



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

**Notice of Amendments to  
National Instrument 81-106 *Investment Fund Continuous Disclosure*,  
Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance*,  
and Companion Policy 81-106CP *Investment Fund Continuous Disclosure*  
and Related Amendments**

**June 20, 2008**

**Introduction**

We, the Canadian Securities Administrators (CSA), are implementing amendments to:

- National Instrument 81-106 *Investment Fund Continuous Disclosure* (the Rule),
- Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (the Form), and
- Companion Policy 81-106CP *Investment Fund Continuous Disclosure* (the Policy).

The Rule and the Form are together referred to as the Instrument. We are also implementing consequential amendments to:

- National Instrument 81-102 *Mutual Funds* and Companion Policy 81-102CP,
- Form 81-101F2 *Contents of Annual Information Form*, and
- Form 41-101F2 *Information Required in an Investment Fund Prospectus*.

The text of the amendments follow the appendices to this Notice.

The amendments have been made, or are expected to be made, by each member of the CSA. Provided all necessary approvals are obtained, the amendments will come into force on September 8, 2008.

In Ontario, the amendments and other materials required to be delivered to the Minister of Finance were delivered on June 20, 2008.

In Quebec, the Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and the amendments must be approved, with or without amendment, by the Minister of Finance. The amendments will come into force on the date of their publication in the *Gazette officielle du Québec* or on any later date specified in the regulation.

**Substance and purpose of the amendments**

The Instrument, which came into force on June 1, 2005, harmonized continuous disclosure (CD) requirements among Canadian jurisdictions and replaced most existing local CD requirements. It sets out the disclosure obligations of investment funds for financial statements, management reports of fund performance, material change reporting, information circulars, proxies and proxy solicitation, delivery obligations, proxy voting disclosure and other CD-related matters.

The amendments primarily serve two purposes:

- to modify the requirements regarding the calculation of net asset value following the introduction of Section 3855 *Financial Instruments – Recognition and Measurement* of the CICA Handbook; and
- to clarify or correct certain provisions of the Instrument.

### **Summary of Changes to Proposed Amendments**

See Appendix A for a summary of the changes made to the amendments as originally published.

### **Summary of Written Comments Received by the CSA**

We published the proposed amendments for comment on June 1, 2007. The comment period ended August 31, 2007. During the comment period, we received submissions from nine commenters. We have considered the comments received and thank all the commenters. Appendix B lists the names of the commenters and summarizes their comments and our responses. The original comment letters are available on the Ontario Securities Commission website at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

After considering the comments, we made changes to the amendments that we published for comment. However, as these changes are not material, we are not republishing the amendments for a further comment period.

### **Questions**

Please refer your questions to any of the following:

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## APPENDIX A

### SUMMARY OF CHANGES TO PUBLISHED AMENDMENTS

The following summarizes the notable changes to the version of the materials published for comment on June 1, 2007.

#### The Rule

##### *Section 3.2 Statement of Operations*

- We have not proceeded with the proposed amendment requiring separate line item disclosure of revenue from repurchase and reverse repurchase transactions on the statement of operations.

##### *Section 3.5 Statement of Investment Portfolio*

- We have not proceeded with the proposed amendment to add a look-through requirement to the statement of investment portfolio for investment funds substantially invested in only one underlying fund. (However, we added guidance to the Companion Policy as noted below.)

##### *Section 3.6 Notes to Financial Statements*

- We removed the requirement to compare net assets and NAV at the fund level. The requirement is to disclose NAV per security and to explain each of the differences between this amount and net assets per security as shown on the financial statements.

##### *Section 9.2 Requirement to File Annual Information Form*

- We clarified this requirement by indicating that an investment fund must file an annual information form if it has not obtained a receipt for a prospectus during the 12 months preceding its financial year end.

##### *Section 14.2 Calculation, Frequency and Currency (of Net Asset Value)*

- We modified this amendment to clarify that the record keeping requirement allows the application of fair value principles to groups of similar securities.

#### The Form

##### *Part B, Item 3.1 Financial Highlights (Trading Expense Ratio)*

- We modified the proposed amendment to clarify that reasonable assumptions or estimates can be used when calculating a fund of funds' trading expense ratio.

##### *Part B, Item 3.3 Management Fees*

- We have incorporated the guidance on management fee breakdown in Question C-8 of CSA Staff Notice 81-315 *Frequently Asked Questions on National Instrument 81-106 Investment Fund Continuous Disclosure* (the FAQ) into the instruction.

*Part B, Item 4.1 General (Past Performance)*

- We have incorporated comments on calculating the return on a short portfolio from Question C-11 of the FAQ into subsection 4.1(3).

*Part B, Item 5 Summary of Investment Portfolio*

- We have added as an instruction the guidance relating to the summary of investment portfolio of a labour sponsored or venture capital fund as found in Question C-14 of the FAQ.

**The Policy**

*New section 2.5.1 Disclosure of Investment Portfolio*

- We added guidance regarding the portfolio disclosure that should be provided by an investment fund that invests substantially all of its assets (directly or indirectly) in one underlying fund.

*Section 4.1 Delivery Instructions*

- The guidance provided in Question D-1 of the FAQ was incorporated into subsection (1).

*Section 4.2 Communication with Beneficial Owners*

- The guidance provided in Question D-3 of the FAQ was incorporated into this section.

*New Section 4.5 Website Disclosure*

- We added a new section on website disclosure which incorporates Question D-5 of the FAQ.

*Section 9.5 Fair Value Techniques and Section 9.6 Valuation Policies and Procedures*

- We amended these sections of the Policy to clarify that, in our view, the manager's board of directors should approve an investment fund's valuation policy.

## APPENDIX B

### SUMMARY OF COMMENTS AND CSA RESPONSES

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

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

We have summarized the comments received and provided our responses.

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

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

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

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

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

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

	CSA Staff Notice 81-315 – Frequently Asked Questions on NI 81-106 Investment Fund Continuous Disclosure, question B-7.
<b>FORM 81-106F1 CONTENTS OF ANNUAL AND INTERIM MANAGEMENT REPORT OF FUND PERFORMANCE</b>	
<b>Part B – Content Requirements for Annual Management Report of Fund Performance</b>	
<b>Comment</b>	<p><b>Item 3.1 Financial Highlights</b> <i>The Fund’s Net Assets per [Unit/Share] table</i></p> <p>Three commenters believe that the “Fund’s Net Assets per Unit/Share” table should be based on NAV per security, not net assets per security, because NAV is more meaningful to investors. The use of net assets in this table, while all other information in the management report of fund performance (MRFP) is derived from NAV, will cause confusion.</p>
<b>Response</b>	The “Fund’s Net Assets per Unit/Share” table highlights some of the information presented in the financial statements, on a per security basis. In order to maintain consistency within this table, the information should all be derived from values that are based on Canadian GAAP. In our view, it would be confusing to mix financial statement values with NAV, which is no longer calculated in accordance with Canadian GAAP.
<b>Comment</b>	<p><b>Item 3.1 Financial Highlights</b> <i>Commissions and other portfolio transaction costs</i></p> <p>One commenter suggested adding a new line to the “Fund’s Net Asset per Unit/Share” table to report brokerage commissions, as these will now be shown as a separate line item on the statement of operations.</p>
<b>Response</b>	<p>We have not added a separate line to the “Fund’s Net Asset per Unit/Share” table for commissions and other portfolio transaction costs. The impact to investors of the commissions and other portfolio transaction costs is already disclosed by way of the trading expense ratio.</p> <p>As noted above, the requirement to recognize transaction costs in net income may be interpreted differently among investment funds, which may also affect whether the transaction costs are captured in the “Fund’s Net Asset per Unit/Share” table, and if so, how.</p>
<b>Comment</b>	<p><b>Item 3.1 Financial Highlights</b> <i>Calculation of trading expense ratio (TER)</i></p> <p>Three commenters indicated that it would be extremely difficult to calculate a TER for a top fund in a fund of funds structure if: the underlying fund has a different year end; the underlying fund is not a reporting issuer; there are multiple underlying</p>

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

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

**NATIONAL INSTRUMENT 81-106**  
***INVESTMENT FUND CONTINUOUS DISCLOSURE***

**AMENDMENT INSTRUMENT**

1. Section 1.1 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by repealing the definition of “net asset value” and substituting the following:

““net asset value” means the value of the total assets of the investment fund less the value of the total liabilities of the investment fund, as at a specific date, determined in accordance with Part 14;”
2. Section 2.9 of NI 81-106 *Investment Fund Continuous Disclosure* is amended
  - (a) in subparagraph (4)(a)(i) by striking out “and a statement of investment portfolio”; and
  - (b) in subparagraph (4)(b)(i) by striking out “and a statement of investment portfolio”.
3. Section 2.10 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by
  - (a) repealing paragraph (a) and substituting the following:

“(a) the investment fund terminating or ceasing to be a reporting issuer;” and
  - (b) repealing paragraph (h) and substituting the following:

“(h) if applicable, the names of each party that terminated or ceased to be a reporting issuer following the transaction and of each continuing entity;”.
4. Section 3.1 of NI 81-106 *Investment Fund Continuous Disclosure* is amended in item 15 by striking out “net asset value” and substituting “net assets”.
5. Section 3.2 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by adding the following after item 10:

“10.1 commissions and other portfolio transaction costs.”.
6. Section 3.6 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by
  - (a) repealing subparagraph 3.6(1)3. and substituting the following:

“3. to the extent the amount is ascertainable, the soft dollar portion of the total commissions and other portfolio transaction costs paid or payable to dealers by the investment fund, where the soft dollar portion is the amount paid or payable for goods and services other than order execution.”; and

- (b) adding the following after subparagraph 3.6(1)4.:
- “5. the net asset value per security as at the date of the financial statements compared to the net assets per security as shown on the statement of net assets, and an explanation of each of the differences between these amounts.”.
7. Subsection 3.11(2) of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “ “net asset value per security” ” and substituting “ “net assets per security” ”.
8. Subsection 8.2(c) of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “net asset value” and substituting “net assets”.
9. Section 8.4 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “net asset value” and substituting “net assets”.
10. Section 9.2 of NI 81-106 *Investment Fund Continuous Disclosure* is repealed and the following is substituted:
- “9.2 Requirement to File Annual Information Form** – An investment fund must file an annual information form if the investment fund has not obtained a receipt for a prospectus during the last 12 months preceding its financial year end.”
11. Section 10.3 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “reporting issuer” and substituting “reporting issuer or the equivalent of a reporting issuer in a foreign jurisdiction”.
12. Section 14.2 of NI 81-106 *Investment Fund Continuous Disclosure* is amended
- (a) by repealing subsection (1) and substituting the following:
- “(1) The net asset value of an investment fund must be calculated using the fair value of the investment fund’s assets and liabilities.”;
- (b) by adding the following after subsection (1):
- “(1.1) The net asset value of an investment fund must include the income and expenses of the investment fund accrued up to the date of calculation of the net asset value.
- (1.2) For the purposes of subsection (1), fair value means
- (a) the market value based on reported prices and quotations in an active market, or

- (b) if the market value is not available, or the manager of the investment fund believes that it is unreliable, a value that is fair and reasonable in all the relevant circumstances.
  - (1.3) The manager of an investment fund must
    - (a) establish and maintain appropriate written policies and procedures for determining the fair value of the investment fund's assets and liabilities; and
    - (b) consistently follow those policies and procedures.
  - (1.4) The manager of an investment fund must maintain a record of the determination of fair value and the reasons supporting that determination.”;
  - (c) in subsection (2) by striking out “Despite subsection (1), for” and substituting “For”; and
  - (d) in subsection (5) by striking out “Despite subsection (3)” and substituting “Despite paragraph (3)(a)”.
- 13. Section 15.1 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by repealing clause (1)(a)(i)(A) and substituting the following:
  - “(A) total expenses of the investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the financial year or interim period, as shown on its statement of operations; and”.
- 14. Section 15.2 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by
  - (a) repealing subparagraph (1)(a)(i) and substituting the following:
    - “(i) multiplying the total expenses of each underlying investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the financial year or interim period, by”; and
  - (b) repealing paragraph (1)(b) and substituting the following:
    - “(b) the total expenses of the investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the period.”.
- 15. Sections 18.2, 18.3, 18.4 and 18.5 of NI 81-106 *Investment Fund Continuous Disclosure* are repealed.

16. This Instrument comes into force on September 8, 2008.

**FORM 81-106F1 CONTENTS OF ANNUAL AND INTERIM  
MANAGEMENT REPORT OF FUND PERFORMANCE**

**AMENDMENT INSTRUMENT**

1. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 1 of Part A by adding the following after subsection (e):

**“(f) Terminology**

All references to “net assets” or “net assets per security” in this Form are references to net assets determined in accordance with Canadian GAAP as presented in the financial statements of the investment fund. All references to “net asset value” or “net asset value per security” in this Form are references to net asset value determined in accordance with Part 14 of the Instrument.

Investment funds must use net assets as shown on the financial statements in the “*The Fund’s Net Assets per [Unit/Share]*” table. All other calculations for the purposes of the MRFP must be made using net asset value.”.

2. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 3 of Part B by
- (a) striking out the sentence “This information is derived from the Fund’s audited annual financial statements.” at the end of the introduction in subsection 3.1(1);
  - (b) repealing the “*The Fund’s Net Asset Value (NAV) per [Unit/Share]*” table in subsection 3.1(1) and substituting the following:

**The Fund’s Net Assets per [Unit/Share] <sup>(1)</sup>**

	[insert year]				
Net Assets, beginning of year	\$	\$	\$	\$	\$
<b>Increase (decrease) from operations:</b>					
total revenue	\$	\$	\$	\$	\$
total expenses	\$	\$	\$	\$	\$
realized gains (losses) for the period	\$	\$	\$	\$	\$
unrealized gains (losses) for the period	\$	\$	\$	\$	\$
<b>Total increase (decrease) from operations <sup>(2)</sup></b>	\$	\$	\$	\$	\$
<b>Distributions:</b>					
From income (excluding dividends)	\$	\$	\$	\$	\$
From dividends	\$	\$	\$	\$	\$
From capital gains	\$	\$	\$	\$	\$
Return of capital	\$	\$	\$	\$	\$
<b>Total Annual Distributions <sup>(3)</sup></b>	\$	\$	\$	\$	\$
<b>Net assets at [insert last day of financial year] of year shown</b>	\$	\$	\$	\$	\$

(1) *This information is derived from the Fund’s audited annual financial statements. The net assets per security presented in the financial statements differs from the net asset value calculated for fund pricing purposes. [An explanation of these differences can be found in the notes to the financial statements./This difference is due to [explain].]*

(2) *Net assets and distributions are based on the actual number of [units/shares] outstanding at the relevant time. The increase/decrease from operations is based on the weighted average number of [units/shares] outstanding over the financial period.*

(3) *Distributions were [paid in cash/reinvested in additional [units/shares] of the Fund, or both].*

(c) repealing the “Ratios and Supplemental Data” table in subsection 3.1(1) and substituting the following:

**Ratios and Supplemental Data**

	[insert year]				
Total net asset value (000's) <sup>(1)</sup>	\$	\$	\$	\$	\$
Number of [units/shares] outstanding <sup>(1)</sup>					
Management expense ratio <sup>(2)</sup>	%	%	%	%	%
Management expense ratio before waivers or absorptions	%	%	%	%	%
Trading expense ratio <sup>(3)</sup>	%	%	%	%	%
Portfolio turnover rate <sup>(4)</sup>	%	%	%	%	%
Net asset value per [unit/share]	\$	\$	\$	\$	\$
Closing market price [if applicable]	\$	\$	\$	\$	\$

- (1) *This information is provided as at [insert date of end of financial year] of the year shown.*
- (2) *Management expense ratio is based on total expenses (excluding commissions and other portfolio transaction costs) for the stated period and is expressed as an annualized percentage of daily average net asset value during the period.*
- (3) *The trading expense ratio represents total commissions and other portfolio transaction costs expressed as an annualized percentage of daily average net asset value during the period.*
- (4) *The Fund's portfolio turnover rate indicates how actively the Fund's portfolio adviser manages its portfolio investments. A portfolio turnover rate of 100% is equivalent to the Fund buying and selling all of the securities in its portfolio once in the course of the year. The higher a fund's portfolio turnover rate in a year, the greater the trading costs payable by the fund in the year, and the greater the chance of an investor receiving taxable capital gains in the year. There is not necessarily a relationship between a high turnover rate and the performance of a fund.*
- (d) repealing subsection 3.1(2);
- (e) repealing subsection 3.1(6) and substituting the following:
- “(6) Except for net assets, net asset value and distributions, calculate per unit/share values on the basis of the weighted average number of unit/shares outstanding over the financial period.”;

(f) repealing subsection 3.1(12) and substituting the following:

- “(12) (a) Calculate the trading expense ratio by dividing
- (i) the total commissions and other portfolio transaction costs disclosed in the statement of operations, by
  - (ii) the same denominator used to calculate the management expense ratio.
- (b) If an investment fund invests in securities of other investment funds, calculate the trading expense ratio using the methodology required for the calculation of the management expense ratio in section 15.2 of the Instrument, making reasonable assumptions or estimates when necessary.”;

(g) repealing subsection 3.1(13) and substituting the following:

“(13) Provide the closing market price only if the investment fund is traded on an exchange.”;

(h) repealing the introduction to the “*Financial & Operating Highlights (with comparative figures)*” table in section 3.2 and substituting the following:

“An investment fund that is a scholarship plan must comply with Item 3.1, except that the following table must replace “The Fund’s Net Assets per [Unit/Share]” table and the “Ratios and Supplemental Data” table.”; and

(i) repealing the Instruction in section 3.3 and substituting the following:

*“The disclosure must list the major services paid for out of the management fees, including portfolio adviser compensation, waived or absorbed expenses, trailing commissions and sales commissions, if applicable. Services may be grouped together so that commercially sensitive information, such as the specific compensation paid to a portfolio adviser or the manager’s profit, is not determinable.”.*

3. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 4 of Part B by

(a) repealing subsection 4.1(3) and substituting the following:

“(3) Set out in the footnotes to the chart or table required by this Item the assumptions relevant to the calculation of the performance information, including any assumptions or estimates made in order to calculate the

return on the short portfolio, if applicable. Include a statement of the significance of the assumption that distributions are reinvested for taxable investments.”; and

- (b) striking out “or” in paragraph 4.3(1)(a) and substituting “and”.
4. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 5 of Part B by
- (a) striking out “net assets” and substituting “net asset value” in paragraph (2)(b);
  - (b) striking out “net assets” and substituting “net asset value” in paragraph (2)(d);
  - (c) striking out “another” and substituting “one other” in Instruction (8);
  - (d) striking out “net assets” and substituting “net asset value” in Instruction (8); and
  - (e) adding the following after Instruction (9):
    - “(10) *A labour sponsored or venture capital fund must disclose its top 25 positions, but is not required to express any of its venture investments as a percentage of the fund’s net asset value if it complies with the conditions in Part 8 of the Instrument to be exempt from disclosing the individual current values of venture investments in its statement of investment portfolio.*”.
5. This Instrument comes into force on September 8, 2008.

**AMENDMENTS TO  
COMPANION POLICY 81-106CP-  
TO NATIONAL INSTRUMENT 81-106  
INVESTMENT FUND CONTINUOUS DISCLOSURE**

1. Section 2.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by repealing subsection (1).
2. Part 2 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by adding the following after section 2.5:

**“2.5.1 Disclosure of Investment Portfolio** – If an investment fund invests substantially all of its assets directly, or indirectly through the use of derivatives, in securities of one other investment fund, the investment fund should provide in the statement of investment portfolio, or the notes to that statement, additional disclosure concerning the holdings of the other investment fund, as available, in order to assist investors in understanding the actual portfolio to which the investment fund is exposed. The CSA is of the view that such disclosure is consistent with the requirements in the Handbook relating to financial instrument disclosure.”.
3. Section 2.9 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is repealed.
4. Section 4.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by repealing the last paragraph of subsection (1) and substituting the following:

“The choices are intended to provide some flexibility concerning the delivery of continuous disclosure documents to securityholders. An investment fund can use any combination of the delivery options for its securityholders. However, the Instrument specifies that once an investment fund chooses option (b) for a securityholder, it cannot switch back to option (c) for that securityholder at a later date. The purpose of this requirement is to encourage investment funds to obtain standing instructions and to ensure that if a securityholder provides standing instructions, the investment fund will abide by those instructions unless the securityholder specifically changes them.”.
5. Section 4.2 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by repealing the second paragraph and substituting the following:

“We recognize that different types of investment funds have different access to beneficial owner information (for example, mutual funds are more likely to have beneficial owner information than exchange-traded funds) and that the procedures in National Instrument 54-101 may not be efficient for every investment fund. We intend the provisions in Part 5 of the Instrument to provide investment funds with flexibility to communicate directly with the beneficial owners of their securities. If an investment fund has the necessary information to communicate directly with one or more beneficial owners of its securities, it can do so, even

though it may need to rely on National Instrument 54-101 to communicate with other beneficial owners of its securities.”.

6. Part 4 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by adding the following after section 4.4:

**“4.5 Website Disclosure** – The Instrument does not specify the length of time that continuous disclosure documents must remain on an investment fund’s website. In the CSA’s view, the documents should stay on the website for a reasonable length of time, and at least until they are replaced by more current versions.”.

7. Part 9 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by

(a) striking out the heading “PUBLICATION OF NET ASSET VALUE PER SECURITY” and substituting the heading “NET ASSET VALUE”; and

(b) by adding the following after section 9.1:

**“9.2 Fair Value Guidance** – Section 14.2 of the Instrument requires an investment fund to calculate its net asset value based on the fair value of the investment fund’s assets and liabilities. While investment funds are required to comply with the definition of “fair value” in the Instrument when calculating net asset value, they may also look to the Handbook for guidance on the measurement of fair value. The fair value principles articulated in the Handbook can be applied by investment funds when valuing assets and liabilities.

**9.3 Meaning of Fair Value** – The Handbook defines fair value as being the amount of the consideration that would be agreed upon in an arm’s length transaction between knowledgeable, willing parties who are under no compulsion to act. Accordingly, fair value should not reflect the amount that would be received or paid in a forced transaction, involuntary liquidation or distress sale.

#### **9.4 Determination of Fair Value**

- (1) A market is generally considered active when quoted prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices reflect actual and regularly occurring market transactions on an arm’s length basis.
- (2) A market is not considered to be active, and prices derived from it may be unreliable for valuation purposes, if, at the time the

investment fund begins to calculate its net asset value, any of the following circumstances are present:

- markets on which portfolio securities are principally traded closed several hours earlier (e.g. some foreign markets may close as much as 15 hours before the time the investment fund begins to calculate its net asset value)
- trading is halted
- events occur that unexpectedly close entire markets (e.g. natural disasters, power blackouts, public disturbances, or similar major events)
- markets are closed due to scheduled holidays
- the security is illiquid and trades infrequently.

If an investment fund manager determines that an active market does not exist for a security, the manager should consider whether the last available quoted market price is representative of fair value. If a significant event (i.e. one that may impact the value of the portfolio security) has occurred between the time the last quoted market price was established and the time the investment fund begins to calculate its net asset value, the last quoted market price may not be representative of fair value.

- (3) Whether a particular event is a significant event for a security depends on whether the event may affect the value of the security. Generally, significant events fall into one of three categories: (i) issuer specific events – e.g. the resignation of the CEO or an after-hours earnings announcement, (ii) market events – e.g. a natural disaster, a political event, or a significant governmental action like raising interest rates, and (iii) volatility events – e.g. a significant movement in North American equity markets that may directly impact the market prices of securities traded on overseas exchanges.

Whether a market movement is significant is a matter to be determined by the manager through the establishment of tolerance levels which it may choose to base on, for example, a specified intraday and/or interday percentage movement of a specific index, security or basket of securities. In all cases, the appropriate triggers should be determined based on the manager's own due diligence and understanding of the correlations relevant to each investment fund's portfolio.

**9.5 Fair Value Techniques** – The CSA do not endorse any particular fair value technique as we recognize that this is a constantly evolving process. However, whichever technique is used, it should be applied consistently for a portfolio security throughout the fund complex and reviewed for reasonableness on a regular basis.

**9.6 Valuation Policies and Procedures** – An investment fund’s valuation policy should be approved by the manager’s board of directors. The policies and procedures should describe the process for monitoring significant events or other situations that could call into question whether a quoted market price is representative of fair value. They should also describe the methods by which the manager will review and test valuations to evaluate the quality of the prices obtained as well as the general functioning of the valuation process. The manager should also consider whether its valuation process is a conflict of interest matter as defined in NI 81-107.”.

8. Section 10.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by

- (a) striking out “of all types” in subsection (2); and
- (b) repealing subsection (4) and substituting the following:

“While brokerage commissions and other portfolio transaction costs are expenses of an investment fund for accounting purposes, they are not included in the MER. These costs are reflected in the trading expense ratio.”.

9. Appendix B of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by

- (a) striking out the title “CONTACT ADDRESSES FOR FILING OF NOTICES” and substituting the title “CONTACT ADDRESSES”;
- (b) in the address for the Alberta Securities Commission, striking out “Attention: Director, Capital Markets” and substituting “Attention: Corporate Finance”;
- (c) striking out the address for the Manitoba Securities Commission and substituting the following:

“Manitoba Securities Commission  
500 – 400 St. Mary Avenue  
Winnipeg, Manitoba  
R3C 4K5  
Attention: Corporate Finance”; and

- (d) striking out “Securities Commission of Newfoundland and Labrador” and substituting “Newfoundland and Labrador Securities Commission”.
10. This Instrument comes into force on September 8, 2008.

**NATIONAL INSTRUMENT 81-101**  
***MUTUAL FUND PROSPECTUS DISCLOSURE***  
**FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM**  
**AMENDMENT INSTRUMENT**

1. Form 81-101F2 *Contents of Annual Information Form* is amended in Item 6 by adding the following after subsection (1):

“(1.1) If the valuation principles and practices established by the manager differ from Canadian GAAP, describe the differences.”.

2. This Instrument comes into force on September 8, 2008.

**NATIONAL INSTRUMENT 81-102**  
***MUTUAL FUNDS***  
**AMENDMENT INSTRUMENT**

1. Section 1.1 of NI 81-102 *Mutual Funds* is amended by adding the following after the definition of “mutual fund conflict of interest reporting requirements”:

““net asset value” means the value of the total assets of the investment fund less the value of the total liabilities of the investment fund, as at a specific date, determined in accordance with Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.”

2. Section 9.4 of NI 81-102 *Mutual Funds* is amended by repealing subsection (3).
3. Section 10.4 of NI 81-102 *Mutual Funds* is amended by repealing subsection (4).
4. This Instrument comes into force on September 8, 2008.

**AMENDMENTS TO  
COMPANION POLICY 81-102CP-  
TO NATIONAL INSTRUMENT 81-102 *MUTUAL FUNDS***

1. Section 2.15 of Companion Policy 81-102CP *Mutual Funds* is amended by striking out “(which include a statement of portfolio transactions)” in subsection (4).
2. This Instrument comes into force on September 8, 2008.

**NATIONAL INSTRUMENT 41-101**  
**GENERAL PROSPECTUS REQUIREMENTS**  
**FORM 41-101F2 INFORMATION REQUIRED IN AN**  
**INVESTMENT FUND PROSPECTUS**

**AMENDMENT INSTRUMENT**

1. Form 41-101F2 *Information Required in an Investment Fund Prospectus* is amended in Item 20.2 by
  - (a) striking out “and” at the end of subsection (a); and
  - (b) adding the following after subsection (a):

“(a.1) If the valuation principles and practices established by the manager differ from Canadian GAAP, describe the differences, and”.
2. This Instrument comes into force on September 8, 2008.