not adequately captured by the synthetic indicator. At present, ETF Facts provide a narrative explanation of the indicator but does not mention its main limitations, nor does it provide any narrative explanation of risks which are relevant to the ETF and which are not adequately captured by the synthetic indicator.

3.6. Specific risks may arise from ETFs as a result of their use of derivatives, their synthetic nature (if applicable), securities lending agreements, or complex investment strategy. A narrative explanation of the key risks (counterparty risk, liquidity risk, currency risks, tracking error, etc.) should be provided. The issue of liquidity with ETFs (and the risk of illiquidity) and the disclosure of average daily volume and number of days traded being information that helps determine liquidity of the ETF, along with the risks involved given that ETFs trade on exchanges, all need to be explained to investors.

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12 This information should be specified as part of the requirement in Form 41-101F4 to "briefly describe the nature of that permitted index or those permitted indices."

13 FAIR Canada Letter to CSA dated March 12, 2014; available online at: http://faircanada.ca/wp-content/uploads/2011/01/FAIR-Canada-comments-re-CSA-risk-classification-methodology-proposal.pdf.

14 IOSCO Principles on Point of Sale Disclosure, Final Report (February 2011), at page 28.

3.7. FAIR Canada has observed that existing risk disclosure by some ETF providers in their summary disclosure document (the "Summary Document") (which is provided to investors as a result of exemptive relief granted from the existing prospectus delivery requirements[15]) is inadequate. For example, it is not adequate to use boilerplate language such as: "All investments involve risks. When you invest in the ETF the value of your investment can go down as well as up. For a description of the specific risks of this ETF, see the ETF's prospectus."[16] The prospectus for this ETF provides that it is a commodity pool and is highly speculative. However, it is questionable whether an investor will read the prospectus given that it is not delivered automatically and the investor must specifically request it. Such deficient risk disclosure does not ensure adequate investor protection. Such disclosure should be corrected swiftly and long before the implementation date for ETF Facts.

**Performance Section**

3.8. The ETF Facts section "How has the ETF performed?" provides an opportunity to help investors distinguish the index that the ETF is trying to track (if an index ETF) from the ETF fund itself and how large any tracking error is. Accordingly, we recommend that the ETF Facts provide a chart comparing the performance of the fund with that of the performance of the index.

3.9. Make it clear that the ETF's returns "will likely not match the returns of the [insert name of index] rather than "may not match". Returns of the ETF will likely be lower as a result of expenses and tracking error.

3.10. FAIR Canada believes that past performance should be shown based on both market value and Net Asset Value (NAV) as the difference between the two allow the investor to see the level of tracking error.

**Costs Section**

3.11. The investor testing demonstrated that investor understanding of the various components of costs such as trailing commissions, brokerage commissions, fee-based accounts (and whether brokerage commissions are included in the fees paid in such an arrangement) was low. In addition, investors were confused by whether the ETF Facts was telling them information applicable to the specific ETF Fund or to ETFs in general. The section requires further work in order to be clear to investors.

3.12. FAIR Canada makes the following suggestions to improve the section:

(i) Brokerage commissions – Advise investors here that the amount of the brokerage commission will depend on the type of account they hold – a fee-based account, a commission based account or an account at a discount brokerage – and that the amount of commission may be negotiable. Advise investors that they should review the documents they signed when opening the account or contact their representative to find out this information.

(ii) Impact on Costs if Buying or Selling in Small Units – Investors should be advised that it may cost them more in commissions if they purchase small amounts frequently rather than execute one larger "buy" or "sell" order, depending on the type of account they have.

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15 Pursuant to exemptive relief obtained, ETF providers such as Horizons are required to deliver to investors a summary disclosure document (the "Summary Document") instead of being required to comply with prospectus delivery requirements under securities legislation. See the Notice, (2015), 38 OSCB 5509 at 5510 including note 6.

16 Summary Document for Horizons Seasonal Rotation ETF dated August 25, 2014.

(iii) ETF Expenses and the Trailing Commission:

- The trailing commission is not understood by most investors and the explanation provided in both ETF Facts and Mutual Fund Facts is deficient. FAIR Canada opposes the use of trailing commissions and urges securities regulators to ban them.
- Investor testing showed that while 60% of ETF investors knew that ETFs may carry a trailing commission, only 48% of investors read the last sentence in the section that tells them whether or not this ETF has a trailing commission. This suggests the document's format needs to be improved.
- FAIR Canada believes that if the ETF Fund has a trailing commission, it should be so indicated in the explanation of Management Expense Ratio "This is the total of the fund's management fee (***which includes the trailing commission***) ...." (my emphasis). A section should be added titled "More about the trailing commission" which sets out what the trailing commission is (in dollars and on a per cent basis). If there is no trailing commission, the explanation of Management Expense Ratio should omit the words "including the trailing commission" and the section "More about the trailing commission" should state "No trailing commission is charged" and indicate in dollars and cents that it is $0. Investors wanted to see this shown[17].
- The "More about the trailing commission" section should have an explanation, at a minimum, similar to the mutual fund facts document explaining that the trailing commission is paid to the representative's firm from the management fee. At present, the ETF Facts omit any description that would alert the investor to the conflicts of interest and misaligned incentives produced through the use of trailing commissions for ETFs. While fewer ETFs may utilize trailing commissions as compared to mutual funds, they can still be a significant cost to investors and we have seen trailing commissions on ETFs of 0.75% and resulting MERs of 2.5%. As long as securities regulators continue to permit the use of trailing commissions, it is vitally important that they be clearly disclosed to investors and that that they be described in an accurate manner. This is not the case presently.

(iv) ETF Expenses - This should be called "Fund expenses" to be consistent with the mutual fund facts document and should consist of the MER (including trailing commission) and TER.

(v) Other Fees - Any other fees that are charged and not included in the MER or the TER should be listed here, such as redemption fees. If there are no other fees, it should indicate that there are none under "Other Fees".

**Format of ETF Facts**

3.13. We suggest the information be formatted in a fashion similar to that of the mutual fund facts document by providing separation in boxes rather than simply columns.

3.14. The document's title should be XYZ Exchange Traded Fund rather than XYZ ETF given that some investors do not know what an ETF is and the title was not always understood[18]. Similarly, the

[17] CSA Point of Sale Disclosure Project – ETF Facts Document Testing, at page 27.
[18] *Ibid* at page 18.

mutual fund facts document should have "mutual fund" at the top so people can quickly identify that it is a mutual fund.

3.15. The section "Who is this ETF for" should come earlier in the document and certainly before "How ETFs are priced" or "A word about tax".

3.16. ETF Facts should specify if the ETF is a commodity pool versus a type of mutual fund, as this indicates that there may be much greater risk associated with the fund. The term ETF should not be permitted if the product is an exchange traded commodity (ETC), an exchange traded note (ETN) and exchanged traded instrument (ETI) or an exchange traded vehicle (ETV).

**4. <u>Leveraged and Inverse ETFs and other Complex ETFs</u>**

4.1. Investor testing of these types of ETFs was limited to the end of the session where a second ETF Facts for a leveraged ETF was briefly shown and investors were directed to read the initial textbox and the opening paragraph of "What does the ETF invest in?" It should be noted that when testing the first ETF Facts document (XYZ S&P/TSX 60 Index ETF), several investors did not read the textbox (the introductory paragraph), assuming it was a legal disclaimer or unimportant.[19] This makes it questionable whether investors will read this textbox if not prompted to do so, and regulators should not rely on textbox disclosure to adequately protect investors of leveraged and inverse ETFs or other types of investments. It should be noted that, under the existing regulatory framework, OBSI statistics reveal there continue to be retail investors who are inappropriately placed into leveraged and inverse ETFs[20].

4.2. Even for those investors who were prompted to read it, only 77% understood that the fund is very risky and only 67% understood that it is a short-term investment.[21]

4.3. In order to provide more adequate investor protection, FAIR Canada recommends:

(i) ETF providers should not be able to suggest in their advertising and marketing that these products are suitable to be held as long-term investments, including being bought and held long-term in an RRSP or RESP account.

(ii) High risk products need pop-up risk warnings on the websites of their providers and on discount brokerage websites. The pop-up warning should inform the investor of the boxed risk warning and any unusual risks (for example, that a commodity ETF does not track the return of the relevant commodity over time periods long than a day). It should require the investor to agree that they understand the warning prior to permitting the transaction to take place.

(iii) Securities regulators should undertake empirical research as to how many retail investors have these products in their accounts, and in which type of accounts these investments are held.

(iv) Securities regulators need to ban embedded commissions and other forms of conflicted remuneration so that the interests of advisors and their clients are not subject to such profound misalignment of interests.

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19 CSA Point of Sale Disclosure Project – ETF Facts Document Testing, at page 38.

20 OBSI 2013 Annual Report had 15 cases where the main issue involved leveraged ETFs and 6 where it was the secondary product. In their 2014 Annual Report this was 1 case where the main issue involved leveraged ETFs and 1 where it was the secondary product. Annual reports of OBSI are available online at https://www.obsi.ca/en/news-and-publications/annual-report.

21 CSA Point of Sale Disclosure Project – ETF Facts Document Testing, at page 109.

(v) A statutory best interest standard is urgently needed to adequately protect investors. An investment product should only be recommended if it is in the person's best interests.

**5. <u>Investor Testing After Implementation of Point of Sale Recommended</u>**

5.1. FAIR Canada recommends that investor testing of the ETF Facts be conducted subsequent to implementation of pre-sale delivery to ensure that the ETF Facts document is meeting its disclosure objectives, is assisting investors in their decision-making process, and is being understood and used by investors as anticipated and expected.

5.2. In FAIR Canada's view, an essential benefit of the ETF Facts document is that it will allow investors to compare the risks, costs, benefits, and other characteristics of different ETFs in order to make informed investment decisions. However, in light of evidence of heavy reliance by investors on advice they receive from representatives, it remains to be seen what effect ETF Facts will have on investors' decisions. Testing should seek information on how the ETF Facts are used in the sales process and whether representatives' explanations help investors to better understand the information ETF Facts is meant to convey. We encourage the CSA to design its testing with this in mind.

5.3. In particular, as discussed in this submission, changes to improve clarity and the use of more precise language are needed in order to enhance its effectiveness. In addition to the sections noted above (including the risk section), we note the following areas may need improvement (although other areas may come to light as a result of the investor testing):

- "How much does it cost?" section
    - Do investors understand how representatives get paid upon reading this section? Do they understand how much it will cost to purchase and own the ETF (the initial and ongoing costs)?
    - The language used to disclose conflicts of interest and trailing commissions will likely not succeed in alerting investors to the fact that their representative does not have an obligation to act in their best interest and that conflicts of interest resulting from the payment of trailing commissions may skew recommendations.
    - The language stating "You don't pay these expenses directly. They affect you because they reduce the fund's returns..." may not be sufficiently clear to convey to investors that, as a result, investors' returns are reduced. We recommend that the CSA's investor testing include questions to determine whether investors understand the implications of reduced fund returns. If they do not, FAIR Canada recommends that the language be revised to make it clear that fund expenses reduce investors' returns and that investors pay these expenses, albeit indirectly.
    - The language stating "XYZ ETFs waived some of the fund's expenses. If it had not done so, the MER would have been higher." Such language could potentially be confusing or misleading to investors. We recommend that the annual rate of the MER be presented without language indicating that the MER could have been higher; alternatively, we would suggest adding language to the effect that, had the fund waived more of the expenses or managed the fund more economically, the MER would have been lower.
- "What if I change my mind?" section

- Harmonization of withdrawal and rescission rights amongst CSA jurisdictions would allow for clear language stating rights of investors. Vague language regarding rights is not helpful and will likely not result in investors exercising those rights.

**6. Other Recommendations**

6.1. FAIR Canada recommends that rules be reformed so that ETF Fund managers cannot close the ETF or make material changes to the fund without a shareholder vote, similar to mutual funds.

6.2. FAIR Canada urges securities regulators to police fund names so that they are not misleading. We have seen funds that are almost entirely equities called "income" funds. While the use of the term "index" is used in the name if it is a passive fund, it would improve clarity to call ETFs that are not passive funds, "active" or "actively managed" in their name if not an index fund.

**7. Transition Period**

7.1. A transition period of two-years following the effective date of the Proposed Amendments to require delivery two days *after* the sale seems unduly long but in no event should it be further extended while other issues are being determined.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Neil Gross at 416-214-3408 (neil.gross@faircanada.ca) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,

Canadian Foundation for Advancement of Investor Rights

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September 14, 2015

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
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Dear Sirs and Mesdames,

**Re: Summary Disclosure Document for ETFs**

The following is submitted by **Russell Investments Canada Limited** in response to the CSA Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery dated June 18, 2015 (**the ETF Facts Proposal**).

Russell Investments Canada Limited is the Canadian arm of Russell Investments, a global asset manager and one of only a few firms that offers actively managed multi-asset portfolios and services that include advice, investments and implementation.

Russell Investments has more than CAD$331 billion in assets under management (as of June 30, 2015) and works with over 2,500 institutional clients, independent distribution partners and individual investors globally. As a consultant to some of the largest pools of capital in the world, the firm has US$2.4 trillion in assets under advisement (as of Dec. 31, 2014). It has four decades of experience researching and selecting investment managers and meets annually with more than 2,200 managers around the world. Russell Investments traded more than US$1.7 trillion in 2014 through its implementation services business.

Headquartered in Seattle, Washington, Russell Investments is wholly owned by London Stock Exchange Group (LSEG) and operates globally, including through its offices in Seattle, New York, London, Paris, Amsterdam, Milan, Dubai, Sydney, Melbourne, Auckland, Singapore, Seoul, Tokyo, Beijing, Toronto, Montreal, Vancouver, Calgary, San Diego, Chicago, Milwaukee, Edinburgh and Frankfurt.

## General Comments

We would like to thank the Canadian Securities Administrators (**CSA**) for taking the initiative on the ETF Facts. We believe that the ETF Facts Proposal is a positive start to regulating in a similar manner financial products which compete with one another. A cornerstone of financial regulation should be to seek to be product neutral as between products and services which serve the same financial need.

As recognized in the ETF Facts Proposal, exchange traded funds and mutual funds regulated by National Instrument 81-101, National Instrument 81-102 and National Instrument 81-106 (**conventional mutual funds**) are similar in that they are collective investment vehicles marketed by their sponsors to the same groups of investors, namely retail investors served by financial advisors. They are competitive products, but subject to differing regulation because of differences in the manner of their legal formation. These differences are for the most part unimportant to the end users. We believe that most retail investors care little about the underlying legal structure of an investment product.

As regulators are aware, the industry has raised similar concerns about level playing field and regulatory arbitrage with respect to variable annuity insurance products (“segregated funds”). Here is another instance in which the products are widely regarded as substitutes for one another, and yet are subject to very different regulation. We understand that securities regulators do not have jurisdiction over insurance products. However, in the case of exchange-traded funds (**ETFs**) and conventional mutual funds, there is an opportunity to get it right insofar as the jurisdictional divisions are not present.

We support the ETF Facts Proposal as an important step in remedying the current situation which in our view puts conventional mutual funds at a disadvantage compared to ETFs. We believe this unsatisfactory state of affairs takes on greater importance as ETFs gain in popularity and become a mainstream investment product. In our view, insufficient regulatory attention has been paid to ETFs and the manner in which they are sold to consumers and the ETF Facts Proposal is long overdue. We believe that the ETF Facts Proposal by itself does not result in a level playing field as between conventional mutual funds and ETFs. We encourage regulators to explore further steps that can be taken to ensure that comparable products are similarly regulated so that investors are afforded equal measures of protection.

**Specific Comments**

Below are our responses to some of the specific questions posed by the ETF Facts Proposal. For convenience of reference, we have reproduced your questions in bold below and as presented in Annex B of the ETF Facts Proposal.

**Content of the ETF Facts**

1. **The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.**

1.1. Improved Disclosure re Tracking Error

One of the most important and least understood features of an ETF is the existence of tracking error due the ETF's portfolio not perfectly tracking its index (sometimes referred to as "replication risk"). Many retail investors assume, incorrectly, that the performance of their ETF units will accurately track its underlying index, and that the only difference between the performance of the index and the performance of the ETF will be attributable to fees. That is not the case. As discussed below, it's virtually impossible for an ETF to perfectly track its index in real time.

For clarity, we are referring here to the differences between the performance of an index ETF and the performance of its benchmark index which are attributable to factors *other than the fees and expenses charged by the fund manager*. These differences can result from, among other things and depending on the nature of the fund and its benchmark index: (i) transaction costs in replicating the benchmark index and making adjustments thereto; (ii) taxes, including withholding taxes; (iii) other expenses such as stamp duties, registration fees and the like; (iv) the temporary unavailability in the secondary markets of securities included in the index; (v) inability or failure of the fund to collect income distributed by an underlying security or level of expenses incurred to collect such income; (vi) the timing of changes to the composition of the underlying index.

Furthermore, ETFs are not all constructed the same way, and use different strategies to replicate the performance of the benchmark index, with varying degrees of success.

Some ETFs do not hold securities which make up the index on a proportionate basis. Instead, they use a "sampling strategy", and hold a representative sample of securities which the ETF sponsor deems to have an investment profile similar to the underlying index. Or the ETF may have a portfolio which the sponsor deems to have characteristics, in the aggregate, similar to the index.

The proposed ETF Facts only prescribes disclosure that performance may deviate due to fund expenses. In our view, this disclosure is inadequate and fails to capture a critical feature in the risk profile of the product that consumers are entitled to know about. It could lead to an inference that the above tracking errors are unimportant and can be ignored.

For conventional mutual funds, there is, in addition to the Fund Facts, a simplified prospectus which must be prepared in plain language and contain prescribed disclosure on "What is a mutual fund and what are the risk of investing in a mutual fund". There is no similar document for purchasers of ETFs. There is a long-form prospectus which is legalistic and unlikely to be read and understood by average retail investors. As a result, while referring the investor in a conventional mutual fund to the simplified prospectus can act as backup to the Fund Facts, simply referring the investor to the ETF's prospectus for an explanation of tracking error is unlikely to assist that investor.

This "tracking error" problem was put into high relief during the recent market turmoil. There were reports in the press of instances of significant discrepancies between the prices of securities included in benchmark indices and their prices as reflected in the ETF. *The Wall Street Journal* reported: [1]

> When the market sold off in the first six minutes of trading [on Monday Aug. 24, 2015], many stocks were halted after triggering circuit breakers, including stocks that are included in popular exchange-traded funds.
>
> Because this happened so quickly, many ETF market makers, or the broker-dealers who buy and sell those products were unable to accurately calculate the value of the underlying holdings or properly hedge their trades. That caused them to lowball their buy offers and overprice their sell orders to ensure they didn't take on too much risk. This sent EFT market value tumbling, too, and caused disruptions in the trading of other assets.

*Proposal:*

We suggest that the ETF Facts prescribe disclosure, in plain language, about tracking error. For example, under "How risky is it?", the following could be added:

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[1] From: The Wall Street Journal, August 25, 2015: http://www.wsj.com/articles/stock-market-tumult-exposes-flaws-in-modern-markets-1440547138

"**Tracking Error**

The ETF will not replicate exactly the performance of the Index. Compared to the return of the Index, the total return of the ETF will be reduced by the ETF's expenses. Additionally, the ETF may have to pay costs, taxes and fees that are not included in calculating the returns of the Index. From time to time, the ETF may not hold the same securities in the same proportions as the Index and these differences will also result in the performance of the ETF differing from the Index."

1.2. <u>Improved Disclosure re Cost of Investing</u>

The disclosure under "How much does it cost? – Brokerage commissions" is inadequate in that it does not provide a full picture of the costs to the customer in owning an ETF. The focus of the Fund Facts document has always been on what the investor may experience in terms of fees when purchasing and holding a mutual fund investment, regardless of whether the fee is paid to the fund manager, the dealer, the dealing representative, or another party such as a registered plan trustee or similar service provider. The same principle should apply to disclosure in the ETF Facts with respect to purchases of ETFs.

ETFs are very often held out to retail investors as a low fee alternative to conventional mutual funds. While the management fees charged at the level of the fund are generally much lower than for conventional mutual funds, particularly actively managed mutual funds, it is not clear that the all-in cost to the investor is as low as advertised.[2]

This becomes significant for example for any retail investor who wishes to participate in a periodic investment program, commonly referred to in the industry as a PAC or a systematic redemption program, also known as a SWIP. Typically for conventional mutual funds, each PAC or SWIP transaction does not attract a separate brokerage commission. Amounts are withdrawn directly from or deposited directly to the investor's bank account (or account with another financial institution). The dealer does receive compensation for PAC purchases, but such commissions are paid by the manager of the conventional mutual fund and are not deducted from the amount invested. By contrast, outside a fee-based account, the investor will incur a brokerage commission with every purchase and sale transaction in an ETF. The amount of the brokerage commission varies depending on the broker or dealer, and can be a flat fee or a percentage of the price. Over time, these fees can be significant.

There is a risk with ETFs that the financial advisor will trade excessively for a client account ("churning the account"). We submit that the prescribed disclosure should better highlight this risk.

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[2] As an example, differences in the level of taxable distributions received by an ETF investor may negatively impact on the value of the ETF investment vs. a conventional mutual fund investment. We trust that the Canadian securities regulators will ensure that required tax disclosure in ETF long-form prospectuses fully and fairly discloses the differential tax impact to investors.

*Proposal:*

The ETF Facts should clearly require full fee disclosure of all fees payable by the investor, so that investors are provided with an apples-to-apples comparison of the all-in cost versus the Fund Fact documents. Furthermore, the proposed statement with respect to brokerage commissions in the “How much does it cost? – Brokerage commissions” section should be revised to “You may have to pay a commission each time you buy and sell [shares/units] of the ETF” and expanded to require specific information regarding the rates of brokerage commissions payable (including for any form of periodic purchase plan).

2. **The "How ETFs are priced" section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.**

We submit that the proposed disclosure under “How ETFs are priced” is misguided and could be misleading. Too much emphasis is placed on the “bid-ask spread” and whether units are trading at a “discount” or “premium”. The level of the bid ask spread and degree of premium or discount to NAV, while not unimportant, pales in significance compared to the real drivers of the price of a ETF unit, namely the market and economic factors that apply to the underlying securities or index. We question whether the reader of the ETF Facts is interested in, or benefits from knowing more about, the technical mechanism for pricing ETFs, any more than the reader of the Fund Facts is interested in knowing the detailed valuation rules for pricing mutual funds.

The title “How ETFs are priced” may lead an average, non-industry investor to think that this is a discussion about the factors that impact the price of their ETF holding, and not a discussion of the mechanics of pricing. The factors that impact the price of an investor’s ETF will be general economic conditions, phase of the business cycle, interest rate environment, the global price for commodities and the like. So there should be a general statement that the price of their ETF can be expected to move up or down with the price of the underlying index or asset, and then a brief discussion of the principal factors that affect the prices in the underlying economic exposure.

Recent market events have highlighted that during periods of unusual volatility, the ETFs themselves, as well as the underlying securities, will be subject to temporary trading halts imposed by circuit breakers.[3] This can have adverse consequences that investors are entitled to know about. By contrast, conventional mutual funds do not trade on an exchange and while in certain circumstances the redemption privilege may be temporarily suspended, the units of conventional mutual funds are not subject to trading halts

*Proposal:*

This section can be considerably shortened and replaced with disclosure that directs the investor to underlying risk factors. We ask that you consider changing the title to "What affects the price of your ETF?" The prescribed disclosure should state that the price of the ETF Unit will reflect the movement of the underlying index or reference security or asset. Then there should be a summary discussion of the principal factors. To deal with the mechanics of pricing, we suggest as follows:

> "**What affects the price of your ETF?**
>
> ETFs are unique because they generally hold a basket of investments, like mutual funds, but trade on an exchange, like stocks. Although your ETF sponsor calculates a net asset value (NAV) for your ETF, you will buy and sell your ETF units at its market price, which could differ from the NAV.
>
> You can expect that the price of your ETF will reflect the prices of your ETF's underlying assets or reference index (subject to tracking error as discussed elsewhere in the EFT Facts). So the price of your ETF unit will move up and down, in greater or lesser amounts, reflecting the prices of such assets or index. The principal factors which affect the price movement of the Index are [list e.g. general economic conditions; phase of the business cycle, level of interest rates, the global price of commodities, prevailing exchange rates].
>
> Some ETFs have underlying securities and assets which are more liquid than others. Some ETFs trade in much higher volumes than others. As a result, the liquidity of the ETF will differ, and that can also impact the trading price of your ETF. During periods of market volatility, there can be a significant variance between the price of a security and the price of such security as reflected in the price of the ETF. Additionally, during times of market volatility, the existence of circuit breakers on the exchange on which your ETF is traded will affect both the price and the liquidity of the ETF units. For further details on how your ETF is priced, see the ETF's prospectus."

**3. Please comment on whether there are other disclosure items/topics that should be added to reflect the differences between ETFs and conventional mutual funds.**

3.1. <u>Pre-Sale Delivery</u>

Unlike conventional mutual funds, which under Stage 3 of the Point of Sale Project will require pre-trade delivery of Fund Facts (commencing May 30, 2016), delivery of ETF Facts will only be required within 2 days after the trade. No explanation was provided for this asymmetry. An unlevel playing field which materially favours ETFs will be created if ETFs can be sold using post-trade delivery while conventional mutual funds must achieve pre-trade delivery

[3] ibid 1, Pg. 4

*Proposal:*

The Canadian Securities Administrators have emphasized that the Fund Facts are far less useful to investors if not received before submitting their purchase order. The same policy rationale should require pre-delivery of ETF Facts. Dealers and advisors are already putting in place a process to deliver Fund Facts at or prior to the purchase transaction. That same process can be used to have ETF Facts delivered in the same way. All parties should be able to leverage their pre-delivery regime for Fund Facts in order to pre-deliver ETF Facts.

3.2. <u>De-emphasize the MER of an ETF</u>

MERs (**management expense ratios**) are poorly understood by retail investors. Put bluntly, retail investors have been conditioned, by years of coverage in the media, prescribed disclosure requirements, and industry usage to believe that the MER is equal to the total cost of investing.

The MER for a conventional mutual fund is not comparable to a MER for an ETF. The former includes distribution cost, the compensation paid to the dealer and financial advisor. Such compensation covers the cost of prescribed services which the financial advisor is required, by statute, to provide (i.e. the costs associated with the financial advisor conducting KYP, KYC, suitability, account monitoring, and the like). For an ETF, the MER reflects solely the cost of operating the ETF and excludes all of the other services typically required by a retail investor in connection with the purchase and holding of the ETF. The MER for an ETF does not include costs that the investor will incur in connection with opening and operating an account with a broker in addition to brokerage commissions: account opening and account administration fees, registered plan fees, transfer fees, NSF fees where applicable, etc. None of this is captured in the MER of an ETF, but many investors mistakenly assume that the MER is an "all-in" cost. If investors are making this assumption, emphasis on the MER is misleading as it does not provide for an "apples to apples" comparison. We encourage you to place less emphasis on the MER of an ETF or better disclose that the MER of an ETF is only one component of the cost of owning and transacting in ETFs.

**Anticipated Costs of Delivery of the ETF Facts**

**4. We seek feedback on the anticipated costs of delivery of ETF Facts for those dealers who do not have Exemptive Relief and are not currently delivering ETF Facts; specifically, the anticipated one-time infrastructure costs and ongoing costs.**

We observe that in the past, securities regulators have given relatively little sympathy to costs of this type as a reason for delaying or dispensing with important investor protection initiatives. Accordingly, we would be surprised if such cost deference were to be shown to the ETF industry.

**Transition Period**

5. **We seek feedback from dealers on the appropriate transition period for ETF Facts delivery under the Proposed Amendments. We are specifically interested in feedback from dealers who are not subject to the Exemptive Relief. Please comment on the feasibility of implementing the delivery requirement under the Proposed Amendments within 21 months of the date the Proposed Amendments come into force. In responding, please comment on the impact a 21 month transition period might have in terms of cost, systems implications, and potential changes to current sales practices.**

6. **We seek feedback from ETF managers on the appropriate transition period to file the initial ETF Facts. We currently contemplate that 6 months after the date the Proposed Amendments come into force, ETF managers will be required to file an initial ETF Facts concurrently with a preliminary or pro forma prospectus for their ETFs. Please comment on the feasibility of making the changes to compliance and operational systems that are necessary to produce the ETF Facts, instead of the summary disclosure document pursuant to the Exemptive Relief, within this timeline.**

7. **We seek feedback from ETF managers and dealers on whether they prefer a single switch-over date for filing the initial ETF Facts rather than following the prospectus renewal cycle as currently contemplated. The CSA implemented a single switch-over date for the Stage 2 Fund Facts, and recognize that there are challenges in doing so, especially for ETF managers, from a business planning and business cycle perspective. If a single switch-over date is preferred, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.**

These questions do not directly involve Russell Investments.

For the reasons stated herein, we urge regulators to have the ETF Facts regime in place as quickly as possible.

**Right for Withdrawal of Purchase**

8. **Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. In the case of ETFs, today only purchases filled with Creation Units trigger a prospectus delivery requirement and are therefore subject to a withdrawal right.**

   **Consistent with the approach taken in the Exemptive Relief, the Proposed Amendments do not extend the right of withdrawal of purchase to investors for the delivery of the ETF Facts. In some jurisdictions, investors will continue to have a right of rescission with delivery of the trade confirmation.**

**We seek feedback on this proposed approach. Specifically, please highlight if any practical impediments exist to introducing a right of withdrawal for purchases made in the secondary market in connection with delivery of the ETF Facts, should we decide to pursue this.**

Unlike mutual fund purchases where investors have a 2 day withdrawal period, there is no withdrawal period afforded to ETF purchasers. We recognize that there is a logistical reason for this: a secondary market trade cannot be reversed if the investor exercises the withdrawal right. However, this is not in the best interests of investors, particularly those investors that are potential or actual investors in both ETFs and conventional mutual funds.

*Proposal:*

We urge the CSA to explore a mechanism for providing investors with the functional equivalent of a withdrawal right. For example, the selling dealer could provide the investor with the right for a refund of all of the investor's money, with the dealer having the right to collect any net losses incurred from the ETF provider on some periodic basis, perhaps quarterly or semi-annually. If such a mechanism would prove difficult or would result in further delay in implementing the ETF Facts regime, for example, by requiring further legislative changes, we suggest more prominent disclosure of the absence of a withdrawal right.

<u>Concluding Observations</u>

We support the ETF Facts Proposal as taking an important step toward the goal of product neutral regulation. We urge regulators to consider further steps that can be taken in this regard. We also note that regulation should not, even as an unintended consequence, promote one class of product over another. This is not only a matter of fundamental fairness among industry participants. It is to ensure that consumers, particularly retail consumers, enjoy equal measures of investor protection. At the end of the day, we need regulation which encourages competition and innovation and drives product selection on the basis of perceived value to users.

We thank you for providing us with an opportunity to comment and we would be pleased to respond to any questions or comments you may have on the foregoing.

Yours truly,

| | |
|---|---|
| "David Feather" | "Samir Khan" |
| David Feather<br>Chief Executive Officer and President<br>Russell Investments Canada Limited | Samir Khan<br>General Counsel, Americas, CCO, Canada<br>Russell Investments Canada Limited |

Broadridge

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September 14, 2015

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

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**Re:** **CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery**

**Proposed Amendments to NI 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements and Related Consequential Amendments**

Broadridge Investor Communications Corporation (Broadridge) is pleased to respond to the Canadian Security Administrators' (CSA's) notice and request for comment concerning National Instrument 41-101 General Prospectus Requirements (NI 41-101) and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements (41-101CP) and Related Consequential Amendments.

Broadridge®

## Context

Since the launch of Smart Prospectus over 12 years ago, Broadridge has worked closely with industry partners, regulators and Dealers supporting the evolution of National Instrument 81-101 (NI 81-101). We have been actively involved in the CSA's requests for comment regarding the three stages of amendments to Point of Sale (POS). These rules will result in operational and cost efficiencies, provide more effective communications to investors and efficiently track compliance information. Ultimately, these benefits will result in a richer investor experience.

Now, we are pleased to provide our comments to the CSA regarding NI 41-101. We anticipate that the same benefits provided to the industry and investors through NI 81-101 – and the solutions designed to allow the implementation of these rules – will be realized with the implementation of the proposed rules and similar industry-proven solutions under NI 41-101.

## CSA Issues for Comment on Disclosure and Delivery of "ETF Facts"

On June 18, 2015, the Canadian Securities Administrators (the CSA) published for comment proposed rule amendments that introduce a requirement for exchange-traded funds (ETFs) to prepare and file specified "ETF Facts" documents. Under the proposed rule amendments, Dealers will be required to deliver the applicable ETF Facts document to investors within two days of any trade in an ETF. The proposed rule amendments are to NI 41-101 and 41-101CP, as well as other related instruments, and create a proposed new disclosure form 41-101F4 *Information Required in an ETF Facts Document*.

The proposed ETF disclosure and delivery requirements are intended to mirror the developments in point of sale disclosure that have been introduced for conventional mutual funds, as well as codify regulatory exemptions that were granted to ETF Manufacturers and certain Dealers in the fall of 2013. Under the Exemptive Relief, a summary document replacing the ETF prospectus is currently being delivered by Broadridge to investors that are clients of participating Dealers, accounting for approximately 80% of all ETF assets under management.

The proposed rule amendments bring the summary disclosure documents (ETF Facts) for ETFs, with some disclosure differences, in line with the Fund Facts for conventional mutual funds.

Here, we will comment on some sections of the proposed amendments:

**Comment on costs - point 4.**

> *We seek feedback on the anticipated costs of delivery of ETF Facts for those Dealers who do not have Exemptive Relief and are not currently delivering ETF Facts; specifically, the anticipated one-time infrastructure costs and ongoing costs.*

For the Dealers already delivering ETF summary disclosure documents, we agree with the statements made by the regulators regarding costs:

> *For the Dealers that already deliver a Summary Document to ETF investors under the Exemptive Relief, we believe that the delivery systems are already in place and the compliance and staff costs in overseeing and maintaining the delivery regime should be more or less the same*[1].

[1] Proposed Amendments to NI 41-101 *General Prospectus Requirements*

For Dealers already using the Broadridge's ETF Facts solutions under exemptive relief, there will be no cost impact.

For the Dealers currently not delivering ETF Facts, we agree with the statements made by the regulators regarding taking advantage of the existing infrastructure:

> *For the Dealers that are not parties to the Exemptive Relief, we think there will be one-time costs to reprogram and update information delivery systems and ongoing costs relating to compliance and staff to oversee and maintain the delivery regime. However, there are a number of third-party service providers that have expertise in creating automated programs and applications for delivery of disclosure documents. To the extent that affected Dealers already have systems in place to accommodate post-sale delivery of the Fund Facts, it may also be possible for those Dealers to leverage those existing systems to implement delivery of the ETF Facts*[2].

For those not yet using the solution, the cost impact associated with the implementation will be minimal. The Broadridge solution is offered as a business processing outsourced solution and is available as a service. No infrastructure or software development costs need be incurred. We anticipate that implementation of the ETF Facts solution for most of the existing Smart Document Fulfillment clients and onboarding new clients will be without issue.

Over the past 12 years, the industry has recognized significant cost savings in the transition from providing a full prospectus to the Smart Prospectus to delivery of Fund Facts utilizing Broadridge's Smart Document Fulfillment service. This service can be utilized to distribute ETF Facts for the industry without adding material cost. Looking forward, our systems will have the capacity to accommodate the delivery of ETF Facts pre-sale, in line with Point of Sale Stage 3.

In addition, similar to the existing Cost Rebate program in place between Dealers and Mutual Fund Manufactures, a similar program is currently being used for ETF Facts to provide further cost management efficiency between Dealers and ETF Manufacturers as part of the Broadridge solution.

The implementation of an ETF Facts solution will provide Dealers and Manufacturers with the same operational efficiencies as the existing Fund Facts solution.

**Comment on transition - points 5 and 6.**

> *We seek feedback from dealers on the appropriate transition period for ETF Facts delivery under the Proposed Amendments. We are specifically interested in feedback from Dealers who are not subject to the Exemptive Relief. Please comment on the feasibility of implementing the delivery requirement under the Proposed Amendments within 21 months of the date the Proposed Amendments come into force. In responding, please comment on the impact a 21 month transition period might have in terms of cost, systems implications, and potential changes to current sales practices.*
>
> *We seek feedback from ETF Managers on the appropriate transition period to file the initial ETF Facts. We currently contemplate that 6 months after the date the Proposed Amendments come into force, ETF Managers will be required to file an initial ETF Facts concurrently with a preliminary or pro forma prospectus for their ETFs. Please comment on the feasibility of making the changes to compliance and operational systems that are necessary to produce the ETF Facts, instead of the summary disclosure document pursuant to the Exemptive Relief, within this timeline.*

[2] Proposed Amendments to NI 41-101 *General Prospectus Requirements*

Broadridge

Broadridge is committed to supporting our Dealer clients and the industry at large. Our solutions are built and ready to be deployed as required either by regulation or client need. Broadridge has developed a consolidated service for the delivery of ETF Facts and other required documents, and we suggest that the CSA encourage dealers to move to delivery of ETF Facts as they are ready to transition.

**Conclusion**

We appreciate the opportunity to comment on the proposed ETF disclosure and delivery rules. We would be pleased to discuss these issues further if it would be of assistance to the CSA in finalizing the requirements for this investor communication regulation.

Sincerely,

Donna Bristow
Vice President, Business Management and Operations
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Investor Communication Solutions

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September 16, 2015

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
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VIA EMAIL

Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery – Proposed Amendments to NI 41-101 *General Prospectus Requirements* and to Companion Policy 41-101CP to NI 41-101 *General Prospectus Requirements* and Related Consequential Amendments**

On behalf of Advocis, The Financial Advisors Association of Canada, we are pleased to respond to the Canadian Securities Administrators' ("CSA") consultation regarding the mandating of a summary disclosure document ("ETF Facts") for exchange-traded mutual funds ("ETFs") and its delivery.

## ABOUT ADVOCIS

Advocis is the largest and oldest professional membership association of financial advisors and planners in Canada. Through its predecessor associations, Advocis proudly continues over a century of uninterrupted history serving Canadian financial advisors and their clients. Our 11,000 members, organized in 40 chapters across the country, are licensed to sell life and health insurance, mutual funds and other securities, and are primarily owners and operators of their own small businesses who create thousands of jobs across Canada. Advocis members provide comprehensive financial planning and investment advice, retirement and estate planning, risk management, employee benefit plans, disability coverage, long-term care and critical illness insurance to millions of Canadian households and businesses.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to a professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain professional liability insurance, and put their clients' interests first. Across Canada, no organization's members spend more time working one-on-one on financial matters with individual Canadians than do ours. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future.

## INTRODUCTORY COMMENTS

We support the CSA's ETF Facts initiative and see its development as the logical next step in consumer protection. ETFs have grown beyond their roots in institutional trading, gaining widespread interest from retail investors.[1] This shift puts ETFs firmly in the mainstream – and their regulation should reflect the needs of today's users. We believe that ETF Facts will be an important tool for consumers, providing them with key information in an accessible format.

We have been a proponent of the CSA's Fund Facts initiative for mutual funds, and we are pleased that ETF Facts will place investors in conventional mutual funds and ETFs on a more equal footing in regards to the disclosure available in connection with a purchase of securities. Commenting on Fund Facts, we have stated that distilling all of the information that a consumer needs into two double-sided pages is ambitious, given the scope and complexity of the issues that bear upon investment decisions – and we believe the same holds true for ETF Facts.

In fact, we are concerned that ETF Facts may exacerbate a general misconception that ETFs are simple products that passively track a broad, underlying index, like the S&P/TSX – meaning their "make up" is easily understood and they do not require anything beyond a superficial investigation. While this may be true for some ETFs, vigorous competition in the industry has spurred the creation of innovative, and extremely complex ETFs, such as actively managed ETFs, inverse and leveraged ETFs, "Smart Beta" ETFs, and commodity ETFs. Growth in these more complex ETFs represent about 11% of Canada's overall ETF sector and half of the growth in the last year.[2]

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[1] As of August 2015, the Canadian ETF sector represents over $85.8 billion (Canadian) in assets amongst 368 ETFs, with $7 billion (US) net inflows in the first half the year alone. See: http://www.theglobeandmail.com/globe-investor/funds-and-etfs/etfs/canadian-etf-sector-continues-to-boom-despite-doubts-in-china-greece/article25913236/.

[2] Assets under management in actively traded ETFs grew to about $9.2 billion as of May 31, 2015, up almost 50% from 2014. See: http://www.theglobeandmail.com/globe-investor/advisers-view/growth-of-actively-managed-etfs-surges-in-canada/article25941079/.

Given this complexity, overreliance on ETF Facts can actually be a disservice to consumers by creating an illusory sense of simplicity: by its nature, ETF Facts is a summary document that consumers are inclined to use to quickly compare different ETFs. Consumers undertaking such a cursory analysis are likely to overlook the sophisticated mechanics that are increasingly behind many of these products – such as whether the ETF is physical or synthetic, whether the ETF employs currency hedging, or whether (and how often) the ETF is rebalanced.

More generally from the retail consumer's perspective, a proper investment decision should not centre on product; first and foremost, consumers should take a critical look at their own financial position and goals, and only then begin considering how a particular ETF (or mutual fund, insurance product, or so on) fits within realizing those goals. For the vast majority of consumers, that in-depth analysis should leverage the knowledge and expertise of a professional financial advisor.

This is especially true as studies have consistently proven that consumers derive substantial benefits from seeking professional advice: a 2012 study by the Center for Interuniversity Research and Analysis of Organizations found that based on data compiled from over 10,000 households, advised households have up to almost three times the median assets of non-advised households.[3] A 2014 study by PricewaterhouseCoopers LLP found that advised households save up to 4.2 times more than non-advised households.[4]

Therefore, in our view, the introduction of ETF Facts will create a helpful tool for retail investors to navigate the increasing array of ETF options – but the best role for ETF Facts is as a springboard for a much deeper conversation with a professional advisor about the client's financial objectives.

## QUESTIONS IN CONSULTATION PAPER

### Content of the ETF Facts

The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.

*Odd lots.* Odd lot trades should be included in market pricing. Odd lots now represent a significant number of trades: according to U.S. data, they now account for 5% of the equity volume in that

[3] The Center for Interuniversity Research and Analysis of Organizations, *Econometric Models on the Value of Advice of a Financial Advisor* (July 2012), http://www.cirano.qc.ca/pdf/publication/2012RP-17.pdf.
[4] PricewaterhouseCoopers LLP, *Sound Advice: Insights into Canada's Financial Advice Industry* (July 2014), http://www.advocis.ca/sareport.pdf.

jurisdiction[5] – and a recent study found that odd lots contribute up to 30% of price discovery (especially for high-value technology stocks that have resisted splitting).[6] It is likely that odd lots feature as prominently in Canadian markets. Further, from the retail consumer's perspective, the use of modern trading platforms featuring electronic trading or flat commissions makes it no longer difficult or expensive for investors to dispose of odd lots as it once was. Therefore, we view trades of odd lots as legitimate data that should be captured in pricing information.

*Average bid-ask spreads and premium/discount to NAV.* All trading days, regardless of the number of quotes represented, should be included in the calculation of the average bid-ask spreads and average premium or discount to NAV.

Although these averages are vulnerable to distortion because the calculation is based on equal calendar day weighting of national best bid and offer quotes (as opposed to, say, volume-weighted), that distortion should be effectively minimized because the average encompasses the trailing 12 months – that is a large enough sample size to mute the effect of outlier trading days. If such outliers nonetheless have a significant impact on the calculations, this suggests something more fundamental about the ETF's liquidity, which only bolsters the case for their presentation on ETF Facts.

Further, including all trading days is consistent with the approach taken with the market price and NAV data. The minima and maxima are absolute values captured over the trailing 12 months, regardless of the market circumstances surrounding them. And the average daily trading volume is a simple calendar day average that includes zero volume days. Therefore, for the sake of a consistent approach to the data, the average bid-ask spreads and premium/discount to NAV should not disqualify trading days based on the number of quotes represented.

*Additional information in "Quick facts".* We believe that the "Quick facts" table should include these additional rows:

- "Asset Type", specifying whether the ETF falls into the equity, fixed income, or hybrid categories.
- "Eligibility for Registered Plans", specifying the ETF's eligibility for inclusion in registered plans (such as RRSP, TFSA, RDSP, etc.).
- "Rebalancing Frequency" (if applicable to the ETF), specifying whether the ETF is rebalanced on a quarterly, annual, or other basis.
- "Distribution Yield" (for ETFs where distributions are a key element), specifying the 12-month trailing yield and distribution yield.

These are fundamental pieces of information that many prospective investors would benefit from having at their fingertips before making an investment decision. Indeed, some of these facets are central to consumers' investment objectives and their absence from the sample ETF Facts is problematic.

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[5] Reuters, *Odd-lot trading data starts being disseminated to public*, (December 9, 2013) http://www.reuters.com/article/2013/12/09/us-exchanges-oddlots-idUSBRE9B814820131209

[6] Maureen O'Hara, Cornell University - Samuel Curtis Johnson Graduate School of Management, Chen Yao, University of Warwick and Mao Ye, University of Illinois at Urbana-Champaign: *What's Not There: The Odd-Lot Bias in TAQ Data* (July 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1892972.

The "How ETFs are priced" section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.

We find the "How ETFs are priced" section to be reasonably clear, but we find the information to be incomplete. We appreciate the CSA is attempting to keep the section short, in keeping with the summary nature of the document – but there are other factors that have a significant impact on pricing and therefore warrant a mention. Consumers should be at least made aware of the following variables that influence the actual price they receive:

*Liquidity.* The section should discuss the impact of transaction volume on liquidity and price volatility, including how small or odd lots at the quoted price may contribute to volatility, relative to the size of the consumer's order. It should note that liquidity considerations come into play both when the investor purchases the security, as well as when the investor wishes to dispose of it. The discussion on price and liquidity is particularly important for ETFs (compared to mutual funds) given the prevalence of secondary market transactions in these products and the relatively light trading volume of niche or targeted ETFs.

*Order types.* The section should also note that there are a variety of different order types that affect the consumer's transaction price. Along with explanations of the most common order types, such as market orders, limit orders and stop orders (with day, good-till, or all-or-none options), the section should also state there are additional order types the investor may wish to consider or ask their advisor about (such as market on close, trailing stop, trailing stop limit, and so on), all of which could impact price.

Please comment on whether there are other disclosure items/topics that should be added to reflect the differences between ETFs and conventional mutual funds.

*Benchmarking and tracking.* If the investment objective of the ETF is to track the performance of a specified underlying index or benchmark, the CSA should provide a summary of the issues that are relevant to these ETFs.

For example, the ETF Facts should discuss correlation and tracking error risk – a number of factors may affect the ETF's ability to track its benchmark index or achieve a high degree of correlation with its benchmark, either on a single trading day or for a longer time period. These factors include fund expenses, imperfect correlation between the ETF's investments and those of its underlying index, rounding of share prices, regulatory policies, high portfolio turnover rate and the use of leverage and currency hedging.

The CSA should include an explanation of the difference between physical and synthetic derivative-based tracking, and tracking that is based on the full replication of an index and tracking that is based on selective or weighted sampling, making clear that failure to achieve a high degree of correlation may prevent the ETF from achieving its investment objective.

*Distributions.* For ETFs having distributions as a central feature, where data regarding year-by-year, three month best/worst and 10-year returns is presented, it should be made clear whether that growth assumes reinvestment of the distributions. The ETF Facts should also include a table that discloses the form of distributions for the past tax year, broken down into categories of eligible dividends, non-eligible dividends, capital gains, other income or returns of capital. There should also be a note stating that there are income tax implications of the forms of distribution when the ETF is held in non-registered accounts and the characterization of distributions for tax purposes will only be reported after the ETF's tax year end.

*Risk disclosure.* As it did for Fund Facts, the CSA has selected volatility as the primary metric of risk to present on ETF Facts and it has stated that volatility, as calculated by the standard deviation of returns, will be the basis of its mandatory risk classification methodology that eventually will be applicable to Fund Facts and ETF Facts. We have voiced our general support for this decision, stating that if there is only one metric chosen to represent risk on a summary document, it should be volatility risk based on standard deviation – this metric is generally understood by consumers, has an established calculation methodology, and can be independently verified by third parties.

But it is important to keep in mind that ETF Facts is not a mechanism for consumers to learn about and understand all of the material risks they should know before making an investment decision. There are other major risks beyond volatility risk, such as counterparty, diversification, liquidity and tracking error risk, which are not necessarily expressed in the security's price but are particularly important to ETF investors. And the biggest risks for a particular consumer are a function of his or her personal goals and expectations in the context of an individual financial plan, and this can only be assessed by a qualified professional.

Therefore, we urge the CSA to ensure and promote a prominent role for professional financial advice. In the context of ETF Facts, this includes adding to the discussion about volatility risk a clear statement that the presentation of risk in the document is necessarily limited and recommending that consumers seek professional financial advice before making an investing decision.

**Transition Period**

Although the questions in this section are aimed specifically at ETF dealers and managers, we wish to provide some high-level commentary on the proposed transition period.

*Coordination and priority-setting with other regulatory initiatives.* In timing the implementation of ETF Facts, we ask the CSA to be mindful of the myriad of demands on market participants from other regulatory initiatives that are already underway – whether promulgated by the CSA itself or by other entities. For example, just within the roughly two-year proposed transition timeline outlined in the consultation paper, the CSA will be:

- implementing the final stage of its ground-breaking Client Relationship Model, Phase 2 ("CRM-2") reforms;
- effecting pre-sale delivery of its Fund Facts point of sale project for mutual funds;
- releasing its selected proposed standardized risk classification methodology for mutual funds; and
- advancing the next stages of its mutual fund fee and best interest duty consultations.

These are just a sampling of the CSA's active initiatives, and other regulatory entities will be pursuing their own projects. For example, the Mutual Fund Dealers Association of Canada is working towards developing ETF proficiency standards for its registered representatives, and there are regular changes to the anti-money laundering and anti-terrorist financing requirements of the Financial Transactions and Reports Analysis Centre of Canada.

All of these initiatives require the focus of market participants, through responding to proposals or revising operational procedures to comply with new laws. We ask that the CSA attempt to coordinate the efforts of its various branches to avoid overwhelming the industry with demands that arise all at once – this could involve mapping out priorities, determining which initiatives should be implemented first (due to their importance in addressing an emerging issue or because they can be done with relatively little disruption to industry), and which ones should be held back until the preceding "wave" of reforms have been absorbed and their efficacy can be assessed.

On this basis, we believe that ETF Facts should take relative priority because the point of sale project on the mutual funds side is so well advanced – other than the determination of the standardized risk methodology, which will also apply to ETF Facts, we understand that the Fund Facts project will be complete in 2016. We have always held that retail consumers should enjoy similar disclosure and rights vis-à-vis financial products that, from their perspective, are complementary in fulfilling their investment needs, so it makes sense for ETF Facts to "catch up" to Fund Facts as soon as practicable.

*Impact on dealers and advisors.* Even though many dealers and advisors will be able to leverage the experience gained through the Fund Facts transition experience, the implementation of ETF Facts still poses significant challenges – particularly for smaller dealers who are not captured under the existing exemptive relief. The development (or modification) of a compliance system that tracks client contact points and records delivery fulfillment will be of paramount importance; this will be particularly trying for smaller firms where branch managers wear many hats and must contemporaneously be an oversight and a business person. Larger dealers face their own challenge in coordinating training and communication across a branch network dispersed across the country.

Advisors and their support staff will need to be trained on how to access the ETF Facts document, and make client-specific arrangements for the preferred mode of delivering the document to each client. Advisors will need to be trained on how to explain the ETF Facts document to clients, particularly how ETFs differ from mutual funds. An interesting challenge will be how ETF Facts interacts with the CRM-2 pre-trade disclosure now in effect and Fund Facts pre-sale delivery after May 30, 2016; consumers may be confused as to why Fund Facts is delivered in advance but ETF Facts is delivered after, but the fundamental aspects of both are discussed together, in advance. The practical result of this may be that advisors move to *de facto* pre-sale delivery of the ETF Facts from the outset.

*Effective date.* In finalizing the ETF Facts delivery effective date, the CSA should avoid the calendar year-end and the period known in the industry as the "RRSP season". These periods are notoriously busy for the financial services industry and represent difficult times to sit down with clients and introduce new changes to point of sale procedures. Ideally, we would suggest that the CSA schedule the effective date to occur during the summer months, which generally see lower transaction volumes. Advisors and clients alike would be able to devote the time required to become accustomed with the new process and discuss the new document in detail.

**Right for Withdrawal of Purchase**

Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. In the case of ETFs, today only purchases filled with Creation Units trigger a prospectus delivery requirement and are therefore subject to a withdrawal right.

Consistent with the approach taken in the Exemptive Relief, the Proposed Amendments do not extend the right of withdrawal of purchase to investors for the delivery of the ETF Facts. In some jurisdictions, investors will continue to have a right of rescission with delivery of the trade confirmation. We seek feedback on this proposed approach. Specifically, please highlight if any practical impediments exist to introducing a right of withdrawal for purchases made in the secondary market in connection with delivery of the ETF Facts, should we decide to pursue this.

For the same reasons that the ETF Facts initiative seeks to achieve uniform consumer disclosure for ETFs (including aligning their disclosure with mutual funds), Advocis would prefer to see a standardized right of rescission across Canada: investors should not be disadvantaged simply on the basis of the province or territory in which they reside. Further, from the consumer's perspective, there is no difference whether their ETF order was fulfilled via creation units or through the secondary market.

Accordingly, Advocis believes that it would be in the best interests of Canadians for the CSA to bring uniformity to ETF investors' rights of rescission and withdrawal. Therefore, we believe the CSA should extend the right of withdrawal to purchasers of ETF securities for a period of two days following receipt of the ETF Facts, regardless of jurisdiction or whether the trade occurred in the secondary market. Various industry stakeholders have, for over a decade, articulately and forcefully emphasized the pressing need for harmonization of these rights and for clarification of how they are to be interpreted and applied.

**Other Considerations**

We believe the CSA should consider the following additional issues that arise in connection with the implementation of ETF Facts.

*Obsolescence of data.* ETF Facts provides an opportunity to build on the experience gained from the Fund Facts program and improve both point-of-sale initiatives. One particular concern we have noted with Fund Facts is that its data is often obsolete by the time it is received by the consumer, and we are concerned that the same problem will occur with ETF Facts.

The CSA requires fund companies to update Fund Facts once per year (in step with prospectus requirements), and as a result, certain key information appearing on Fund Facts may be many months old by the time it is in the consumer's hands. As one example, prior to Fund Facts, an advisor could not provide clients with information regarding the rates of return for a mutual fund that had been calculated more than three months prior. Today, the Fund Facts provided to consumers may be nearly a year old and show rate of return calculations that are out of date by much more than three months. This unintended result harms the ability of consumers to make informed decisions.

Specifically, the following points of data appearing on Fund Facts are vulnerable to rapid obsolescence (collectively, the "Variable Portion"):

- total value of the fund as of a certain date;
- top ten holdings;
- investment mix or asset allocation; and
- investment performance.

The other sections of Fund Facts do not normally change (the "Fixed Portion"), even upon its annual update. If the Fixed Portion does change, it is likely a material change that warrants that a new Fund Facts and prospectus be filed in any event.

We recognize that, from the fund manufacturer's perspective, a Fund Facts document has to be filed separately with securities commissions for each of the different series of a particular fund. Thus, when they file Fund Facts, they have to file many iterations of these documents (which could literally be into the hundreds) – so doing so on a more regular (that is, more often than annual) basis would result in excessive cost and administrative burden on the fund company.

But now that fund companies, advisors and investors have had more experience with Fund Facts, we believe the time is appropriate for the securities commissions and the fund companies to come to a new compromise: we suggest that Fund Facts should continue to be filed annually. However, the Variable Portion should be updated quarterly by the fund companies, made available on their websites, and populated into "working versions" of their Fund Facts – but fund companies would not have to file those quarterly versions with securities commissions.

Proper Fund Facts delivery to consumers would constitute delivery of the latest quarterly-updated version. Of course, if the fund company files a prospectus amendment and new Fund Facts with securities commissions due to a material change between annual filings, the quarterly updates would be populated into that latest filed version. And since the updates to the Variable Portion would be applicable to multiple series of the same mutual fund, the objective of providing relevant data to consumers on a current basis at a reasonable cost to the fund company would be achieved.

The same approach should be taken with ETF Facts – annual filing with securities commissions, and quarterly "working" updates for the Variable Portion – so that consumers are provided with relevant and timely information. After all, providing consumers with information that is known to be outdated, under the premise that they can use it to make informed decisions, seems at odds with the objective of the point-of-sale project and consumer protection more generally.

*Delivery requirements vis-à-vis Fund Facts.* The CSA is calling for ETF Facts to be delivered on a post-sale basis when it first comes into effect, following the same procedure it used when it introduced Fund Facts. We believe this staged approach makes sense, as it grants industry participants the opportunity to acclimatize to the new point of sale requirements. But by the time ETF Facts actually goes into effect, Fund Facts will have advanced to pre-sale delivery and the ultimate goal is clearly to synchronize the delivery requirements for both Fund Facts and ETF Facts.

In a previous submission on the Fund Facts project, we stated that it would have been preferable if the CSA had waited to implement the pre-sale delivery phase of Fund Facts until ETF Facts was launched and both were operating on a post-sale delivery basis; once both Fund Facts and ETF Facts were established and functioning well, the CSA could select a uniform switchover date upon which both documents would require pre-sale delivery. A coordinated transition would have better aligned with the International

Organization of Securities Commissions' Point of Sale Principle 4, which calls for "[d]isclosure of key information… in plain language and in a simple, accessible and comparable format to *facilitate a meaningful comparison of information disclosed for competing CIS* [Collective Investment Scheme] *products*" (emphasis added).[7]

Given the CSA's other consumer-focused reforms that are proceeding as scheduled, particularly CRM-2, we believe the benefits of the pre-sale delivery of Fund Facts (in advance of the pre-sale delivery of ETF Facts) could be outweighed by the unnecessary confusion and complication brought about by having two separate delivery regimes for complementary products. Therefore, we recommend that the CSA consider delaying the pre-sale delivery phase for Fund Facts until the ETF Facts initiative "catches up" and both documents can be switched over to pre-sale delivery together.

*Regulatory arbitrage.* The point of sale project is a continuation of the shared vision of securities and insurance regulators to provide consumers with more meaningful and effective prospectus disclosure for mutual funds (now including ETFs) and individual variable insurance contracts ("IVICs" or "segregated funds"), as described in *Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds*, which was published by the Joint Forum of Financial Market Regulators (the "Joint Forum") on October 24, 2008.

On January 1, 2011, new disclosure requirements went into effect for segregated funds to implement the principles set out by the Joint Forum and to harmonize the short-form disclosure practices for mutual funds and segregated funds. In summary, the purchaser of an IVIC must receive an Information Folder which contains a "Key Facts" document, which is essentially a version of Fund/ETF Facts for the segregated fund.

Since that time, there has been relatively little change to the regulatory requirements for Key Facts, including no foreseeable pre-sale delivery requirement. Compare this to the continuous change on the securities side, including the forthcoming pre-sale delivery for Fund Facts which will eventually apply to ETF Facts. The result of this disparity could lead to a regulatory arbitrage situation which would favour the insurance sector.

Regulatory arbitrage is a real and ongoing issue and the forthcoming pre-sale delivery requirements for mutual funds (and eventually ETFs) will exacerbate the problem vis-à-vis segregated funds. The impact of such arbitrage will only increase as insurance companies continue their foray into wealth management. Any re-allocation of investment assets to alternative product choices on the basis of the different regulatory requirements at the point of sale should be cause for concern.

If IVICs do not share the same pre-sale delivery requirements as mutual funds or ETFs, then the Canadian retail investor is exposed to the problem of less-than-professional dual-licenced advisors diverting clients from mutual funds to more costly IVICs. Whenever possible, investor protection should not play out on an un-level playing field.

*ETF Facts delivery and the discount brokerage channel.* Many of the retail investors who have been "early adopters" of ETFs have executed their trades on discount brokerage platforms, without the benefit of suitability assessments and know-your-client processes. Nonetheless, the CSA should ensure

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[7] International Organization of Securities Commissions, *Principles on Point of Sale Disclosure – Final Report* (February 2011), available at: http://www.iosco.org/library/pubdocs/pdf/IOSCOPD343.pdf.

that investors transacting through this channel are afforded the benefits of ETF Facts by verifying that discount brokerages have proper processes in place to "deliver" ETF Facts to their clients. As the discount brokerage model is based on having little personal contact with the consumer, there may be unique challenges in determining whether ETF Facts is successfully delivered.

## CONCLUSIONS

The CSA's ETF Facts initiative continues the evolution of the point-of-sale project and is logically based on the experience gained through the implementation of Fund Facts. ETF Facts helps level the playing field between ETFs and mutual funds and serves as a useful tool for consumers to consider in making investment decisions. The initiative is timely given the explosive growth in popularity of ETFs amongst retail investors.

Through the consultation paper, the CSA seeks to ensure that the main differences of ETFs are captured on ETF Facts, vis-à-vis mutual funds and Fund Facts. We believe that certain additional information must be included – despite the risk of complicating what is intended to be a summary document, there are certain aspects of ETFs that are too fundamental to exclude. And while it was already a challenge to distill the main features of a mutual fund into two double-sided pages, the issues unique to ETFs make such summarization even more difficult, and as a result, risky for consumers to be over-reliant upon.

In fact, for most consumers, having a positive experience with the capital markets will not be determined by choosing any one specific product over another, but by developing and adhering to a personalized financial plan. We urge the CSA to be mindful of the inherent limitations of a document like ETF Facts and recognize how professional financial advice is critical to consumer financial literacy and protection. A document like ETF Facts simply cannot capture the complexity of the ETF universe, but it can serve as the foundation of a deeper discussion with a professional advisor about the consumer's financial position and objectives.

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We look forward to working with the CSA as it works to implement the ETF Facts initiative. Should you have any questions, please do not hesitate to contact the undersigned, or Ed Skwarek, Vice President, Regulatory and Public Affairs at 416-342-9837 or eskwarek@advocis.ca.

Sincerely,

Greg Pollock, M.Ed., LL.M., C.Dir., CFP
President and CEO

Caron Czorny, FLMI, ACS, CFP, CLU, CH.F.C., EPC, CHS
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August 6, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumers Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
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**CSA Notice and Request for Comment**

**Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery**

**Proposed Amendments to**
**National Instrument 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements**

**and**
**Related Consequential Amendments**

The Investor Advisory Panel is pleased to comment on this consultation regarding delivery of ETF Facts to investors and supports the CSA as it continues to encourage clear and comprehensive disclosure of investment products. The Panel is an independent body formed by the Ontario Securities Commission (OSC) in August 2010. We are charged with providing input on the Commission's policy initiatives, including proposed rules and policies, the annual Statement of Priorities, concept papers and specific issues. Our mandate is to represent the views of investors.

To that end, the Panel would like to make the following comments and suggestions for improvement based on the draft ETF Facts document submitted for consultation.

**General Comments**

The Panel is pleased that the CSA has taken this initiative to improve transparency and educate investors about the risks and costs of ETFs. To that end, we support the delivery of an ETF Facts document and believe it is especially important given the growing popularity of ETFs in Canada (as of June 30, 2015, there were 367 ETFs in Canada with assets totaling US$68 billion. *Source: ETFGI*)

While we offer specific comments related to the document below, the Panel has some general observations and suggestions:

**ETF definitions** - The difference in construction between ETFs and mutual funds can have an impact on both the costs and the risks. The CSA ought to consider creating a broader ETF education program to accompany the launch of ETF Facts that outlines the construction process and the key risks. The CSA should also ensure that it uses a consistent definition of ETFs throughout - we note three different definitions in the consultation document (below).

**ETF Delivery** - We recommend that, for retail investors, ETF Facts be delivered before the purchase. For on line trades, clicking on a link/ read/ agree would be acceptable. The delivery does not need to be made on subsequent purchases unless the ETF Facts has changed in the intervening period.

**Investment risk classification methodology** - The CSA should have its risk classification methodology firmly in place before mandating a risk rating disclosure as per the proposed regulation. Using subjective methods as a substitute or interim methodology can create confusion and (worse) could be misleading. If the CSA has not finalized the prescribed methodology at the time of implementing the ETF Facts, we recommend that the risk rating disclosure requirement be postponed and added at a later date.

**The risks of ETFs** - The ETF Fact sheet must be flexible enough to reflect the many ways in which ETFs are constructed and how the underlying asset classes can deliver what they promise (i.e. daily liquidity). Specific risks such as liquidity and tracking error are also quite specific to these products -- these should be reflected. At the same time, as the ETF space evolves and new products emerge, the ETF Fact sheet must evolve along with it. This is occurring in other jurisdictions -- the Hong Kong Stock Exchange and Securities and Futures Commission recently introduced new measures to raise awareness of synthetic ETFs. We recommend that the CSA seriously consider this model for implementation in Canada.

**Background research**: Although not part of the formal consultation request, the Panel would like to express concerns about the disconnect between the Fund Facts draft and observations made during the CSA's focus group-based research. In particular, the research revealed that a relatively high percentage of participants did not understand that a particular product was risky, or how to interpret the Fund Fact document. While we recognize the importance of using the same format and disclosure language that is used to describe mutual funds, we are of the view that more should be done to ensure the disclosure actually protects investors from making bad decisions.

**<u>ETF Facts Document</u>**

Specific comments on the document:

*Information on Trading* - The Panel notes that information on daily volume is useful for evaluating the risk of an ETF, especially as it relates to liquidity. The explanation of the difference between market price and net asset value (NAV) included here is helpful, however, members of the panel wonder if this information could be conveyed in a more meaningful way?

*Shares traded* - Should market price range include odd lots and should days on which trading is under a certain number of trades be excluded? Also, rather than imposing a threshold on the number of shares traded (or odd lots), it may be more useful to add a warning that liquidity may be an issue for those ETFs that don't trade every day. All trading information should be included.

*Investment objective* - It would be helpful to include an explanation of how the choice of securities and derivatives is made (i.e. Criteria used for choosing specific bonds over others).

*Clarify the difference between distribution frequency and timing*. Right now this is not clearly laid out. If it is monthly, then there is no need to list the months. For income planning purposes, it may be useful to include the date of the distribution (i.e. the 15th of every month). And it may be that only one line "distribution" is required: e.g., monthly on the 15th, or quarterly on the 15th of March, June, September and December).

*Total Fund Expenses* - It might be more helpful to list this under “Fund Details” rather than MER.

*Return calculation* - These should be based on market value at the close not NAV. If both are shown, consider using market value as the main source of information.

*CUSIP* not useful for individual investors.

*DRIP* - The Panel notes individual investors might not be familiar with the term and what it means. Consider clarifying and add “Eligible” (see below).

*Form of distribution* - This should be highlighted particularly when it does not involve cash.

*Risk* - Market risk is not the only risk that investors should be aware of. The Panel recommends the CSA consider additional ETF-specific risks including:

- **Tracking error -** The price of the ETF units or shares can vary from the market value of the underlying shares (NAV) due to market supply and demand.
- **Leverage** - Leveraged ETFs and ETFs that employ derivatives have additional risks that should be clearly explained to investors who ought to understand how these products are constructed.
- **Liquidity risk -** ETFs based on thinly traded or niche markets could raise the risk of a liquidity mismatch between the ETF and the underlying investments. How does the ETF provider maintain liquidity for ETFs in such cases (i.e. for fixed income)?
- **Benchmarks -** Some ETFs (i.e., active ETFs) are not designed to track and index so there is no benchmark for performance over time.
- **Counterparty Risk** - Given how ETFs are constructed, what role does counterparty risk play in a given ETF?
- **Currency risk** - Are investors at risk of currency fluctuations?

Trailer Commissions – Only mention trailer commissions if they apply to the ETF and do not mention if there are none.

**<u>Comments on format and look of ETF Facts</u>**

*Fonts* - The Panel recommends using a 12 pt or larger font to make the document more readable.

*Format, headings, methodologies, etc*. -- The Panel recommends that the formatting of ETF Facts should be as close to the MF Facts as possible for consistency and to facilitate comparisons by investors.

*Dates* - In the template on page 1, 3rd box, there is a list of Market price, NAV, Avg bid-ask spread, average premium/discount to NAV. This box should indicate the "as of date". All data and performance references should show the applicable dates/periods. Dates throughout the template should be consistent.

**Defining ETFs**

The Panel notes some inconsistencies in how ETFs are defined in the document that could impact investors' understanding how the product works well as risks and costs.

Specific comments:

14. 20 Part I- Information about the ETF Item 1 – Introduction

*Begin by explaining the difference between an ETF and a mutual fund* - The Panel recommends including a definition of ETFs, including how they are created and how they differ from mutual funds. ETFs and mutual funds are not created the same way - this could lead to additional considerations and/or risks for investors. When investing in mutual funds, for example, investors' money is used to directly purchase securities and issue additional shares of the fund. In the case of ETFs, they are formed through creation units - ETF shares represent a fraction of each unit. Some types of ETFs also use derivatives to amplify performance (i.e., leveraged ETFs; conventional mutual funds are prohibited from doing so).

*Definitions - "Exchange-traded mutual fund"* etc. - In all, we note three different definitions of that an ETF is in the same document:

- *Annex C - 2." "ETF" means an exchange-traded mutual fund"*
- *5.(b) PART 3C 3C.2(4) [next page] "In Ontario, a security of an ETF is an investment fund security prescribed for the purposes of Subsections, etc. "*
- *13. (a) "For an investment fund in continuous distribution, state, etc."*

The inconsistency is confusing. The panel recommends this definition be revisited based on global best practices (exchange traded funds or exchange traded products) and that the same term is used consistently throughout.

**Investment Risk Classification Methodology**

The Panel recommends the risk classification methodology the CSA is working on be prescribed at the time of implementation of the ETF Regulation for consistency, objectivity, comparability, and for efficiency (also keeping in mind costs for providers). Should the CSA not have finalized the risk rating methodology at the time of implementing the ETF Facts regulation, the Panel strongly recommends that mandating disclosure of a risk rating in the ETF Facts be postponed and added when the methodology has been finalized.

The Panel does not recommend using a subjective measure at any point. Moreover, Staff should anticipate that the risk categories may be used in the algorithms for (Model) Portfolio construction by robo-advisors and by dealers and planners. The risk classification methodology should also be same for both mutual funds and ETFs.

**Additional observations**

*14.20. Part I, Item 2 – Quick Facts – INSTRUCTIONS (7)* - The current sample template reads: "Dividend Reinvestment Plan (DRIP. For clarity, this should read: "Dividend Reinvestment Plan (DRIP) Eligible."

*14.20. Part I, Item 3 – Investments of the ETF* - Include information about leverage and the leverage ratio, where applicable.

*14.20. Part I, Item 5 – Guarantee* - Should address insurance provided by derivative strategies and how it is applied.

*14.20. Part II – Costs , Rights and Other Information – Item 1 -1.3 (2)* -- In the block in the sentence: "This is the total of the ETF's Management fee and operating expenses" we suggest replacing "total" by "sum". At the bottom of the block we suggest adding "Total" in front of "ETF expenses".

**Right for Withdrawal of Purchase**

The Panel notes that if the two-day withdrawal period is triggered by the receipt of the trade confirmation rather than the prospectus it would apply to all trades.

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September 16, 2015

**VIA E-MAIL**

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

Attention:

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Me Anne-Marie Beaudoin
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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds (“ETFs”)**

**and its Delivery - Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements* ("NI 41-101") and to Companion Policy 41-101CP to NI 41-101 and related consequential amendments (collectively, the "Proposed Amendments")**

We are writing in response to the request for comments on the Proposed Amendments dated June 18, 2015. We appreciate the opportunity to comment on the Proposed Amendments.

Invesco Canada Ltd. is a wholly-owned subsidiary of Invesco Ltd. Invesco is a leading independent global investment management company, dedicated to helping people worldwide build their financial security. As of August 31, 2015, Invesco and its operating subsidiaries had assets under management of approximately US$776.4 billion. Invesco operates in more than 20 countries in North America, Europe and Asia. Invesco Canada is currently the manager of 22 ETFs listed on the Toronto Stock Exchange under the "PowerShares" brand.

Capitalized terms in this letter that are not defined in this letter have the meanings ascribed to them in the Proposed Amendments. Page references are to the Ontario Securities Commission Bulletin (2015), 38 OSCB in which the Proposed Amendments were published.

**Ineffectiveness of Simplified Disclosure Regimes**

The Proposed Amendments state at page 5515:

> *Unlike industry participants, investors often do not have key information about an ETF and may not know where to find the information. We also know that many investors do not use the information in the prospectus because they have trouble finding and understanding the information they need.*

We agree with this statement and with similar statements that have been made by the Canadian Securities Administrators ("CSA") in the context of point of sale disclosure initiatives for conventional mutual funds. While we agree that this is a problem, as we have previously stated in other comment letters, we have serious reservations about the ability of simplified disclosure regimes (such as the Fund Facts and the proposed ETF Facts) to solve this problem. We have previously cited research not sponsored by the mutual fund industry that showed that pre-trade delivery of a summary prospectus in lieu of a prospectus merely hastens the speed with which the investment decision is made but has no other impact, including on the quality of the investment decision.[1]

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[1] Beshears, J., Choi, J., Laibson, D. and Madrian, B. (2009), How Does Simplified Disclosure Affect Individuals' Mutual Fund Choice?, *Yale International Centre for Finance,* p.3

In the Proposed Amendment, the CSA appears to be acknowledging some of this research when it states at page 5515: "Research suggests that certain behavioral biases of investors may impact the effectiveness of policy initiatives that are designed to encourage better choices about financial products." But then the CSA goes on to say: "However, research on investor preferences for mutual fund information, including our own testing of the Fund Facts and ETF Facts, indicates investors prefer a concise summary of the information that they can use to make a decision."

We cannot help but read this as saying, in effect, that investors have said that they want concise summaries such as the Fund Facts and the ETF Facts, so, even though research has shown that investors may not actually be helped in any meaningful way by these new sources of information, and this information is created and distributed at a significant expense, the CSA has decided that investors must receive this information.

We have always believed as an organization that it is in our own best interests if investors are provided with transparency and are well-informed. If investors were to read and use the Fund Facts and the ETF Facts, we would take great satisfaction in the fact that we had created documents that investors had used and found to be of help. Unfortunately, based on our real-life experiences, which are supported by research, we believe that it is wishful thinking to believe that the Fund Facts and ETF Facts will have the hoped for benefits.

The comments that follow are drafted on the basis that the CSA has concluded otherwise, and that there will be some form of ETF Facts document required; nonetheless, we wished to take this opportunity to reiterate our views on this point.

**Divergence from Negotiated Summary Document**

We were disappointed to see that the ETF Facts provides for many additional data points as well as new mandatory text that are not in the current form of Summary Document in light of the fact that, in our view, this additional disclosure will not be helpful to investors.

The discussions that took place among the OSC (on behalf of the CSA), the ETF managers and certain dealers that ultimately led to the current Summary Document creation and delivery process took place over an extended period of time. The discussions started in the fall of 2011, and the first orders relating to the creation and delivery of the Summary Documents were issued in July 2013. The specific items required to be included in the Summary Documents were discussed at length between the OSC and the ETF managers over this period, leading to the form of Summary Document that exists today. Conceptually, the goal of the parties was to arrive at a summary disclosure document that would provide the "key information" (to borrow the wording used by the CSA to describe its goals in respect of the ETF Facts) investors needed about an ETF. We do not understand why data that was not required in the negotiated Summary Document (presumably because all of the parties were in agreement that this data was not key information) is now being required in the ETF Facts.

We provide specific commentary on certain of these new data points below in our letter.

**<u>Start Date / Inception Date for Performance</u>**

In our opinion, the Proposed Amendments should clearly state that the performance of an ETF is measured beginning with the listing date and, as a consequential change, the term “Date ETF Started” in the Quick Facts should be changed to “Original Listing Date”, since that would tie in with the start date used for performance measurement and offer up a modicum of consistency. If different dates are used for each, an investor could easily be confused, and it is not clear how disclosing the start date (often interpreted as the date the ETF became a reporting issuer or the date the ETF itself was created) is helpful to an investor in these circumstances. That is, what information does it convey to an investor?

We note that ETFs are not seeded by the investment fund manager but, rather, take advantage of that part of National Instrument 81-102 *Investment Funds* which allows a minimum subscription level. That minimum comes from the designated brokers, who typically make their investment several days prior to the initial listing date of the ETF in order to ensure that there are securities to be listed. It is only at that point that the ETF portfolio is invested and, as such, any performance measurement prior to that date is misleading. While the current draft of the Proposed Amendments seemingly permits an ETF to measure performance beginning on the listing date, for this information to be meaningful and comparable across ETFs, the CSA should mandate that all ETFs use the listing date as the beginning of performance measurement as that is the date the ETF can be purchased by the public. In our view, the fact that the Proposed Amendments permit the use of the listing date is a vast improvement over the status quo, and we strongly urge the CSA to make consequential amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (“NI 81-106”) to achieve the same consistency. We do not currently use listing date for performance measurement in Management Reports of Fund Performance as OSC Staff has directed us not to do so. The performance measurement in the two documents should be identical. In fact, in continuous disclosure reviews, Staff has asked us why performance is different in different publications. This is a result of the inconsistency of the rules, and this should be corrected in the Proposed Amendments.

**<u>Item 2 – Quick Facts, Trading Information and Pricing Information</u>**

*Trading Information*

Item 2 – Quick Facts, Trading Information and Pricing Information as drafted require the disclosure of “average daily volume” and “number of days traded”. The inclusion of these data points benefits large, established ETFs, and places newer entrants at a disadvantage because an investor may wrongly interpret these figures as indicating that an ETF with lower figures is a less desirable investment than an ETF with higher figures. While these statistics are often used as measures of liquidity for corporate issuers, because of the ability of dealers to create and redeem units, the average daily volume of an ETF and the number of days traded are not reliable indicators of an ETF's true liquidity. Merely because volumes were low or a trade did not occur on a particular day does not indicate that there is a liquidity issue. If demand for securities of a particular ETF were to suddenly increase during the course of a day, the supply could be quickly increased through the creation process. What will ultimately determine the liquidity of an ETF is the liquidity of its underlying basket of assets.

We acknowledge that the January 2015 Allen Research Corporation report "CSA Point of Sale Disclosure Project ETF Facts Document Testing" noted at page 72 that "Seven out of ten or more of all retail investors [68%-79%] identified currency, exchange, average daily volume and total value as very or fairly important trading information"; however, we respectfully submit that these investors may not be aware of the differences between corporate issuers and ETFs and the impact of the creation mechanism. Average daily volume and number of days traded are not "key information" for an ETF investor, and they should be removed from the ETF Facts.

*Pricing Information*

As a general comment, we note that, unlike the proposed ETF Facts document, neither the current form of Summary Document used by ETFs nor the Fund Facts document requires the inclusion of any pricing information.  We believe that this is the correct approach. We are of the view that the historical "after the fact" pricing information required in the ETF Facts document (market price and net asset value (NAV) ranges, bid-ask spread and premium/discount to NAV) is not meaningful, and does not help investors make investment decisions.  Including this information may be counterproductive as it introduces non-essential information. In support of the ETF Facts, the CSA noted that "investors prefer a concise summary of the information that they can use to make a decision" (page 5515). For these reasons, we suggest that the "Pricing information" section be removed from the ETF Facts document.

If the CSA disagrees and is of the view that some "Pricing information" should be retained in the ETF Facts, we would ask that the CSA at least consider the following:

*i) Alter the disclosure requirements for market price and net asset value*

Item 2 requires the disclosure of "market value". Instruction 13 under Item 2 requires that the ETF "[s]how the range for the market price…by specifying the highest and lowest prices at which…securities of the ETF have traded on all trading venues over a 12 month period…" (page 5533). Instruction 14 requires that the ETF also "[s]how the range for the net asset value per share or unit…by specifying the highest and lowest net asset value …over a 12 month period." (page 5533)

We interpret the reference to market value in instruction 13 as requiring us to look at intra-day (i.e. all) market prices. If this was not the result that the CSA intended, we would ask the CSA to revise instruction 13 accordingly. Giving investors market price in such close proximity to NAV may be confusing in that the highest and lowest market prices are drawn from all prices (including intra-day prices) while NAVs would look only at end of day NAVs. All other things being equal, we have found the intra-day volatility of market prices to be, in general, higher than the day to day volatility of closing prices. If the CSA is of the view that both market price and NAV should remain in the pricing information chart, we would suggest that end of day data be used for both data points or that language be added in close proximity to the Pricing information table explaining this difference. (We acknowledge that the section "How ETFs are priced" elsewhere in the ETF Facts document discloses that NAV is calculated after the close of each trading day, and also discusses how market prices change throughout the trading day, but this information is produced too far away from the Pricing information to be helpful to investors who are trying to understand the market price and net asset value data. We also note that we recommend the removal of that entire section in our comment letter at pages 11 and 12.)

(ii) *Provide clarity regarding calculation of daily average bid-ask spread*

Instruction 15 requires that we take the "the average of the quoted spreads based on NBBO for each day". The instructions do not specify the interval that is to be used. Should we be looking at the time of each trade or each second, minute, hour or end of day? While we do not believe that this data point is at all helpful to investors, if we and other ETF managers are required to calculate it, absent any direction regarding the interval to be used, this data point is likely to be calculated in different ways by different ETF managers, compromising the comparability of this data point across different ETF Facts documents.

**Item 7 – Pricing ("How ETFs are priced")**

We are of the view that the entire "How ETFs are priced" section should be removed from the ETF Facts. Please see pages 11 and 12 of our comment letter for our thoughts on this point. If the CSA removes this section, our comments below become irrelevant. If the CSA retains this section, please note the comments below.

*Market Price and Bid-ask Spread*

The fourth bullet point under Market Price currently reads (page 5539): "In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect."

With respect, we believe that this statement is not true. By definition, a buyer should be able to buy at the ask and a seller should be able to sell at the bid (i.e. they should each be able to get the price they expect), and this should be the case regardless of the size of the bid-ask spread.

We also have serious reservations about the use of the word "liquid" in the ETF Facts. Based on research conducted by Invesco, we believe that many investors do not have a good understanding of the concept of liquidity. Liquidity in the context of an ETF will be more difficult to explain. While an ETF with a small bid-ask spread is likely to be considered liquid, the fact that an ETF has a wider bid-ask spread does not necessarily indicate a lack of liquidity, given the existence of the creation mechanism. As we previously noted, if demand for securities of a particular ETF were to suddenly increase during the course of a day, the supply could be quickly increased through the creation process. What will ultimately determine the liquidity of an ETF is the liquidity of its underlying basket of assets.

As stated in our letter at page 5, we do not believe that the average bid-ask spread (or any other pricing information) should be included in the ETF Facts document. If the CSA agrees with us and removes average bid-ask spread from the ETF Facts, this fourth bullet point becomes irrelevant, and will presumably be removed. We attempted to develop new wording for this fourth bullet point to provide to the CSA as an alternative to the current wording, in the event the CSA determined that it wished to retain disclosure explaining the implications of the size of the bid-ask spread. However, despite numerous attempts, we were not able to arrive at a description that was short, easily understandable and accurate. This further supports, in our view, our belief that this bullet point should be removed.

*Net Asset Value*

The third bullet point required to be included in the ETF Facts under the heading "Net Asset Value" may confuse and mislead investors. It reads:

> *If the market price is lower than the NAV, the ETF is trading at a* ***discount****. If the market price is higher than the NAV, the ETF is trading at a* ***premium****. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth.*

There is a theoretical uncalculated NAV at all points in time for a fund. If an investor were in a position to know what this theoretical NAV is, he or she would be in a position to say whether a transaction was occurring at a premium or at a discount.

Canadian ETFs produce an official NAV only at the end of the day. In contrast, U.S. ETFs provide intraday NAVs at regular intervals (i.e. in some cases every 15 seconds) which makes this information considerably more meaningful. The wording in the Proposed Amendment encourages investors to compare today's intra-day market price to the "stale" NAV calculated at the close of the previous trading day. This is not an indicator of whether there is a true "discount" or "premium" at the time of the transaction. We acknowledge that many people compare the current market price to the last published NAV. We would suggest the following text be used instead:

> *People often compare a current market price to the last published NAV (which was calculated at the close of the previous trading day). If the market price is lower than the NAV, the ETF is trading at a discount. If the market price is higher than the NAV, the ETF is trading at a premium. If you sell an ETF at a discount, you may*

> *be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth. However, please keep in mind that this NAV reflects the previous day's valuation and may not reflect the current value of the ETF.*

We appreciate that there may be space limitations in the context of the ETF Facts document. While we believe that the proposed text above is preferable, we would propose the paragraph below as an alternative.

> *If the market price at the end of the trading day is lower than the NAV calculated after the close of trading, the ETF ~~at is trading~~ traded at a discount. If the market price at the end of the trading day is higher than the NAV calculated after the close of trading, the ETF ~~is trading~~ traded at a premium. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth.*

**Investment Risk**

We have previously participated in a discussion group organized by the Ontario Securities Commission regarding fund risk classification methodology. We also provided comments in a letter dated March 12, 2015 in respond to CSA Notice 81-324 and Request For Comment Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts (the "CSA Risk Classification Proposal"). Our views on the CSA Risk Classification Proposal have not changed, and we respectfully refer the CSA to our previously submitted comment letter for our views on the CSA Risk Classification Proposal.

**Proposed Subsection 5A.3(4) to Companion Policy 41-101CP**

We support the CSA's efforts to provide guidance as to what types of changes would not be considered material changes. We would suggest the following changes to the proposed text of subsection 5A.3(4) to add additional clarity:

> *An amendment to the ETF facts document should be filed when there is a material change to the ETF that requires a change to the disclosure in the ETF facts document. This is consistent with the requirement in paragraph 11.2(1)(d) of National Instrument 81-106 Investment Fund Continuous Disclosure. We would not generally consider changes to the quick facts (other than changes in distribution frequency), trading information, pricing information, top 10 investments, investment mix or year-by-year returns of the ETF to be material changes. We would generally consider changes to the ETF's investment objective or risk level to be material changes under securities legislation.*

**Other Drafting Comments**

*General Instruction 16*

General instruction 16 (page 5530) to Form 41-101F4 states:

> *For a class or series of securities of the ETF denominated in a currency other than the Canadian dollar, identify the other currency under the heading "Quick Facts" and provide the dollar amounts in the other currency, where applicable, under the headings "How has the ETF performed?" and "How much does it cost?".*

We believe that the reference to "Quick Facts" should be changed to "Trading Information" given that the instruction 10 for Item 2 require disclosure of the currency under the heading "Trading Information".

*Item 3 – Investments of the ETF*

Instruction 3 (page 5534) states:

> *For an ETF that uses derivatives, state using wording substantially similar to the following: It uses derivatives, such as options, futures and swaps to get exposure to the [index/benchmark] without investing directly in the securities that make up the [index/benchmark].*

This language assumes that an ETF would only use derivatives to replicate an index/benchmark, but the ETF may not track an index, or even if it tracks an index, it may use derivatives for other purposes (e.g. currency hedging). We would suggest modifying the language of this form requirement as follows:

> *For an ETF that uses derivatives <u>to replicate the performance of an index</u>, state using wording substantially similar to the following: It uses derivatives, such as options, futures and swaps to ~~get exposure to~~ <u>replicate the performance of</u> the [index/benchmark] without investing directly in the securities that make up the [index/benchmark].*

*Item 6 – Past Performance*

(i) <u>*How returns are calculated*</u>

Each ETF Facts document must include the following text (page 5539): "NAV is used to calculate financial information for reporting purposes – like the returns shown in this document."

To reduce the possibility of investors becoming confused by the fact that returns are calculated using NAV when they are purchasing at market price, we would suggest that additional language be added to the section "How has the ETF performed?" under Item 6 in the ETF Facts, perhaps along the lines of:

> *The returns shown are calculated using net asset value (NAV). Most investors will buy ETFs at market price, not NAV. Please see "How ETFs are priced" for more information on these two sets of prices.*

In our comment letter at pages 11 and 12, in response to a specific question posed by the CSA, we suggest the removal of the "How ETFs are priced" section. If the CSA adopts this suggestion, the last sentence in the proposed text above becomes, of course, irrelevant.

*(ii)* <u>Periods covered by best and worst 3-month returns</u>

We believe that there is a technical issue with the current drafting of the instructions for Item 6. The instructions refer to the "period covered in the bar chart required under paragraph (3)(a). The referenced paragraph refers to "completed calendar years". By way of an example, the drafting provides that if the ETF Facts document were to be prepared in September 2016, none of the performance in the partial calendar year of 2016 would be eligible for consideration when determining the best and worst 3 month returns. This does not seem like the right outcome to us.

Accordingly, we would suggest that the wording of the instructions for Item 6 be changed to

> *Under the sub-heading "Best and worst 3-month returns",*
> *(a) for an ETF that has completed at least one calendar year:*
> *(i) provide information for the period covered in the bar chart required under paragraph (3)(a) <u>and the current partial calendar year</u> in the form of the following table…*

We note that the same issue exists with the wording of instruction 3 to Item 5 in Form 81-101F3.

**<u>Specific Questions Posed by the CSA for Comments</u>**

We have comments on the following questions posed by the CSA.

1. ***The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do***

***not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.***

This question asks for suggestions on how this information should be calculated and presented. This presupposes that the additional information required to be disclosed (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV) is helpful to investors. With respect, as stated earlier in our letter, it is our position that this additional information is of limited utility, and may, in fact, detract from the CSA's stated goal of giving investors "clear, concise, understandable" (proposed subsection 5A.1(2) of 41-101CP) disclosure through the ETF Facts document. We have provided our comments on certain specific disclosure requirements earlier in this letter to the effect that many of the trading and pricing disclosure requirements should be removed from the ETF Facts. However, if the CSA opts to retain these data points, then we respectfully request that the additional requirements proposed in the question be excluded (that is, we should not have to exclude odd lot trades or require a minimum number of quotes) as sourcing and processing the information in this manner would add to the cost and complexity of preparing the ETF Facts documents. In other words, if investors would receive a measurable benefit from the cost and burden imposed on an investment fund manager in preparing the required data, one could argue it is justified. There is no measurable benefit in this context for investors yet the investment fund manager preparing the ETF Facts would incur additional costs and burdens and, therefore, the additional requirements contemplated by this question cannot be justified.

2. ***The "How ETFs are priced" section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.***

We urge the CSA to remove the "How ETFs are priced" section from the ETF Facts and to consider creating other investor use publications to explain these and other ETF-related investment concepts and terms. The explanations currently required to be included in the ETF Facts are fairly lengthy, which is understandable given that the concepts are sometimes fairly complex and are not intuitive. We note that General instruction 15 generally requires that each of Part I and Part II must not exceed one page in length, although four pages in total is permissible. The sample ETF Facts included with the Proposed Amendments runs three pages which suggests to us that two pages in total is simply unachievable given the minimum form requirements. However, if this section is removed, two pages is achievable and the result is perhaps more desirable from the investor's perspective.

On a broader note, the CSA has acknowledged in other contexts that financial literacy is a serious problem in Canada. This being the case, we believe that it is somewhat naïve to believe that complex financial concepts can be explained with the ease and simplicity suggested by the required explanatory language in the ETF Facts and, as we have observed in our comments earlier in this letter, in some cases we are of the view that the explanations are not accurate. An investor use publication or brochure would provide the CSA with a better opportunity to explain ETF-related investment concepts and terms that it feels are important for investors to understand without the constraints of the ETF Facts format.

As a final point, by way of comparison, we note that since the coming into force of NI 81-106, investors have had to contend with two pricing situations for conventional mutual funds, namely, NAV used for financial statement purposes and NAV used for transactional purposes. Notwithstanding this duality – which is exacerbated since the same nomenclature is used for both concepts – the CSA has determined that it is not necessary to provide investors with an explanation of these terms. This approach is not consistent with the level of explanatory text that is required in the ETF Facts document.

We would urge the CSA to reconsider its current approach. We believe that it is simply not realistic to seek to have ETF managers produce ETF Facts documents that investors can “easily understand” (pages 5509 and 5511) in a compressed format, and yet require the inclusion of multiple data points and explanations of fairly complex concepts. These conflicting goals result in a document that falls short on both fronts.

3. ***Please comment on whether there are other disclosure items/topics that should be added to reflect the differences between ETFs and conventional mutual funds.***

As a manager of both ETFs and mutual funds, we believe that we are well positioned to respond to this question. The presumption underlying this question is that investors have a thorough understanding of conventional mutual funds and, as such, are in a position to find information on the differences between the two helpful. CSA investment fund initiatives over the last decade have shown that this presumption has no basis in reality. More importantly, it presupposes that investors seeking managed investments will choose only between mutual funds and ETFs. For present purposes, we will accept the underlying assumption of the CSA that the market for managed investments (such as funds) is different from the market for non-managed investments (such as stocks). Accepting this assumption, however, requires that one consider the range of options for managed investments, namely, (1) conventional mutual funds, (2) ETFs, (3) separately managed accounts (i.e. where the client buys into an investment strategy, the dealer buys securities for the account in accordance with the instructions of a portfolio manager and the investor owns the portfolio securities directly rather than indirectly through their ownership of mutual fund securities), and (4) segregated funds. All four types of investment vehicles compete for the same investment dollars, and are equally available to investors seeking a managed investment. In our experience, investors care about the investment mandate and cost, not about the vehicle or packaging through which the mandate is delivered. This being the case, comparing ETFs only to mutual funds and not to the other two options does not appear to us to be based on any reasonable principle. For these reasons, we do not believe detailed disclosure of the differences between ETFs and conventional mutual funds should be included in the ETF Facts.

We have previously commented in the context of other regulatory initiatives on the importance of creating a level playing field between investment products, regardless of structure. To that end, we believe that the disclosure obligations in the ETF Facts go beyond those in the Fund Facts, imposing greater obligations on ETFs than on conventional mutual funds, with no offsetting benefits arising from these additional requirements.

7. ***We seek feedback from ETF managers and dealers on whether they prefer a single switch-over date for filing the initial ETF Facts rather than following the prospectus renewal cycle as currently contemplated. The CSA implemented a single switch-over date for the Stage 2 Fund Facts, and recognize that there are challenges in doing so, especially for ETF managers, from a business planning and business cycle perspective. If a single switch-over date is preferred, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.***

Based on our experiences with the introduction of the Fund Facts document, our preference is that the CSA not adopt a single switch-over date as that process required us to prepare and file hundreds of Fund Facts documents by the switch-over date, and then again shortly thereafter during the prospectus renewal. We would ask that, given the differences between the current Summary Document filed by each ETF and the proposed ETF Facts, the CSA confirm that no blacklines are required to be filed with the initial ETF Facts filing, comparing the ETF Facts with the prior Summary Documents. This was the approach used for the 2014 changes to the Fund Facts documents when blacklines were not required.

**Conclusion**

Thank you for providing us with the opportunity to comment on the Proposed Amendments. We would be pleased to discuss our comments further should you so desire.

Yours very truly,

**Invesco Canada Ltd.**

*(signed) “Julianna Ahn”*

Julianna Ahn
Vice President, Legal and Associate General Counsel

PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

September 16, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumers Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island Nova Scotia Securities
Commission Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

The Secretary Ontario Securities Commission
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-and-

Me Anne-Marie Beaudoin
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consultation-en-cours@lautorite.qc.ca

**Re: CSA Notice and Request for Comment Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds (ETF) and it's Delivery**

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The Portfolio Management Association of Canada ("PMAC"), through its Industry, Regulation & Tax Committee, is pleased to have the opportunity to participate in the consultation process regarding the summary disclosure document called "ETF Facts" and the content and delivery of ETF Facts to investors (the "Consultation").

PMAC commends the CSA's commitment to ensure that investors in all publicly offered investment funds have access to effective and meaningful disclosure through a largely harmonized summary disclosure document - Fund Facts documents for mutual funds and ETF Facts for ETFs. PMAC supports the ETF Facts document and believes that investors should have plain language transparency on the risks and costs of investing in ETFs. We also support a consistent disclosure framework between conventional mutual funds and ETFs.

As background, PMAC represents investment management firms registered to do business in Canada as portfolio managers. PMAC members manage investment portfolios for private individuals, foundations, universities and pension plans. PMAC was established in 1952 and currently represents over 200 investment management firms that manage total assets in excess of $1.4 trillion. Our mission is to advocate the highest standards of unbiased portfolio management in the interest of the investors served by Members. For more information about PMAC and our mandate, please visit our website at www.portfoliomanagement.org.

**General Comments**

PMAC is an advocate of investor transparency of investment products and services provided to investors, including ETF products and the associated risks and costs of investing in ETFs. As a general observation, we believe that for consistency and comparability purposes, the format of the ETF Facts should be consistent with the mutual fund facts document ("Fund Facts"). In this regard, we are pleased that the ETF Facts is substantially similar to the Fund Facts. As advocates of harmonized securities legislation, we believe it is important for investors to have an ETF Facts regime that is largely harmonized with the Fund Facts regime, include consistent risk methodology information once finalized by the CSA, and that cost and performance disclosure information included in the ETF Facts is also harmonized with CRM2 performance reporting disclosure so investors are not confused.

We note that a number of our Members who are ETF managers have identified significant concerns with the trading and pricing information proposed to be included in the ETF Facts. We understand these Members will be submitting detailed comment letters setting out the issues they've indentified with some of the new information required in the ETF Facts. Our submission will provide a high level overview of the some of these issues. While we support the objective of providing investors with ETF Facts, we recommend certain proposed information to be included in the ETF Facts document be reconsidered or removed. Alternatively, the addition of more detailed information and disclosure around some of the pricing information should be required so that investors will have a better understanding and more realistic picture of how ETFs work.

**Trading and Pricing Information**

The CSA has proposed additional content be included in the "ETF Facts" that speaks to trading and pricing characteristics of ETFs. Namely, the inclusion of information related to market price, bid-ask spread, as well as premium/discount of market price to net asset value. The CSA has also proposed the inclusion of content that explains some of the pricing issues to consider when trading ETFs. The rationale for including this additional information is because of the key difference between ETFs and conventional mutual funds - individual investors cannot subscribe for ETFs directly from the fund, and instead are bought and sold over an exchange. While we agree that there are differences between ETFs and mutual funds, we have identified concerns with the inclusion of this additional disclosure on ETF pricing information.

First, the data required to provide the compulsory information on trading and pricing will be dependent on third party sources/vendors. This will not only create additional costs to managers to source such data but will also create a reliability issue where managers will not be able to verify the information provided. There is also the concern about licensing issues around the data that will be included in this section of the ETF Facts.

Second, certain information proposed to be included will not provide a meaningful reflection of the cost and/or liquidity of an ETF investment. For instance, "number of days traded" may not necessarily be a meaningful input regarding the liquidity of a fund given the unique ETF mechanism and how underwriters can create or redeem units to meet demand. In addition, a fund that traded one unit every trading day would appear to be more liquid based on this statistic than one that traded much heavier volume on fewer days. As a result, this data point may be incomplete and potentially misleading to investors who may not be knowledgeable in the nuances of ETF trading.

Similarly, the information proposed to be included under “average premium/discount to NAV” could be potentially misleading. For example, in some cases there could be viable reasons for discounts or premiums to NAV as the pricing is occurring in real-time. The inclusion of this information implies or suggests that anything above or below NAV is a negative outcome.

Finally, we question whether this data will be helpful to investors and the utility of including this information. We note that the Consultation Paper states that the research and testing conducted by the CSA indicated that investors found it hard to understand the concepts “bid-ask spread” and “premium and discount” in the “Trading ETFs” section and asked for examples. We recommend the CSA reconsider the utility of this information as currently proposed. We believe that it may be more misleading than helpful.

**Delivery of ETF Facts for Managed Accounts**

We would like to confirm our understanding that in the context of a discretionary managed account, the ETF Facts will be delivered to the portfolio manager as the “purchaser” as is the case with Fund Facts.

**Investment Risk Classification Methodology**

We understand the CSA expects to publish for comment by the end of the year a new risk classification methodology for mutual funds. We recommend the CSA align the implementation of final rules on risk classification methodology with the final rule on ETF Facts so that the first ETF Facts that are prepared and filed reflect the new methodology.

**Transition Period**

We support the transition period contemplated in the Consultation document.

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If you have any questions regarding this submission, please do not hesitate to contact Katie Walmsley (kwalmsley@portfoliomanagement.org) at (416) 504-7018.

Yours truly;

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

K.A. Walmsley

Scott Mahaffy

Katie A. Walmsley
President, PMAC

Scott Mahaffy
Vice President and Senior Counsel
MFS Investment Management Canada
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Kenmar Associates
Investor Education and Protection

**Sent Via email** August 2, 2015

**Kenmar Comment Letter**

CSA NOTICE AND REQUEST FOR COMMENT
MANDATING A SUMMARY DISCLOSURE DOCUMENT
FOR EXCHANGE-TRADED MUTUAL FUNDS AND ITS DELIVERY
PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS AND TO COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS AND RELATED CONSEQUENTIAL AMENDMENTS
http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20150618_41-101_rfc-amd-general-prospectus.htm

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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador

Kenmar Associates
Investor Education and Protection

Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

Kenmar Associates is an Ontario- based privately-funded organization focused on investment fund investor education via on-line research papers hosted at www.canadianfundwatch.com . Kenmar also publishes ***the Fund OBSERVER*** on a bi-weekly basis discussing investor protection issues primarily for investment fund investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in filing investor complaints and restitution claims.

We are pleased to offer our comments on this important consultation.

We agree with the already posted comments provided by Mr. L. Elford and the Small Investor Protection Association.

The CSA initiative of utilizing ETF Facts is a positive step in encouraging retail investors to consider Exchange Traded Funds (ETF's) for their portfolios. Given prevailing low interest rates, a greater use of ETF's increases the chances for Canadians in growing their savings. Providing a plain language disclosure will be a positive factor in drawing investors' attention to ETF's ( we assume this excludes Closed-end Funds)..

The ETF Facts provide for some additional ETF-specific information that isn't included in the Fund Facts form or the current ETF summary documents. Most of these additional requirements are intended to highlight that ETFs, unlike conventional mutual funds, are traded on an exchange. For example, the CSA propose the inclusion of additional disclosure on ETF pricing information over a 12 month period ending within 60 days of the date of the ETF Facts, such as the market price, net asset value (**NAV**), average bid-ask spread and average premium/discount to NAV. Prescribed disclosure on the significance of the difference between the market price and the NAV and a description on the impact of premium/discount of market price to NAV will also be required. It will be interesting to see the comments the CSA receive on this requirement, as it is not clear to us whether this information will be meaningful or useful to retail investors. Other ETF specific content includes average daily volume and number of days traded over a 12 month period, which should, at least in principle, provide investors with information about the liquidity of their investment.

One thing that we want to relate to you is that we have heard from a number of fund industry participants on plain language. They tell us they do a lot of studies on what different words mean to investors and what they do and do not understand. Interestingly, they have found that investors really do not understand the term "liquidity". In light of that, we are surprised ETF Facts uses that term as part of the ETF Facts explanations. If the focus groups are saying that "liquidity" is understood, the industry think it shows that the sample sizes are ineffective,It is food for thought we felt should be brought to your attention.

We assume that ETF Facts will only be required of Canadian-domiciled ETF manufacturers and that copies of the Summary Prospectus will be provided for U.S. originated ETF's. Per CETFA, approximately 20% of ETF assets held by Canadians are non-Canadian listed ETFs. Approximately 1/3 of all ETFs (US-based and Canadian-based) are held by investors other than the retail market.

The new simplified ETF disclosure regime should also be accompanied by a meaningful CSA sponsored investor education initiative. The brochure should include a dictionary .The brochure would be used to explain in plain language how to use ETF Facts for decision making. The Vanguard Canada ETF education centre is a good model for ETF investor education.
https://www.vanguardcanada.ca/individual/insights/etfeducation.htm#/ See also a Bulletin ( in REFERENCES) from the Hong Kong Securities Agency. We believe such a brochure is a critical success factor for the ETF Facts disclosure regime.

We would like to expand on a few points made by Elford and SIPA.

#1 **Pre-sale delivery of ETF Facts** Under the proposed rule amendments dealers will be required to deliver the applicable ETF Facts document to investors within two days of any trade in an ETF. We feel that pre-sale delivery is essential if investors are to make informed investment decisions. As noted in the document testing research / focus groups, pre-sale delivery is desired by a vast majority (87 %) of retail investors Ref ***CSA Point of Sale Disclosure Project: ETF Facts Document Testing,"***
http://www.osc.gov.on.ca/documents/en/InvestmentFunds/etf-facts-document-testing.pdf . In the case of online purchases we would agree that providing an intelligent confirmation process of having accessed/read/confirm the online file before clicking BUY would constitute delivery. We note too that MFDA licensed mutual fund salespersons will soon be able to sell selected ETF's; it is necessary that ETF's be delivered in the same manner as mutual funds to avoid investor and dealer Rep confusion and to treat both products in the same manner. We also question whether this has the potential to be operationally complicated for dealers who distribute both mutual funds and ETFs.

#2 **Return calculations** ETF Performance returns should be based on market value - This is particularly true for actively- managed and currency-hedged ETF's. In any event, the ETF Facts disclosure should be harmonized with CRM2 performance reporting disclosure so investors are not confused.

# 3 **Risk disclosure** We agree with SIPA- the risk disclosure system rooted in the standard deviation (SD) is flawed . We do not agree that the use of a SD based, word descriptor for risk is proper or adequate. In fact, we believe it is misleading and hence breaks the cardinal rule of any disclosure- DO NO HARM . See the Kenmar Comment letter on mutual fund risk for comprehensive backup for our rationale. Another good reference here is **Product risk disclosure needs improvement**
http://www.financialobserver.com.au/articles/product-risk-disclosure-needs-improvement

A recent article *Investors Need More Meaningful Risk Measures* by respected fund analyst Dan Hallet had this to say:

**" I tracked risk rating changes on 44 mutual funds since last October. The** table below lists the affected 28 unique funds – excluding 16 funds that are simply other incarnations of the 28 – and summarizes the risk rating changes and related risk statistics.

| Fund Name | Direction | Previous Risk Rating | New Risk Rating | Risk Rating Method | Biggest Drop in Value | Time Under Water |
|---|---|---|---|---|---|---|
| Franklin Bissett Canadian Balanced | ↓ | Low-to-Medium | Low | | -28% | 2 years & 4 mos |
| Franklin Bissett Canadian All Cap Bal | ↓ | Low-to-Medium | Low | | | |
| Franklin Bissett Canadian High Dividend | ↑ | Low-to-Medium | Medium | | -35% | 1 year & 9 mos |
| Franklin Bissett Dividend Income | ↓ | Low-to-Medium | Low | | -25% | 1 year & 10 mos |
| Franklin Quotential Balanced Income | ↓ | Low-to-Medium | Low | | -23% | 2 years & 5 mos |
| Franklin Quotential Diversified Equity | ↓ | Medium | Low-to-Medium | Historical Volatility | -44% | 5 years & 7 mos |
| Franklin World Growth | ↓ | Medium | Low-to-Medium | | -46% | 3 years & 11 mos |
| Templeton Asian Growth | ↑ | Medium | Medium-to-High | | | |
| Templeton BRIC | ↑ | Medium-to-High | High | | -52% | still recovering (after 7.5yrs) |
| Templeton Global Bond | ↓ | Low-to-Medium | Low | | -13% | 3 years & 7 mos |
| Templeton Global Smaller Companies | ↑ | Medium | Medium-to-High | | -55% | 6 years & 3 mos |
| Sprott Enhanced Equity | ↓ | Medium | Low-to-Medium | Historical Volatility | | |
| Sprott Enhanced Balanced | ↓ | Low-to-Medium | Low | | | |
| NEI Select Conservative Portfolio | ↓ | Low-to-Medium | Low | Historical Volatility | -17% | 3 years & 6 mos |
| O'Leary Canadian Dividend | ↓ | Medium | Low-to-Medium | | | |
| O'Leary Canadian Balanced Income | ↓ | Low-to-Medium | Low | | | |
| O'Leary Conservative Income | ↓ | Low-to-Medium | Low | Historical Volatility | | |
| O'Leary Global Dividend | ↓ | Medium | Low-to-Medium | | | |
| O'Leary Emerging Markets Income | ↑ | Low-to-Medium | Medium | | | |
| RBC O'Shaughnessy U.S. Growth Fund | ↑ | Medium-to-High | High | Historical Volatility | -66% | still recovering (after 7.2yrs) |
| RBC Private O'Shaughnessy U.S. Growth Equity Pool | ↑ | Medium-to-High | High | | | |
| MDPIM Canadian Bond Pool | ↑ | Low | Low-to-Medium | | | |
| MD Strategic Yield | ↑ | Medium | Medium-to-High | Historical Volatility | | |
| MD Precision Moderate Growth Portfolio | ↑ | Medium | Medium-to-High | | | |
| Standard Life Diversified Income | ↓ | Low-to-Medium | Low | | -17% | 1 year & 6 mos |
| Standard Life U.S. Dividend Growth | ↓ | Medium | Low-to-Medium | Historical Volatility | -33% | 5 years & 8 mos |
| Standard Life Canadian Equity Growth | ↓ | Medium-to-High | Medium | | | |
| Standard Life Canadian Equity Value | ↓ | Medium-to-High | Medium | | | |

***Multiple versions of funds (i.e. trust, corporate class, series F, series T, series A, etc.) are excluded for brevity. Risk stats are calculated on longer running version.***
***Raw data source: GlobeInvestorGold.com***

Nearly two thirds of the affected funds saw falling risk ratings with just over one third seeing a bump up in risk rating. In my view,**an investor's exposure to risk should not fall after a multi-year run up in prices. A** case can be made for risk being higher since we are likely closer than not to the next significant price drop."
http://www.highviewfin.com/blog/investors-need-more-meaningful-risk-measures/

We agree with Mr. Hallet.

There are other reports and data that challenge the idea that low volatility means lower returns . In fact many low volatility mutual funds and ETF's have outperformed benchmarks and other riskier funds.This is one more reason we distrust the tobustness of the SD as a risk indicator.

If the CSA is resolute in retaining the SD rating it should, in good conscience, at least relabel the header as **Variability of Returns** and avoid using the label "Risk" that would deceive investors .

Academic research on risk disclosure makes it clear- risk disclosure should be as simple and meaningful as possible. The retail investor interprets risk as the chance of loss and that is why we have supported the use of a plain language enumeration of the principal risks and the worst 12 months metric and not a SD- based disclosure.

Some risks unique to ETF's may not be clear to investors if not annunciated. We agree with SIPA that they should be enumerated.

We have particular concerns with the rating of non-traditional ETF's like inverse and leveraged ETF's. These ETF's are truly unique. .These funds use very complex derivative structures in order to achieve certain stated benchmark prospectus return on a daily basis. These should all be rated HIGH with accompanying cautionary language as proposed.

Another comment on risk disclosure comes from behavioural finance*. **Less is More.** For that reason we urge the CSA to remove any reference to trailers if trailers do not apply and CUSIP which will confuse investors as it is not needed to make the investment decision.
* **Financial Product Disclosure: Insight from Behavioural Economics**
http://www.mbie.govt.nz/about-us/publications/occasional-papers/2015-occasional-papers/15-01.pdf

The CSA explain that they are still working on developing a new risk classification for mutual funds, with proposed rules expected to be published for comment by the end of the year. We hope that the CSA will align the publication of any final rules on risk classification methodology with any final rules on the proposed amendments, so that ETF managers will be able to adopt the CSA's fund risk classification methodology at its implementation, rather than having to change methodologies and disclosure after the first ETF Facts are prepared and filed.

#4 **Benchmark data** For index-tracking ETFs, the ETF Facts disclose the name and nature of the ETF's benchmark index in the "What does this ETF invest in?" section. However, the ETF Facts do not permit disclosure of the performance of an ETF's benchmark index. Currently, some ETFs disclose the year-by-year returns and average returns of the benchmark index that the ETF tracks to allow investors to get a sense of how closely the ETF tracks the performance of the benchmark index.

#5 **Investment objective and strategy** - What does the fund invest in and how does it do that? If it tracks an index, it should explain how the index works, not merely refer to the index (we've found it very difficult at times to figure out how an index works when it is a custom-made index)

#6 **Rights for Withdrawal of Purchase** The various rights of rescission and rights associated with misrepresentations have not been modified for ETFs, but will apply to ETFs in respect of ETF Facts in ways that are similar to Fund Facts for mutual funds.
Investors that do not receive the ETF Facts within the prescribed timing have the right to seek damages or rescind their purchase. However, the proposed amendments do not extend to ETF investors the right of withdrawal within two days of purchase that is provided to conventional mutual fund investors (generally investing under a specified amount). ETF purchasers have, however, the same statutory rights of rescission or action that apply with respect to the prospectus for misrepresentations in the ETF Facts, since the ETF Facts will be incorporated by reference into the prospectus. Further, in some jurisdictions, investors continue to have a right of rescission associated with the delivery of the trade confirmation and may have a right of action for civil liability for misrepresentations in secondary market disclosure. This appears reasonable.

CONCLUSION

The key goal of disclosure is for investors to understand what they are buying.and the risks involved They need to understand  how a particular ETF will perform in the portfolio and how it is going to perform alongside the other ETF's. We believe ETF Facts has the potential to assist in that understanding ( font size should be such that seniors and others with visual issues can read the documemt even if this means allowing ETF Facts to be longer than two pages) .

We hope this feedback is useful to you. Please do not hesitate to contact us if any additional information is required.

Kenmar  agree to public posting of this Comment Letter.

Sincerely,

Ken Kivenko, P.Eng.
Kenmar Associates

**REFERENCES**

**Low-volatility fund investment options**
http://www.fundlibrary.com/features/columns/page.asp?id=14647

**Low-Volatility ETFs Outperform in Shaky Market Conditions** ( Jan. 2015)
http://finance.yahoo.com/news/low-volatility-etfs-outperform-shaky-

140044121.html;_ylt=AwrSbjQoq71VgS4AeRvrFAx.;_ylu=X3oDMTByb2lvbXVuBGNvbG8DZ3ExBHBvcwMxBHZ0aWQDBHNlYwNzcg--

**Leveraged ETFs | Inverse ETFs | Understanding The Risk |** TradeKing
https://www.tradeking.com/education/etfs/leveraged-and-inverse-etfs

**HK Exchange increases awareness of synthetic ETF's**
http://www.hkex.com.hk/eng/newsconsul/newsltr/2011/documents/2011-01-11-e.pdf

**How does simplified disclosure affect individual's mutual fund choices?**
https://research.hks.harvard.edu/publications/getFile.aspx?Id=367

**Designing Disclosures to Inform Consumer Financial Decisionmaking: Lessons Learned from Consumer Testing**
http://www.federalreserve.gov/pubs/bulletin/2011/articles/DesigningDisclosures/default.htm

**Financial Products and Short-Form Disclosure Documents - Challenges and Trends**
Melbourne Law School University of Melbourne - Law School; Centre for International Finance and Regulation (CIFR) October 8, 2014
**Abstract:**Recent years have seen a trend in many jurisdictions towards the adoption of short-form disclosure documents for retail financial products. This paper analyses the challenges and trends in relation to short-form disclosure documents from a comparative perspective. Developments in the following markets are examined for this purpose: Australia, New Zealand, the European Union ('EU'), Hong Kong, Singapore and Canada. The objectives of this paper are to review the international trend towards short-form disclosure documents and the policy reasons behind the trend; to examine the different approaches that have been adopted by the selected jurisdictions; and to identify the criteria and the factors that should be taken into account when jurisdictions consider which approach to adopt. In this way, the paper seeks to assist regulators in determining appropriate responses and strategies through a guide to the approaches in the selected jurisdictions, the legislative and policy underpinnings and the short-form disclosure documents themselves.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2510189

**Designing disclosure regimes for responsible financial inclusion**
https://www.cgap.org/sites/default/files/Focus-Note-Designing-Disclosure-Regimes-for-Responsible-Financial-Inclusion-Mar-2012.pdf

**ESMA Cracks down on ETF disclosure**
http://mutfunds.net/exchangetraded-funds/esma-cracks-down-on-disclosure-for-etfs/

**ESMA's new UCITS guidelines** ( 2012)
http://www2.deloitte.com/content/dam/Deloitte/ie/Documents/FinancialServices/investmentmanagement/2013_esma_ucits_guidelines_deloitte_ireland.pdf

**The KIID - A Summary of the Requirements of the Key Investor Information Document** ( March 2011)
http://www.mondaq.com/x/124598/Compliance/The+KIID+A+Summary+of+the+Requirements+of+the+Key+Investor+Information+Document

One of the key provisions of the UCITS IV Directive, which was approved by the European Commission on 13 January 2009, is the implementation of the key investor information document ("KIID"). This document replaces the simplified prospectus which was required pursuant to the UCITS III Directive and which was seen to have a number of shortcomings.The KIID is to be a short document containing key investor information the aim of which is to facilitate retail investors' understanding of the product being offered. It is intended to allow direct comparisons to be made more easily between UCITS funds. This briefing sets out the requirements relating to the KIID.

The simplified prospectus must include a brief and easily understandable description of all relevant and material risks associated with the investment policy of the UCITS. The KIID must provide information on the risk profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investment in the UCITS. It must give a fair and balanced description of the likelihood of growth or loss. CESR recommended that the KIID include a synthetic risk and reward indicator ("SRRI") in the form of a numerical scale. The SRRI will correspond to an integer number designed to rank the fund over a scale from 1 to 7, according to its increasing level of volatility/risk-reward profile, and is based on defined annualised volatility intervals. The SRRI must be supported by a narrative explanation of the limitations of the indicator and the other material risks relevant to the UCITS which are not, or not fully, captured by the methodology for the synthetic indicator (such as credit, counterparty, liquidity and operational risk).

**CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document** ( 2010)
http://www.esma.europa.eu/system/files/10_673.pdf

**Draft guidance on risk indicators and descriptions of managed funds** July 2015
https://www.fma.govt.nz/assets/Consultations/150706-draft-guidance-on-risk-indicators-and-descriptions-on-managed-funds.pdf

**Statement on Risk Disclosure for mutual Funds** ( 1996)
http://web.stanford.edu/~wfsharpe/art/fer/fer96.htm

**NOTES**

1.We note that Vanguard has concluded that Portfolio Turnover is a valuable piece of information for its U.S. ETF's. Given Canada's high income tax rates, it might make sense to include this metric. Ref http://www.vanguard.com/funds/reports/sp920etf.pdf

2.Please see *Canadian Regulators Propose Standard Deviation as the Mandatory Risk Measurement for Canadian Mutual Funds* Investment Management Bulletin January 2014 Borden Ladner Gervais LLP.

3. We urge the CSA to include criteria for fund names so there is no investor confusion

SIPA
SMALL INVESTOR PROTECTION ASSOCIATION

**A Voice for Small Investors**

**Sent Via email** June 29, 2015

**SIPA Comment Letter**

**CSA NOTICE AND REQUEST FOR COMMENT**
**MANDATING A SUMMARY DISCLOSURE DOCUMENT**
**FOR EXCHANGE-TRADED MUTUAL FUNDS AND ITS DELIVERY**
**PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS**
**AND TO COMPANION POLICY 41-101CP TO**
**NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS**
**AND**
**RELATED CONSEQUENTIAL AMENDMENTS**
http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20150618_41-101_rfc-amd-general-prospectus.htm

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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)

SIPA
SMALL INVESTOR PROTECTION ASSOCIATION

**A Voice for Small Investors**

Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

The Small Investor Protection Association (SIPA www.sipa.ca ) was founded in 1998 and is registered in Ontario as a national non-profit organization. Its mission is the protection of small investors. SIPA represents the views of the small investor.

The CSA initiative of utilizing ETF Facts is a positive step in encouraging retail investors to consider Exchange Traded Funds (ETF's) for their portfolios. The most often cited benefits of ETF's are low cost, transparency, diversification and tax efficiency. Given prevailing low interest rates, a greater use of ETF's increases the chances for Canadians in growing an adequate retirement nest egg. Providing a plain language disclosure will be a positive factor in drawing investors' attention to ETF's.

The new simplified ETF disclosure regime should also be accompanied by a meaningful CSA sponsored investor education initiative. The brochure should include a caution that excessive trading rarely produces the desired results since it has been observed that retail investors tend to trade ETF's too frequently .

We assume that ETF Facts will only be required of Canadian domiciled ETF manufacturers and that copies of the Summary Prospectus will be provided for U.S. originated ETF's. Per CETFA, approximately 80% of ETF assets held by Canadians are Canadian listed ETFs. Approximately 68% of all ETFs (US-based and Canadian-based) are held by the retail market.

SIPA is pleased to provide comments on the proposed Disclosure document for Exchange Traded Funds. Here are our comments:

RECOMMENDATIONS:

# 1 **A Minimum Font size should be specified** As presented, the document may not be legible by a large group of society even with eyeglasses. We recommend a minimum font size (say 12) be specified and the use of bolding and color be permitted as appropriate. The current forms being mailed to investors appear to be Xerox copies and are very hard to read due to poor reproduction/ low contrast ratio in addition to small print size. The legibility may be an issue if document is limited to four 8-1/2 by 11 pages.

#2 **Pre-sale delivery of ETF Facts** As noted in the document testing research / focus groups, pre-sale delivery is desired by a vast majority (87 %) of retail investors. In the case of online purchases we would agree that providing an intelligent confirmation process of having accessed/read the online file before clicking BUY would constitute delivery. The consultation is in fact based on a document entitled "*CSA Point of Sale Disclosure Project: ETF Facts Document Testing,*" http://www.osc.gov.on.ca/documents/en/InvestmentFunds/etf-facts-document-testing.pdf . We note too that MFDA licensed mutual fund salespersons will soon be able to sell selected ETF's; it is necessary that ETF's be delivered in the same manner as mutual funds to avoid investor and dealer Rep confusion. Principle 2 of the IOSCO Principles on Point of Sale Disclosure specifies: "*key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest.*" Delivery two days after purchase does not meet this fundamental principle.

#3 W**hat does the ETF invest in**? We think a better title might be *Principal Investment Strategy* for certain ETF's. Some ETF's do not actually invest precisely in the stocks in the index but rather use a model or other approaches to try to replicate the index. See for example Summary Prospectus for the Guggenheim S&P 500® Equal Weight ETF. http://www.sec.gov/Archives/edgar/data/1208211/000119312513083410/d467601d497k.htm This section of ETF Facts would describe the strategy (ies) employed. It is interesting to note that the Guggenheim Summary Prospectus states 'As long as the Fund invests at least 90% of its total assets in securities included in the Underlying Index, the Fund may also invest its other assets in futures contracts, options on futures contracts, options, and swaps related to the Underlying Index, as well as cash, cash equivalents, such as repurchase agreements, and shares of investment funds, including money market funds…" Such disclosure is necessary to ensure retail investors are not shocked when the actual return is less than the index return, sometimes significantly. We note from the focus group results that ETF's are still a mystery to most retail investors so any disclosure that explains the difference between an active vs passive investing strategy would be a real positive.

#4 **Return calculations** Returns should be based on market value -it would be acceptable to present returns using NAV as well, although, according to our experience, this is not what retail ETF investors ( as opposed to mutual fund investors) typically look at. This is particularly true for actively managed and currency-hedged ETF's. In any event, the ETF Facts disclosure should be harmonized with CRM2 performance reporting disclosure so investors are not confused.

# 5 **Risk disclosure** As we have stated many times in the past, we do not agree that the use of a SD based, word descriptor for risk is proper or adequate. In fact, we believe it is misleading. See our Comment letter on mutual fund risk classification system and the letter by Kenmar Associates for detailed backup for our position. Recent research by Yuriy Bodjov and Isaac Lemprière A ***Review of the Historical Return-Volatility Relationship*** questioned the very basis for ETF Facts position on the relationship between volatility (SD) and return: "'…'In conclusion, our study shows that the low volatility anomaly is not a short-lived recent phenomenon, but it has persisted for a very long time. Moreover, it is a profitable long-term investment alternative regardless of the prevailing interest rate environment, and low volatility equities differ substantially from value strategies by their construction rules and investment objectives. Overall, low volatility equities provide

competitive rates of return with a downside protection resulting in superior risk-adjusted returns ..” Source: http://www.investmentreview.com/files/2015/05/CIR_TDAM-LowVol-Paper-Final-May-2015.pdf

Here’s a quick summary of our rationale:
(a) SD is not understood by retail investors; basic literacy is at grade 6 level
(b) investors do not understand that “medium" risk can mean a loss of 40%
(c) Low volatility ETF's exist that outperform high volatility ones so indicator is not robust
(d) Using SD only and not including specific risks breaches IOSCO disclosure standards
(e) SD is really variability of returns not downside risk as commonly understood by investors
(f) To our knowledge, no regulator in the world uses SD as the sole means to describe risk; the SEC requires enumeration of the Principal risks of the fund/ ETF
(g) SD and mean are descriptive stats and MUST be paired together
(h) Ten year return data do not exist for most ETF's
(h) Some indexes are not Gaussian distributed; at least one appears to be bi-modal
(i) Neither the mean or SD are stable in a long term time series; short term returns are correlated /not random as required under classical statistical theory
(j) Many risks unique to ETF's are not captured by volatility metric especially for Bond ETF’s

Some ETF risks may not be clear to investors if not annunciated. For example:

**Correlation and Tracking Error Risk–**A number of factors may affect the Fund’s ability to track its benchmark index or achieve a high degree of correlation with its benchmark either on a single trading day or for a longer time period. Factors such as Fund expenses, imperfect correlation between the Fund’s investments and those of its Underlying Index, rounding of share prices, regulatory policies, high portfolio turnover rate and the use of leverage /currency hedging all contribute to tracking error or correlation risk. There can be no guarantee that the Fund will achieve a high degree of correlation. Failure to achieve a high degree of correlation may prevent the Fund from achieving its investment objective.

**Derivatives Risk–**Derivatives may pose risks in addition to and greater than those associated with investing directly in securities or other investments, including risks relating to leverage, imperfect correlations with underlying investments or the Fund’s other portfolio holdings, high price volatility, lack of availability, counterparty credit, liquidity and valuation. Their use is a highly specialized activity that involves investment techniques and risks different from those associated with ordinary portfolio securities transactions. If the Advisor is incorrect about its expectations of market conditions, the use of derivatives could also result in a loss, which in some cases may be more than the amount invested. Some derivatives may trade in OTC markets, which are largely unregulated.

**ETF Shares Trading Risk–**An unanticipated early closing of an “Exchange may result in a shareholder’s inability to buy or sell shares of the Fund on that day. Trading in Fund shares similarly may be halted by the Exchange because of market conditions or other reasons. If a trading halt occurs, a shareholder may temporarily be unable to purchase or sell shares of the Fund. Shares also may trade on the Exchange at prices that differ from (and can be below) their net asset values (“NAV”). The NAV of shares will fluctuate with changes in the market value of the Fund’s holdings and the exchange-traded prices may not reflect these market values. In addition, although the Fund’s shares are currently listed on the Exchange, there can be no assurance that an active trading market for shares will develop or be maintained.

**Liquidity and Valuation Risk–**In certain circumstances, it may be difficult for the Fund to purchase and sell particular investments within a reasonable time at a fair price, or the price at which it has been valued by the Advisor for purposes of the Fund's NAV, causing the Fund to be less liquid and unable to realize what the Advisor believes should be the price of the investment.

We have particular concerns with the rating of non-traditional ETF's like inverse and leveraged ETF's. These funds are truly unique. They are not like most plain vanilla ETFs out there that own single stocks or own a basket of stocks or a basket of bonds.These funds use very complex derivative structures in order to achieve certain stated benchmark prospectus return on a daily basis. SIPA have previously stated that we think that dealers should apply the same account standards as for single derivative or short sales or buying commodities futures as they would if you were doing that on an individual basis and not really be allowed to have the ETF back door sale. We maintain that position now .As to the specific example in the Document testing report we find the proposed warning "adequate" but no more:

XYZ ETFs

**XYZ S&P/TSX 60 Index Bull 2x ETF**

**ETF FACTS**
June 30, 20XX
XXZ

**This exchange traded fund (ETF) is highly speculative. It uses leverage, which magnifies gains and losses. It is intended for use in daily or short-term trading strategies by sophisticated investors. If you hold this ETF for more than one day, your return could vary considerably from the ETF's daily target return. Any losses may be compounded. Don't buy this ETF if you are looking for a longer-term investment.**

The CSA ETF Document testing results confirm that the message of risk is marginally clear (77% of the focus group understood that the leveraged ETF is very risky; 67 % understood it is not appropriate as a long term investment. Additionally , we believe the Standard Deviation (SD )-based risk rating methodology, despite it resulting in a HIGH rating in the Bull 2x example, should not be used to rate these types of exotic structured funds. The 2x Bull is designed to offer double the daily performance of the underlying index or benchmark. The ultimate return may be better or worse than two times. Because volatility is magnified by double leverage, the investment needs to rebalance leverage often. We argue that the return distribution profile is not based on random fluctuations but by structured daily mathematical derived interventions. Arbitrary functions cannot be expected to introduce Gaussian statistics, since their purpose is to alter the statistics of the underlying portfolio .To use a SD based risk rating methodology based on years of monthly return data makes no sense to us as the sole retail investor risk disclosure . We see its use as misrepresenting the true nature of these structured products by treating them as if they were well behaved traditional mutual funds. How can an investment not intended for long term investment have its risk measured using the distribution variability of long term returns? These are trading products and the downside risk rating should be HIGH by definition.

Finally, the sequencing of regulatory reform transition is important. The Statement of 2015-2016 OSC priorities commits to introducing both a mandated CSA risk classification methodology for mutual funds and a new summary disclosure document for ETFs in the year ahead. However, without sufficient coordination between the two projects, the ETF disclosure documents (if modeled after Fund Facts) could be developed and implemented using existing fund risk methodologies, only to be shortly thereafter required to switch to a different rating methodology. This should be avoided.

#7 **Investment objective and strategy** - what does the fund invest in and how does it do that? If it tracks an index, it should explain how the index works, not merely refer to the index (we've found it very difficult at times to figure out how an index works when it is a custom-made index)

#8 **Trailer commissions** If no trailers for the series, we recommend omitting a reference to trailers rather than confuse the investor with a negative disclosure. We note that the Document testing revealed that investors were confused by the term "trailing commission" and mixed it up with the term "Brokerage Commissions" in the *How much does it cost* section. The Focus Group's desire to be told about trailers even when not applicable is at variance with fundamental behavioural finance research on disclosure and our 10 years of experience. Most ETF's don't employ embedded trailer commissions but for the few that do, a different ticker, and therefore ETF Facts, applies. We note from the Quantitative research that ".. only 48% read the last sentence in this section that tells them that this ETF does not have a trailing commission…". As an aside, CETFA advise that as of December 2014 – just 95 ETFs pay trailers with AUMs less than $1 billion (around $985 million). At Q1, 2015, total ETF Assets amounted to $83 billion spread over about 400 ETF's. Roughly 90% of Canadian ETF assets are invested in funds that track passive, market-cap-weighted benchmarks, according to Morningstar data. **Focus Groups / Issues including advantages and disadvantages** http://focusgroups.pbworks.com/w/page/5677430/Issues%20including%20advantages%20and%20disadvantages ]

#9 **Fund Cost**– We agree that cost should represent the Total expense ratio which includes the sum of the Management expense ratio (less trailers) and the Trading Expense Ratio. In those few cases where a trailer is applicable, add a line "Trailing commissions ".This is necessary to give these commissions the visibility they deserve.

#10 **"How ETFs are priced" section** This section of the ETF Facts provides plain language to ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. We find this presentation clear and understandable and can offer no better suggestions.

#11 **Rights for Withdrawal of Purchase** We would hope there are no practical impediments to introducing a right of withdrawal for purchases made in the secondary market in connection with delivery of the ETF Facts .This would be consistent with mutual funds.

# 12 Portfolio **turnover** We note that Vanguard has concluded that Portfolio Turnover is a valuable piece of information for its U.S. ETF's. Given Canada's high income tax rates, it might make sense to include this metric. Ref http://www.vanguard.com/funds/reports/sp920etf.pdf

#13 **Total Value**: Relabel as Net Assets, a term more investors will understand

#14 **Foreign property** Domestic or Foreign Holding per Canada Revenue Agency – state whether or not the ETF is foreign property wrt the infamous T1135 form

#15 **ETF Facts is light on tax related disclosure**. An investment in a non-registered account, requires the investor to be concerned about more than just the funds' performance: they also need to know how much of their return will be eaten up by taxes. Unfortunately, while the CSA are strict about the way ETFs and mutual funds report performance, fund companies in Canada have no obligation to estimate after-tax returns—something that's been required in the US since 2001. When investing in an ETF, an investor should be familiar with how the ETF obtains exposure to international markets. An ETF's structure and the type of account used to hold it could significantly affect how much withholding tax an investor is subject to. Once the impact of foreign withholding taxes on ETFs is understood, an investor will be better equipped to make investment choices that will maximize their after-tax returns. We recommend that after-tax returns be provided similar to the method of presentation in the U.S.

#16 **Prepare a CSA Investor Brochure** The brochure would be used to explain in plain language how to use ETF Facts for decision making. The Vanguard Canada ETF education centre is a good model for ETF investor education. https://www.vanguardcanada.ca/individual/insights/etfeducation.htm#/ We believe this brochure is a critical success factor for the howETF Facts disclosure regime.

Other Observations and Comments

**#16 Performance metric- Consider Total Return to Volatility Ratio** - a basic "bang for buck risk" metric, using standard deviation of monthly returns for the various trailing return periods. This could be included in the CSA educational document.

#17 **Average daily trading volume in units/ Liquidity** – The planned disclosure is fine but a more robust metric for the liquidity of the ETF as determined by the under-lying assets, perhaps something like daily average trading volume of the five least active holdings would also be meaningful; this might be an important source of implied riskiness for a particular ETF to be disclosed in the Risk section of ETF Facts. Should the word *shares* be used instead of units?

#18 **Fixed Income ETF's** Consider including Duration, & Term to Maturity - weighted averages for Bond ETF's.

**# 19 Interpretation of focus testing results**: According to the Quantitative Report "Investors **clearly understood this introductory information**:
▪77% understood the fund is very risky.
▪ About half of ETF investors were able to identify the correct answer for the first two statements [48% - 54%]. Many did not understand that the Index fund does not include all of the stocks on the TSX or that managers do not simply choose their personal favourites.
67% understood that this ETF is invested proportionately to the Index**.**
▪84% believed the introduction is fair and appropriate while a further 14% believed it is not strong enough.
▪Overall, 70% of retail investors reported that ETF Facts explains the costs of the ETF very or fairly clearly.
▪84% also thought it is useful information to have when deciding whether or not to invest."

Put another way:

- 23% or almost 1/4 of participants did NOT understand that the fund is very risky.
- 33 % did NOT understood that this ETF is invested proportionately to the Index

Is it therefore reasonable to conclude that investors "clearly understood" this information? Some did but for nearly a quarter (23-33%) did not. And 84% believed the introduction is *fair and appropriate*? Does this mean **useful**? How can this statistic be valid? Only 67% understood all the key points in the introduction. These statistics are worrisome in that we typically consider an 85% + approval thresh-hold is the standard. [**Using and analysing focus groups limitations and possibilities:**, Smithson http://www.sfu.ca/cmns/courses/2008/801/Fall2008/ClassFolders/Soerensen,%20Maria%20Odgaard/Smithson_Using%20and%20analysing%20focus%20groups_%20limitations%20and%20possibilities.pdf ]

Summation:

The key goal of disclosure is for investors to understand what they are buying. They need to understand what they are getting involved with to get an idea of how a particular ETF will perform in the portfolio and how it is going to perform alongside the other ETF's. We believe ETF Facts has the potential to assist in that understanding.

SIPA recognize the difficulty in condensing a large volume of data of a complex product onto a few pages and appreciate the CSA's dedicated efforts in this regard.

We hope this feedback is useful to you. Please do not hesitate to contact us if any additional information is required.

SIPA agree to public posting of this Comment Letter.

Sincerely,

Ken Kivenko,
Chair, Advisory Committee
Small Investor Protection Association

**REFERENCES**

**FINRA and the SEC focus on structured products and alternative funds at complex products industry forum** – Lexology
In a related speech, Norm Champ, the SEC's Director of the Division of Investment Management, spoke about how his industry is addressing complex funds being sold to retail investors. A copy of his speech may be found at: http://www.sec.gov/News/Speech/Detail/Speech/1370543319219. Mr. Champ paid particular attention to the risks posed by alternative funds, and their significant recent growth. Disclosures of their strategies, risks, and holdings remains a principal concern, particularly the possibility of a disconnect between the strategies disclosed in a prospectus, and the strategies that a fund actually employs.
http://www.lexology.com/library/detail.aspx?g=3622f4fa-b00c-4403-aa7e-96a15dd6c5cb

**New fee transparency boosting ETFs** - Investment Executive
"..New disclosure rules, however, do seem to be propelling ETF sales in other countries. After the U.K. implemented its Retail Distribution Review in 2012, which banned embedded commissions, among other changes, sales of iShares ETFs through BlackRock Asset Management (U.K.) Ltd., grew to £1.1 billion in 2014, up from about £620 million in 2010.Warren Collier, managing director and head of iShares Canada with BlackRock Asset Management Canada Ltd. in Toronto, notes that the company has seen sizable growth in other countries, such as the Netherlands and Switzerland, as a result of regulatory change. "As the industry becomes more transparent in every market, we see ETFs and iShares become preferred tools of choice for advisors," says Collier, "and I do expect that to happen here."…"
http://www.investmentexecutive.com/-/new-fee-transparency-boosting-etfs?redirect=%2Fsearch

**Fee transparency driving shift to ETFs** - Investment Executive
As fees are becoming more evident to investors, expect those investors to want to pay less, said Scott Boniferro, product manager for Invesco Canada Ltd. in Toronto.
http://www.investmentexecutive.com/-/fee-transparency-driving-shift-to-etfs?redirect=%2Fsearch

**U.S. ETF companies boost bank credit lines amid liquidity concerns**: G&M
Interesting points raised in this article. We are not convinced that SD captures these risks.
http://www.theglobeandmail.com/globe-investor/funds-and-etfs/etfs/us-etf-companies-boost-bank-credit-lines-amid-liquidity-concern/article24420126/

**Exchange Traded Funds Evolution: Benefits, Vulnerabilities and Risks**-Bank of Canada

http://www.bankofcanada.ca/wp-content/uploads/2014/12/fsr-december14-foucher.pdf
(Dec. 2014)

**The future of ETFs is (almost) here** | Christopher Davis | ETF Investing | Morningstar
"..Canadian investors should be just as disappointed by their experience: From 1990 to 2013, less than 30% of Canadian large-cap managers outperformed their most-comparable benchmarks on a risk-adjusted basis, according to research by Morningstar Investment Management, Morningstar's consulting arm. Over the same period, Canadian bond funds fared even worse, with only 10% outperforming their comparable benchmarks on a risk-adjusted basis. Given this backdrop -- not to mention the higher fees charged by active managers -- it's surprising more Canadians haven't opted for cheaper, more-predictable alternatives. The biggest reason they haven't is pretty simple: Most advisors don't make any money when they put clients in ETFs. Most fund companies pay advisors what are known as trailer fees for selling their wares, while ETF providers rarely do. (Trailer fees are embedded in funds' MERs and typically range from a 0.5% annual charge for fixed-income funds to 1% for equity funds.) ..."
http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?culture=en-CA&id=687856

**IIROC Bulletin on Leveraged ETF's** (2009)
http://www.iiroc.ca/Documents/2009/E786AB09-D19F-41B5-A63E-496352FF040C_en.pdf

**Academic research on ETF's:** UofT
http://www.cetfa.ca//files/Susan%20Christoffersen%20%20-%20ETF%20Research%20-%20Sept%2022.ppt

**101 ETF Lessons Every Financial Advisor Should Learn**
http://etfdb.com/financial-advisor-center/101-etf-tips-tricks-every-financial-advisor-should-know/

**What Risks Are There In ETFs?** | ETF.com
http://www.etf.com/etf-education-center/21004-what-risks-are-there-in-etfs.html

**Understand ETFs: Nine Questions**
http://www.understandetfs.com/nine_questions.html

**What to look for when buying an ETF** - MoneySense
http://www.moneysense.ca/invest/what-to-look-for-when-buying-an-etf

**Seven questions to ask before you follow your advisor into ETFs** More and more advisors are moving their clients into exchange-traded funds, but don't go along without doing your homework.
http://cawidgets.morningstar.ca/ArticleTemplate/ArticleGL.aspx?id=693427&culture=en-CA

**Liquidity Problems Can Be Costly for ETF Investors** - WSJ http://www.wsj.com/articles/SB10001424052748703837004575012772071656484

**Watch Out: The Risks of ETFs** | Morningstar
http://www.morningstar.co.uk/uk/news/69479/watch-out-the-risks-of-etfs.aspx

**Exchange Traded Products Overview: Benefits and Myths** - Blackrock
http://www.blackrock.com/corporate/en-dk/literature/whitepaper/viewpoint-etps-overview-benefits-myths-062013.pdf

**Fidelity - BlackRock Research on ETF's**
New Research From Fidelity® and BlackRock Reveals a Key to Growth for ETF Adoption is Educating Investing on ETF Basics
https://www.fidelity.com/about-fidelity/individual-investing/fidelity-blackrock-research

'Passive' doesn't always mean 'index'
Strategic beta, quantitative and DFA funds prove that traditional indexing isn't the only passive method .

**Policy Issues Raised by Structured Products**: Harvard U.
http://www.law.harvard.edu/programs/olin_center/papers/pdf/Ferrell_et%20al_560.pdf

**Developing a risk -rating methodology (UK)**
http://www.cass.city.ac.uk/__data/assets/pdf_file/0017/32525/risk-rating-comp.pdf . It looks like the standard deviation is one way to depict risk.

**IOSCO Principles on Point of Sale Disclosure Final Report 01022011**
http://www.investorpos.com/documents/IOSCO%20Principles%20on%20Point%20of%20Sale%20Disclosure%20Final%20Report%2001022011.pdf

**IOSCO: Principles for the Regulation of ETF's**
http://www.cetfa.ca/files/1372163325_IOSCO%20ETF%20Final%20Report.pdf

**The uses and limits of volatility** Investopedia
http://onswipe.investopedia.com/investopedia/#!/entry/the-uses-and-limits-of-volatility,5228c469da27f5d9d017a727/1

**CESR 10-673 Guidelines KID SRRI methodology for publication**
http://www.esma.europa.eu/system/files/10_673.pdf

**Improving Mutual Fund Risk Disclosure** (ICI Perspective, V1N2, November 1995)
http://www.ici.org/pdf/per01-02.pdf ICI is the investment fund industry lobbyist in the U.S.

**Submission by the Society of Actuaries in Ireland: *Communicating Investment risk***

https://web.actuaries.ie/sites/default/files/event/2011/03/Communicating%20Investment%20Risk%201.pdf

**What's wrong with multiplying by the square root of 12?**
http://corporate.morningstar.com/US/documents/MethodologyDocuments/MethodologyPapers/SquareRootofTwelve.pdf

**Standard deviation and the Square Root of Time**
http://www.gummy-stuff.org/square-root-time.htm

**Low Volatility Strategies: The Historical Performance**
A review of the return-volatility relationship.
BY Isaac Lempriere and Yuriy Bodjov May 19, 2015
Over the past few years low volatility investment strategies have emerged as an alternative to traditional active and passive investing programs, with the goal of providing market-type returns with lower risk. They seek to capitalize on the so-called low volatility anomaly where stocks with lower volatility historically have realized higher returns than predicted by theoretical models such as the Capital Asset Pricing Model (CAPM). Unlike traditional investing strategies that focus on generating abnormal returns from stock picking, investment styles, or risk factors, low volatility investing seeks to capitalize on a fundamental underpricing of risk in equity markets supported by a growing body of academic literature. Given the surge in popularity of such strategies in the recent years, a logical question would be to ask if this is not just a recent phenomenon. There are opinions suggesting that the low volatility effect is due primarily to the environment of falling interest rates which favors specific sectors and it will fade out as soon as interest rates start to rise. Other studies describe low volatility as just another value strategy. Are they confirmed by the historical evidence? There is no easy way to give answers to these questions without going back in time as far as possible. Read the full paper.

**Stock Volatility: Not What You Might Think -** PIMCO | Viewpoints
http://www.pimco.com/EN/Insights/Pages/Stock-Volatility-Not-What-You-Might-Think.aspx

**Risk Shifting and Mutual Fund Performance** by Jennifer C. Huang, Clemens Sialm, Hanjiang Zhang: SSRN **Abstract:**
Mutual funds change their risk levels significantly over time. Risk shifting might be caused by ill-motivated trades of unskilled or agency-prone fund managers who trade to increase their personal compensation. Alternatively, risk shifting might occur when skilled fund managers trade to take advantage of their stock selection and timing abilities. This paper investigates the performance consequences of risk shifting and sheds light on the mechanisms and the economic motivations behind the risk shifting behavior. Using a holdings-based measure of risk shifting, we find that funds that increase risk perform worse than funds that keep stable risk levels over time, suggesting that risk shifting is either an indication of inferior ability or is motivated by agency issues.http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1108734 Raises questions about SD risk rating methodology if data for Canada is similar.

**Non-normality of market returns**
http://www.jpmorganinstitutional.com/blobcontent/42/35/1159384839488_Non_normality_long.pdf

**Histogram of S&P 500 – Normally distributed?**


Source:
http://classes.bus.oregonstate.edu/ba406/index_files/Brooks/2012%20SP500%20Histogram%20FPS.ppt

**On R-squared and beta** Investors need to ensure that the ETF index fund they are considering does a good job of tracking its index. Key metrics to look for here are the fund's R-squared and beta. R-squared is a statistical measure that indicates how well the index fund's price movements correlate with the index. The closer the R-squared is to one, the closer the index fund's ups and downs match those of the target index. Investors will also want to ensure that the fund's beta is very close to the target index's beta. This means that the fund has about the same risk profile as the index. Theoretically, a fund can have a close correlation with its index, but still fluctuate by a greater or lesser margin than the index, which will be indicated by a different beta. These two metrics together indicate that the fund will track the index very closely. We accept that ETF Facts has chosen not to include these relatively complex statistical metrics but expect at least that the CSA ETF Facts brochure will include a brief discussion and links.

**Laurentian to pay fine over sale of leveraged ETFs** - The Globe and Mail

Laurentian Bank of Canada has agreed to pay $150,000 in penalties as part of a regulatory crackdown into sales of a controversial investment product to unsophisticated retail investors. The bank reached a settlement with the Investment Industry Regulatory

Organization of Canada over employees' sales of leveraged ETFs – a specialized form of exchange traded funds that have faced criticisms as being inappropriate for many ordinary investors.http://www.theglobeandmail.com/globe-investor/funds-and-etfs/etfs/laurentian-to-pay-fine-over-sale-of-leveraged-etfs/article4523851/

**Do Exotic Derivative ETFs Need to Comply Further?**
Morningstar Director of ETF Analysis Scott Burns advocates for greater oversight of derivative ETFs.
"..What we have right now is a situation where these exchange traded derivative funds are allowing individual investors to blindly stumble into products they don't really understand and at the same time allowing some advisors to back door things like leverage and short sales into their client's portfolios without approval. Our solution is actually fairly simple. We think that you should look through the basket of exchange traded funds and say, if this holds a derivative, we should regulate it like a derivative. Whether it's an inverse leverage fund or a fund that is tracking oil futures, these funds own derivatives and these derivatives are complex, and there are a lot of risks…"
http://www.morningstar.com/cover/videocenter.aspx?id=295709

**Warning: Leveraged and Inverse ETFs Kill Portfolios**
http://news.morningstar.com/articlenet/article.aspx?id=271892

**Heads you lose, Tails you lose: The strange case of leveraged ETF's**
http://faircanada.ca/wp-content/uploads/2008/12/etfs-may-14pm-etf-sw-final-final1.pdf

**The Strange Case of Leveraged and Inverse ETFs, Part 2: A Few Steps Forward; Much Remains to be Done** This document provided some specific steps for the Canadian regulators to consider including : 1. Insist on better plain language prospectus disclosure of risks and of how these exotic ETFs work. 2. Implement risk disclosure and acknowledgment requirements for any retail investor who wishes to trade these products and 3. Issue specific guidance on advertising and require warnings on both advertising materials and websites. Enforce restrictions on misleading advertising through disciplinary proceedings http://faircanada.ca/wp-content/uploads/2009/07/ETF-Update-FINAL-July-13.pdf?a07595

**Avoid Leveraged ETF's**
**" ..** Horizons BetaPro NYMEX Natural Gas Bull ETF (HNU) is a product for gamblers, not investors. Like most commodity ETFs where actually owning the physical commodity is not practical, HNU buys futures contracts on natural gas. That by itself is problematic. Commodity futures are normally in a state of "contango." The contracts that are close to expiry are cheaper than the ones farther out by an amount roughly equal to the cost of storing the gas for one month and paying interest charges. (The opposite of contango is "backwardation" which occurs whenever there is some supply disruption and near term prices spike briefly, before returning to contango.) HNU buys contracts that mature over several weeks. Just before expiry, it replaces them with a fresh batch. This process alone means that every month, the value of HNU erodes by the amount of contango. Gas prices could go up one month and HNU might still be down. However, it is HNU's second quality that makes it toxic for human consumption. For every dollar invested, HNU buys $2 worth of futures contracts. On any given day, HNU's price move will be about

double the move of the gas futures. Each day, HNU must adjust the number of futures contracts it holds to align back to twice its assets. Over a few weeks, especially if markets are turbulent, the adjustments leave HNU's return complete disconnected from the natural gas price…"
http://business.financialpost.com/investing/etfs/avoid-leveraged-commodity-etfs

**The Case Against Leveraged ETFs** | Seeking Alpha
http://seekingalpha.com/article/35789-the-case-against-leveraged-etfs

**TAXES TAKE TOLL ON TOTAL FUND RETURNS, CANADIAN RESEARCH STUDY FINDS**
Taxes exceed management fees and brokerage commissions in their ability to erode long-term investment returns," write Amin Mawani and Moshe Milevsky, both professors at the Schulich School of Business at York University in Toronto, and Kamphol Panyagometh, a post-doctoral researcher working with Mawani and Milevsky.
http://www.advisor.ca/news/industry-news/taxes-take-toll-on-total-fund-returns-canadian-research-study-finds-36524 Full Report *The Impact of Personal Income Taxes on Returns and Rankings of Canadian Equity Mutual Funds,* at
http://www.ifid.ca/pdf_workingpapers/WP2003.pdf

**To disclose or Not to disclose After-tax returns**
www.ctf.ca/ctfweb/Documents/PDF/2003ctj/2003ctj5-mawani.pdf

**Reference Guide: Foreign Withholding Taxes on ETFs for Canadian Investors**
Education Centre | First Asset
http://www.firstasset.com/resources/education/?article=Reference+Guide%3A+Foreign+Withholding+Taxes+on+ETFs+for+Canadian+Investors

**White paper : how to estimate the after tax returns of ETF's**
https://www.pwlcapital.com/pwl/media/pwl-media/PDF-files/White-Papers/2014_Bender-Bortolotti_After-Tax-Returns_Hyperlinked.pdf?ext=.pdf

**Tax treatment of income from exchange traded funds**: TaxTips.ca
http://www.taxtips.ca/personaltax/investing/taxtreatment/etfs.htm

**After-tax returns on Canadian ETFs**: MoneySense
http://www.moneysense.ca/taxes/after-tax-returns-on-canadian-etfs

Via email July 2, 2015

Comment Letter
CSA NOTICE AND REQUEST FOR COMMENT MANDATING A SUMMARY DISCLOSURE DOCUMENT FOR EXCHANGE-TRADED MUTUAL FUNDS AND ITS DELIVERY PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS AND TO COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS AND RELATED CONSEQUENTIAL AMENDMENTS
http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20150618_41-101_rfc-amd-general-prospectus.htm

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
consultation-en-cours@lautorite.qc.ca

The CSA initiative of introducing ETF Facts is a constructive step in increasing retail investors awareness of Exchange Traded Funds (ETF's) . Given prevailing low interest rates, a greater use of ETF's increases the chances for Canadians in meeting their life financial goals Providing a plain language disclosure is key to drawing retail investors' attention to ETF's.

Retail Investors may not realize that one does not buy an ETF from the ETF provider (unlike mutual funds), one buys them from another investor on the open market . This is important information to communicate.

I assume that ETF Facts will only be required of Canadian domiciled ETF manufacturers and that copies of the Summary Prospectus will be provided for U.S. originated ETF's.

I am pleased to provide comments on the proposed Disclosure document for Exchange Traded Funds. Here are my comments:

# 1 Minimum Font size and font type should be specified The document must be readable and legible without the need for magnification or awareness of legal or industry jargon.
#2 Pre-sale delivery of ETF Facts should be required – this would make it consistent with Fund Facts delivery requirements and be what investors need and want. I must admit though that most ETF buyers use online systems where easy access to the ETF Facts document is or could easily be available.

# 3 Return calculations Returns should be based on market value not NAV as this is what retail investors typically look at and experience. In any event, the disclosure should be harmonized with CRM2 performance reporting disclosure. A benchmark should be included in the return table so tracking error for index ETF's can be seen.
#4 Risk disclosure should be linited to a plain language listing of the principal risks of the ETF. I am uncomfortable with using the IFIC risk rating classification system to disclose risks. Also,I have particular concerns with the rating of exotic ETF's like inverse and leveraged ETF's. These funds are truly unique. A simple statement like " This ETF is not for long-term investors. It is a product designed for active traders. " should be adequate risk disclosure
#5 Investment objective and strategy - what does the fund invest in and how does it do that? if it tracks an index, it should explain how the index works, not merely refer to the index .
#6 Trailer commissions If no trailers are applicable for the series, I strongly recommend omitting any reference to trailers .It is my understanding that only a small percentage of Canadian ETF's are burdened by embedded trailers.
#7 Foreign property Domestic or Foreign Holding per Canada Revenue Agency – state whether or not the ETF is foreign property wrt the infamous T1135 form?
#8 Net assets: The net assets of the fund should be disclosed.
#9 Form of Distributions - for the latest calendar year, state the nature of the distributions e.g. interest, eligible dividends, ROC, capital gains, foreign income.
#10 Disclose Portfolio turnover This woulld give the reader a sense of tax exposure .
#11 ETF liquidity ETF liquidity is not solely dependent on the ETF's own daily trading volume but on that of the underlying securities.
#12 Prepare an Investor Education Brochure The educational brochure would be used to explain in plain language how to use ETF Facts for decision making.
I hope this feedback is useful to you. Please do not hesitate to contact me if any additional information is required.
I agree to public posting of this Submission.

Sincerely,

Larry Elford

RBC Global Asset Management®

VIA E-MAIL: comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

September 16, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commisions (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

Attention:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON M5H 3S8
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Consultation-en-cours@lautorite.qc.ca

Dear Sirs and Mesdames:

**Re: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery – Proposed Amendments to NI 41-101 *General Prospectus Requirements* and to Companion Policy 41-101CP and Related Consequential Amendments**

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We are writing to provide our comments on the CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery – Proposed Amendments to NI 41-101 *General Prospectus Requirements* and to Companion Policy 41-101CP and Related Consequential Amendments (the "**Proposal**").

RBC Global Asset Management Inc. ("**RBC GAM**") is a wholly-owned subsidiary of Royal Bank of Canada and provides a broad range of investment management services and solutions to investors, including through a variety of exchange-traded mutual funds ("**ETFs**"). As at June 30, 2015, RBC Global Asset Management Inc. had over $260 billion in assets under management, including $1.3 billion in ETF assets under management.

We support the Canadian Securities Administrators' aim of providing investors with access to key information about ETFs in an easily understood format. We also support the goal of providing a more consistent disclosure framework between conventional mutual funds and ETFs, while recognizing the need to tailor certain aspects of ETFs' disclosure to reflect their distinct features as exchange-traded investment vehicles.

We have organized our comments as follows: In the first section of this comment letter, we have provided responses to the "Issues for Comment" outlined in Annex B of the Proposal. In the second section of this comment letter, we have provided further comments relating to the proposed content for the ETF Facts.

**1. Responses to "Issues for Comment" Outlined in Annex B to the Proposal**

*QUESTION #1: The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.*

RBC GAM RESPONSE:

- **Average daily volume/Number of days traded** – The CSA has proposed including "average daily volume" and "number of days traded" data in the ETF Facts. We question whether this data is sufficiently material to investors such that it should be featured in a summary document that is meant to highlight key facts relating to an ETF. We are also concerned that investors may mistakenly interpret these data points as indicating the level of liquidity for an ETF, which would not be the case. While other exchange-traded securities'(i.e., traditional stocks') liquidity depends on trading volume, a better indicator of an ETF's liquidity is the liquidity of the underlying securities that comprise the ETF's portfolio. In addition, ETFs, unlike other exchange-traded securities, do not have a fixed number of outstanding securities since authorized dealers can issue and redeem securities of the ETF at any time to alleviate any supply/demand mismatches. While we would recommend excluding "average daily volume" and "number of days traded" data from the ETF Facts, if the CSA nonetheless determines to include this data, we recommend that a short explanation be provided in the ETF Facts document to explain the unique aspects of ETFs' liquidity.

- **Market price range – should odd lot prices be excluded?** We believe that the range of market prices should include odd lot trades so as to provide a more comprehensive and relevant indicator of market prices.

- **Average bid-ask spread and premium/discount to NAV**
    - We seek further clarity regarding how the average bid-ask spread is to be calculated. For instance, given that bid-ask spreads can change throughout the day, in respect of what point(s) in time should they be calculated?
    - Prior to finalizing this instruction we would appreciate the opportunity to review a sample calculation prepared by the CSA in order to (a) ensure all such information necessary to satisfy the disclosure requirements will be readily available, accessible and administratively practicable to obtain to obtain from third party data providers (such as Bloomberg), and (b) ensure that we fully understand and are comfortable with the calculation itself.
    - We do not think that trading days that do not have a minimum number of trades should be excluded from the calculation of "average bid-ask spread". Given that ETFs are backed by market makers, who will post for size and replenish if transacted against, the number of trades is not relevant to the bid-ask spread.

*QUESTION #2: The "How ETFs are priced" section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.*

RBC GAM RESPONSE:

- **"Market price" – first bullet** – We disagree with the statement that supply and demand affect the market price of ETFs, and we recommend that this statement be removed. Unlike traditional shares, of which there is a finite number issued and outstanding, an ETF continually issues additional securities to meet demand and continually redeems securities to deal with excess supply.
- **"Market price" – fourth bullet** – We disagree with the statement that a smaller bid-ask spread "means you are more likely to get the price you expect", and we recommend that this language be deleted. An investor will always pay or receive the prevailing "bid" or "ask" (depending on what side of the trade the investor is on). This price, however, may be unrelated to what an investor "expects", as an investor's expectations may not be consistent with the prevailing bid/ask prices.
- **"Net asset value (NAV)" – third bullet** – We would recommend adding a statement to the end of this bullet indicating that, given that certain unitholders have the ability to subscribe for or exchange a prescribed number of units of an ETF at NAV, it isn't anticipated that large discounts or premiums to NAV would be sustained.

*QUESTION #3: Please comment on whether there are other disclosure items/topics that should be added to reflect the differences between ETFs and conventional mutual funds.*

RBC GAM RESPONSE: We would not propose any additional disclosure items, other than those already noted above.

*QUESTION #4: We seek feedback on the anticipated costs of delivery of ETF Facts for those dealers who do not have Exemptive Relief and are not currently delivering ETF Facts; specifically, the anticipated one-time infrastructure costs and ongoing costs.*

RBC GAM RESPONSE: No comment.

*QUESTION #5: We seek feedback from dealers on the appropriate transition period for ETF Facts delivery under the Proposed Amendments. We are specifically interested in feedback from dealers who are not subject to the Exemptive Relief. Please comment on the feasibility of implementing the delivery requirement under the Proposed Amendments within 21 months of the date the Proposed Amendments come into force. In responding, please comment on the impact a 21 month transition period might have in terms of cost, systems implications, and potential changes to current sales practices.*

RBC GAM RESPONSE: No comment.

*QUESTION #6: We seek feedback from ETF managers on the appropriate transition period to file the initial ETF Facts. We currently contemplate that 6 months after the date the Proposed Amendments come into force, ETF managers will be required to file an initial ETF Facts concurrently with a preliminary or pro forma prospectus for their ETFs. Please comment on the feasibility of making the changes to compliance and operational systems that are necessary to produce the ETF Facts, instead of the summary disclosure document pursuant to the Exemptive Relief, within this timeline.*

RBC GAM RESPONSE: We believe a transition period of 12 months after the date on which the Proposed Amendments come into force would be an appropriate amount of time to enable ETF managers to prepare for the new requirements under the Proposal.

*QUESTION #7: We seek feedback from ETF managers and dealers on whether they prefer a single switch-over date for filing the initial ETF Facts rather than following the prospectus renewal cycle as currently contemplated. The CSA implemented a single switch-over date for the Stage 2 Fund Facts, and recognize that there are challenges in doing so, especially for ETF managers, from a business planning and business cycle perspective. If a single switch-over date is preferred, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.*

RBC GAM RESPONSE: We would prefer following the prospectus renewal cycle as currently contemplated in the Proposal.

*QUESTION #8: Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. In the case of ETFs, today only purchases filled with Creation Units trigger a prospectus delivery requirement and are therefore subject to a withdrawal right. Consistent with the approach taken in the Exemptive Relief, the Proposed Amendments do not extend the right of withdrawal of purchase to investors for the delivery of the ETF Facts. In some jurisdictions, investors will continue to have a right of rescission with delivery of the trade confirmation. We seek feedback on this proposed approach. Specifically, please highlight if any practical impediments exist to introducing a right of withdrawal for purchases made in the secondary market in connection with delivery of the ETF Facts, should we decide to pursue this.*

RBC GAM RESPONSE: We do not think there is a need to extend the right of withdrawal of purchase to investors for the delivery of the ETF Facts. The rights of rescission associated with delivery of a trade confirmation should be sufficient.

## 2. Further Comments Relating to the Proposed Content for the ETF Facts

We also have the following, additional comments relating to the proposed content for the ETF Facts document:

- **"Quick facts" – Dividend Reinvestment Plan (DRIP)** – We recommend that the reference to DRIP eligibility be deleted from the ETF Facts document, as the reference to DRIPs in this manner is under inclusive (i.e., why would the form focus merely on DRIPs and ignore other types of plans, such as systematic withdrawal plans or pre-authorized cash contribution plans) and potentially misleading since, although not all ETF managers offer DRIPs or other types of plans, such plans may nonetheless be available through a dealer. If this item is maintained as a requirement, we would suggest that a note clarifying that DRIPs and other types of plans may be available through a dealer be added to the ETF Fact to make investors aware of their options.

- **"How has the ETF performed?"** – Item 6(1) of Part I of Form 41-101F4 indicates that this section should include an introduction "using wording substantially similar to the following". The last sentence of the suggested wording is "This means that the ETF's returns may not match the returns of the [index/benchmark]." We presume that this last sentence would only apply to index-tracking ETFs; however, this point should be clarified in the form.

- **"How much does it cost?"** – The second paragraph under this heading contains the following disclosure:

  "Higher commissions can influence representatives to recommend one investment over another. Ask about other ETFs and investments that may be suitable for you at a lower cost."

  In addition, the last sub-section entitled "Trailing commission" includes disclosure regarding trailing commissions, including a description of what trailing commissions are and for what services and advice they are meant to compensate.

  It is our view that, for ETFs that do not have trailing commissions a statement to this effect (i.e., "This ETF does not have a trailing commission.") should be sufficient disclosure, and we would suggest that this statement would replace the first above-noted paragraph. Further, for non-trailing commission ETFs, the description of trailing commissions and the warning that higher commissions can influence representatives to recommend one investment over another, with the suggestion that the investor should ask about other investments that may be suitable at a lower cost, is not necessary.

- **"How much does it cost? – Brokerage commissions"** – We recommend that the words indicated in underlined text below be added to the statement that is required to be included in the ETF Facts, as per Item 1.2 of Part II of Form 41-101F4 in order to add additional clarity re what type of commission may need to be paid and to whom they are paid:

  "You may have to pay a <u>brokerage</u> commission <u>to your dealer</u> when you buy and sell [shares/units] of the ETF."

Thank you for the opportunity to provide these comments. We would be pleased to discuss with you any of the matters outlined in this letter.

Yours truly,

RBC GLOBAL ASSET MANAGEMENT INC.

By:______________________________

Name: Mark Neill
Title: Vice President

INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Naomi Solomon
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September 16, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

**Attention:**

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Corporate Secretary
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Montréal (Québec) H4Z 1G3

Dear Sirs / Mesdames:

**Re: Canadian Securities Regulators (CSA) Request for Comments on a Summary Disclosure Document ("ETF Facts") and Delivery Regime for Exchange-Traded Mutual Funds (ETFs)**

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to provide input on the proposed ETF Facts disclosure and delivery regime. The IIAC is the national association representing the investment industry's position on securities regulation, public policy and industry issues on behalf of our 148 investment dealer member firms ("IIAC Members") that are regulated by the Investment Industry Regulatory Organization of Canada ("IIROC"). These dealer firms are the key intermediaries in Canadian capital markets, accounting for the vast majority of financial advisory services, securities trading and underwriting in public and private markets for governments and corporations that is fundamental to economic growth.

The IIAC's Members share the CSA's goal of providing investors with key information about ETFs in a consistent manner. The IIAC recommends, however, that the CSA refine the proposed ETF Facts disclosure and delivery regime as indicated in the comments below, to ensure a positive investor experience, an efficient and cost effective implementation and to avoid negative market impact.

**1) Disclosure Delivery Linked to Trade Confirmation Delivery**

The IIAC urges the CSA to codify the ETF Facts disclosure and delivery regime in accordance with the exemptive relief granted to a group of dealers which permits the delivery of a summary disclosure document ("Summary Document") to purchasers in lieu of a prospectus when required, and extends the delivery of a Summary Document to secondary market ETF purchases (the "Exemptive Relief"). Dealers face the difficulty of identifying purchasers of ETFs for the purpose of delivering a Summary Document, unlike when delivering mutual fund disclosure ("Fund Facts") to purchasers of conventional mutual funds. This challenge is acknowledged and alleviated in the Exemptive Relief, by linking delivery of the Summary Document to those investors for whom a trade confirmation is required to be delivered. The Exemptive Relief also recognizes that investors are better served if the delivery of the Summary Document is provided together with, and triggered by, delivery of a trade confirmation. Requiring the delivery of a Summary Document only when the delivery of a trade confirmation is required aligns with the right given to a purchaser of an ETF security (under securities legislation in certain jurisdictions), to rescind the purchase within 48 hours after receiving confirmation of the purchase (the "Trade Confirmation Right of Rescission").

The proposed ETF disclosure and delivery regime does not link the requirement to deliver ETF Facts to the requirement to deliver a trade confirmation and has thus broadened the proposed scope of delivery for ETF Facts. This will pose a cost and operational burden on investment dealers that will have the same difficulty identifying purchasers of ETFs in cases when trade confirmations are not required to be delivered to purchasers. Dealers have been granted exemptive relief orders from the requirement to deliver trade confirmations in certain circumstances, including for managed accounts, employer-sponsored stock investment plans, contributions to a self-determined scholarship plan, and rebalancing of "model portfolios"[1]; and otherwise have been relieved from the obligation to deliver trade

[1] *In the Matter of RBC Dominion Securities Inc. and RBC Investments Private Investment Management Program* (May 14, 2003); *In the Matter of Nigel Stephens Counsel Inc.* (November 28, 2003); *In the Matter of First Associates Investments Inc.* (January 20, 2005); *In the Matter of McLean Budden Limited* (January 27, 2005); *In the Matter of Raymond James Ltd.* (July 22, 2005); *In the Matter of Wellington West Capital Inc. And Wellington West Asset Management Inc.* (January 20, 2006); *In the Matter of Scotia Capital Inc.* (February 3, 2006); *In the Matter of CIBC World Markets Inc.* (August 25, 2006); *In the Matter of HSBC Securities (Canada) Inc*. (July 26, 2007); *In the Matter of Wellington West*

confirmations to Institutional Customers[2] when the trade must be matched[3] or for certain automatic plans[4] (the "trade confirmation relief"). Requiring the delivery of ETF Facts to investors in these situations would generally be inconsistent with the rationale for which the transactions received trade confirmation relief. There is no material benefit that outweighs the significant costs to deliver the ETF Facts to purchasers whose decision to invest would generally not be impacted by the information provided nor should require it for the exercise of investor rights (as with delivery of a Summary Document.

Contrary to the CSA's assertion that delivery systems are already in place and that compliance and staff costs in overseeing and maintaining the ETF Facts delivery regime should be the same for those dealers that rely on the Exemptive Relief, a requirement to deliver ETF Facts to all ETF investors regardless of whether trade confirmation relief applies, as currently proposed, will add significant new costs to the process, require the change of dealers' delivery systems that were built to comply with the terms of the Exemptive Relief, and result in new implementation and compliance difficulties that are not clearly resolvable or defensible under a cost-benefit analysis.

**2) Prospectus Exemptions, Exception for Non-Individual Permitted Clients**

As with a conventional mutual fund class or series that may be offered in reliance on a prospectus exemption and for which Fund Facts is not required to be delivered, if an ETF is offered by way of prospectus exempt distribution, ETF Facts should also not be required to be delivered. It would be understood that there would be no obligation to produce an ETF Facts document for delivery in the case of an ETF offered under a prospectus exemption. For example, the purchase of non-prospectus qualified ETF securities by an accredited investor (which includes a person acting on behalf of a managed account), ought not trigger a requirement to produce and deliver ETF Facts to the accredited investor, whether or not the transaction involves newly issued ETF Securities ("Creation Units"). This is consistent with securities law which recognizes that investor protection is not compromised by permitting certain categories market participants to transact in the exempt market. The IIAC requests that the CSA provide confirmation that production and delivery of ETF Facts is not required for prospectus exempt offerings of ETF securities so that dealers do not have to unnecessarily assume those costs of delivery.

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*Holdings Inc*. (July 27, 2007); *In the Matter of Phillips, Hager & North Investment Management Ltd*. (August 17, 2007); *In the Matter of GMP Private Client LP* (December 7, 2007); *In the Matter of C.S.T. Consultants Inc*. (July 2, 2008); *In the Matter of CIBC Private Investment Counsel Inc.* (August 7, 2008); *In the Matter of TD Waterhouse Private Investment Counsel Inc.* (December 31, 2008); *In the Matter of CIBC World Markets Inc.* (May 8, 2009); In the Matter of HSBC Securities (Canada) Inc. (May 22, 2009); *In the Matter of ITG Canada Corp.* (August 27, 2009) - this relief expired on the day after National Instrument 31-103 - Registration Requirements, Exemptions and Ongoing Registrant Obligations ("NI 31-103") came into effect*; In the Matter of BMO Nesbitt Burns Inc., CIBC World Markets Inc., RBC Dominion Securities Inc., Scotia Capital Inc. and TD Securities Inc*. (November 24, 2011); *In the Matter of Merrill Lynch Canada Inc.* (October 31, 2012); *In the Matter of National Bank Financial Inc.* (December 14, 2012); *In The Matter Of Deutsche Bank Securities Limited* (May 16, 2013).

[2] As defined in IIROC Dealer Member Rule 1.1.

[3] See trade matching requirements under IIROC Dealer Member Rule 800.49 and National Instrument 24-101 - *Institutional Trade Matching and Settlements* (NI 24-101); and IIROC Dealer Member Rule 200.1(h) – Trade Confirmation Requirements.

[4] See section 14.13 of NI 31-103.

While accredited investors are entitled to invest in any security in the exempt market without a form of written disclosure document, it is not clear why these most sophisticated and wealthy investors are precluded from even a making a choice to waive delivery of a disclosure document in the case that the same security would be offered as a prospectus-qualified investment fund (including an ETF). There has been no particular higher risk or issue identified with ETF securities, that in any event trade primarily in the secondary market unlike conventional mutual funds, to justify inflexibly mandating disclosure delivery to those market participants who otherwise qualify to transact in the exempt market.

The CSA has already recognized, by providing exceptions under securities legislation to the requirement to provide other disclosures to non-individual permitted clients[5], whom dealers have generally identified, that these market participants are qualified to invest without requiring delivery of the same disclosure provided to other classes of market participants. Consistent with this principle, the CSA should also except non-individual permitted clients from the ETF Facts delivery regime, if not other accredited investors, who are in any event able to access the disclosure on the applicable ETF website, so that dealers do not have to unnecessarily assume those costs of delivery.

**3) No Right of Withdrawal of Purchase**

The IIAC supports the CSA's initial decision not to institute a Right of Withdrawal in connection with the delivery of the ETF Facts. As per the Exemptive Relief, a client purchasing ETF securities should not have a right to withdraw from the purchase agreement within two business days of receipt of disclosure[6]. The introduction of a Right of Withdrawal for ETF purchases would be inconsistent with the Exemptive Relief, securities law and may negatively impact market integrity.

As acknowledged in the request for comments, a Right of Withdrawal is not available under securities law for secondary market purchases, which is largely how ETF purchases are conducted. The grant of a Right of Withdrawal to purchasers of ETFs would entail a significant change to securities law that would apply inequitably to ETF securities and not to other securities purchased in the secondary market for which a Right of Withdrawal does not exist. Unlike with conventional mutual funds, a secondary market ETF trade cannot be reversed and an ETF purchaser's Right of Withdrawal will inappropriately provide price protection to the purchaser by shifting the risk of loss to the dealer if the market price of the ETF security declines in the withdrawal period. The Right of Withdrawal is impractical for ETFs as the dealer can only mitigate the loss by selling the ETF at the prevailing market price. Market integrity may also be impacted as the purchaser who has withdrawn will be at liberty to repurchase the ETF in the market at a lower price, creating an asymmetrical allocation of risk between buyers and sellers in a trade. In addition, the Right of Withdrawal will not practically exist in cases of pre-sale delivery of Fund Facts disclosure more than two days prior to the date of purchase, resulting in an inconsistent application of the Right of Withdrawal for investors of conventional mutual funds. In contrast, a Right of Withdrawal

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[5] For example, see ss. 14.2, 14.2.1, 14.14.1, 14.14.2, 14.17 and 14.18 of NI 31-103.

[6] This is also consistent with practice in the U.S. where there is no equivalent "cooling off" concept and investors purchasing ETF securities do not have the right to withdraw within two days from the purchase.

for ETFs would apply to all purchases although not essential to investor protection. Unlike with conventional mutual funds, ETF purchasers can sell their investments at any time on a marketplace at the prevailing market price, and can do so without the fees and penalties associated with conventional mutual funds. Accordingly, there is no compelling policy rationale to support the extension of a Right of Withdrawal to ETF purchases[7].

The Exemptive Relief also recognizes that it is not practicable for dealers to provide purchasers of Creation Units with a prospectus and accordingly did not make the Right of Withdrawal available to the purchaser of Creation Units (as with securities purchases in the secondary market). The Exemptive Relief was granted on the basis that the Trade Confirmation Right of Rescission and other rights and remedies for misrepresentation in the disclosure documents are sufficient and appropriately address any investor protection concerns.

**4) No Right of Action for Failure to Deliver**

As noted, the IIAC believes that the proposed ETF Facts disclosure and delivery regime should adhere to the terms of the Exemptive Relief, which did not incorporate a purchaser's right of action for failure to deliver the Summary Document (the "Right of Action"), acknowledging the inability to determine whether purchases of ETFs involved Creation Units or secondary market transactions. As such, investor rights would not be diminished without the Right of Action in the case of ETF securities purchases, as with other securities transactions in the secondary market[8]. The Right of Action is unnecessary as the Trade Confirmation Right of Rescission provides appropriate relief, which the Exemptive Relief acknowledged, without requiring disclosure delivery as a precondition for its exercise. To the extent that the Trade Confirmation Right of Rescission is not applicable across the country, however, investors would benefit from harmonization to enjoy consistent rights.

In addition, negative market impact may be an unintended consequence of providing a Right of Action (and Right of Withdrawal). Market integrity may be harmed if investors are granted asymmetric rights and price exposure is left with the dealer. Dealers saddled with ETF distribution costs would also be bearing the costs associated with the Right of Action (and Right of Withdrawal) in the absence of compensating revenue streams of sales charges, trailers and redemption fees like with conventional mutual funds. In an active volatile market, dealers will face significant risk which ETF market makers may determine to offset by restricting liquidity provision. This may result in larger bid-ask spreads for ETF securities, driving up their cost and deviating significantly from the ETF's Net Asset Value (NAV) to the potential detriment of investors. The IIAC therefore recommends that the proposed Right of Action in the ETF Facts disclosure and delivery regime be withdrawn and not be enacted in the securities legislation of the provinces and territories.

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7 It should also be noted that potential future changes to settlement cycles (from T+3 to T+2) in the US and Canada would have an impact on the Right of Withdrawal and Trade Confirmation Right of Rescission to the extent that they may be exercised after settlement of the trade.

8 Notably, the Right of Action is also not available in the U.S.

### 5) No Future Pre-sale Delivery of ETF Facts

While the proposed ETF Facts disclosure and delivery regime aspires to develop a more consistent disclosure framework between conventional mutual funds and ETFs, the IIAC strongly advocates against a future pre-sale delivery requirement for ETF Facts given that ETFs have the attributes of equities, trade on a marketplace throughout the day and retail investors generally conduct ETF trades in the secondary market. Unlike conventional mutual funds which have charges, fees and penalties, do not trade on a marketplace, often have hold periods and are generally intended to be long-term investments, ETF investors tend to be active and have a higher transaction turnover given low transaction costs. Investors of ETF securities require flexibility to enter the market quickly as the trading price for ETF securities changes throughout the day and in cases that they are appropriate as short-term investments. The investor would in any event be entitled to a Trade Confirmation Right of Rescission as applicable. Requiring delivery of the ETF Facts before the dealer can execute the trade would have an impact on the price at which the trade may be executed and in the circumstances would effectively bring the ETF business to a halt. The Fund Facts regime itself allows an exception to pre-sale delivery of Fund Facts in certain circumstances where the CSA has recognized that there is no policy rationale for, or it would be impracticable to, require delivery of Fund Facts before the investor completes a purchase, and this would be the case for pre-sale delivery of ETFs.

In view of the fundamental difference in the attributes of, and manner in which ETFs and conventional mutual funds typically trade, the IIAC stresses that pre-sale delivery of ETF Facts would not be feasible or achieve any benefit for ETF investors should any such future further proposed "harmonization" with the Fund Facts regime be contemplated. The post-sale delivery of ETF Facts together with a Trade Confirmation Right of Rescission strikes the appropriate balance for investor protection in the circumstances.

### 6) Content of ETF Facts – Qualitative not Quantitative Disclosure

The IIAC's comments on areas of the content of the ETF Facts disclosure include responses to questions posed in the request for comments:

- The IIAC agrees with the CSA that the ETF Facts should contain pertinent information that is easy to understand and useful to investors considering the purchase of ETF securities. To most effectively serve that end, however, ETF Facts should concentrate on qualitative disclosure respecting relevant factors that may materially impact the particular ETF's liquidity and price (such as performance and nature of the ETF's underlying assets, factors concerning currency, exchange rate and trading hours in foreign markets), that provide more meaningful insight for investors into what would have an impact on future price volatility and liquidity of an ETF. Quantitative disclosure can be misunderstood or be misleading to investors, in that it is generally complex, backward looking and potentially stale, may only provide a point-in-time indication, may not contain the full context underlying the data, and may be inconsistently interpreted or applied. The use of quantitative disclosure may also cause negative market impact if as a result investors unduly favour lower priced

ETFs with smaller spreads, or established ETFs with more active secondary markets and higher trade volume and this causes new entrants and innovative ETF products to be dissuaded from coming to market. It is also questionable whether ETF providers are best placed and able to provide investors with technical quantitative information that they have never previously provided in a prospectus and in the absence of any consistent protocols for collecting this data.

- If the range of market prices is to be incorporated in the ETF Facts it should exclude odd lot trades. This is consistent with the fact that odd lot trades do not impact the last sale price, closing price or other common benchmarks, as they are excluded from the information displayed on orders or trades from each protected marketplace.

- In regard to disclosure of the average bid-ask spread of the ETF, this does not include the relevant bid-ask spreads of the ETF's underlying securities and therefore does not provide the arbitrage context for analysis of the ETF's liquidity and distorts this concept in relation to ETFs. Given the complexity and breadth of quantitative information that would have to be included in the ETF Facts in this regard, it should instead be excluded as investors have already indicated they find this difficult to understand. Rather, it may be beneficial to include a disclaimer that there can be no assurance that a liquid market will be maintained for the ETF security.

- Disclosure of the premium or discount to NAV has a deficit in that it is only captured at the end-of-day and does not indicate what fluctuation in the premium or discount occurred throughout the trading day as a result of the fluctuation in the price of the ETF's underlying securities, which is more relevant to actual investor experience. Moreover, there are variations in NAV measurement methodologies which may not correspond directly with the market price of the ETF security at the end of the trading day which may mislead investors as to the actual value of the ETF compared to the underlying. As a result, it is recommended that this complex metric be excluded from the ETF Facts.

- In respect of the risk rating section of the ETF Facts disclosure, the IIAC recommends that the CSA conclude consultation on the risk classification methodology for the purposes of ETF Facts in addition to the Fund Facts and align the final rule with implementation of ETF Facts. In this manner, the CSA's fund risk classification methodology can be adopted at the implementation stage of ETF Facts rather than having to change the disclosure for a new methodology after the ETF Facts have already been prepared and filed, which could potentially be disruptive for ETF manufacturers and dealers in the sale process and confusing for investors as they consider their investment choices.

**7) Transition Period**

The preference of IIAC Members is to follow the prospectus renewal cycle rather than having a single switch-over date. In regard to the transition from the delivery of the Summary Document to delivery of the ETF Facts, it notably took nearly 18 months for dealers to be able to implement delivery of the Summary Document with the advantage of linking delivery of disclosure to delivery of trade confirmations; the period provided for transition may therefore be insufficient if implementation issues arise as a result of the introduction of new delivery requirements and rights under the ETF Facts disclosure and delivery regime that deviate from those under the Exemptive Relief.

Thank you for considering our submission. We would be pleased to discuss our comments on the ETF Facts disclosure and delivery regime and welcome the opportunity for ongoing dialogue on this important initiative.

Yours sincerely,

“Naomi Solomon”

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September 16, 2015

**SENT BY ELECTRONIC MAIL**

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

**CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery**

This letter is in response to the CSA Notice and Request for Comment – *Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery – Proposed Amendments to NI 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements and Related Consequential Amendments* (2015) 38 OSCB 5509 (the "**Proposed Amendments**").

This letter reflects the comments of certain members of Osler, Hoskin & Harcourt LLP's Investment Funds and Asset Management Practice Group and does not necessarily reflect the overall views of our firm or our clients.

We are generally very supportive of the Proposed Amendments but would like to take this opportunity to offer the following comments on a select number of issues relating to them:

***1. The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.***

*Average Premium/Discount to NAV*

Similar to closed-end funds, but unlike conventional mutual funds, there are two prices for exchange-trade fund ("**ETF**") securities at any given point in time: the primary market price (i.e. the net asset value ("**NAV**")) for the purposes of creations and exchanges, and the secondary market price (i.e. the prevailing exchange bid and ask price) which is the price at which investors typically acquire and dispose of their ETF securities.

The fact that an ETF can trade at a premium or discount to NAV is sometimes viewed as a failure of the ETF mechanism. However, there are often healthy reasons for the existence of premiums or discounts, particularly for ETFs that have exposure to international or fixed income securities. In order for an investor to properly evaluate the premium/discount disclosure proposed, it is therefore imperative that they understand the inherent limitations of NAV and that NAV is sometimes an imperfect estimate of the fair value of a fund. NAV is a static calculation that is generally based on end-of-day pricing sources, whereas market price trades in real-time and reflects current and forward-looking valuations. This is especially true for ETFs holding international securities where apparent ETF premiums and discounts typically reflect price discovery and the ability to trade the ETF securities in real time. For example, ETFs can be used to express a market view on international securities even when their underlying markets are closed.

In addition, apparent premiums and discounts on securities of fixed income ETFs may arise due to several factors, particularly the challenges of price discovery when valuing the portfolio assets in a primarily non-transparent, over-the-counter market. The NAV of a fixed income ETF is also typically based on either mid or bid market prices, and therefore does not directly reflect the bid/ask spread that exists in the market for each bond. ETF market prices, in contrast, do reflect this spread. The fact that bid/ask spread is observable in ETF market prices, but not in NAVs, can also contribute to differences between a fixed income ETF's market price and its NAV.

As a result, where there is a deviation between market price and NAV, it often has more to do with the NAV being calculated using static valuations of the underlying portfolio securities than with the exchange-determined intra-day market price of the ETF deviating from fair value. Without this deeper understanding – which is difficult to convey in a brief document such as an ETF Facts – many investors may draw incorrect conclusions from this disclosure, especially given that, in practice, ETF investors will not typically transact with an ETF at NAV. We therefore believe that the proposed ETF Facts disclosure overemphasizes the significance of NAV premiums and discounts with respect to ETFs and may incorrectly lead investors to believe that a premium or discount is inherently "good" or "bad", when, in fact, premiums and discounts are often healthy but are not inherently either "good" or "bad".

Moreover, ETFs incorporate a number of features that seek to minimize discrepancies between the market price and fair value such as the continuous distribution mechanism and the market-making roles played by designated brokers and other liquidity providers. Generally, because of the flexibility of the creation and exchange mechanism, liquidity providers are able to quickly meet demand to buy and sell ETF securities at appropriate prices relative to an ETF's NAV. In addition, the unique arbitrage mechanism of ETFs, which allows liquidity providers to profit from any mispricing between an ETF and its underlying holdings, helps to both keep market prices in line with the value of the ETF's underlying portfolio securities and to eliminate sustained premiums or discounts to NAV.

Therefore, we respectfully caution the Canadian Securities Administrators (the "**CSA**") from placing undue emphasis on NAV premiums/discounts in the ETF Facts as we believe this information is not particularly instructive for most investors and may lend credence to the myth that trading at a premium or discount to NAV is a shortcoming – rather than a positive feature – of the ETF mechanism.

*Average Daily Volume and Number of Days Traded*

We believe that, without a complete understanding of ETF liquidity and structure, requiring the disclosure of average daily volume and number of days traded may mislead investors as to an ETF's true liquidity. Focusing solely on the liquidity of the ETF security as if it was a conventional equity stock, while ignoring the liquidity of the ETF's underlying portfolio securities, may give ETF investors an incomplete picture of an ETF's liquidity as secondary market turnover discounts the ability of the primary market creation mechanism to meet demand. Although an ETF may have a low average daily volume or a relatively few number of days traded, underwriters can nevertheless create new ETF securities as needed to satisfy investor demand or, conversely, redeem ETF securities where there is little demand. As many Canadian ETFs do not trade on a daily basis, this may lead investors to mistakenly believe these ETFs are not liquid because they do not appreciate an ETF's creation/redemption mechanism; a mechanism which generally allows liquidity to be added as needed through primary market transactions with underwriters.

*Average Bid-Ask Spread*

We respectfully submit that focusing on average bid-ask spread, regardless of the size of trade, may be misleading for investors that place larger trades (i.e. outside "top of book") as the bid-ask spread often increases with the size of the trade. Instead, we suggest it may be more useful for investors to use a sample trade size (for example, show the average bid-ask spread for a $1,000 trade, which aligns with the amount used in connection with the proposed performance disclosure). We also suggest that this disclosure be moved under the heading "Trading information".

Finally, if the CSA proceeds with the inclusion of trading and pricing information such as average bid-ask spread, average daily volume and average premium/discount to NAV, we strongly encourage the CSA to clarify the calculation methodology that they expect to be applied in order to ensure both a level playing field across ETF managers and a clearer understanding by ETF investors. We note that, to the extent data is sourced from different data vendors, this may affect the consistency and comparability of the information across different ETF managers.

***2. The "How ETFs are priced" section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.***

While we understand the underlying policy rationale of facilitating investor access to key information about an ETF in language they can easily understand, we have a concern that the proposed disclosure in Item 7 of proposed Form 41-101F4 – *Information Required in an ETF Facts Document* oversimplifies the relationship between market price and NAV of an ETF and overstates the significance of NAV premiums and discounts with respect to ETFs for the reasons described earlier in our response.

As discussed above, while the fact that an ETF can trade at a premium or discount to NAV is sometimes viewed as a failure of the ETF mechanism, our understanding is that, given that markets are imperfect, the ETF mechanism can actually facilitate an ETF's ability to provide liquidity at the intrinsic value of the underlying assets.

Rather than attempting to summarize the complex relationship between NAV and market price in a brief document like the ETF Facts, we suggest that the CSA instead publish an "ETF 101" document for investors (similar to the *Investing 101: Indices and Index Funds* publication the Ontario Securities Commission has previously released)[1], that provides guidance on ETF pricing and trading. This document could include a more nuanced and detailed discussion of market price and NAV, as well as some suggested best practices for trade execution (for example, avoiding placing trades early in the morning or late in the afternoon to limit volatility and advocating the use of limit orders rather than market orders).

In the alternative, if the CSA chooses to proceed with including the aforementioned disclosure, we recommend revising the language in Item 7 of proposed Form 41-101F4 per the blackline provided in Appendix A.

We thank you for the opportunity to comment on the Proposed Amendments and would be pleased to discuss them with you further. If you have any questions or comments, please contact John Black (416.862.6586; jblack@osler.com) or Shawn Cymbalisty (416.862.4244; scymbalisty@osler.com).

Yours very truly,

***"Osler, Hoskin & Harcourt LLP"***

Osler, Hoskin & Harcourt LLP

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1 http://www.osc.gov.on.ca/documents/en/Investors/inv_news_20150727_indices-index-funds.pdf

**Appendix A**
**Form 41-101F4 - Information Required in an ETF Facts Document**

***Item 7 – Pricing***
Under the sub-heading "How ETFs are priced", state the following:

ETFs are unique because they hold a basket of investments, like mutual funds, but trade on exchanges like stocks. For this reason, ETFs have two sets of prices: market price and net asset value (NAV).

Market Price [*in bold type*]

- You buy and sell ~~ETFs~~ETF securities at the market price on the exchange. The market price can change throughout the trading day. Factors like supply, demand, and changes in the value of the ETF's portfolio investments can affect the market price for an ETF's securities.
- You can get price quotes any time during the trading day. Quotes have two parts: bid and ask.
- The bid is the highest price a buyer is willing to pay if you want to sell your ~~units~~ETF securities. The ask is the lowest price a seller will accept if you want to buy ~~units~~ETF securities. The difference between the two is called the "bid-ask spread".
- In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

Net Asset Value (NAV) [*in bold type*]

- Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments at the point in time when it was calculated.
- NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.
- If the market price is lower than the NAV, the ETF ~~is~~'s securities are trading at a discount. If the market price is higher than the NAV, the ETF ~~is~~'s securities are trading at a premium. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth. Premiums and discounts may also result from changes in the value of the ETF's investments that have not yet been reflected in the ETF's NAV. Since ETF's continuously offer their securities, it is generally unlikely that large premiums or discounts to NAV would be sustained.

cetfa
Canadian ETF Association

September 16, 2015

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Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

Dear Sirs and Mesdames:

**Re: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery – Proposed Amendments to NI 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements and Related Consequential Amendments (the "Proposed Amendments")**

This letter is submitted on behalf of the Canadian Exchange-Traded Fund Association ("**CETFA**"). Based in Toronto, CETFA is the sole exchange-traded fund ("**ETF**") association in Canada and represents numerous Canadian ETF providers.

CETFA appreciates the opportunity to provide comments on the Proposed Amendments, comprising part of Stage 3 of the implementation of the point of sale disclosure project of the Canadian Securities Administrators (the "**CSA**").



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Canadian ETF Association

## A. Content of the ETF Facts (Form 41-101F4)

The Proposed Amendments mandate mutual funds in continuous distribution, the securities of which are listed and traded on an exchange, to produce and file a summary disclosure document called "**ETF Facts**". The substance and purpose of the ETF Facts are to provide investors with the opportunity to make informed investment decisions by: (i) providing access to key information about an ETF, (ii) providing information that investors can easily understand, and (iii) establishing a consistent disclosure framework between mutual funds and ETFs.

CETFA agrees with the substance and purpose of the Proposed Amendments, and accordingly, believes that it is important to ensure that the prescribed form of the ETF Facts only prescribes disclosure that (i) is helpful to an investor's decision making process, (ii) provides consistent, not conflicting, information, and (iii) is not misleading or potentially misleading in any way.

***Item 2 – Quick Facts, Trading Information and Pricing Information***

**(a) Total Value on Date**

Consistent with the CSA's objective to simplify disclosure, CETFA suggests revising "Total Value on Date" to "Total Net Asset Value as at". As the ETF Facts have introduced and explained the concepts of "market price" and "net asset value" to investors, CETFA believes the ETF Facts should avoid any potential confusion by introducing new terminology such as "Total Value". It may not be clear to investors whether this is a reference to market price, net asset value or reference to a third valuation concept.

**(b) Management Expense Ratio**

As the management expense ratio is not tracked regularly by ETF providers, and often only tracked semi-annually or annually, CETFA suggests revising the "Management Expense Ratio" in the Quick Facts section to include an "as at" date (similar to the requirement in Instruction (2)).

**(c) Distributions**

Instruction (6) requires ETF providers to disclose the "frequency and timing" of distributions. Please provide additional guidance to describe the differences between "frequency" and "timing", if any.

**(d) Dividend Reinvestment Plan (DRIP)**

In accordance with the objective of developing a consistent disclosure framework between mutual funds and ETFs, we note that Form 81-101F3 does not prescribe a requirement to disclose a DRIP in



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the Fund Fact for conventional mutual funds. CETFA does not believe the significance of the DRIP to an investor's decision is any different for mutual funds versus ETFs.

In addition, we note that the Quick Facts does not mandate disclosure regarding any other types of plans, such as systematic withdrawal plans or pre-authorized cash contribution plans. CETFA does not believe there is any basis for prioritizing disclosure regarding one type of plan (e.g. DRIP), over another (such as SWP or PACC), as each plan may be considered differently by investors. Last, we note that although an ETF provider may not implement a DRIP directly, that individual dealers may still offer this service to investors. Accordingly, there is concern that by including this disclosure, investors may be misled into believing a DRIP is not possible in respect of a particular ETF, notwithstanding that it could be available through their dealer.

For the foregoing reasons, CETFA suggests deleting DRIP disclosure from the form requirement.

**(e) Exchange**

As all ETFs are primarily traded on the Toronto Stock Exchange, CETFA suggests deleting this component of the Quick Facts altogether, or, suggests amending "Exchange" to "Primary Exchange". In accordance with the objective of providing investors with key information, we do not believe disclosure regarding the multiple exchanges on which an ETF may trade is helpful to an investor's decision making process (note that many ETFs are listed on multiple exchanges).

**(f) Average Daily Volume and Number of Days Traded**

CETFA strongly urges the CSA to reconsider inclusion of this information in the ETF Facts. In accordance with the objective of providing key information to investors through the ETF Facts, it is equally important for the CSA to ensure that the information mandated by the form will not be misleading or potentially misleading in any way.

A more accurate proxy for the level of liquidity of an ETF is appropriately addressed in the section entitled "How ETFs are Priced". In particular, the fourth bullet under "Market Price" attempts to explain the concept of a bid-ask spread, and states "In general, a small bid-ask spread means the ETF is more liquid". In the event an ETF carries an average small bid-ask spread but may not trade on a particular number of days throughout the year, CETFA believes the prescribed form may send mixed messages to investors, resulting in confusion and a lack of understanding of ETF liquidity. Because ETFs are generally considered to be as liquid as the underlying securities in which the ETF is invested, an ETF that tracks the TSX 60, for example, should be considered to be a liquid ETF – regardless of its trading volume and whether or not it trades on certain days. The correlation between average daily volume and the number of days traded is not tied to the liquidity of an ETF.



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Instead, CETFA believes that the more appropriate indication of liquidity is the bid-ask spread, for which there is a correlation to liquidity, and which concept will already be explained under "Market Price". CETFA believes that attempting to incorporate additional concepts (such as the average daily volume and number of days traded) will lead to misleading or inconsistent messaging with respect to liquidity, and could result in investor confusion.

(g) Average bid-ask spread and Average premium/discount to NAV

Before finalizing Instruction (15) and Instruction (16) regarding inclusion of a daily average bid-ask spread and the average premium/discount to NAV, respectively, each of the ETF provider members of CETFA request to review a sample calculation prepared by the CSA of each item. In order to ensure that all ETF providers will be able to obtain the requisite information from data providers in order to satisfy the proposed form requirements, we believe it is important to provide ETF providers an opportunity to review the particulars of the calculation, to ensure all such information necessary to satisfy the disclosure requirements will be readily available, accessible and administratively practicable. By way of example, one CETFA member prepared a sample calculation for an ETF with a medium level of activity on the Toronto Stock Exchange, and noted that on a single day (between 9:30am until noon), the number of distinct bid and ask data points during that short period was approximately 718,000. Such volume and number of data points could make preparing similar calculations for a larger number of ETFs (including those with more activity on the exchange) administratively inefficient, costly and time consuming.

In addition, in order for disclosure of the average premium/discount to NAV to be helpful information to investors, CETFA believes that additional clarification should be included in Instruction (16) to exclude market-open and end-of-day data points from the calculation described therein. We note that due to the unique distribution structure of ETFs and the role played by market makers, the spread between market price and NAV is generally wider at the opening and closing of each trading day, and therefore submit that data points obtained during the first thirty minutes and last thirty minutes of each trading day should be expressly excluded from the calculation of the average premium/discount to NAV. Without such exclusion, CETFA believes that the average premium/discount to NAV disclosure would produce information that is skewed and potentially misleading to investors.

**Item 7 – Pricing**

**(i) How ETFs are Priced – Market Price**

CETFA recommends the following revisions to the prescribed disclosure under Item 7. Generally, we are supportive of the additional content to the trading and pricing characteristics of ETFs. However, if



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such basic components are to be conveyed in the ETF Facts, we believe such information should be accurate and complete.

We note that due to the role of the designated brokers and dealers, supply and demand factors do not impact the market price per unit of an ETF. Rather, such factors, among other things, may affect the value of an ETFs investments. We suggest the following revisions:

> You buy and sell ETFs at the market price. The market price can change throughout the trading day. Changes to the value of the ETFs investments, as a result of changes in supply and demand and other economic influences, can affect the market price of the units of the ETF.

CETFA believes it is important to explain to investors that the bid price and ask price may fluctuate throughout any given trading day, and that a bid price may increase or decrease on any given trading day, even if no units have traded on such day. We suggest the following revisions:

> The bid is the highest price currently offered to purchase your units if you wish to sell them. The ask is the lowest price at which a seller has currently offered to sell its units if you wish to buy them. The bid and ask prices may fluctuate throughout the trading day regardless of whether any trades have been executed. The difference between the two is called the "bid-ask spread".

CETFA believes that the ETF Facts should not make any reference to the "expectations" of investors and any such reference may be problematic. We suggest the following revisions:

> In general, a narrower bid-ask spread indicates the ETF is more liquid. That means your order to purchase or sell units of the ETF is more likely to be executed closer to the then-current fair value per unit.

**(j) How ETFs are Priced – Net Asset Value**

In the first bullet, we recommend clarifying that the NAV as at the end of each trading day only reflects the value of the ETF's investments as at that time. Accordingly, we suggest the following revisions:

> Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments at that point in time.

In the third bullet, we believe that the references to "market price" and "NAV" should be to "market price per Unit" and "NAV per Unit". Accordingly, we suggest the following revisions:

> If the market price per Unit is lower than the NAV per Unit, the ETF is trading at a discount. If the market price per Unit is higher than the NAV per Unit, the ETF is trading at a premium. If you



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sell your Units at a discount, you may be getting less than its investments are worth. If you buy Units at a premium, you may be paying more than its investments are worth.

**Item 8 – Suitability**

**(k) Who is this ETF For?**

We recommend additional guidance or instructions to clarify the circumstances under which the disclosure requiring an Exclamation Mark (or other colourful symbol) must be used by an ETF.

**Part II – Costs, Rights and Other Information**

**(l) ETF Expenses**

We recommend amending Item 1.3(3) to specify that the calculation of expenses are based on the prior 12 months. We suggest the following revisions:

> As at XXXX, the ETF's expenses, for the prior 12 month period, were equal to X.XX% of its value. This equals $XXXX for every $1,000 invested.

**(m) Trailing Commissions**

We respectfully submit that an explanation of the trailing commission should only be included on an ETF Facts if the ETF Facts is in respect of a class of securities that actually pays trailing commissions. The additional explanation is not applicable, nor relevant, to investors who purchase classes of an ETF that do not carry any ongoing commission. For such classes of an ETF that do not carry an ongoing commission, we believe it is adequate disclosure to simply indicate that the ETF does not have a trailing commission.

**B. ANNEX B**

**Content of the ETF Facts**

1. With respect to the specific questions raised, CETFA believes that the range of market prices should include, not exclude, odd lot trades. As many investors transact in such smaller sizes, including this information would provide a more accurate and relevant summary to such investors.

   In terms of the calculation of the average bid-asks spread, trading days that do not have a minimum number of quotes should not be excluded from such calculation. As previously stated, because ETFs and their bid-ask spreads are supported by designated brokers and dealers, the liquidity of an ETF should remain unaffected by days with few or no trades.



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2. With respect to the new disclosure regarding How ETFs Are Priced, we have recommended some language to improve the accuracy of the disclosure above. Notwithstanding the foregoing, we caution against over-simplifying certain concepts such as liquidity or factors which may affect the market price for units of an ETF or its underlying investments. For example, while supply and demand may affect the value of an ETF's investments, there are several other factors, not included in the ETF Facts, that may also play a significant contributing factor to changing the value of such investments, and disclosing only one or two of these factors at a high level, to the exclusion of others, may not be helpful to the end-investor.
3. Consistent with the goal of explaining basic market concepts to investors, we feel the ETF Facts should similarly be used to explain basic ETF specific concepts, such as ETF liquidity. CETFA believes that intraday liquidity, as one of the fundamental features of investing in an ETF as compared to a conventional mutual fund, deserves a more comprehensive explanation. In particular, the ETF Facts should explain why trading levels are not indicative of liquidity, but rather, the bid-ask spread which (i) reflects the liquidity of the underlying investments of the ETF, and therefore, a better proxy for liquidity of the ETF, and (ii) can also be wider for ETFs representing certain asset classes or jurisdictions.

**Transition Period**

4. To give ETF providers sufficient time to transition their compliance and operational systems, CETFA recommends that the appropriate transition period to file the initial ETF Facts should be 12 months (not six months) after the date the Proposed Amendments come into force.
5. To avoid confusion resulting from an investor receiving multiple iterations of the summary document and ETF Facts, we recommend that the switch-over should follow the prospectus renewal cycle of an ETF (rather than a single switch-over date). While a single switch-over date is problematic from a business planning perspective, it also results in duplication of work and unnecessary costs as it relates to mailing and printing. For ETFs that have a renewal date shortly after the switch-over date, we note that it is possible for investors to receive several iterations of the summary document (ETF Facts) over a short period of time. For example, an investor could receive,

   (i) a summary document on purchase of an ETF (prior to the switch-over date), (ii) a new ETF Facts on the switch-over date, and (iii) a third ETF Facts shortly thereafter on the renewal date). To avoid these issues, CETFA recommends that the switch-over should follow the current prospectus renewal cycle of each ETF.

**Rights of Withdrawal**



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6. We support the approach currently taken in the Exemptive Relief and the Proposed Amendments, and do not believe the right of withdrawal of purchase should be introduced for ETFs. We do not see a feasible manner in which such a right could be enforced and applied in an equitable fashion to all parties involved.

**C. No Pre-Sale Delivery of ETF Facts**

The CSA Notice and Request for Comment seeks to address an important balance between the need to harmonize the disclosure framework between mutual fund and ETFs, while specifically acknowledging the unique distribution model employed by ETFs (as compared to conventional mutual funds).

As a result of the unique distribution structure of ETFs, we submit that mandating pre-sale delivery of ETF Facts would not be an appropriate delivery regime. In particular, we note that securities of ETFs share the attributes of equities, are actively traded, available for purchase and sale on a designated stock exchange throughout each trading day, and that dealers may have difficulties in identifying purchasers of ETFs in instances when such purchasers do not receive trade confirmations. For several reasons, CETFA believes that the concerns regarding pre-sale delivery of ETF Facts are different than the concerns for pre-sale delivery of Fund Facts. CETFA supports the arguments advanced by the Investment Industry Association of Canada in favour of requiring the ETF Facts to be delivered only to investors to whom a trade confirmation is required to be delivered.

Thank you for this opportunity and we welcome any further discussions regarding this proposal.

Yours truly,

Patricia Dunwoody
Executive Director
Canadian ETF Association



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September 18, 2015

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Dear Sirs/Mesdames:

**Re: CSA Notice and Request for Comment - Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery - Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements* and to Companion Policy 41-101CP**

We are writing on behalf of members of The Investment Funds Institute of Canada ("IFIC") to comment on Proposed Amendments to National Instrument 41-101 General Prospectus Requirements and to Companion Policy 41-101CP, Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery (the “Proposals”).

We appreciate the opportunity to provide our comments on the Proposals. Notwithstanding IFIC’s traditional role as the association representing managers and distributors of conventional retail mutual funds, IFIC’s membership includes investment fund managers that currently manage in excess of $70 billion in ETF assets or 82% of industry total assets. Our comments are of a more general nature, primarily to identify comparative differences and inconsistencies the Proposals will create in the experience of investors in ETFs and mutual funds. We understand that several of our members that manage ETFs will be submitting individual letters with more detailed comments on various aspects of the Proposals, including on the content of the ETF Facts.

We appreciate the efforts made by the Canadian Securities Administrators (“CSA”) to propose creation of a point of sale disclosure regime for ETFs that is similar to that for retail mutual funds, the objective of which is to ensure greater consistency in the disclosure provided to retail investors for these functionally equivalent, substitutable products. Requiring the provision of a Fund Facts or ETF Facts ensures an investor in either product has key information about the product in a comparable, plain-language format. This initiative is especially important as ETFs are frequently sold as low-cost alternatives to mutual funds, although we recognize the increasing momentum shown by actively-managed ETFs that are even closer equivalents to mutual funds.

We have identified some fundamental inconsistencies that the Proposals in their current form would create in the point of sale disclosure regimes for mutual funds and ETFs, contrary to the CSA's objective of enhanced consistency, as well as concerns with some aspects of the Proposals.

**Distribution of ETF Units**

We agree with the CSA's approach to essentially ignore the distinction between ETF creation units and resale units for purposes of the disclosure requirement, ensuring that all ETF investors receive ETF Facts, and prospectuses if desired. To maintain the current statutory requirement for prospectus disclosure only to the purchaser on first re-sale of a creation unit on an exchange or other marketplace, is not appropriate since retail investors do not typically have any knowledge as to which type of units will be used to fill their orders. Similarly we are pleased that consistency with the mutual fund regime is maintained in the requirement that a prospectus continue to be prepared and filed, and a copy provided to investors at their request, at no cost.

We also agree with the CSA's proposal to codify the 2013 exemptive relief granted to specified dealers, so as to require all dealers acting for purchasers to deliver to investors a summary document within two days of the investor buying the ETF, whether or not the investor's purchase order is filled with Creation Units. It is also appropriate that this delivery obligation will apply to dealers acting as agents of the purchasers on the buy-side of the transaction, rather than to dealers acting in a distribution on the sell-side of the transaction, as is currently required under securities legislation.

**Contents of ETF Facts**

As ETFs are functionally-equivalent investment products to mutual funds it is appropriate that the ETF Facts disclose similar information, but also, as importantly, information that is unique to the structure and operation of ETFs, so that investors can understand that there are substantive differences to conventional mutual funds.

In principle we agree it is important that information about an ETF's liquidity be included in the ETF Facts, as this is information relevant to an investor's purchase decision. Data such as "bid-ask spread" and "premium/discount to NAV" may be recognized indicators of liquidity, however we wonder whether the proposed descriptions of these concepts in the ETF Facts will be meaningful to the typical retail investor. Similarly, the proposed disclosure of average daily trading volume and the number of trading days does not appear to be particularly useful to investors. Some members have suggested this is not an ideal measure of liquidity. If the CSA wishes to retain the disclosure of the number of trading days, it might better serve investors if this information were disclosed as a percentage, rather than leaving it to investors to calculate the percentage themselves. More clarity on the importance of liquidity and the relevance of the data provided as indicators of liquidity might be helpful, as is suggested by the CSA's own document testing.

Members have noted that the proposed currency of the data to be included in the ETF Facts for bid-ask spread and the premium/discount to NAV (within 60 days of the date of the ETF Facts), raises a question about the utility of this information, especially if such information is subsequently affected by a significant market event.

Several members that manage ETFs have indicated they will be submitting additional comments on several aspects of the Proposals in their individual comment letters. However, they have noted that much of the data required in the ETF Facts will need to be sourced from third-party providers. This raises several concerns, including who will be responsible for the accuracy of the data in this document. We understand some members will discuss this concern in detail in their individual letters.

*How ETFs are Priced*

The information provided under this section of the ETF Facts is generally helpful to investors. However, reordering the disclosure so that the pricing information appears before the risk discussion, closer to the column presenting Trading information and Pricing information may enhance investors' comprehension of this information.

Also, as a general comment, it may be more accurate to describe ETFs, in the opening words of this section, as 'different' or that they 'vary', rather than referring to them as 'unique,' given the proliferation of ETFs of many different attributes.

*Disclosure of Cost*

The CSA has done well to make consistent the fee and cost disclosure in the ETF Facts to that in the Fund Facts. Consistent cost of ownership information empowers investors to perform fair product comparisons.

Proposed Form 41-101F4, Part II – Costs, Rights and Other Information, Item 1 – Costs of Buying, Owning and Selling the ETF, section 1.4 – Other Fees, requires disclosure of information about the amount of other fees payable by an investor when they buy, hold, sell or switch units or shares of the ETF. Can the CSA provide greater specificity as to the types of fees that may be in contemplation for disclosure in this "Other" category? Given the final sentence in Instruction 2, which permits replacement of the fee table with a statement that there are no other fees associated with buying, holding, selling or switching units or shares of the ETF, is this simply meant as a "standby" section in the event there are any transaction fees that are not already otherwise disclosed?

*Disclosure of Risk Classification Methodology*

The Proposals note that the CSA is developing a risk classification methodology for use in the Fund Facts and ETF Facts. Since the release of the Proposals, the Canadian ETF Association has endorsed a fund volatility recommendation for use by ETFs for purposes of their Fund Facts disclosure. This methodology is largely based on IFIC's recommended methodology for mutual funds, and therefore would comprise a very consistent approach to this disclosure requirement. Please confirm whether the CETFA methodology is an acceptable methodology for use in the ETF Facts.

Furthermore, it is hoped that the CSA will coordinate the final rules to implement the Proposals with any rules to implement the CSA's risk classification methodology, to permit ETF managers to adopt the CSA's classification methodology at the outset, rather than having to switch methodologies and disclosure after the first ETF Facts have been filed and delivered. We also urge the CSA to consider the implications and timing of amendments to the applicable ETF prospectuses to reflect the addition of the CSA's risk classification methodology,

**Delivery**

If enacted in their current form, the Proposals would result in the CSA creating an inconsistent point-of-sale disclosure delivery requirement for ETFs and for retail mutual funds, despite introducing consistency in many other areas of the disclosure regime. This approach appears to contradict the CSA's principles underlying and objectives of a consistent point-of-sale disclosure regime and leaves open the risk of regulatory arbitrage.

The CSA's three principles supporting the conversion of mutual funds to a pre-sale delivery model for Fund Facts were: (a) to provide investors with key information about a fund; (b) to provide the information in a simple, accessible and comparable format; and (c) to provide the information before investors make their decision to buy. That the Proposals seek to address only the first two of these principles with respect to ETFs, and not at all seek to ensure ETF investors have this information before they make their decision to buy will result in an inconsistent investor experience, particularly given that ETFs are often recommended as substitutes for mutual funds.

Ideally the CSA would have holistically studied the possible delivery models for all substitutable products before moving forward with a change in the model for only one product. A broader industry-wide consideration might have identified that the various products' differing attributes and business models there would be a real prospect that different timing of delivery models would result. This suggests that a more high-level approach across all products could have been developed that would meet the CSA's principles while "delivering" a consistent approach for investors, thereby avoiding any opportunity for regulatory arbitrage.

Different delivery requirements create, for dealers and advisors that distribute both ETFs and mutual funds, the added administrative burden of managing compliance with two separate and distinct delivery systems. Mutual fund dealers are currently in the midst of the very substantial conversion of their systems to pre-sale delivery for mutual funds. The existence of two different delivery requirements may lead to regulatory arbitrage where products without a pre-sale disclosure requirement are recommended in place of products for which pre-sale delivery is required. With the development of more efficient mechanisms to permit non-IIROC dealers to access the exchanges, the number of MFDA dealers who will be distributing ETFs will increase; a trend that will increase the number of dealers impacted by the need to ensure compliance with two disclosure delivery models.

Since the CSA will permit delivery to be made in person, by mail, by fax, electronically or otherwise, consistent with the methods that can be used by mutual funds, a ready solution that could resolve the inconsistent timing of delivery of disclosure for these products is for the CSA to reconsider its aversion to "access equals delivery" for point of sale disclosure documents. Such a delivery method offers a viable, broadly applicable solution to ensure investors in all products are able to receive this key information in a consistent format, conveniently and when they need it, regardless of the distribution channel through which they are purchasing their security(ies) of choice. Despite our concerns we certainly agree with the Proposals' intention to entrench the transfer of the prospectus delivery obligation, currently imposed by securities legislation on the dealer acting as underwriter in the ETF distribution (the sell-side dealer) to the dealer that is acting as agent of the purchaser of an ETF security (the buy-side dealer).

**Definition of ETF and Exchange-traded Mutual Fund**

Section 1.1 of the Proposal contains a definition of "ETF" (an exchange-traded mutual fund) plus a separate definition of "exchange-traded mutual fund" (a mutual fund in continuous distribution, the securities of which are (a) listed on an exchange, and (b) trading on an exchange or an alternative trading system). Would a merger of these definitions, as suggested below, be a more efficient and appropriate approach?

> "exchange-traded mutual fund" or "ETF" means a mutual fund in continuous distribution, the securities of which are
>
> (a) listed on an exchange, and
>
> (b) trading on an exchange or an alternative trading system.

**Responses to Questions Posed by the CSA**

*Content of the ETF Facts*

1. *The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.*

2. *The "How ETFs are priced" section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.*

3. *Please comment on whether there are other disclosure items/topics that should be added to reflect the differences between ETFs and conventional mutual funds.*

**IFIC's responses to Questions 1, 2 and 3 are noted in the Contents of ETF Facts section above, starting on page 2.**

*Anticipated Costs of Delivery of the ETF Facts*

*4. We seek feedback on the anticipated costs of delivery of ETF Facts for those dealers who do not have Exemptive Relief and are not currently delivering ETF Facts; specifically, the anticipated one-time infrastructure costs and ongoing costs.*

**We currently have no response to this Question.**

*Transition Period*

*5. We seek feedback from dealers on the appropriate transition period for ETF Facts delivery under the Proposed Amendments. We are specifically interested in feedback from dealers who are not subject to the Exemptive Relief. Please comment on the feasibility of implementing the delivery requirement under the Proposed Amendments within 21 months of the date the Proposed Amendments come into force. In responding, please comment on the impact a 21 month transition period might have in terms of cost, systems implications, and potential changes to current sales practices.*

**We currently have no response to this Question.**

*6. We seek feedback from ETF managers on the appropriate transition period to file the initial ETF Facts. We currently contemplate that 6 months after the date the Proposed Amendments come into force, ETF managers will be required to file an initial ETF Facts concurrently with a preliminary or pro forma prospectus for their ETFs. Please comment on the feasibility of making the changes to compliance and operational systems that are necessary to produce the ETF Facts, instead of the summary disclosure document pursuant to the Exemptive Relief, within this timeline.*

*7. We seek feedback from ETF managers and dealers on whether they prefer a single switch-over date for filing the initial ETF Facts rather than following the prospectus renewal cycle as currently contemplated. The CSA implemented a single switch-over date for the Stage 2 Fund Facts, and recognize that there are challenges in doing so, especially for ETF managers, from a business planning and business cycle perspective. If a single switch-over date is preferred, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.*

**Our members have indicated that a minimum of 12 months is necessary to prepare and file the ETF Facts; this amount of time is needed to permit changes to templates and to reflect any new data inputs.**

**Given mutual fund managers' experience with implementation of the Fund Facts, we discourage the use of a single switchover date because it could require a manager to file ETF Facts twice within a short period of time. Rather, we recommend that the filing be permitted to be made at the next prospectus renewal cycle. Given that the Summary Document is already required for ETFs, it is doubtful that investors would be prejudiced by this approach.**

**If a single-switch over date is selected, we recommend avoiding RRSP season and year-end as transition deadlines, given the strain on resources during these periods.**

*Right for Withdrawal of Purchase*

*8. Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. In the case of ETFs, today only purchases filled with Creation Units trigger a prospectus delivery requirement and are therefore subject to a withdrawal right.*

**We do not think there should be a distinction based on Creation Units. This is consistent with the CSA's proposal that all investors receive the ETF Facts regardless of the type of units they receive. As investors will not know which type of units have been used to fill their orders, their right to withdraw should not differ based only on this detail.**

*Consistent with the approach taken in the Exemptive Relief, the Proposed Amendments do not extend the right of withdrawal of purchase to investors for the delivery of the ETF Facts. In some jurisdictions, investors will continue to have a right of rescission with delivery of the trade confirmation.*

*We seek feedback on this proposed approach. Specifically, please highlight if any practical impediments exist to introducing a right of withdrawal for purchases made in the secondary market in connection with delivery of the ETF Facts, should we decide to pursue this.*

**We currently have no response to this Question.**

* * * * *

Again we appreciate the opportunity to express our members' concerns and to raise points of clarification on the Proposals. We would be pleased to discuss, at your convenience, any questions or comments you may have on our submission. Please feel free to contact me by email at rhensel@ific.ca or by phone at (416) 309-2314.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Ralf Hensel
General Counsel, Corporate Secretary & Vice President, Policy

Manulife Securities

**Rick Annaert**
*President & CEO – Manulife Securities*
T: 905-469-2118
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September 16, 2015

**VIA EMAIL** (comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca)

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial and Consumer Affairs Authority
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Financial and Consumer Services Commission
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

**Attention:**

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Me Anne-Marie Beaudoin
Corporate Secretary
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800, square Victoria, 22e étage
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Montréal, PQ H4Z 1G3

Dear Sirs and Mesdames:

**Re: Request for Comment**

Manulife Securities Incorporated ("Manulife Securities") is writing in response to the CSA Notice and Request for Comment dated June 18, 2015 in respect of proposed amendments to National Instrument 41-101 *General Prospectus Requirements*, Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* and related consequential amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (collectively, the "Proposed Amendments"). Manulife Securities understands the CSA wants to ensure that investors are provided with key information about Exchange Traded Funds ("ETFs") in a clear, precise, easily understandable fashion. We respectfully submit that taking into consideration the comments below on certain aspects of the Proposed Amendments will assist in achieving this goal.

**Issues for Comment**

**1. Content of the ETF Facts**

a) Under "Quick Facts", the removal of or a clarification to "Number of days traded" should be considered. We think that particular data is of marginal use and are concerned that investors may be misled into thinking that ETFs provide limited liquidity i.e. can only be traded on certain days.

b) In respect of the "Market price" section, the last bullet point could be drafted in a manner that provides more accurate information. The sentence currently reads "In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect." The first sentence is correct in so far as the underlying holdings of the ETF are concerned. However, a smaller bid-ask spread does not necessarily mean that the retail investor's liquidity is impacted; a redemption will always be available to him or her. It would be more accurate to say that the smaller bid-ask means there is a lower opportunity trading cost in the ETF.

c) The "Year-by-year returns" chart is based on the net asset value ("NAV") of the ETF. Manulife Securities suggests that a return chart based on the market price of the ETF would be preferable. That would assist the investor in understanding a further distinction between ETFs and mutual funds (i.e. the value at which each investment trades) and would clarify the returns that are actually available.

d) Manulife Securities recommends adding a section to ETF Facts showing dividend yield. This would provide information about the income potential of the ETF, which may be relevant to the investor's investment objectives. In addition, a section that discusses liquidity, as well as the nature of primary and secondary markets, would give the investor an enhanced understanding of the difference between ETFs and mutual funds.

e) Manulife Securities has concerns regarding the paragraph on page three of the ETF Fact sheet that alleges "Higher commissions can influence representatives to recommend one investment over another." It is notable that Fund Facts do not include such language. In Manulife Securities' view, it is unfair and unbalanced to include such a statement in one information sheet but not another. In addition, the sentence implies that investment advisors might recommend unsuitable investments in order to receive increased compensation. Manulife Securities respectfully submits that this is an opinion and is not properly within the scope of ETF Facts.

**2. Anticipated Costs of Delivery of the ETF Facts**

Approximately 11,200 purchases of ETFs were made through Manulife Securities during 2014. It is anticipated that MFDA advisors will soon be permitted to sell ETFs and as a result, the volume of trades will continue to rise. (Manulife Securities is an IIROC dealer; Manulife Securities Investment Services Inc. is an MFDA dealer.) Manulife Securities currently contracts with Broadridge Investor Communications to issue confirmations, along with the associated mutual fund Fund Facts. Assuming our supplier's cost of printing and emailing ETF Facts is the same as Fund Facts, the annual delivery cost is estimated to be $50,000. Manulife Securities does not yet have a quote for any one-time start-up or testing costs.

We note that the ability of dealers to begin to deliver ETF Facts will be contingent on their respective suppliers' system preparedness. Accordingly, Manulife Securities recommends that supplier readiness be taken into consideration when determining timelines for implementation of the Proposed Amendments.

In addition, Manulife Securities recommends a full exemption from the requirement to deliver ETF Facts for managed accounts. The very nature of managed accounts is such that delivery to the investor is unnecessary and in general, likely to be unwelcome or confusing. Of course, ETF Facts should be readily available upon request to any investor who might want to receive them.

**3. Right for withdrawal of purchases**

Manulife Securities appreciates why the CSA has proposed a right of withdrawal for purchases made in the secondary market in connection with delivery of ETF Facts. However, controls should be put in place in order to protect both the investor and the dealer, as well as to avoid speculative trading. In particular, Manulife Securities is of the view that it would be prudent to require that:

- The right of withdrawal must be exercised within 48 hours of receipt of the ETF Facts
- Upon notice of exercise of the right, the dealer must make best efforts to sell the ETF as soon as possible with net proceeds of the sale being paid to the investor
- The dealer must not be required to guarantee a return of the full purchase amount
- The right of withdrawal can only apply to purchases less than $50,000 CAD
- The dealer cannot be permitted to incur any cost or profit in respect of an investor exercising the right

Manulife Securities appreciates the opportunity to comment on the Proposed Amendments. If you have any questions about our submission or wish to discuss the matter further, please do not hesitate to contact the undersigned.

Yours very truly,

Rick Annaert
President & CEO

*(Electronic signature)*

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strong reliable trustworthy forward thinking

BY ELECTRONIC MAIL: comments@osc.gov.on.ca
consultation-en-cours@lautorite.qc.ca

September 16, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Office of the Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

**RE: CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and its Delivery – Proposed Amendments to NI 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements and Related Consequential Amendments (the "Proposed Amendments")**

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (**"CSA"**) on the Proposed Amendments.

Fidelity Investments Canada ULC (“**Fidelity**”, “**we**”, “**our**” or “**us**”) is part of the Fidelity Investments organization in Boston, one of the world’s largest financial services providers. Fidelity manages over $108 billion in mutual funds and institutional assets and offers over 200 mutual funds and pooled funds to Canadian investors.

## GENERAL COMMENTS

Fidelity supports the CSA’s initiative to provide clear and concise fund information to investors through the Fund Facts documents. We continue to hear from our clients that the Fund Facts are making it much easier for retail investors to understand critical fund information about the fund(s) they are buying and provide a more user-friendly alternative to the simplified prospectus. We are equally supportive of the CSA’s goal to ensure that investors receive the Fund Facts at the time that is most relevant to their investment decision, before the point of sale.

We commend the CSA for introducing the “ETF Facts” and seeking greater consistency in terms of the disclosure regime for conventional mutual funds and ETFs. However, we were surprised that in the Proposed Amendments the CSA will not require pre-sale delivery of the ETF Facts. The regulators have said that comparable securities products sold to retail investors like mutual funds and ETFs should be subject to consistent disclosure and delivery requirements. In our view, by not extending the pre-sale delivery requirements to ETFs, the CSA has created another incentive for financial advisors and their clients who may want to transact more quickly to turn to other types of securities or products, such as ETFs and segregated funds, which are not similarly restricted in terms of how they may be purchased.

We do not see any reason why mutual funds and ETFs should be treated differently in terms of disclosure and delivery. The only material difference between mutual funds and ETFs is how they are distributed. Otherwise, mutual funds and ETFs are comparable securities products that have similar features that are both sold to retail investors. Advice-based and self-directed dealers who sell ETFs can achieve pre-sale delivery of the ETF Facts in the same way that these dealers are currently working toward achieving pre-sale delivery for the Fund Facts, which comes into force on May 30, 2016. The foundation for pre-sale delivery of the ETF Facts has been laid.

## CONCLUSION

We appreciate the CSA’s efforts in seeking greater consistency in terms of the disclosure regime for mutual funds and ETFs. However, we believe that the CSA has not gone far enough by not proposing to extend the pre-sale delivery requirements, currently applicable to mutual funds, to ETFs. In our view, the CSA has created an unlevel playing field between mutual funds and ETFs that has not been justified under the circumstances. Therefore, we strongly recommend that the CSA adopt the pre-sale delivery requirements for the ETF Facts.

We thank you for the opportunity to comment on the Proposed Amendments. As always, we are more than willing to meet with you to discuss any of our comments.

Yours truly,

*"W. Sian Burgess"*

W. Sian Burgess
Senior Vice President, Fund Oversight
Fidelity Investments Canada ULC

*"Robert I. Sklar"*

Robert I. Sklar
Senior Legal Counsel
Fidelity Investments Canada ULC

c.c. Rob Strickland, President
Robyn Mendelson, Vice President, Legal

BLACKROCK®

September 16, 2015

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Office of the Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Superintendent of Securities, Yukon Territory
Office of the Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

**CSA Notice and Request for Comment – Mandating a Summary Disclosure Document For Exchange-Traded Mutual Funds and Its Delivery ("Request for Comments")**

## A. About BlackRock

BlackRock Asset Management Canada Limited ("**BlackRock Canada**" or "**we**") is an indirect, wholly-owned subsidiary of BlackRock, Inc. ("**BlackRock**") and is registered as a portfolio manager, investment fund manager and exempt market dealer in all the jurisdictions of Canada and as a commodity trading manager in Ontario.

BlackRock is one of the world's leading asset management firms, managing assets for clients in North America and South America, Europe, the Middle East, Africa, Asia and Australia. Our client base includes corporate, public, multi-employer pensions plans, insurance companies, mutual funds and exchange-traded funds, endowments, foundations, charities, corporations, official institutions, banks and individuals around the world.

As of June 30, 2015, BlackRock's assets under management totalled US $4.721 trillion across equity, fixed income, cash management, alternative investment, real estate and advisory products.

## B. General Observations

BlackRock welcomes the efforts of the Canadian Securities Administrators ("**CSA**") to codify the disclosure obligations currently required by exemptive relief granted in respect of the delivery of summary documents for exchange-traded funds ("**ETFs**") and applauds your efforts to harmonize, where appropriate, the disclosure regime for conventional mutual funds with that of ETFs. We do, however, have some questions and concerns about certain of the proposed disclosure requirements, each of which are set out in greater detail below for your consideration.

## C. BlackRock's Responses

### 1. Trading and Pricing Information

We commend the CSA for seeking to foster greater understanding of ETFs and strongly support the CSA's initiative to provide meaningful disclosure to ETF investors. We are, however, concerned that, absent a broader understanding of the ETF mechanism, the inclusion of certain of the proposed trading and pricing form requirements may inadvertently result in investor confusion – concerns which are more fully outlined in subsequent sections of our response letter.

In addition, in order to meet certain of the contemplated trading and pricing form requirements (i.e., the average daily volume, number of days traded, average bid-ask spread, and average premium/discount to NAV fields), ETF providers will likely need to source data from third party vendors as this information is not self-sourced content unlike, for example, performance, management expense ratio and trading expense ratio calculations. As a result, ETF managers may not only have issues licensing the necessary information for purposes of public disclosure, but will likely also be exposed to increased liability resulting from the possibility of inaccurate information being provided by vendors. This is particularly the case as we expect that vendors will disclaim liability for the data they provide, thereby forcing ETF providers to take on additional legal risk for content that is not readily verifiable.

Finally, we expect that ETF providers will incur increased costs to access this information. Given that the "official" national best bid and offer is currently only available from one data vendor and that it's unclear whether the use of consolidated trading data from other providers will be permitted, the proposed form requirements may therefore introduce a "captive consumer" issue whereby the data vendor controlling this information can exercise monopolistic pricing.

A. Average Premium/Discount to NAV

Similar to closed-end funds, but unlike conventional mutual funds, there are two prices for ETF securities at any given point in time: the primary market price (i.e. the net asset value ("**NAV**")) for the purposes of creations and exchanges, and the secondary market price (i.e. the prevailing exchange bid and ask price) which is the price at which investors typically acquire and dispose of their ETF securities.

The fact that an ETF can trade at a premium or discount to NAV is sometimes viewed as a failure of the ETF mechanism. However, there are often healthy reasons for the existence of premiums or discounts, particularly for ETFs that have exposure to international or fixed income securities. In order for an investor to properly evaluate the premium/discount disclosure proposed, it is therefore imperative that they understand the inherent limitations of NAV and that NAV is sometimes an imperfect estimate of the fair value of a fund. NAV is a static calculation that is generally based on end-of-day pricing sources, whereas market price trades in real-time and reflects current and forward-looking valuations. This is especially true for ETFs holding international securities where apparent ETF premiums and discounts typically reflect price discovery and the ability to trade the ETF securities in real time. For example, ETFs can be used to express a market view on international securities even when their underlying markets are closed.

In addition, apparent premiums and discounts on securities of fixed income ETFs may arise due to several factors, particularly the challenges of price discovery when valuing the portfolio assets in a primarily non-transparent, over-the-counter market. The NAV of a fixed income ETF is also typically based on either mid or bid market prices, and therefore does not directly reflect the bid/ask spread that exists in the market for each bond. ETF market prices, in contrast, do reflect this spread. The fact that bid/ask spread is observable in ETF market prices, but not in NAVs, can also contribute to differences between a fixed income ETF's market price and its NAV.

As a result, where there is a deviation between market price and NAV, it often has more to do with the NAV being calculated using static valuations of the underlying portfolio securities than with the exchange-determined intra-day market price of the ETF deviating from fair value. Without this deeper understanding – which is difficult to convey in a brief document such as an ETF Facts – many investors may draw incorrect conclusions from this disclosure, especially given that, in practice, ETF investors will not typically transact with an ETF at NAV. We therefore believe that the proposed ETF Facts disclosure overemphasizes the significance of NAV premiums and discounts with respect to ETFs and may incorrectly lead investors to believe that a premium or discount is inherently "good" or "bad", when, in fact, premiums and discounts are often healthy but are not inherently either.

Moreover, ETFs incorporate a number of features that seek to minimize discrepancies between the market price and fair value such as the continuous distribution mechanism and the market-making roles played by designated brokers and other liquidity providers. Generally, because of the flexibility of the creation and exchange mechanism, liquidity providers are able to quickly meet demand to buy and sell ETF securities at appropriate prices relative to an ETF's NAV. In addition, the unique arbitrage mechanism of ETFs, which allows liquidity providers to profit from any mispricing between an ETF and its underlying holdings, helps to both keep market prices in line with the value of the ETF's underlying portfolio securities and to eliminate sustained premiums or discounts to NAV.

Therefore, we respectfully caution the CSA from placing undue emphasis on NAV premiums/discounts in the ETF Facts as we believe this information is not particularly instructive for most investors and may lend credence to the myth that trading at a premium or discount to NAV is a shortcoming – rather than a positive feature – of the ETF mechanism.

B. Average Daily Volume and Number of Days Traded

We believe that, without a complete understanding of ETF liquidity and structure, requiring the disclosure of average daily volume and number of days traded may mislead investors as to an ETF's true liquidity. Focusing solely on the liquidity of the ETF security as if it was a conventional equity stock, while ignoring the liquidity of the ETF's underlying portfolio securities, may give ETF investors an incomplete picture of an ETF's liquidity as secondary market turnover discounts the ability of the primary market creation mechanism to meet demand. Although an ETF may have a low average daily volume or a relatively few number of days traded, underwriters can nevertheless create new ETF securities as needed to satisfy investor demand or, conversely, redeem ETF securities where there is little demand. As many Canadian ETFs do not trade on a daily basis, this may lead investors to mistakenly believe these ETFs are not liquid because they do not appreciate an ETF's creation/redemption mechanism; a mechanism which generally allows liquidity to be added as needed through primary market transactions with underwriters.

C. Average Bid-Ask Spread

We are concerned that focusing on average bid-ask spread, regardless of the size of trade, may be misleading for investors that place larger trades (i.e. outside "top of book") as the bid-ask spread often increases with the size of the trade. Instead, we suggest it may be more useful for investors to use a sample trade size (for example, show the average bid-ask spread for a $1,000 trade, which aligns with the amount used in connection with the proposed performance disclosure). We also suggest that this disclosure be moved under the heading "Trading information".

Finally, if the CSA proceeds with the inclusion of trading and pricing information such as average bid-ask spread, average daily volume and average premium/discount to NAV, we strongly encourage the CSA to clarify the calculation methodology that they expect to be applied in order to ensure both a level playing field across ETF providers and a clearer understanding by ETF investors. We would greatly benefit from sample calculations to ensure that we understand and can apply the methodologies contemplated and can appropriately source the data required. We note that, to the extent data is sourced from different data vendors, this may affect the consistency and comparability of the information across different ETF providers.

**2. How ETFs are Priced**

While BlackRock supports the underlying policy rationale of facilitating investor access to key information about an ETF in language they can easily understand, we believe that the proposed disclosure in Item 7 of proposed Form 41-101F4 – *Information Required in an ETF Facts Document* oversimplifies the relationship between market price and NAV of an ETF and overstates the significance of NAV premiums and discounts with respect to ETFs for the reasons described earlier in our response.

As discussed above, while the fact that an ETF can trade at a premium or discount to NAV is sometimes viewed as a failure of the ETF mechanism, our view is that, given that markets are imperfect, the ETF mechanism can actually facilitate an ETF's ability to provide liquidity at the intrinsic value of the underlying assets. For example, in times of market stress, or where an underlying market is closed or illiquid, we have seen that ETFs have generally proven to be extremely effective price discovery vehicles given that ETFs trade in real-time and reflect current and forward-looking valuations. In cases like these, an investor would not be paying "more or less than an investment is worth" (as the proposed disclosure provides); but rather a price that more accurately reflects currently available information regarding an asset's intrinsic value.

Rather than attempting to summarize the complex relationship between NAV and market price in a brief document like the ETF Facts, we suggest that the CSA instead publish an "ETF 101" document for investors (similar to the *Investing 101: Indices and Index Funds* publication the Ontario Securities Commission has previously released)[1], that provides guidance on ETF pricing and trading. This document could include a more nuanced and detailed discussion of market price and NAV, as well as some suggested best practices for trade execution (for example, avoiding placing trades early in the morning or late in the afternoon to limit volatility and advocating the use of limit orders rather than market orders). BlackRock would welcome the opportunity to assist the CSA with the preparation of such a document.

In the alternative, if the CSA chooses to proceed with including the aforementioned disclosure, we recommend revising the language in Item 7 of proposed Form 41-101F4 per the blackline provided in Appendix A.

### 3. Suitability

While we acknowledge that brief statements regarding the suitability of investments are currently required for Fund Facts in respect of conventional mutual funds[2], we harbour reservations about mandating a similar requirement for ETFs as set out in Item 8 of proposed Form 41-101F4 – *Information Required in an ETF Facts Document*. Specifically, we don't believe that investment fund managers are well positioned to provide suitability assessments on investment products given their lack of privity with end investors; a principle borne out in other areas of Canadian securities law where, for example, investment fund managers are exempted from the application of "know your client" and suitability requirements[3].

Given that suitability is a function of *both* the investment product in question but also, crucially, its application to an investor's particular circumstances, we believe the lack of transparency by ETF managers into the latter make it a problematic – and potentially misleading – form requirement for ETF Facts. Instead, we believe that other disclosure requirements that speak

[1] http://www.osc.gov.on.ca/documents/en/Investors/inv_news_20150727_indices-index-funds.pdf
[2] Item 7, Form 81-101F3 – *Contents of Fund Facts Document*.
[3] Section 13.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

specifically to the product itself, such as the introduction of risk ratings[4], are a far more meaningful and appropriate metric for ETF managers to include in ETF Facts.

**4. <u>Currency of Data and Transition Period</u>**

We support the CSA's proposal to harmonize the currency of data requirement for ETF Facts with those of Fund Facts by moving to 60 days before the date of the summary document. However, we strongly recommend that a carve-out from the 60 day currency requirement be introduced in respect of ETF Facts filed in conjunction with a material change where data fields are otherwise not impacted by the material change. Given that timely disclosure obligations require an issuer to file a prospectus amendment (and, if applicable, an accompanying ETF Facts document) within 10 days of the material change, we believe there are significant operational constraints on collecting and presenting the required data in such a short period of time – this is particularly the case in light of the additional form requirements proposed regarding trading and pricing information, some of which entail third party sourcing and/or manual calculations. From a policy perspective, we don't believe that investors would be negatively impacted by such a carve-out as, absent a material change, the data otherwise remains "static" for approximately a year leading up to the applicable ETF's prospectus renewal.

Finally, we support the CSA's proposal to implement a phased transition of the ETF Facts requirement which follows the prospectus renewal cycle rather than a single switch-over date. Doing so, we believe, would considerably reduce costs and lessen the operational burden of implementation.

**D. <u>Conclusion</u>**

BlackRock very much appreciates the opportunity to provide input on this important regulatory initiative and would be pleased to make appropriate representatives available to discuss any of these comments with you at your convenience.

Yours very truly,

"*Warren Collier*"

**Managing Director (Head of iShares)**
**BlackRock Asset Management Canada Limited**

[4] Item 4, Form 41-101F4 – *Information Required in an ETF Facts Document*.

# Appendix A

**Form 41-101F4 – *Information Required in an ETF Facts Document***
**Item 7 - Pricing**

**How ETFs are priced**

ETFs are unique because they hold a basket of investments, like mutual funds, but trade on exchanges like stocks. For this reason, they have two sets of prices: market price and net asset value (NAV).

**Market price**

• You buy and sell ~~ETFs~~ETF securities at the market price on the exchange. The market price can change throughout the trading day. Factors like supply, demand and changes in the value of the ETF's portfolio investments can affect the market price fo r an ETF's securities.

• You can get price quotes any time during the trading day. Quotes have two parts: **bid** and **ask**.

• The bid is the highest price a buyer is willing to pay if you want to sell your ~~units.~~ETF securities. The ask is the lowest price a seller will accept if you want to buy ~~units~~ETF securities. The difference between the two is called the "**bid-ask spread**".

• In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

**Net asset value (NAV)**

• Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments at the point in time when it was calculated.

• NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.

• If the market price is lower than the NAV, the ~~ETF is~~ETF's securities are trading at a **discount**. If the market price is higher than the NAV, the ~~ETF is~~ETF's securities are trading at a **premium**. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth. Premiums and discounts may also result from changes in the value of the ETF's investments that have not yet been reflected in the ETF's NAV. Since ETF's continuously offer their securities, it is generally unlikely that large premiums or discounts to NAV would be sustained.