

CSA Notice and Request for Comment

Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers

September 27, 2022

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are proposing an alternative to delivering financial statements, which include interim financial reports, and interim and annual management reports of fund performance (**MRFPs**, and with financial statements, **designated documents**) for investment fund reporting issuers. The access-based model proposed by the CSA is seeking to modernize the current delivery of continuous disclosure document requirements and reduce the regulatory burden on investment fund reporting issuers.

We are publishing for a 90-day comment period

- proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**),
- proposed changes to Companion Policy 81-106CP *Continuous Disclosure Obligations* (**81-106CP**), and
- proposed consequential amendments to
 - National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), and
 - National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**),

(collectively, the **Proposed Amendments**).

For the reasons outlined in this notice, we are not proposing to extend an access-based model for investment funds disclosure documents other than the designated documents. We are interested, however, in understanding whether there are any other changes that we should consider in order to help facilitate alternatives to delivery in paper format, such as electronic delivery for these other documents.

We are seeking specific feedback on a number of consultation questions, but we welcome comments on all aspects of the Proposed Amendments.

The text of the Proposed Amendments is contained in Annexes A, B, C, and D of this notice and will also be available on the websites of the following CSA jurisdictions:

www.lautorite.qc.ca
www.asc.ca
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnc.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The purpose of the Proposed Amendments is to modernize the way designated documents are made available to investors and to reduce printing and mailing costs associated with the current regime. The Proposed Amendments would enable a more cost-efficient, timely and environmentally friendly manner of making these documents available to investors, which could assist in reducing the regulatory burden on investment funds without compromising investor protection.

The Proposed Amendments would replace the current delivery requirements, for designated documents of an investment fund that is a reporting issuer, with a designated website posting requirement, a requirement to issue, file, and post a news release announcing the availability of the documents, and requirements to send documents to a registered holder or a beneficial owner of securities of the investment fund (a **Securityholder**) on request or in accordance with standing instructions.

The Proposed Amendments are being proposed on the basis that the current delivery requirements impose a significant cost on investment funds without a corresponding benefit to Securityholders. Securityholders would benefit from the Proposed Amendments because the information would be more readily available to them.

We recognize that information technology is an important and useful tool in facilitating communication with investors. The Proposed Amendments are consistent with the general evolution of the investment fund industry, particularly the increased availability and accessibility of information online. The Proposed Amendments also recognize increased investor capacity and preference for accessing and consuming information electronically.

The Proposed Amendments would not remove an investor's ability to request designated documents in paper or electronic form. Investors would also have the ability to provide standing instructions to receive paper or electronic copies of designated documents.

Background

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (CP 51-404)* to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. Commenters responding to CP 51-404 were generally supportive of developments which would further facilitate electronic delivery of documents. Investment fund stakeholders specifically commented that it is overly onerous and expensive to comply with the condition that they send an annual reminder, or send annual notices, in order to rely on the exemption from sending designated documents and advocated for its removal.

In January 2020, the CSA published CSA Consultation Paper 51-405 *Consideration of Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (CP 51-405)*. While CP 51-405 focused on non-investment fund reporting issuers, some commenters nevertheless raised concerns about the costs to investment funds of complying with the delivery requirements in Part 5 of NI 81-106. These commenters supported an access-based model for investment funds.

The Proposed Amendments are informed by the comment letters received in response to CP 51-404 and CP 51-405.

On April 7, 2022, the CSA published CSA Notice and Request for Comment *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (the Non-Investment Fund Proposal)* which proposed to implement an access-based model for non-investment fund reporting issuers in respect of prospectuses, annual financial statements, interim financial reports and related management's discussion & analysis. The Proposed Amendments are also informed by the Non-Investment Fund Proposal, but are targeted specifically to the investment funds context, and consequently are different in some key areas.

Existing requirements

Under subsection 5.1(2) of NI 81-106, an investment fund must send financial statements and, if applicable, copies of MRFPs, to a Securityholder.

Section 5.2 of NI 81-106 permits the investment fund to request standing instructions (**Standing Instructions**) from a Securityholder with respect to the documents they wish to receive. When soliciting Standing Instructions from Securityholders, an investment fund can deem no response from a Securityholder to be an election not to receive designated documents. Subsection 5.2(5) of NI 81-106 provides that, even if the investment fund obtains Standing Instructions, it must send an annual letter (**Annual Notices**) reminding those Securityholders of, among other things, their right to receive designated documents. Alternatively, under section 5.3 of NI 81-106, an investment fund may solicit annual delivery instructions (**Annual Instructions**) from Securityholders.

Under subsection 5.4(1) of NI 81-106, an investment fund must send designated documents to a Securityholder who requests them. An investment fund must file these documents on SEDAR and, under section 5.5 of NI 81-106, an investment fund that is a reporting issuer must post these documents on its designated website.

Summary of the Proposed Amendments

Under the Proposed Amendments, the requirements for an investment fund that is a reporting issuer to send designated documents, to solicit Standing Instructions and send Annual Notices, and solicit Annual Instructions would be repealed and replaced with requirements to:

- post designated documents in a prominent manner on the investment fund's designated website;
- issue, file on SEDAR, and post on the investment fund's designated website, a news release announcing the availability of the designated documents;
- send a designated document to a Securityholder who requests a copy; and
- send a designated document that is filed by the investment fund to a Securityholder who provides the investment fund with standing instructions to receive copies of all documents commencing with the next document filed after the Securityholder has provided those standing instructions and continuing until the Securityholder changes those standing instructions.

The Proposed Amendments do not amend the requirement to file designated documents on SEDAR.

In applicable jurisdictions, a mutual fund that is not a reporting issuer continues to be subject to requirements substantially identical to the existing requirements under Part 5 of NI 81-106.

Under the transition provisions of the Proposed Amendments, a Securityholder is considered to have provided standing instructions to receive paper copies of the designated documents if they have previously provided Standing Instructions to the investment fund to deliver financial statements or MRFP but has not previously consented to electronic delivery. If a Securityholder previously consented to electronic delivery, the Securityholder is deemed to have provided standing instructions to receive electronic copies of the designated documents.

Content of Annexes

This notice contains the following annexes:

- Annex A - Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*
- Annex B - Proposed Changes to Companion Policy 81-106 *Investment Fund Continuous Disclosure*
- Annex C - Proposed Consequential Amendments to National Instrument 41-101 *General Prospectus Requirements*

- Annex D - Proposed Consequential Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*
- Annex E - Local Matters

Specific Questions

In addition to your comments on all aspects of the Proposed Amendments, the CSA also seeks specific feedback on the following questions:

1. Standing instructions to receive paper copies

Under subsection 5.3(2) of the proposed amendments to NI 81-106, a Securityholder can provide standing instructions in order to receive a paper copy of a designated document that is filed by the investment fund. These instructions will apply to the next designated document filed and continue to apply until the standing instructions are changed by the Securityholder. While the costs of complying with this requirement may be greater than the costs for the delivery of electronic copies, we are of the view that these costs are outweighed by the benefits to Securityholders being able to provide standing instructions to receive paper copies. Do you agree? Please explain.

2. Standing instructions to receive electronic copies

Under subsection 5.3(4) of the proposed amendments to NI 81-106, a Securityholder can provide standing instructions in order to receive an electronic copy of a designated document that is filed by the investment fund. These instructions will apply to the next designated document filed by the investment fund and continue to apply until the standing instructions are changed by the Securityholder. We are of the view that the cost of complying with this requirement is *de minimis* while the benefits to Securityholders of being able to provide standing instructions to receive electronic copies is significant. Do you agree? Please explain.

3. Notification methods

Under subsection 5.4(1) of the proposed amendments to NI 81-106, an investment fund would be required to file a news release and to post that news release on its designated website, indicating that the designated document is available electronically and that a paper or electronic copy can be obtained upon request.

- a. Would this be an effective way to notify Securityholders that designated documents are available? If not, please explain why.
- b. Should the news release or the designated website include any information other than the information required in subsection 5.4(2) of the proposed amendments to NI 81-106?
- c. Are there any alternative ways of notifying Securityholders we should consider that would be effective and practical? Please provide specific details on how to implement your proposal, along with an outline of the costs and benefits of your

suggested approach. Are there any obstacles to using your suggested approach? For example, if you propose notification by email, how would an investment fund obtain a Securityholder's email address? What should be the outcome if the Securityholder does not keep their email address updated or does not provide consent to receiving these communications by email?

4. Designated websites

The effectiveness of the Proposed Amendments depends in part on whether investors will be able to easily find and retrieve the designated documents that they are interested in on a fund's designated website. Subsection 11.1(5) of 81-106CP provides that a designated website should be designed in a manner that allows an individual investor with a reasonable level of technological skill and knowledge to easily access, read and search the information and the documents posted on the website, and download and print the documents.

- a. Is this guidance sufficient? Are there additional best practices beyond the guidance in Part 11 of 81-106CP that should be highlighted?
- b. Alternatively, should the CSA establish specific requirements for the posting and maintenance of any regulatory document on a designated website in order to create more consistency and comparability in terms of investor experience in accessing these documents? In responding, please specify the additional guidance or specific presentation requirements that we should consider and outline the reason for your preferred approach. Where possible, please also outline if there are any significant cost or benefit differences between these two approaches.

5. No further broadening of access-based model

Both CP 51-404 and CP 51-405 were limited in scope to non-investment fund reporting issuers. In response to these publications, commenters said that the reasons underlying an alternative delivery model for non-investment fund reporting issuers are equally applicable to investment fund reporting issuers. While the underlying principles may be similar, there are fundamental differences between non-investment funds and investment funds that justify the application of different delivery models between these types of issuers.

We have reviewed the delivery requirements applicable to investment funds and are of the view that extending the Proposed Amendments beyond financial statements and MRFPs is not appropriate at this time. Specifically, we have considered the delivery requirements for the following documents:

- **Fund Facts document and ETF Facts document:** The Fund Facts and the ETF Facts are plain language documents that concisely highlight key information about a mutual fund that our research has identified as important to investors. The Fund Facts is required to be delivered prior to the purchase of a mutual fund, and so it does not lend itself to being part of an access-based model. For consistency, we think an access-based model

should not apply to ETFs and that ETF investors should also continue to receive the ETF Facts. These documents are an important way to assist mutual fund and ETF investors in their decision-making process and in discussions with their financial advisors.

- **Prospectuses for mutual funds and ETFs:** The prospectus delivery requirement does not apply to a dealer selling a mutual fund or an ETF. Instead, for a mutual fund that is not an ETF, a dealer is required to deliver a Fund Facts prior to purchase. For ETFs, a dealer is required to deliver an ETF Facts document instead.
- **Prospectuses for scholarship plans:** In our view, an access-based model for this type of document is not appropriate. Like mutual funds and ETFs, we consider the delivery of key informational documents as important to assist scholarship plan investors in their decision-making process. We think the key informational document for a scholarship plan is its prospectus.
- **Prospectuses for non-redeemable investment funds (that are not ETFs):** We think investment fund investors should have a consistent means of obtaining the information they need to make a purchase decision. As discussed above, we are not proposing an access-based model for Fund Facts or ETF Facts documents or scholarship plan prospectuses. For consistency, we also think it is appropriate to retain the current prospectus delivery requirements for non-redeemable investment funds.
- **Proxy materials:** In 2021, the CSA adopted a notice-and-access system for the solicitation of proxies for investment funds that is substantially similar to the regime for non-investment fund issuers. Notice-and-access differs from an access-based model in that it permits delivery of proxy-related materials by sending a notice providing Securityholders with summary information about the proxy-related materials and instructions on how to access them. In our view, an access-based model for this type of document, with no notice, is not appropriate. As discussed in the Non-Investment Fund Proposal, stakeholder comments in response to CP 51-404 and CP 51-405 cautioned the CSA against introducing an access-based model to documents that require a time sensitive response from investors.

The CSA has published for comment an access-based model for prospectuses of non-investment fund reporting issuers under the Non-Investment Fund Proposal. We think the typical investor in non-investment fund reporting issuers has different informational needs than the typical investor in investment fund reporting issuers. We are not proposing an access-based model for offering documents (Fund Facts, ETF Facts, or prospectus as applicable) of investment fund reporting issuers because we think there are significant benefits to the typical investor in investment fund reporting issuers in receiving the relevant offering documents rather than only having access to them.

We have the following additional questions:

- a. Do you agree with our views about the delivery requirements for each type of document described above? Please justify your response with reference to the costs and benefits of an access-based model for each type of document.

- b. If you think the CSA should adopt an access-based model for a specific type of document, please describe the model and explain how that approach would be beneficial to funds, dealers and investors.
- c. Are there alternative ways, other than adopting an access-based model, to improve or modernize the current delivery requirements for investment fund documents other than designated documents? For example, does securities legislation impose any impediments to greater adoption of electronic delivery? Could the methods of electronic delivery be modernized? If so, please describe any methods, provide the reasons why those methods are an improvement and explain what regulatory changes would be required to use any proposed method.

How to Provide Your Comments

Please provide your comments in writing by **December 26, 2022**.

We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at www.asc.ca, the Ontario Securities Commission at www.osc.ca and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Thank you in advance for your comments.

Please address your submission to all of the CSA as follows:

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
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
 Nova Scotia Securities Commission
 Office of the Superintendent of Securities, Service NL
 Northwest Territories Office of the Superintendent of Securities
 Office of the Yukon Superintendent of Securities
 Superintendent of Securities, Nunavut

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

The Secretary
 Ontario Securities Commission
 20 Queen Street West
 22nd Floor, Box 55
 Toronto, Ontario
 M5H 3S8
 Fax: 416-593-2318
 Email: comment@osc.gov.on.ca

Me Philippe Lebel
 Corporate Secretary and Executive Director, Legal Affairs
 Autorité des marchés financiers
 Place de la Cité, tour Cominar
 2640, boulevard Laurier, bureau 400
 Québec (Québec) G1V 5C1
 Fax: (514) 864-8381
 Email: consultation-en-cours@lautorite.qc.ca

Questions

Please refer your questions to any of the following:

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 Email: jleong@bcsc.bc.ca

Alberta Securities Commission

Chad Conrad
 Senior Legal Counsel, Corporate Finance
 Tel: (403) 297-4295
 Email: chad.conrad@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan

Heather Kuchuran
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 Securities Division
 Tel: 306-787-1009
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Manitoba Securities Commission

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Nova Scotia Securities Commission

Abel Lazarus
Director, Corporate Finance
Tel : 902-424-6859
Email : Abel.Lazarus@novascotia.ca

ANNEX A

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. *In paragraph 2.11(b), “Part 5” is replaced with “Part 5A”.*
3. *Part 5 is replaced with the following:*

Part 5 – Access to and Delivery of Financial Statements and Management Reports of Fund Performance – Reporting Issuers

- 5.1 Interpretation and Application – (1) In this Part, “designated document” means any of the following documents an investment fund is required to file on SEDAR:
- (a) financial statements;
 - (b) annual management reports of fund performance; and
 - (c) interim management reports of fund performance.
- (2) This Part does not apply to an investment fund that is not a reporting issuer.
- 5.2 Posting on Designated Website – (1) An investment fund must post a designated document on its designated website no later than the date that the designated document is filed.
- (2) An investment fund referred to in subsection (1) must include, on its designated website, a statement that
- (a) explains the choices a registered holder or beneficial owner of securities issued by the investment fund has to receive designated documents;
 - (b) describes how the registered holder or beneficial owner may provide the investment fund with standing instructions to receive either electronic or paper copies of all of the investment fund’s designated documents commencing with the next designated document filed after the registered holder or beneficial owner provides the instructions; and
 - (c) explains that the investment fund will continue to follow the instructions provided by the registered holder or beneficial owner until they are changed by the registered holder or beneficial owner.

- (3) An investment fund must display a designated document posted under subsection (1) and the statement included under subsection (2) in a manner that would be considered prominent to a reasonable person.
- 5.3 Sending Paper and Electronic Copies of Designated Documents – (1) An investment fund must send a paper copy of a designated document to a registered holder or beneficial owner of securities issued by the investment fund if the registered holder or beneficial owner requests a paper copy of the designated document.
- (2) If a registered holder or beneficial owner of securities issued by an investment fund provides the investment fund with standing instructions to receive paper copies of a designated document, the investment fund must send paper copies of the designated document to the registered holder or beneficial owner, commencing with the next designated document filed after the registered holder or beneficial owner provides the investment fund with those standing instructions.
 - (3) An investment fund must send an electronic copy of a designated document to a registered holder or beneficial owner of securities issued by an investment fund if the registered holder or beneficial owner requests an electronic copy of the designated document.
 - (4) If a registered holder or beneficial owner of securities issued by an investment fund provides the investment fund with standing instructions to receive electronic copies of a designated document, the investment fund must send electronic copies of the designated document to the registered holder or beneficial owner, commencing with the next designated document filed after the registered holder or beneficial owner provides the investment fund with those standing instructions.
 - (5) If a registered holder or beneficial owner of securities issued by the investment fund makes a request under subsection (1) or provides standing instructions under subsection (2), the investment fund must send a copy of the designated document by the later of
 - (a) the filing deadline for the designated document; and
 - (b) 10 calendar days after the investment fund receives the request or instructions.
 - (6) If a registered holder or beneficial owner of securities issued by the investment fund makes a request under subsection (3) or provides standing instructions under subsection (4), the investment fund must send a copy of the designated document by the later of
 - (a) the filing deadline for the designated document; and
 - (b) five calendar days after the investment fund receives the request or instructions.

- (7) An investment fund must not charge a fee for sending a designated document under this section.
- 5.4 News Release – (1) On the date that a designated document is filed, an investment fund must
- (a) issue a news release stating that the investment fund has filed the designated document;
 - (b) file the news release on SEDAR; and
 - (c) post the news release on the investment fund’s designated website.
- (2) A news release under subsection (1), must
- (a) state in the title that the designated document is available,
 - (b) state that the designated document is available at www.sedar.com and on the investment fund’s designated website,
 - (c) provide the investment fund’s designated website address,
 - (d) state the following:
 - (i) “A paper copy of the *[insert name of the designated document]* may be obtained by a registered holder or beneficial owner of securities issued *[insert name of the investment fund]*, without charge, from *[insert name of the manager of the investment fund]*.”,
 - (ii) “If a registered holder or beneficial owner of securities issued by *[insert name of the investment fund]* wants to receive paper copies of any of *[insert list designated documents the investment fund is required to file]* filed by *[insert name of investment fund]* in the future, please provide standing instructions to *[insert name of the manager of the investment fund]*. The standing instructions will continue to be followed by *[insert name of investment fund]* until they are changed by the registered holder or beneficial owner.”,
 - (iii) “An electronic copy of the *[insert name of the designated document]* may be obtained by a registered holder or beneficial owner of securities issued by *[insert name of the investment fund]*, without charge, from *[insert name of the manager of the investment fund]*.”,
 - (iv) “If a registered holder or beneficial owner of securities issued by *[insert name of the investment fund]* wants to receive electronic copies of any of *[insert list designated documents the investment fund is required to file]* filed by *[insert name of investment fund]* in the future,

please provide standing instructions to [*insert name of the manager of the investment fund*]. The standing instructions will continue to be followed by [*insert name of investment fund*] until they are changed by the registered holder or beneficial owner.”, and

- (v) the name, address, toll-free telephone number, e-mail address, and website of the manager of the investment fund.

4. The following Part 5A is added after Part 5:

Part 5A – Delivery of Financial Statements – Non-Reporting Mutual Funds

- 5A.1 Application – This Part does not apply to a mutual fund that is a reporting issuer.
 - 5A.2 Delivery of Financial Statements – Subject to sections 5A.3 and 5A.4, a mutual fund must send financial statements to a registered holder or beneficial owner of securities issued by the mutual fund by the filing deadline for the financial statements.
 - 5A.3 Sending According to Standing Instructions – (1) Section 5A.2 does not apply to a mutual fund that requests standing instructions from a registered holder or beneficial owner of securities issued by the mutual fund in accordance with this section and sends financial statements according to those instructions.
- (2) A mutual fund relying on subsection (1) must send, to each registered holder or beneficial owner of securities issued by the mutual fund, a document that
 - (a) explains the choices a registered holder or beneficial owner of securities issued by the mutual fund has to receive financial statements;
 - (b) requests instructions from the registered holder or beneficial owner of securities issued by the mutual fund about delivery of financial statements; and
 - (c) explains that the mutual fund will continue to follow the instructions provided by the registered holder or beneficial owner of securities issued by the mutual fund until they are changed by the registered holder or beneficial owner.
 - (3) If a person or company becomes a registered holder or beneficial owner of securities issued by a mutual fund, the mutual fund must request instructions in accordance with subsection (2) from the registered holder or beneficial owner as soon as reasonably practicable after the mutual fund accepts a purchase order from the registered holder or beneficial owner.
 - (4) A mutual fund must rely on instructions given under this section until a registered holder or beneficial owner of securities issued by the mutual fund changes them.

- (5) At least once a year, a mutual fund must send each registered holder or beneficial owner of securities issued by the mutual fund a reminder that
- (a) the registered holder or beneficial owner is entitled to receive financial statements;
 - (b) the mutual fund is relying on delivery instructions provided by the registered holder or beneficial owner;
 - (c) explains how a registered holder or beneficial owner of securities issued by the mutual fund can change the instructions it has given; and
 - (d) the registered holder or beneficial owner can obtain the financial statements by contacting the mutual fund, or, if applicable, on www.sedar.com or on the mutual fund's website.

5A.4 Sending According to Annual Instructions – (1) Section 5A.2 does not apply to a mutual fund that requests annual instructions from a registered holder or beneficial owner of securities issued by the mutual fund in accordance with this section and sends financial statements according to those instructions.

- (2) Subsection (1) does not apply to a mutual fund that has previously requested standing instructions in accordance with section 5A.3.
- (3) A mutual fund relying on subsection (1) must send annually to each registered holder or beneficial owner of securities issued by the mutual fund a request form the registered holder or beneficial owner may use to instruct the mutual fund as to which financial statements the registered holder or beneficial owner wishes to receive.
- (4) The request form referred to in subsection (3) must be accompanied by a notice explaining that
- (a) the registered holder or beneficial owner is providing delivery instructions for the current year only; and
 - (b) the registered holder or beneficial owner can obtain financial statements by contacting the mutual fund, or, if applicable, on www.sedar.com or on the mutual fund's website.

5A.5 General – (1) If a registered holder or beneficial owner of securities issued by a mutual fund requests financial statements, the mutual fund must send a copy of the requested financial statements by the later of

- (a) the filing deadline for the requested financial statements; and

- (b) 10 calendar days after the mutual fund receives the request.
- (2) A mutual fund must not charge a fee for sending the financial statements referred to in this Part and must ensure that registered holders or beneficial owners of securities issued by the mutual fund can respond without cost to the requests for instructions required by this Part.
- (3) For the purposes of this section, mutual funds under common management may send one request form to serve as a standing instruction or an annual instruction, as applicable, from a registered holder or beneficial owner of securities issued by the mutual funds that will apply to all of the mutual funds under common management held by that registered holder or beneficial owner.

Transition

5. For the purposes of subsection 5.3(2), a registered holder or beneficial owner of securities issued by an investment fund is considered to have provided standing instructions to receive paper copies of designated documents immediately after this Instrument comes into force if:
 - (a) the investment fund is a reporting issuer;
 - (b) immediately before this Instrument comes into force, the investment fund has standing or annual instructions from the registered holder or beneficial owner to deliver annual financial statements, interim financial reports, or annual or interim management reports of fund performance to the registered holder or beneficial owner; and
 - (c) immediately before this Instrument comes into force, the investment fund does not have the consent of the registered holder or beneficial owner to electronic delivery of the annual financial statements, the interim financial reports, or the annual or interim management reports of fund performance.
6. For the purposes of subsection 5.3(4), a registered holder or beneficial owner of securities issued by an investment fund is considered to have provided standing instructions to receive electronic copies of designated documents immediately after this Instrument comes into force if:
 - (a) the investment fund is a reporting issuer;
 - (b) immediately before this Instrument comes into force, the investment fund has standing or annual instructions from the registered holder or beneficial owner to deliver annual financial statements, interim financial reports, or annual or interim management reports of fund performance to the registered holder or beneficial owner; and

- (c) immediately before this Instrument comes into force, the investment fund has the consent of the registered holder or beneficial owner to electronic delivery of the annual financial statements, the interim financial reports, or the annual or interim management reports of fund performance.
7. A mutual fund may rely on subsection 5A.3(1) in connection with standing instructions from a registered holder or beneficial owner of securities issued by the mutual fund if:
- (a) immediately before this Instrument comes into force, the mutual fund had requested standing instructions from the registered holder or beneficial owner under subsection 5.2(1) of National Instrument 81-106 *Investment Fund Continuous Disclosure* as it read on [**DATE IMMEDIATELY BEFORE EFFECTIVE DATE OF THIS INSTRUMENT**];
 - (b) the mutual fund sends annual financial statements or interim financial reports according to those instructions; and
 - (c) the mutual fund otherwise complies with section 5A.3.
8. A mutual fund may rely on subsection 5A.4(1) in connection with annual instructions from a registered holder or beneficial owner of securities issued by the mutual fund if:
- (a) immediately before this Instrument comes into force, the mutual fund had requested annual instructions from the registered holder or beneficial owner under subsection 5.3(1) of National Instrument 81-106 *Investment Fund Continuous Disclosure* as it read on [**DATE IMMEDIATELY BEFORE EFFECTIVE DATE OF THIS INSTRUMENT**]; and
 - (b) the mutual fund sends annual financial statements or interim financial reports according to those instructions; and
 - (c) the mutual fund otherwise complies with section 5A.4.

Effective Date

9. (1) This Instrument comes into force on [●].
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [●], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.”

ANNEX B

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

1. *Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure is changed by this Document.*
2. *Part 4 is replaced with the following:*

Part 4 – Access to and Delivery of Financial Statements and Management Reports of Fund Performance – Reporting Issuers

- 4.1 Sending Designated Documents – Subsections 5.3(1) and (2) of the Instrument require an investment fund that is a reporting issuer to send a paper or an electronic copy, as applicable, of a designated document to a registered holder or beneficial owner of securities of the investment fund if requested. A registered holder or beneficial owner making such a request would likely do so by using the contact information disclosed under paragraph 5.4(2)(d) of the Instrument, as applicable. However, the investment fund should comply with any reasonable request even if it is not made by using the contact information required to be disclosed under those paragraphs.

Section 5.4 of the Instrument requires an investment fund that is a reporting issuer to issue and file on SEDAR, and post on its designated website, a news release announcing it has filed a designated document. This section also requires that the news release provide information about how a registered holder or beneficial owner of securities of the investment fund can contact the investment fund to obtain a paper or electronic copy of a designated document. So that a registered holder or beneficial owner clearly understands how they should contact the investment fund to obtain a designated document, we think registered holders or beneficial owners would find it helpful if an investment fund used the same contact information in its news releases, its designated website and in its Fund Facts, ETF Facts, or scholarship plan prospectus, as applicable.

- 4.2 Electronic Delivery – A designated document required to be sent electronically under Part 5 of the Instrument should follow the guidance in National Policy 11-201 *Delivery of Documents by Electronic Means*.

3. *The following Part 4A is added after Part 4:*

Part 4A – Delivery of Financial Statements – Non-Reporting Mutual Funds

- 4A.1 Delivery Instructions – (1) The Instrument gives mutual funds that are not reporting issuers the following choices for the delivery of financial statements:

- (a) send these documents to all registered holders or beneficial owners of securities of the mutual fund;
- (b) obtain standing instructions from registered holders or beneficial owners with respect to the documents they wish to receive; or
- (c) obtain annual instructions from registered holders or beneficial owners by sending them an annual request form they can use to indicate which documents they wish to receive.

The choices are intended to provide some flexibility concerning the delivery of financial statements to registered holders or beneficial owners of securities of a mutual fund. The mutual fund can use any combination of the delivery options for registered holders or beneficial owners. However, the Instrument specifies that if the mutual fund chooses option (b) for a registered holder or beneficial owner, it cannot switch back to option (c) for that registered holder or beneficial owner at a later date. The purpose of this requirement is to encourage mutual funds that are not reporting issuers to obtain standing instructions and to ensure that if a registered holder or beneficial owner provides standing instructions, the mutual fund will abide by those instructions unless the registered holder or beneficial owner specifically changes them.

- (2) When requesting delivery instructions from a registered holder or beneficial owner of securities of a mutual fund that is not a reporting issuer, the mutual fund may treat no response from the registered holder or beneficial owner to be a request by the registered holder or beneficial owner to receive all, some or none of the financial statements. When requesting delivery instructions, the mutual fund should make clear what the consequence of no response will be to registered holders or beneficial owners.
- (3) A mutual fund that is not a reporting issuer should request delivery instructions sufficiently ahead of time so that registered holders or beneficial owners of securities of the mutual fund can receive the requested financial statements within the time required by the Instrument. Registered holders or beneficial owners should also be given a reasonable amount of time to respond to a request for instructions. The mutual fund should provide registered holders or beneficial owners with complete contact information for the mutual fund, including a toll-free telephone number or a number for collect calls.
- (4) Mutual funds that are not reporting issuers and that are under common management can request one set of delivery instructions from a registered owner or beneficial owner of securities of the mutual funds that will apply to all of the mutual funds that are not reporting issuers in the same fund family that the registered holder or beneficial owner owns. If a registered holder or beneficial owner has given a mutual fund that is not a reporting issuer standing delivery instructions and then later acquires the securities of another mutual fund that is not a reporting issuer managed

by the same manager, the newly acquired mutual fund can rely on those standing instructions.

4A.2 Communication with Beneficial Owners – A mutual fund that is not a reporting issuer and that is relying on Part 5A of the Instrument must have the necessary information to communicate with a beneficial owner of its securities. If the mutual fund does not have this information, the mutual fund cannot rely on the filing exemption in section 2.11 of the Instrument.

4A.3 Electronic Delivery – Any documents required to be sent under Part 5A of the Instrument may be sent by electronic delivery. Such electronic delivery should be made following the guidance in National Policy 11-201 *Delivery of Documents by Electronic Means*. In particular, the annual reminder required by section 5A.3(5) and the request form required by section 5A.4(3) of the Instrument may be given in electronic form and may be combined with other notices. Request forms and notices may alternatively be sent with account statements or other materials sent to registered holders or beneficial owners of securities of a mutual fund that is not a reporting issuer by the mutual fund.

4. These changes become effective on [●].

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. *Form 41-101F3 is amended by replacing subsections (1) and (2) of Item 12 of Part A with the following:*

- (1) Under the sub-heading “For more information”, state the following using substantially similar wording:

“The Detailed Plan Disclosure delivered with this Plan Summary contains further details about this plan, and we recommend that you read it. You may also contact [insert name of the manager of the scholarship plan] or your sales representative for more information about this plan. You can obtain a copy of the plan’s financial statements and management reports of fund performance by contacting [insert name of manager of the scholarship plan]. Please contact [insert contact information of manager of the scholarship plan] or visit [insert address of designated website of the scholarship plan] for instructions on how to provide standing instructions to receive filed financial statements and management reports of fund performance in the future.”

- (2) State the name, address, toll-free telephone number, e-mail address and website of the investment fund manager of the plan.

3. *Form 41-101F4 is amended by replacing subsections (1) and (2) of Item 3 of Part II with the following:*

- (1) Under the heading “For more information”, state the following using substantially similar wording:

“Contact [insert name of the manager of the ETF] or your representative or visit [insert address of designated website of the ETF] for a copy of the ETF’s prospectus and other disclosure documents. You can obtain a copy of the ETF’s financial statements and management reports of fund performance by contacting [insert name of the manager of the ETF]. These documents and the ETF Facts make up the ETF’s legal documents. Please contact [insert contact information of the manager of the ETF] or visit [insert address of designated website of the ETF] for instructions on how to provide standing instructions to receive filed financial statements and management reports of fund performance in the future.”

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

Effective Date

4. (1) This Instrument comes into force on [●].
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [●], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX D

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. *National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.*
2. *Form 81-101F3 is amended by replacing subsection (1) Item 3 of Part II with the following:*

- (1) Under the heading “For more information”, state the following using substantially similar wording:

“Contact [*insert name of the manager of the mutual fund*] or your representative or visit [*insert address of designated website of the mutual fund*] for a copy of the fund’s simplified prospectus and other disclosure documents. These documents and the Fund Facts make up the fund’s legal documents. You can obtain a copy of the fund’s financial statements and management reports of fund performance by contacting [*insert name of the manager of the mutual fund*]. Please contact [*insert contact information of the manager of the mutual fund*] or visit [*insert address of designated website of the mutual fund*] for instructions on how to provide standing instructions to receive filed financial statements and management reports of fund performance in the future.”

3. *Form 81-101F3 is amended by replacing subsection (2) Item 3 of Part II of with the following:*

- (2) State the name, address, toll-free telephone number, e-mail address and website of the manager of the mutual fund.

Effective Date

4. (1) This Instrument comes into force on [●].
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [●], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX E

LOCAL MATTERS

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