

CSA Notice and Request for Comment
Proposed Amendments to
National Instrument 41-101 *General Prospectus Requirements*,
National Instrument 81-101 *Mutual Fund Prospectus Disclosure*,
and
Related Proposed Consequential Amendments and Changes
and
Consultation Paper on a Base Shelf Prospectus Filing Model for
Investment Funds in Continuous Distribution

Modernization of the Prospectus Filing Model for Investment Funds

January 27, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are proposing to modernize the prospectus filing model for investment funds, with a particular focus on investment funds in continuous distribution. The CSA's proposed modernization will reduce unnecessary regulatory burden of the current prospectus filing requirements under securities legislation without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The fund facts document (**Fund Facts**) and the ETF facts document (**ETF Facts**) will continue to be filed annually and will continue to be delivered to investors under the current delivery requirements.

We are seeking feedback on a staged approach to implementation of a new prospectus filing model for investment funds in continuous distribution:

- **Stage 1** – As a first step, we are seeking feedback on proposed amendments that would reduce the frequency of prospectus filings by extending the lapse date period for pro forma prospectuses filed by investment funds in continuous distribution. The end result would be to shift the current prospectus renewal cycle from annual to biennial (every 2 years). There will be no change to when Fund Facts and the ETF Facts must be filed and delivered. The adoption of this change will be contingent on not having a negative impact on filing fees. Additionally, we are proposing to repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus (**90-day rule**) for all investment funds.

- **Stage 2** – In the longer term, we are also contemplating the possibility of introducing a new base shelf prospectus filing model that could apply to all investment funds in continuous distribution. We have developed a conceptual framework for this model based on an adaptation of the current shelf prospectus system and are seeking specific input on the viability of this framework.

As part of Stage 1, we are publishing, for a 90-day comment period, proposed amendments to

- National Instrument 41-101 *General Prospectus Requirements (NI 41-101)*, and
- National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)*,

proposed consequential amendments to

- National Instrument 81-106 *Investment Fund Continuous Disclosure*,

and proposed consequential changes to

- Companion Policy 41-101 *General Prospectus Requirements (41-101CP)*, and
- Companion Policy 81-101 *Mutual Fund Prospectus Disclosure (81-101CP)*

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

As part of Stage 2, we are publishing, for a 90-day comment period, a consultation paper (the **Consultation Paper**) to provide a forum for discussing possible adaptations to the shelf prospectus filing model that could apply to all investment funds in continuous distribution. Stakeholder comments on the Consultation Paper will be used to formulate appropriate adaptations to the shelf prospectus model for use by all investment funds in continuous distribution. Any adaptations drafted as part of Stage 2 will be subject to further consultation prior to implementation.

We encourage commenters to provide any data and information that could help us evaluate the effects of modernizing the prospectus filing model for investment funds on investor protection. In addition to the general feedback on the Proposed Amendments and the Consultation Paper, we have also set out specific questions for stakeholders to consider.

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

www.besc.bc.ca
www.asc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca
www.osc.ca
www.lautorite.qc.ca
www.fcnb.ca
nssc.novascotia.ca

Substance and Purpose

The purpose of the Proposed Amendments is to modernize the prospectus filing model for investment funds without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The current prospectus filing model was based on an investment fund prospectus being filed every 12 months in order to remain in continuous distribution and the prospectus being delivered to investors in connection with a purchase. With the introduction of the Fund Facts and the ETF Facts as summary disclosure documents that are now delivered to investors instead of the prospectus, investors are provided with key information about a fund in a simple, accessible and comparable format. The Fund Facts and ETF Facts are required to be filed annually and provide disclosure that changes from year to year. In contrast, a prospectus is also filed annually but the disclosure in the prospectus does not generally change materially from year to year.

A prospectus must contain full, true and plain disclosure of all material facts relating to the securities being distributed. Where material changes in respect of a mutual fund take place prior to that fund's next prospectus renewal (e.g., fee changes, changes in investment objectives or fund mergers), a fund must file a material change report and also amend its prospectus, Fund Facts or ETF Facts to reflect the new information, if applicable. These requirements help ensure that the mutual fund's continuous disclosure and offering documents are kept up to date on a continuous basis so that prospective investors have access to up-to-date disclosure to inform their investment decision.

As part of Stage 1, the Proposed Amendments will

- extend the lapse date for investment funds in continuous distribution from 12 months to 24 months, which will allow investment funds in continuous distribution to file their pro forma prospectuses biennially, rather than annually, and
- repeal the 90-day rule for all investment funds.

Implementation of the Proposed Amendments will better reflect the shift from the delivery of the prospectus to the delivery of the Fund Facts and ETF Facts to investors and reduce unnecessary regulatory burden imposed by the current prospectus filing requirements under securities legislation on investment funds.

Background

The Proposed Amendments are part of Stage 1 of the CSA's proposed modernization of the prospectus filing model for investment funds. The Proposed Amendments are also in response to comments received on the Project RID Consultation (as defined below), as well as the OSC Burden Reduction Consultation (as defined below).

On September 12, 2019, the CSA published for consultation Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1, as part of the CSA's efforts to reduce regulatory burden for investment fund issuers (**Project RID Consultation**). On October 7, 2021, the CSA

published final amendments for Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1 (**Project RID amendments**).

On January 14, 2019, the Ontario Securities Commission (**OSC**) published OSC Staff Notice 11-784 *Burden Reduction* to seek suggestions from stakeholders on ways to further reduce unnecessary regulatory burden (**OSC Burden Reduction Consultation**).

The Current Prospectus Filing Model for Investment Funds in Continuous Distribution

The prospectus is the source of all material information about an investment fund and the prospectus renewal process ensures that information is kept current and up-to-date. Securities legislation requires an investment fund to file a new prospectus every 12 months in order to remain in continuous distribution. *A pro forma* prospectus must be filed not less than 30 days prior to the lapse date of the previous prospectus. A final prospectus must then be filed not later than 10 days following the lapse date of the previous prospectus and a receipt for the final prospectus must be obtained within 20 days following the lapse date of the previous prospectus.

For an annual prospectus renewal for conventional mutual funds, the following prospectus and related documents must be prepared and filed: the simplified prospectus (**SP**), Fund Facts, material contracts not previously filed, personal information forms where required, blacklines of the SP and Fund Facts from the latest filed versions, annual and interim financial statements with a signed auditor's report, an auditor's consent letter, and French translations of the SP and Fund Facts, if the documents are also filed in Quebec. For an annual prospectus renewal for exchange-traded mutual funds (**ETFs**), the same documents must be prepared and filed, except ETFs prepare and file a long-form prospectus instead of an SP, and the ETF Facts instead of a Fund Facts.

With respect to the prospectus filing model for investment funds in continuous distribution, stakeholders commented that the model should be modernized because the annual prospectus filing requirement is an unnecessary regulatory burden for investment funds in continuous distribution. Investment fund managers spend significant internal and external resources on the preparation and filing of annual prospectus and related documents, which generally do not change materially from year to year. Some stakeholders suggested reducing the frequency of prospectus renewal by extending the prospectus lapse date to allow for prospectuses to be renewed every other year. Other stakeholders suggested that investment funds in continuous distribution should be allowed to use the shelf prospectus system available to public companies. Stakeholders noted that investors rely on the Fund Facts or the ETF Facts, rather than the prospectus, for key information about a fund to inform their investment decision. Stakeholders also noted that the continuous disclosure regime in National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)* ensures that investors will continue to be informed of material changes and prospectus amendments in a timely manner.

The Current 90-Day Prospectus Filing Requirement for Investment Funds

Securities legislation requires that an investment fund issuer file a final prospectus no more than 90 days after the date of the receipt for the preliminary prospectus. If the investment fund issuer is

unable to meet the 90-day filing deadline, then an exemptive relief application must be filed to seek an extension of the 90-day rule.

The 90-day rule was implemented to ensure that corporate issuers are not marketing by means of preliminary prospectuses containing outdated information, particularly financial statements. Stakeholders commented that while the 90-day rule was also adopted for investment funds, investment funds generally do not market by means of preliminary prospectuses. Also, preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days. Stakeholders noted that there is no investor protection rationale for the 90-day rule for investment funds, unlike for corporate issuers. Some stakeholders suggested that eliminating the 90-day rule for investment funds would help reduce regulatory burden as investment fund issuers would no longer be required to file an application for exemptive relief in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. Such exemptive relief is routinely granted to investment fund issuers.

Summary of the Proposed Amendments

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

The Proposed Amendments would extend the lapse date for investment funds in continuous distribution from 12 months to 24 months.

The Proposed Amendments would result in the following changes:

(i) Cost Savings

The Proposed Amendments would extend the lapse date for investment funds in continuous distribution from 12 months to 24 months. We anticipate that investment funds in continuous distribution would save the time, effort and costs associated with a prospectus filing, including external and internal resources, every other year.

(ii) Biennial Prospectus Filing

The Proposed Amendments would allow prospectuses and related documents for investment funds in continuous distribution to be filed biennially, instead of annually.

(iii) Prospectus Amendments

The Proposed Amendments would require every prospectus amendment to be filed as an amended and restated prospectus. Prospectus amendments would no longer be made in the form of a “slip sheet” amendment because the number of “slip sheet” amendments associated with a prospectus would increase over a 2-year period relative

to a 1-year period, thereby making it more difficult to trace through how disclosure pertaining to a particular fund has been modified.

(iv) Filing Processes

In terms of filing processes, for the years where a “renewal” prospectus is not being filed, a Fund Facts or ETF Facts, as applicable, would be filed as (i) a “Year 2 Fund Facts – Private” or “Year 2 ETF Facts – Private”, respectively, where there are material changes to the disclosure from the most recently filed Fund Facts or ETF Facts, or (ii) a “Year 2 Fund Facts – Auto Public” or “Year 2 ETF Facts – Auto Public”, respectively, if there are no material changes to the disclosure from the most recently filed Fund Facts or ETF Facts.

(A) Private Filings

The filing of a “Year 2 Fund Facts – Private” or “Year 2 ETF Facts – Private” would be filed with a blackline showing changes from the most recently filed version along with a prospectus certificate and would trigger a “prospectus review process” of any material changes made to the disclosure since the most recently filed Fund Facts or ETF Facts, respectively, which would conclude with the issuance of a receipt in connection with the filing. If the material change(s) relate to the information contained in the corresponding prospectus, then a blackline of the prospectus would also be filed, along with any changes to personal information forms, if applicable.

(B) Auto-Public Filings

Where there are no material changes since the most recently filed Fund Facts or ETF Facts and changes are limited to updating the variable data (i.e., date, top 10 holdings, investment mix, risk rating, past performance, MER, TER and fund expenses), the new filing categories of “Year 2 Fund Facts – Auto Public” and “Year 2 ETF Facts – Auto Public” can be used and the document will be made public automatically without being subject to a prospectus review process. Filings under “Year 2 Fund Facts – Auto Public” and “Year 2 ETF Facts – Auto Public” would be required to be filed with a blackline showing changes from the most recently filed version of the Fund Facts or ETF Facts, as applicable, but would not be required to be filed with a certificate.

(v) Local Fee Rule Changes

By moving to a biennial filing model without changes to local fee rules, there will likely be an impact on fees collected in connection with prospectus filings. We anticipate that affected CSA jurisdictions will make concurrent changes to their fee rules to ensure that the Proposed Amendments will not have a negative impact on filing fees. In some CSA jurisdictions, public consultation on changes to local fee rules may also be required. It is contemplated that local fee rules will be changed

such that current filing fees for prospectuses for investment funds in continuous distribution will instead be replaced with filing fees for the Fund Facts and ETF Facts. For additional clarity, filing fees for the Fund Facts and ETF Facts in the years when a “renewal” prospectus is not being filed will be the same as in the years when a “renewal” prospectus is being filed.

The Lapse Date Extension would not affect the following:

(i) Prospectus Form Requirements

The Proposed Amendments would not require amendments to the form requirements for prospectus related disclosure documents for investment funds in continuous distribution.

As part of the CSA’s efforts to reduce regulatory burden for investment fund issuers, the Project RID amendments consolidate annual information form disclosure into an SP to provide more streamlined disclosure for investors.

(ii) Fund Facts and ETF Facts Requirements

The Proposed Amendments would not affect the form requirements or the filing requirements for the Fund Facts or the ETF Facts. The Funds Facts or ETF Facts, as applicable, would continue to be filed annually in order to ensure that variable information in those documents is not stale. On this, basis, the Fund Facts or ETF Facts would be filed by the 12-month anniversary of the investment fund’s most recently filed prospectus.

The Proposed Amendments would not affect the Fund Facts delivery requirement or the ETF Facts delivery requirement. The Fund Facts or ETF Facts must be delivered to purchasers in accordance with securities legislation.

(iii) Material Changes

The Proposed Amendments would not affect the reporting requirements for material changes, or the need to update the prospectus for investment funds in continuous distribution to reflect any material changes. Material changes will continue to be reported by way of material change reports, in accordance with NI 81-106.

(iv) Continuous Disclosure Documents

The Proposed Amendments would not affect the filing requirement or delivery requirement of an investment fund’s annual financial statements and interim financial reports, in accordance with NI 81-106.

Similarly, the Proposed Amendments would not affect the filing requirement or delivery requirement of an investment fund’s annual management reports of fund

performance and interim management reports of fund performance, in accordance with NI 81-106.

(v) Investor Rights

The Proposed Amendments would not affect investor rights relating to liability for misrepresentation in a prospectus. For example, for a conventional mutual fund, the following documents will continue to be incorporated by reference into the simplified prospectus:

- the most recently filed Fund Facts,
- the most recently filed annual financial statements,
- any interim financial reports filed after the annual financial statements,
- the most recently filed management report of fund performance, and
- any interim management report of fund performance filed after the annual management report of fund performance.

(vi) Certificate Pages

The Proposed Amendments would not affect the certificate pages filed with a prospectus or a prospectus amendment. The certificate pages filed with a prospectus or a prospectus amendment includes all documents incorporated by reference and are effective until the next prospectus or prospectus amendment filing.

(b) Repeal of the 90-Day Rule for Investment Funds

The Proposed Amendments would repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus for investment funds.

Impact on Investors

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

Although we are proposing to extend the lapse date period, to the extent that an investment fund in continuous distribution does experience a significant change, the material change reporting requirements in NI 81-106 would apply and there would be an obligation to update any affected prospectus disclosure by way of an amendment. As a result, shifting to a biennial prospectus filing model would not affect the currency or accuracy of the information available to investors. In addition, the Proposed Amendments would not affect the filing and delivery requirements of the Fund Facts and the ETF Facts, which provide key information about a fund for investors to make an informed investment decision.

(b) Repeal of the 90-Day Rule for Investment Funds

As preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days, eliminating the 90-day rule does not

raise any investor protection issues. The Proposed Amendments will help reduce regulatory burden as investment fund issuers would no longer be required to file an exemptive relief application in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt.

Anticipated Costs and Benefits

The prospectus regime for investment funds is cumbersome and the filing process is repetitive and frequent. Prospectuses must be filed annually even when there are no substantive changes in content. Any lapse date extension must be effected by way of exemptive relief, which results in unnecessary costs for the affected issuer.

Overall, we are of the view that the potential benefits of the Proposed Amendments outweigh the costs of making them. We do not expect investment fund managers will incur any material incremental costs to comply with the Proposed Amendments.

(a) Lapse Date Extension for Investment Funds in Continuous Distribution

The Proposed Amendments will benefit both investors and investment funds in continuous distribution by reducing the unnecessary regulatory burden of the current prospectus filing requirements under securities legislation. Investors will benefit from lower fund expenses as a result of shifting to biennial prospectus filing. Investment funds in continuous distribution will benefit as a result of the time, effort and cost savings of biennial prospectus filing.

(b) Repeal of the 90-Day Rule for Investment Funds

The Proposed Amendments will also benefit investment funds by reducing the unnecessary regulatory burden of filing exemptive relief applications in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt.

Local Fee Changes

As explained above, changes to local fee rules will also be required to ensure that there is not a negative impact on filing fees in each CSA jurisdiction. In some CSA jurisdictions, public consultation will be required on local fee rule changes. Given that fee rule changes are local matters, it is expected that the necessary processes in each jurisdiction would run separately from this consultation and any required changes to local fee rules would be finalized prior to the effective date of the Proposed Amendments.

Transition

There will not be a transition period prior to the effective date of the Proposed Amendments.

Request for Comments

Please submit your comments on the Proposed Amendments, the Consultation Paper, and specifically, the Consultation Questions in this Notice. 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.

Deadline for Comments

Please submit your comments in writing on or before April 27, 2022. If you are not sending your comments by email, please send a USB flash drive containing the submissions (in Microsoft Word format).

Where to Send Your Comments

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
Email: comments@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
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Fax: (514) 864-8381
Email: consultation-en-cours@lautorite.qc.ca

Content of Annexes

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

- Annex A: Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*
- Annex B: Proposed Changes to Companion Policy 41-101 *General Prospectus Requirements*
- Annex C: Proposed Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*
- Annex D: Proposed Changes to Companion Policy 81-101 *Mutual Fund Prospectus Disclosure*
- Annex E: Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*
- Annex F: Specific Consultation Questions Relating to the Lapse Date Extension
- Annex G: Consultation Paper
- Annex H: Local Matters

Questions

Please refer your questions to any of the following:

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ANNEX A

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

1. *National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.*
2. *Subsection 2.3(1) is amended by adding “, other than an investment fund,” after “An issuer”.*
3. *Subsection 2.3(1.1) is amended by adding “, other than an investment fund,” after “An issuer”.*
4. *Subsection 2.3 (1.2) is amended by adding “, other than an investment fund,” after “If an issuer”.*
5. *The following Part is added:*

PART 3D: FILING OF ETF FACTS DOCUMENTS WITHOUT A PROSPECTUS

3D.1 Required documents for filing an ETF facts document – An ETF that files an ETF facts document without a preliminary, pro forma or final prospectus must

- (a) file, with an ETF facts document for each class or series of securities of the ETF, the following documents if there is a material change to the ETF in respect of the disclosure in the most recently filed ETF facts document:
 - (i) an amendment to the corresponding prospectus, certified in accordance with Part 5;
 - (ii) a copy of any material contract, and any amendments to a material contract, that have not previously been filed, and
- (b) at the time an ETF facts document for each class or series of securities of the ETF is filed, deliver or send to the securities regulatory authority
 - (i) a copy of the ETF facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the most recently filed ETF facts document, and
 - (ii) if there is a material change to the ETF in respect of the disclosure in the most recently filed ETF facts document,
 - (A) if an amendment to the prospectus is filed, a copy of the prospectus blacklined to show changes, including the text of deletions, from the

most recently filed prospectus, and

- (B) details of any changes to the personal information form required to be delivered under subparagraph 9.1(1)(b)(ii), in the form of the personal information form, since the delivery of that information in connection with the filing of the prospectus of the ETF or another ETF managed by the manager..

6. Section 6.1 is amended by adding the following subsection:

(3.1) Despite subsection (1), an amendment to a prospectus of an ETF must be an amended and restated prospectus..

7. Paragraph 10.1(2)(a) is amended by replacing “or the amendment to the final prospectus” with “, the amendment to the final prospectus or the ETF facts document referred to in section 3D.1”.

8. Section 17.2 is amended to add the following subsection:

(1.1) This section does not apply to an ETF..

9. The following sections are added after section 17.2:

17.3 Lapse date of an ETF – (1) This section applies only to an ETF.

- (2) In this section, “lapse date” means, with reference to the distribution of a security that has been qualified under a prospectus, the date that is 24 months after the date of the most recent final prospectus relating to the security.
- (3) An ETF must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the ETF files a new prospectus that complies with securities legislation and a receipt for that new prospectus is issued by the regulator or, in Québec, the securities regulatory authority.
- (4) Despite subsection (3), a distribution may be continued for a further 24 months after a lapse date if
 - (a) the ETF files an ETF facts document for each class or series of securities of the ETF no earlier than 13 months and no later than 12 months before the lapse date of the previous prospectus,
 - (b) the ETF delivers a pro forma prospectus not less than 30 days before the lapse date of the previous prospectus,
 - (c) the ETF files a new final prospectus not later than 10 days after the lapse date of the previous prospectus, and

- (d) a receipt for the new final prospectus is issued by the regulator or, in Québec, the securities regulatory authority within 20 days after the lapse date of the previous prospectus.
- (5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.
- (6) Subject to any extension granted under subsection (7), if a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.
- (7) The regulator or, in Québec, the securities regulatory authority may, on an application of an ETF, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

17.4 Lapse date of an ETF – Ontario – In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a prospectus for an ETF is extended to the date 24 months from the date of issuance of the receipt in accordance with section 17.3..

10. This Instrument comes into force on •.

ANNEX B

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

1. *Companion Policy 41-101 General Prospectus Requirements is changed by this Document.*
2. *Part 5A of the Companion Policy is changed by adding the following section:*

5A.6 Filing of an ETF facts document without a prospectus – An ETF facts document that is filed without a prospectus under section 3D.1 of the Instrument should be filed under the category of “Year 2 ETF Facts – Auto Public” or “Year 2 ETF Facts – Private”. An ETF facts document filed under the category of “Year 2 ETF Facts – Auto Public” should only include the following changes from the most recently filed ETF facts document:

- (a) the date of the document (Item 1(f) of Part I of Form 41-101F4)
- (b) the total value of the ETF (Item 2 of Part I of Form 41-101F4)
- (c) the MER (Item 2 of Part I and Item 1.3(2) of Part II of Form 41-101F4)
- (d) the average daily volume (Item 2(2) of Part I of Form 41-101F4)
- (e) the number of days traded (Item 2(2) of Part I of Form 41-101F4)
- (f) the pricing information (Item 2(3) of Part I of Form 41-101F4)
- (g) the top 10 investments (Item 3(5) of Part I of Form 41-101F4)
- (h) the investment mix (Item 3(6) of Part I of Form 41-101F4)
- (i) the risk rating (Item 4(2) of Part I of Form 41-101F4)
- (j) the past performance (Item 5 of Part I of Form 41-101F4)
- (k) the TER (Item 1.3(2) of Part II of Form 41-101F4), and
- (l) the ETF expenses (Item 1.3(2) of Part II of Form 41-101F4).

If there is a change to the most recently filed ETF facts document that would be considered to be a material change under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, then the Year 2 ETF Facts should be filed under the category of “Year 2 ETF Facts – Private”, together with the documents required to be filed under section 3D.1 of the Instrument and section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

3. This change become effective on ●.

ANNEX C

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

1. *National Instrument 81-101 Investment Funds is amended by this Instrument.*
2. *Subsection 2.1(1) is amended by*
 - (a) *deleting “and” at the end of subparagraph (d)(iii),*
 - (b) *replacing “.” at the end of subparagraph (e) with “; and”, and*
 - (c) *adding the following paragraph:*
 - (f) that files a fund facts document without a simplified prospectus must file the fund facts document in the form of a fund facts document prepared in accordance with Form 81-101F3 for each class or series of securities of the mutual fund..
3. *Subsection 2.1(2) is repealed.*
4. *Section 2.2 is amended by*
 - (a) *replacing subsection (1) with the following:*
 - (1) An amendment to a simplified prospectus must be an amended and restated simplified prospectus,,
 - (b) *repealing subsection (2), and*
 - (c) *replacing subsection (3) with the following:*
 - (3) An amendment to a simplified prospectus must be identified and dated as follows: “Amended and Restated [*identify document*] dated [*insert date of amendment*], amending and restating [*identify document*] dated [*insert date of document being amended*].”.
5. *Section 2.3 is amended by*
 - (a) *deleting “if the amendment to the simplified prospectus is in the form of an amended and restated simplified prospectus,” from subparagraph (4)(b)(i), and*
 - (b) *adding the following subsection:*

- (5.2) A mutual fund that files a fund facts document without a preliminary, pro forma or simplified prospectus must
- (a) file, with a fund facts document for each class or series of securities of the mutual fund, the following documents if there is a material change to the mutual fund in respect of the disclosure in the most recently filed fund facts document:
 - (i) an amendment to the corresponding simplified prospectus, certified in accordance with Part 5.1;
 - (ii) a copy of any material contract, and any amendment to a material contract that have not previously been filed, and
 - (b) at the time a fund facts document for each class or series of securities of the mutual fund is filed, deliver or send to the securities regulatory authority
 - (i) a copy of the fund facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the most recently filed fund facts document, and
 - (ii) if there is a material change to the mutual fund in respect of the disclosure in the most recently filed fund facts document,
 - (A) if an amendment to the simplified prospectus is filed, a copy of the simplified prospectus blacklined to show changes, including the text of deletions, from the most recently filed simplified prospectus, and
 - (B) details of any changes to the personal information required to be delivered under subparagraph (1)(b)(ii), (2)(b)(iv) or (3)(b)(iii), in the form of the personal information form and authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager..

6. Section 2.5 is replaced with the following:

2.5 Lapse Date – (1) In this section, “lapse date” means, with reference to the distribution of a security that has been qualified under a simplified prospectus, the date that is 24 months after the date of the most recent simplified prospectus relating to the security.

- INCLUDES COMMENT LETTERS RECEIVED
- (2) A mutual fund must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the mutual fund files a new simplified prospectus that complies with securities legislation and a receipt for that new simplified prospectus is issued by the regulator or, in Québec, the securities regulatory authority.
 - (3) Despite subsection (2), a distribution may be continued for a further 24 months after a lapse date if
 - (a) the mutual fund files a fund facts document for each class or series of securities of the mutual fund no earlier than 13 months and no later than 12 months before the lapse date of the previous simplified prospectus,
 - (b) the mutual fund delivers a *pro forma* simplified prospectus not less than 30 days before the lapse date of the previous simplified prospectus,
 - (c) the mutual fund files a new final simplified prospectus not later than 10 days after the lapse date of the previous simplified prospectus, and
 - (d) a receipt for the new final simplified prospectus is issued by the regulator or, in Québec, the securities regulatory authority within 20 days after the lapse date of the previous simplified prospectus.
 - (4) The continued distribution of securities after the lapse date does not contravene subsection (2) unless and until any of the conditions of subsection (3) are not complied with.
 - (5) Subject to any extension granted under subsection (6), if a condition in subsection (3) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (3) within 90 days after the purchaser first became aware of the failure to comply with the condition.
 - (6) The regulator or, in Québec, the securities regulatory authority may, on an application of a mutual fund, extend, subject to such terms and conditions as it may impose, the times provided by subsection (3) where in its opinion it would not be prejudicial to the public interest to do so..
7. ***The following section is added after section 2.5:***
- 2.5.1 Lapse Date – Ontario** – In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a simplified prospectus is extended to the date 24 months from the date of issuance of the receipt in accordance with section 2.5..
8. This Instrument comes into force on •.

ANNEX D

**PROPOSED CHANGES TO
COMPANION POLICY 81-101 MUTUAL FUND PROSPECTUS DISCLOSURE**

1. *Companion Policy 81-101 Mutual Fund Prospectus Disclosure is changed by this Document.*
2. *Part 4.1 of the Companion Policy is changed by adding the following section:*

4.1.6 Filing of a fund facts document without a prospectus – A fund facts document that is filed without a prospectus under subsection 2.3(5.2) of the Instrument should be filed under the category of “Year 2 Fund Facts – Auto Public” or “Year 2 Fund Facts – Private”. A fund facts document filed under the category of “Year 2 Fund Facts – Auto Public” should only include the following changes from the most recently filed fund facts document:

- (a) the date of the document (Item 1(d) of Part I of Form 81-101F3)
- (b) the total value of the fund (Item 2 of Part I of Form 81-101F3)
- (c) the MER (Item 2 of Part I and Item 1.3(2) of Part II of Form 81-101F3)
- (d) the top 10 investments (Item 3(4) of Part I of Form 81-101F3)
- (e) the investment mix (Item 3(5) of Part I of Form 81-101F3)
- (f) the risk rating (Item 4(2) of Part I of Form 81-101F3)
- (g) the past performance (Item 5 of Part I of Form 81-101F3)
- (h) the TER (Item 1.3(2) of Part II of Form 81-101F3), and
- (i) the fund expenses (Item 1.3(2) of Part II of Form 81-101F3).

If there is a change to the most recently filed fund facts document that would be considered to be a material change under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, then the Year 2 Fund Facts should be filed under the category of “Year 2 Fund Facts – Private”, together with the documents required to be filed under subsection 2.3(5.2) of the Instrument and section 11.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

3. This change become effective on •.

ANNEX E

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

1. *National Instrument 81-106 Investment Funds Continuous Disclosure is amended by this Instrument.*
2. *Section 9.2 is amended by renumbering it as subsection 9.2(1) and by adding the following subsection:*
 - (2) Subsection (1) does not apply to an investment fund in continuous distribution that, during the 12 months preceding its financial year end, has filed
 - (a) an ETF facts document under section 3D.1 of National Instrument 41-101 *General Prospectus Requirements*, or
 - (b) a fund facts document under subsection 2.3(5.2) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.
3. This Instrument comes into force on •.

ANNEX F**SPECIFIC CONSULTATION QUESTIONS RELATING TO
THE LAPSE DATE EXTENSION**

1. Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.
2. Would cost savings from the Lapse Date Extension be passed onto investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.
3. Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed investment decisions.
4. Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of “slip sheet” amendments make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.

ANNEX G

CONSULTATION PAPER ON A BASE SHELF PROSPECTUS FILING MODEL FOR INVESTMENT FUNDS IN CONTINUOUS DISTRIBUTION

Introduction

This Consultation Paper provides an overview of our Stage 2 proposal and invites stakeholders to provide responses to questions to help shape the proposal, ultimately determining whether we should publish for comment proposed amendments aimed at introducing a base shelf prospectus filing model that could apply to all investment funds in continuous distribution. Such a base shelf prospectus filing model would be based on an adaptation of the shelf prospectus system provided its benefits to market participants would outweigh its costs, including consideration of any adverse impact on the protection of investors.

Current Lapse Date Requirements and the Proposed Amendments

An investment fund in continuous distribution will file a *pro forma* long form prospectus to qualify those distributions. Under current Canadian securities legislation, the *pro forma* long form prospectus will lapse in just over 12 months from the date a receipt is issued for it. If the Proposed Amendments are adopted, the *pro forma* long form prospectus will lapse in just over 24 months from the date a receipt is issued for it. The annual or biennial lapse of a *pro forma* prospectus causes investment funds to incur the time and costs of preparing a renewal prospectus that is subject to pre-receipt regulatory review even though much of the disclosure remains unchanged year-to-year.

Base Shelf Prospectus

If we proceed to Stage 2, we would propose a new rule to permit an investment fund to qualify continuous distributions of its securities with a base shelf prospectus that is subject to a lapse date greater than 24 months (a **Base Shelf Prospectus**).

The Stage 2 proposal will also set out Base Shelf Prospectus requirements to ensure no adverse impact on investor protection. For example, material facts that are not disclosed in a Base Shelf Prospectus should be updated through the filing of either: (i) an amendment to the Base Shelf Prospectus; or (ii) a document that is incorporated by reference into the Base Shelf Prospectus. Moreover, a person or company required to sign a prospectus certificate may be required to provide a forward-looking certificate similar to those required under the base shelf prospectus system set out in Part 9 or Appendix A of National Instrument 44-102 *Shelf Distributions* (NI 44-102).

The base shelf prospectus regime under NI 44-102 provides an example of how to ensure a prospectus discloses all material facts and how to impose liability on any person or company required to certify that the prospectus discloses all material facts at the time of a distribution. These two principles then support the adoption of Part 2 of NI 44-102, which provides that the lapse date for a base shelf prospectus is the date 25 months from the date of issuance of the receipt. NI 44-

102 further sets out the prospectus requirements in respect of a base shelf prospectus, shelf prospectus supplements (which are incorporated by reference into the base shelf prospectus), and any documents incorporated by reference into the base shelf prospectus. NI 44-102 further sets out the certification requirements so they may be forward-looking.

For investment funds in continuous distribution, the Base Shelf Prospectus could have a lapse date beyond 25 months. To ensure investors continue to receive information necessary to make informed investment decisions, disclosure documents like the Fund Facts and ETF Facts that are required to be delivered to purchasers *in lieu* of a prospectus, would continue to be required to be updated annually and delivered. These documents would be incorporated by reference into the Base Shelf Prospectus and, as a result of forward-looking certification, would be subject to primary market liability in the event of a misrepresentation.

On September 12, 2019, we published for comment,¹ among other things, a proposal to reduce the regulatory burden for investment fund issuers by amending existing rules to remove redundant information in selected disclosure documents. A Base Shelf Prospectus regime would also build on the September 2019 proposal by identifying items within the consolidated disclosure that does not need to be updated annually. Disclosure that does need to be updated annually would be moved into a document that would be incorporated by reference into the Base Shelf Prospectus.

Consultation Questions

We welcome your comments on the issues outlined in this Consultation Paper. In addition, we are also interested in your views and comments on the following specific questions:

1. Please identify the disclosure required in a simplified prospectus (SP) or an ETF prospectus that is unlikely to change year-to-year.
 - (a) We think this disclosure should be subject to regulatory review before a prospectus receipt is issued. Do you agree? Please explain.
 - (b) We think it would be appropriate to require an amended and restated Base Shelf Prospectus to be filed and be subject to regulatory review before a receipt for the amended and restated Base Shelf Prospectus is issued if there is a change to this disclosure. Do you agree? Please explain.
 - (c) Would it be appropriate for Part A of an SP under the Project RID amendments to form the equivalent of a base shelf prospectus for a group of investment funds under a Base Shelf Prospectus regime? Please explain.
 - (d) Would it be appropriate for Part B of an SP under the Project RID amendments to form the equivalent of a prospectus supplement establishing an offering program for an investment fund under a Base Shelf Prospectus regime? Please explain.

¹ https://www.osc.ca/sites/default/files/pdfs/irps/ni_20190912_41-101_reducing-regulatory-burden-for-investment-fund-issuers.pdf

2. Please identify the disclosure required in an SP and an ETF prospectus that is likely to change year-to-year.
 - (a) Please confirm if this disclosure is also required to be updated at least annually in a Fund Facts or ETF Facts or other disclosure document required to be filed by investment funds in continuous distribution under Canadian securities legislation.
 - (b) Should this disclosure be subject to regulatory review before a prospectus receipt is issued? Please explain.
 - (c) Should this disclosure be subject to regulatory review only on a continuous disclosure basis? Please explain.
3. Please identify, categorize, and estimate the annual costs saved by an investment fund in continuous distribution if it were not required to file an SP or an ETF prospectus. In this regard, we note that any Stage 2 proposal for a Base Shelf Prospectus should not have a negative impact on filing fees. Accordingly, any costs savings identified should not include reduced filing fees.
4. Please identify any adverse impacts a Base Shelf Prospectus may have on the disclosure investors need to make informed investment decisions.
5. Please identify any adverse impacts a Base Shelf Prospectus may have on the liability rights investors currently have under the requirement to file an SP or an ETF prospectus.
6. How should the current base shelf prospectus filing model for public companies be adapted for use by investment funds in continuous distribution?
7. We contemplate a lapse date for a Base Shelf Prospectus to extend beyond 25 months. What would be an appropriate lapse date for a Base Shelf Prospectus for investment funds in continuous distribution? We think it would be prejudicial to the public interest for a Base Shelf Prospectus not to be subject to a lapse date at all. Do you agree? Please explain.

ANNEX H

LOCAL MATTERS

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

February 2, 2022

Via email

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince
Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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

CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds [CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultatio | OSC](#)

Kenmar appreciate the opportunity to comment on this consultation. Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at www.canadianfundwatch.com . Kenmar also publishes **the Fund OBSERVER** on a monthly basis discussing consumer protection issues primarily for retail investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused consumers and/or their counsel in filing investor complaints and restitution claims

Kenmar Associates

Due to COVID-19, an influx of investor complaints and numerous consultation requests, we are unable to apply the resources to fully respond to this consultation. We offer some high level comments that may be useful.

Frankly, we are surprised to see this consultation on the CSA priority list when so many other investor protection priorities have languished for years in the CSA in-basket. The potential industry savings from these amendments pale by comparison to the hundreds of millions of dollars improperly incurred each year by retail investors due to weak regulations and enforcement. See the OAG report, the Cumming Report (*A Dissection of Mutual Fund Fees, Flows, and Performance*) and other research.

The CSA is proposing to change the prospectus filing frequency from one year to two on the basis the disclosure in the prospectus does not generally change materially from year to year. If that is indeed the case, why not go further and require filing only if the prospectus incurs a material change? This would reduce Fundco costs even more and *potentially* free up regulator staff for much needed investor protection initiatives. "*There is nothing so useless as doing efficiently that which should not be done at all.*"- Peter Drucker

The OSC estimate that extending the lapse date from 12 months to 24 months will result in fund industry cost savings of \$15,792,030 annually and the repeal of the 90-day rule will result in cost savings of \$15,201 annually across all CSA jurisdictions. We do not realistically expect to see investors receive any material benefit from the \$2.1 trillion fund industry reflected in lower fund MER's from these very modest savings. We hope that any related CSA fee revenue reductions will not adversely impact investor protection, the OSC Investor Office budget or the proposed implementation of a CSA IAP.

The definition of *material change* is critical. For us, this would include a change in fund category (per CIFSC definitions), portfolio manager, fund strategy, fees, risk rating etc. and of course any merger with another fund or conversion to an ETF. Any significant litigation or threat of litigation regarding an alleged prospectus disclosure deficiency would, in our view, count as a material event.

We are glad to see that the Proposed Amendments would not affect investor rights relating to liability for misrepresentation in a prospectus. It is our understanding that Fund Facts and ETF Facts will continue to be filed annually and provide robust disclosure that is updated annually.

Since the Prospectus will not be updated as frequently as Fund Facts, there is the possibility that there may be contradictory text. Since FF is the dominant disclosure document, we expect that the order of precedence in the case of conflicting clauses to be that Fund Facts takes precedence over the Simplified Prospectus.

We do not object to the proposed initiative to reduce "regulatory burden" so long as it doesn't impact the currency or accuracy of information available to investors. Retail investors must continue to receive the up-to-date information needed to

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make informed mutual fund and ETF investment decisions. In the short to intermediate term, we expect prospectuses will be amended to reflect the ban on DSC funds, the elimination of the D series and the addition of a new fund series applicable to discount brokers.

Kenmar remain concerned about fund industry attempts to sweep all series of a fund into a single Fund Facts document (yet another “regulatory burden” reduction). We expect the CSA will not permit this unless it has strong investor support and is backed up by independent professional testing. It is our hope that the industry will streamline its offering and reduce the number of series and thereby reduce investor burden.

Do-it-yourself investors will soon have to pay fees for mutual fund trades on certain discount brokerage platforms, as companies prepare to recoup “losses” from CSA changes that will no longer allow OEO platforms to sell mutual funds with embedded trailing commissions. (This mis-selling was permitted for over a decade without CSA or IIROC intervention). We expect this will impact Fund Facts and Prospectus disclosures.

While this consultation refers to filing frequency, we are more concerned with the content of filings and quality of disclosure.

We take this opportunity to ask the CSA for a number of actions to reduce the regulatory burden on retail investors and to better protect them.

- ETF Facts should be delivered pre-sale in the same manner as Fund Facts is delivered.
- Fund manufacturers should design their websites such that it is easy for retail investors to locate the Fund Facts for a particular mutual fund.
- The CSA should revisit NI81-107 to confirm that it is providing the governance necessary in today’s operating environment. It can be argued that the *double billing* scandal would not have occurred if fund governance was robust.
- Reinstate the CFR restrictions on the products offered to a client (such as only offering proprietary products) from the impacts that must be discussed with clients.
- Fund Facts should be amended to break out trailing commissions in the expense table for greater investor visibility.
- There should be a review of the utility of the controversial fund risk rating methodology and method of presentation. Benchmarking against international standards is also required. Please see our previous submissions on this topic.
- Given the controversy and class actions surrounding trailing commissions, we recommend the FF wording be examined for accuracy and integrity.
- There should be a statement of investment strategy in Fund Facts.
- The CRM3 initiative should be accelerated; it is long overdue. The annual report on fees sent to investors is seriously deficient.

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The *Access Equals Delivery* initiative should be shelved if it applies to retail mutual fund or ETF documents. It likely should be discarded altogether.

The CSA is aware that there may be circumstances when multiple affiliated dealers, including a full-service dealer and an OEO dealer, use a single dealer code to place orders for mutual funds with fund managers. In these circumstances, fund managers may not be able to determine whether a mutual fund purchase order originates from the full-service dealer, who was required to make a suitability determination, or from the affiliated OEO dealer, who was not required to make a suitability determination. We once again request the CSA and IROC ensure that every investor, without exception, entitled to a switch, is notified by the Dealer and Fundco of their rights before the June 1 deadline. Should future Prospectuses contain a provision that trailing commissions must be accurately directed to Dealers?

It was very unfortunate that the CSA proposed CFR requirement that a registered Firm must maintain an offering of securities and services that is consistent with how the firm holds itself out (*holding out* was shifted into guidance relating to misleading communications) was removed to placate industry. Perhaps this could be revisited?

Kenmar expect the CSA to deal effectively with those Firms who have used the KYP provisions to limit their product shelves to proprietary products. At a minimum, we expect CFR disclosure to make the point that Firms with restricted mutual fund shelves may not be acting in the client's best interests and that representatives with prop shelves must use the title **Salesperson**. Fund Facts disclosures should refer to salespersons /representatives and not advisors. When applicable, there should be a note in FF's stating that Salespersons/Reps who can only recommend proprietary funds are providing *restricted advice*.

We'd like to see some evidence of CSA enforcement action re DSC fund mis-selling. Note: CFR conflict-of-interest rules came into effect in July 2021. [We never understood why the CSA gave the fund industry such a long time to move away from toxic DSC funds. Was it another case of reducing "regulatory burden" for industry?]

We recommend that the CSA publicly report how discount brokers are handling the elimination of improper trailing commissions leading up to their ban in June 2022. [We consider the collection of these fees immoral and unethical even if the CSA feels there is no need to immediately intervene to stop the charging for advisory services not provided .Hundreds of millions of dollars of investor retirement savings have gone down the drain due to CSA inaction.] The Ontario Auditor General Report is very clear on this point. Hopefully, there are some lessons learned by the OSC and other CSA jurisdictions.

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We recommend that those regulators that also regulate insurance should be taking decisive action to ban the sale of DSC segregated funds to eliminate regulatory arbitrage.

We urge the CSA to provide a 21st century complaint handling rule for Dealers and give OBSI the mandate to provide binding decisions and investigate systemic issues. A high priority should be given to creating an effective New SRO. The burden, financial toll and emotional distress on retail investors has been intolerable. The determined opposition to reform by the CSA has to come to an end. Further procrastination borders on regulatory malpractice.

After a year or so of CFR, we expect the CSA to review data to validate the presumption that improved CFR disclosure, KYC and suitability processes were able to counter the power of trailing commissions to skew salesperson recommendations. If not, we expect the CSA to revisit the whole issue of embedded commissions and Best interests that have caused retail investors so much harm and misery.

Conclusion

We are amazed at the velocity of, and capacity for, change the CSA has demonstrated in reducing "regulatory burden" for industry participants. It almost appears that regulatory burden reduction is now part of the CSA mandate, competing with investor protection. Investor protection must get back on the CSA's to-do priority list.

As regards this consultation, on the surface, it appears that despite the numerous text changes, that there is no adverse investor protection impact. We trust the CSA analysis that such is the case. However, if the CSA acts on the issues we have put forward, there could be a material positive impact on the retirement savings of Canadians.

Kenmar agree to public posting of this letter.

We sincerely hope this feedback proves useful to policy and decision makers.

Do not hesitate to contact us if there any questions or clarifications needed.

Ken Kivenko, President
Kenmar Associates

REFERENCES

Regulatory inaction costs investors billions, audit finds | Investment Executive

Kenmar Associates

"A combination of government meddling and industry lobbying that prevented regulatory action has cost investors billions of dollars in excess investment fund commissions, a report by Ontario's auditor general's office found"

<https://www.investmentexecutive.com/news/from-the-regulators/regulatory-inaction-costs-investors-billions-audit-finds/> .

OAG Report

https://www.auditor.on.ca/en/content/annualreports/arreports/en21/AR_OSC_en21.pdf

The Intended Consequences of Embedded Commissions in Mutual Funds: G. Stenzler

https://www.osc.ca/sites/default/files/pdfs/irps/comments/com_20180926_81-105_stenzlerg.pdf

CSA Provide Transitional Relief from Certain Client Focused Reforms for Deferred Sales Charge Products

<https://stikeman.com/en-ca/kh/canadian-securities-law/csa-provide-transitional-relief-from-certain-client-focused-reforms-for-deferred-sales-charge>

Cumming's report: The final nail in the coffin for trailing commissions

https://www.investmentexecutive.com/inside-track/_neil-gross/cumming-s-report-the-final-nail-in-the-coffin-for-trailing-commissions/

Regulators fiddle while investors burn over fund fees at discount brokers

<https://www.theglobeandmail.com/globe-investor/funds-and-etfs/funds/regulators-fiddle-while-investors-burn-over-discount-broker-fees/article38195683/>

OSC's 'slow' pace on priorities irks investor groups | Advisor's Edge

<https://www.advisor.ca/news/industry-news/oscs-slow-pace-on-priorities-irks-investor-groups/>

Is the OSC taking on too much at once? | Investment Executive

https://www.investmentexecutive.com/newspaper/_news-newspaper/is-the-osc-taking-on-too-much-at-once/

Mutual Fund Fees in Canada Are Among the World's Highest

<https://www.barrons.com/articles/mutual-fund-fees-canada-morningstar-vanguard-expense-ratio-51568751799>

Mutual Fund Advisory Fees: Sponsors Game the System as Watchdogs

Slumber by Stewart L. Brown, Steven Pomerantz: SSRN

Maybe it's time to revisit NI81-107 mandate.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3687680



April 24, 2022

Delivered by Email

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: (416) 593-2318
Email: comments@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

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds

The Canadian ETF Association (CETFA) is pleased to provide the members of the Canadian Securities Administrators (CSA) with comments on the proposals described in the above-noted CSA Notice and Request for Comment. CETFA is the only exchange traded fund (ETF) association in Canada and represents members comprising 95% of the ETF assets under management in Canada. The mandate of CETFA is to support the growth, sustainability and integrity of Canada's ETF industry on behalf of our members, who are typically ETF managers.



Accordingly, please find set out below our comments on each of the issues raised in the CSA Notice and Request for Comment:

Responses to Specific Consultation Questions Relating to the Lapse Date Extension

1. Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.

We acknowledge and appreciate the CSA's efforts in seeking ways to reduce the regulatory and associated financial burden on investment funds in continuous distribution through the Proposed Amendments.

CETFA is of the view that the implementation of any form of Lapse Date Extension that would require full amendments and restatements of prospectuses will not result in any cost savings or reduction in regulatory burden. Conversely, such implementation could have the opposite effect of increasing the regulatory burden on issuers. As under the current prospectus model, implementation of any Lapse Date Extension should continue to give investment fund managers the discretion to choose whether filing a stand-alone amendment (referred to as a slip sheet amendment) or a full amendment and restatement, would be the most appropriate course of action given the extent of the changes required to be made.

The extent of cost savings as a result of transitioning the current prospectus renewal cycle from annual to biennial will depend on a number of factors associated with the manner of implementation, including the following: (i) with respect to the amendment procedure proposed in the Proposed Amendments, whether prospectus amendment filing fees in each jurisdiction will apply to each fund included in each amended and restated prospectus during the renewal period, regardless of whether or not such funds are impacted by a given amendment and restatement (as is typically the case in an amended and restated prospectus under the current prospectus filing model); (ii) the necessity and frequency of amendments during each biennial distribution period, including the type of information that is expected to be updated upon each amendment (e.g., portfolio holdings, director and officer tables and biographical information, Prior Sales tables, etc.); (iii) the quantum of the prospectus amendment filing fees based on each of the jurisdictions of the CSA required for each amendment, in aggregate; and (iv) since annual filings of ETF Facts will continue to be required, the quantum of filing fees that will apply to such annual ETF Fact filings, if any.

We also note that at the current time, certain ETF issuers time their product launches such that new ETFs are incorporated into the group prospectus on renewal. For such issuers, we note that the Lapse Date Extension may not have a meaningful impact as certain issuers may nevertheless continue to file "Preliminary and Pro Forma" prospectuses on at least an annual basis, and will continue to update their information on an annual basis. Accordingly, these issuers may not benefit from the contemplated cost savings of the Lapse Date Extension.



- 2. Would cost savings from the Lapse Date Extension be passed onto investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.**

The attribution of cost savings, if any, from the Lapse Date Extension, will depend on whether prospectus renewal costs are currently absorbed by the relevant ETFs and their securityholders, or the manager vis a vis the management fee or fixed administration fee. This will vary on a case-by-case basis.

- 3. Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed investment decisions.**

A biennial renewal period will inevitably put the onus on issuers to determine whether applicable updates to a prospectus warrant a prospectus amendment or not. While no different than the current materiality assessments that must be made by issuers under the current prospectus filing model, we note that any amendment filings that are required under the Lapse Date Extension that necessarily result in extensive filing fees to be incurred will have the unintended effect of potentially discouraging such updates to be made in a timely manner. For example, if a prospectus that qualifies the securities of ten ETFs is amended because one of the ETFs on that prospectus is reducing its management fee, but there is an immaterial update to the directors and officers table (e.g., a change in biographical information or the addition of a new director) that can be made at the same time, does including that update to the directors and officers necessarily mean that each of the ten ETFs on that amended and restated prospectus are therefore undergoing an amendment filing and are therefore subject to an amendment filing fee? In these circumstances, a “slip sheet” amendment would most likely be a stand-alone amendment of the one ETF on that prospectus that is reducing its management fee, and therefore the other ETFs in that prospectus would not be subject to filing fees.

Accordingly, the implementation of a prospectus filing model that requires each amendment to be filed as an amended and restated prospectus, may have the effect of encouraging managers to narrow the scope of what changes it considers to be “material” to a prospectus. If the associated filing fees with amended and restated prospectuses are unduly costly, manager’s may choose to delay updating prospectus disclosure unless the changes reach a higher level of materiality (i.e. the collection of less material disclosure updates will accumulate until the next amendment is actually required to be made, if any).

The Lapse Date Extension is also unclear whether the ETF Facts that continue to be renewed on an annual basis would be accompanied by a certificate of the manager and ETF (as is currently the case). CETFA presumes that, similar to the base shelf prospectus model proposed in Stage 2, a form of certificate that is forward-looking would apply to ETF Facts.

- 4. Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of “slip sheet” amendments make it easier for investors to trace through how disclosure**



pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.

Significant time and resources are allocated to preparing prospectus amendments, amendments and restatements and prospectus renewals. At a high level, the time and resources required to prepare an amended and restated prospectus are not that different than the time and resources required to prepare a prospectus renewal. In particular, being required to update ETF Facts (and Fund Facts) on each amendment and restatement, as well as refreshing the currency of information in the full prospectus itself, is a task that requires the full review of an asset management firm (affecting departments in compliance, portfolio management, fund administration, third parties (such as sub-advisors) and that requires an appropriate level of oversight). In contrast, the time and resources required to file a “slip sheet” amendment is much more streamlined and targeted, and therefore, much more efficient, as it often does not require the full review of an asset management firm. Furthermore, if investment fund managers are required to always file an amendment by way of an amended and restated prospectus instead of having the option of filing a “slip sheet” amendment, this could increase the burden on the regulators in terms of the time and resources required to review each such amended and restated prospectus as compared to the less onerous review required for “slip sheet” amendments. This increased burden on the regulators could be compounded in circumstances where many investment fund managers are undertaking amendments to their prospectuses at the same time, for example, in response to a change in the rules that are applicable to investment funds in continuous distribution.

At the current time, managers have discretion to determine which style of amendment is most appropriate and suitable based on the circumstances, and CETFA strongly proposes that, in order for any cost savings to be realized by the Proposed Amendments at all and for the Lapse Date Extension to be acceptable, this discretion must continue to be available to managers.

For greater certainty, and as noted above, CETFA is of the view that the implementation of any form of Lapse Date Extension that would require full amendments and restatements of prospectuses will not result in any cost savings or reduction in regulatory burden. Conversely, such implementation could have the opposite effect of increasing the regulatory burden on issuers.

Responses to Consultation Questions on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution

CETFA appreciates the CSA’s willingness to consider a new prospectus filing regime for investment funds in continuous distribution that would utilize a base shelf prospectus model, and that would permit a lapse date that is greater than 25 months. Such an initiative is applauded for the CSA’s willingness to consider new avenues to allow the investment fund industry to continue to evolve.

Although CETFA reserves the ability to provide further comment once additional details are provided, as a general matter, CETFA is supportive of a new prospectus filing regime that balances



the importance of material and current disclosure and is also supportive of a prospectus regime that would only require periodic updates of certain material information on a more frequent basis.

1. Please identify the disclosure required in a simplified prospectus (SP) or an ETF prospectus that is unlikely to change year-to-year

The sections of Form 41-101F2 *Information Required in an Investment Fund Prospectus* (Form 41-101F2) that are least likely to change from year-to-year include the following:

- Overview of the Legal Structure of the Investment Fund
- Purchases of Securities
- Redemption of Securities
- Organization and Management Details of the Investment Fund (excluding the names and biographical information of directors and officers)
- Calculation of Net Asset Value
- Description of the Securities Distributed
- Securityholder Matters
- Termination of the Fund
- Plan of Distribution
- Proxy Voting Disclosure
- Purchaser's Statutory Rights of Withdrawal and Rescission
- Documents Incorporated by Reference

CETFA does not object to regulatory review and receipt of any of the above disclosure items, including amendments thereto.

In our view, adopting the base shelf prospectus regime provides a valuable opportunity for the CSA to reconsider, update and streamline prospectus disclosure. For example, following the introduction of the ETF Facts, CETFA is of the view that the prospectus summary portion (Item 3) of Form 41-101F2 is now redundant and can be removed from any form of future disclosure document. In particular, the summary information is often mirrored in the body of the prospectus, and the duplication, while redundant, also creates the potential for unnecessary error. The inclusion of this duplicative information can also be burdensome as it has the potential to result in additional drafting and/or translation costs for the manager of an investment fund. Any new prospectus regime should be carefully drafted to account for the unique features of ETFs, and should include a reconsideration of certain significant items that are currently required by Form 41-101F2, such as the Prior Sales tables, which CETFA believes the CSA should consider excluding.

2. Please identify the disclosure required in an SP and an ETF prospectus that is likely to change year-to-year



The sections of Form 41-101F2 that are most likely to change from year-to-year include the following:

- Investment Strategies and Overview of the Investment Structure
- Overview of the Sector(s) that the Fund Invests In
- Investment Objectives (included here as they are very fund specific)
- Investment Restrictions (included here as they are very fund specific)
- Fees and Expenses (included here as they are very fund specific)
- Annual Returns and Management Expense Ratio
- Risk Factors
- Distribution Policy
- Organization and Management Details of the Investment Fund (in particular, the names and biographical information of directors, officers and portfolio advisers)
- Prior Sales
- Income Tax Considerations
- Material Contracts
- Legal and Administrative Proceedings (included here as they are very fund specific)
- Experts
- Exemptions and Approvals
- Other Material Facts

CETFA does not believe that the current form of ETF Facts is deficient and does not propose adding any additional disclosure to the form of ETF Facts. CETFA does not object to regulatory review and receipt of any of the above disclosure items, including amendments thereto.

- 3. Please identify, categorize, and estimate the annual costs saved by an investment fund in continuous distribution if it were not required to file an SP or an ETF prospectus. In this regard, we note that any Stage 2 proposal for a Base Shelf Prospectus should not have a negative impact on filing fees. Accordingly, any costs savings identified should not include reduced filing fees.**

On a preliminary basis, CETFA does not anticipate material cost savings as a result of adoption of the base shelf system, which on a principled basis, would still include an expectation that updated ETF Facts be filed at least annually, and that any changes to material facts be disclosed by way of an amendment being filed as required. In our view the main advantage of adopting a base shelf prospectus system is the clearer recognition and separation of the portion of disclosure that remains consistent from year-to-year, versus the portion of disclosure that needs to be updated. If the documents requiring update from year-to-year are consolidated and more concise, that could save translation costs and/or drafting costs.



4. Please identify any adverse impacts a Base Shelf Prospectus may have on the disclosure investors need to make informed investment decisions.

CETFA does not anticipate any material adverse impact on investors as a result of adoption of a base shelf prospectus filing system, since, in CETFA's view, the relevant material information for an investment fund in continuous distribution is already disseminated via the ETF Facts.

5. Please identify any adverse impacts a Base Shelf Prospectus may have on the liability rights investors currently have under the requirement to file an SP or an ETF prospectus.

Given the continued delivery of ETF Facts, CETFA does not anticipate the adoption of the base shelf prospectus regime having an adverse impact on the liability rights of investors. CETFA also notes that the Consultation Paper on the base shelf prospectus model raises the possibility that a person or company required to sign a prospectus certificate under this new model may be required to provide a forward-looking certificate similar to those required under the base shelf prospectus system set out in Part 9 or Appendix A of National Instrument 44-102 *Shelf Distributions*.

6. How should the current base shelf prospectus filing model for public companies be adapted for use by investment funds in continuous distribution?

As already identified, in order for any base shelf prospectus regime to be effective, it must effectively compartmentalize the disclosure that does not regularly require update versus the disclosure that is fund-specific and is updated on a more regular basis. To be worthwhile, the base shelf prospectus regime would need to permit a substantially longer lapse date than under a conventional renewal prospectus.

7. We contemplate a lapse date for a Base Shelf Prospectus to extend beyond 25 months. What would be an appropriate lapse date for a Base Shelf Prospectus for investment funds in continuous distribution? We think it would be prejudicial to the public interest for a Base Shelf Prospectus not to be subject to a lapse date at all. Do you agree? Please explain

Provided that the base shelf prospectus continues at all times to contain full, true and plain disclosure, in such case, CETFA would not see an obvious public policy reason to require a lapse date.

However, in support of the initiative, CETFA would be flexible in the establishment of a staged implementation process beginning with an initial period of at least 36 months, with the goal of eventually extending the lapse date to 60 months or longer. We respectfully submit that when considering adoption of the base shelf prospectus system, it is more important to ensure that there is an efficient disclosure and filing regime to provide disclosure updates in a compliant, cost effective and timely manner.

Thank you for this opportunity to express our comments about the Proposed Amendments.



If you have any questions or if we can be of any other assistance, please do not hesitate to contact Pat Dunwoody, Executive Director of the CETFA, at (647) 256-6637 or at patdunwoody@cetfa.ca.

Yours truly,

CANADIAN ETF ASSOCIATION:

By: (Signed) *"Pat Dunwoody"*

Pat Dunwoody
Executive Director
patdunwoody@cetfa.ca

INCLUDES COMMENT LETTERS RECEIVED



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April 26, 2022

VIA EMAIL

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

Attention:

M^e Phillippe Lebel
Corporate Secretary and
Executive Director, Legal Affairs
Autorité des marchés financiers

Grace Knakowski
Secretary
Ontario Securities Commission

consultation-en-cours@lautorite.qc.ca comments@osc.gov.on.ca

Dear Sirs/Mesdames,

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – *Modernization of the Prospectus Filing Model for Investment Funds*

INCLUDES COMMENT LETTERS RECEIVED

Introduction

We are writing to provide our comments on the CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds (the “**Consultation**”). Thank you for the opportunity to submit comments.

Invesco Canada Ltd. (“**Invesco Canada**”) is a wholly-owned subsidiary of Invesco Ltd. (“**Invesco**”). Invesco is a leading independent global investment management company, dedicated to delivering an investment experience that helps people get more out of life. As of March 31, 2022, Invesco and its operating subsidiaries had assets under management of approximately USD \$1.6 trillion. Invesco operates in more than 20 countries in North America, Europe and Asia. Invesco Canada operates Invesco’s Canadian business and maintains offices in Toronto, Montreal, Vancouver and Charlottetown.

General Comments

Invesco Canada applauds the CSA for their continued efforts in seeking to reduce regulatory burden for investment fund issuers. We believe that the efforts to streamline and reduce prospectus filing requirements will increase efficiency and ultimately reduce operating and legal costs which may benefit investors in the long-term.

We believe that the Lapse Date Extension would meet the CSA’s goal of reducing the burden for issuers, with one important caveat. That is, in our view, the proposal to require an issuer to file amended and restated prospectuses for amendments, rather than ‘slip sheet’ amendments, will unintentionally increase burden and eliminate any potential costs savings from the Lapse Date Extension. As such, we request that the CSA update the proposal to remove the requirement to file amended and restated prospectuses and continue to allow slip sheet amendments to be used.

- 1. Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.**

We believe that the Lapse Date Extension will be beneficial to investment fund issuers, provided that issuers retain the flexibility to slip sheet amendments. We also believe that issuers should be allowed to make immaterial amendments to their prospectuses without paying regulatory filing fees at least annually, in order to enhance disclosures following new or updated regulatory guidance. Please see our comments in response to question 4 below for greater detail.

In the long term, cost savings would flow from reduced legal costs, audit costs, translation costs, internal governance costs and other costs associated with renewing a prospectus.

2. **Would cost savings from the Lapse Date Extension be passed onto investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.**

If issuers are permitted to continue to issue slip sheet amendments, there may be overall costs savings from the Lapse Date Extension. For issuers that charge operating expenses to investors, those cost savings would accrue to investors. However, certain issuers charge a fixed administration fee in lieu of operating expenses. For those issuers, the cost savings from the Lapse Date Extension would likely not accrue to investors and would benefit the fund managers.

3. **Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed investment decisions.**

Please see our comments in response to question 4.

4. **Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of “slip sheet” amendments make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.**

We do not believe that filing an amended and restated prospectus instead of a slip sheet amendment will provide investors with better disclosure for the following reasons:

- a) Under the current disclosure regime, investors are only provided with fund facts or ETF facts at the time of purchase. While prospectuses are available to investors upon request, we believe that very few investors review prospectuses either at the time of purchase or thereafter. Investors generally obtain advice from their advisors and use fund facts or ETF facts as their primary disclosure documents. When there are material amendments to fund facts or ETF facts, new fund facts or ETF facts are issued. Accordingly, in our view, the disclosure of material changes impacting an issuer to an investor is not impaired by the manner in which amendments are affected to a prospectus.
- b) For those investors who do review prospectuses, an amended and restated prospectus does not clearly identify changes that are made to an issuer. As such, it will be very cumbersome and challenging for an investor to identify the changes to that fund without reviewing other ancillary disclosure documents like a material change report. In contrast, a slip sheet amendment clearly identifies the changes made to the prospectus and accordingly, investors do not need to source other documents to identify changes to the prospectus or the issuer.
- c) We are not aware of any investor who has ever complained about not being able to track slip sheet amendments to prospectuses. As such, we do not believe that

amended and restated prospectuses will provide any real benefit to investors from a disclosure perspective.

Accordingly, we are of the view that slip sheet amendments provide investors with disclosure of issuer changes that is equivalent to disclosures under an amended and restated prospectus.

The costs associated with producing an amended and restated prospectus exceed the costs associated with a slip sheet amendment. This is because investment fund managers tend to issue multi-fund prospectuses rather than single fund prospectuses. As such, prospectuses tend to be lengthy and may exceed 200 pages. The costs of translation are greater for larger documents and in addition, certain provinces have legislation that seeks to provide disabled investors with equal access to information such as *Accessibility for Ontarians with Disabilities Act* (Ontario). This legislation requires that documents posted on a website be accessible to persons with disabilities. The cost of making those documents accessible is directly correlated to the number of pages in the document. Accordingly, the cost of making an amended and restated prospectus of 200+ pages accessible versus a 1 or 2 page slip sheet amendment is significant. These costs could even be borne by investors where managers have implemented fixed administration cost regimes, as those fixed administration cost regimes ordinarily exclude costs associated with future changes to legislation.

Further, we are concerned that if amendments are required to be filed as amended and restated prospectuses that the CSA will expect issuers to update their prospectus disclosures more regularly following the issuance of CSA guidance. For example, the CSA has issued guidance on liquidity and ESG matters, which for some issuers may lead to amendments to disclosure. These enhancements to prospectus disclosures are generally folded into an annual prospectus renewal which is not subject to payment of regulatory filing fees (as these amendments form part of the renewal). If issuers are required to pay to make these amendments and if issuers are expected to more frequently update these types of disclosures, issuers will file more amendments which will incur greater regulatory filing fees. We do not believe this is the intent of the proposal, but would wish to avoid this as a possible consequence.

Consultation paper on base shelf prospectus filing model

Invesco Canada is supportive of any initiatives which would reduce regulatory burden for investment fund issuers. We are unfortunately unable to assess the feasibility of the base shelf prospectus proposal as we believe that greater detail is required on how this will be implemented as corporate issuers using the base shelf prospectus regime are generally not in continuous distribution and hence a supplement for a limited number of securities that can be approved by the CSA quickly makes sense.

Conclusion

We would be pleased to discuss our responses in greater detail at your convenience. Thank you for the opportunity to comment on this important matter.

Yours truly,

Invesco Canada Ltd.

Per: (Signed) "Shalomi Abraham"

Name: Shalomi Abraham
Title: Senior Vice President,
Head of Legal - Canada

Per: (Signed) "Caroline Mingfok"

Name: Caroline Mingfok
Title: Vice-President, Legal

cc. John Zerr, President & CEO, Invesco Canada Ltd.



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April 27, 2022

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Delivered to:

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

M^e Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
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Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

RE: CSA Notice and Request for Comment - Proposed Amendments to National Instrument 41-101 - General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution - Modernization of the Prospectus Filing Model for Investment Funds.

C.S.T. Spark Inc. and C.S.T. Savings Inc. (collectively, CST) are writing to provide our comments on the CSA Notice and Request for Comment - Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and the Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution - Modernization of the Prospectus Filing Model for Investment Funds.

CST Spark Inc. is registered as a mutual fund dealer, scholarship plan dealer, and investment fund manager and both distributes and manages the CST Spark Education Portfolios. As a scholarship plan



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dealer and investment fund manager, CST Savings Inc. distributes and manages the Canadian Scholarship Trust Plans, education savings plans, which are registerable with the Canada Revenue Agency as Registered Education Savings Plans (RESP).

General Comments

CST recognizes the CSA's efforts in seeking opportunities to reduce the regulatory burden for investment fund issuers. Proposals which streamline and/or reduce prospectus filing requirements will enhance our ability as an investment fund manager to allocate time to more value-added activities for both the business and investors and reduce costs.

While the Lapse Date Extension has the potential to reduce the regulatory burden for issuers, we respectfully submit that the proposal to require an issuer to file an amended and restated prospectus, instead of a stand-alone (slip sheet) amendment, will have the unintentional consequence of increasing the regulatory burden and eliminating any potential costs savings. The amended and restated prospectus format will also make it difficult for the investor to identify the material changes to the prospectus. As a result, we request that the CSA consider maintaining the current practice of allowing slip sheet amendments.

We note that the proposed amendments to NI 41-101 and NI 81-101 only speak to investment fund issuers such as mutual fund and exchange traded fund issuers. We encourage the CSA to consider this and other burden reduction proposals in the context of other types of investment funds, including scholarship plans.

1. Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.

In our view, the Lapse Date Extension will reduce the regulatory burden for investment fund issuers provided that issuers have ability to file either a slip sheet amendment or an amended and restated prospectus depending upon the nature and extent of the changes required to be made. We respectfully submit that the implementation of the Lapse Date Extension with the requirement to amend and restate a prospectus for material changes will not result in any cost savings or reduction in regulatory burden.

In a situation where the Lapse Date Extension is combined with slip-sheet amendments, cost savings could be realized from reduced legal, audit, translation, governance and other costs associated with renewing a prospectus.

2. Would cost savings from the Lapse Date Extension be passed onto investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.

The extent to which cost savings from the Lapse Date Extension would accrue to investors will depend on whether the prospectus renewal fees are charged to investors. For issuers who charge a fixed administration fee in lieu of operating expenses, the cost savings from the Lapse Date Extension would likely benefit only the fund manager.

3. Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed



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investment decisions.

CST believes that the Lapse Date Extension will not affect the currency or accuracy of the information available to investors to make an informed investment decision due to the availability of other disclosure documents such as fund facts, financial statements and management reports of fund performance and advice.

- 4. Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of “slip sheet” amendments make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.**

We do not believe that filing an amended and restated prospectus instead of a slip sheet amendment will provide investors with better disclosure. An amended and restated prospectus will not clearly identify changes that are made to an issuer and as such, it will be very difficult for an investor to identify the changes to that fund. A slip sheet amendment clearly identifies the changes being made to the prospectus.

The time and costs associated with producing an amended and restated prospectus will exceed the time and costs associated with a slip sheet amendment. Investment fund managers often issue multi-fund prospectuses and as a result, these prospectuses tend to be lengthy and the time and costs of preparing and issuing the prospectus may be higher for larger documents. Additionally, it is unclear when filing an amended and restated prospectus whether all information must be reviewed and updated to the date of the prospectus. If this is the case, then the outcome will not reduce the regulatory burden or costs associated with renewing the prospectus.

Consultation paper on base shelf prospectus filing model

CST broadly supports the objectives of the CSA to modernize the prospectus filing model for investment funds that are in continuous distribution. We are unfortunately unable to assess the feasibility of the base shelf prospectus proposal as we are focussed on the preparation of our combined simplified prospectus and annual information form.

CST appreciates the opportunity to provide comments on this initiative. I would be pleased to discuss our responses further or answer any questions that you may have at your convenience.

Yours truly,

A handwritten signature in black ink that reads 'C. Matear'.

Carole Matear CPA, CA
Chief Compliance Officer

cc. Sherry MacDonald, President and CEO, C.S.T. Spark Inc. and C.S.T. Savings Inc.

FASKEN

Fasken Martineau DuMoulin LLP
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April 27, 2022

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BY E-MAIL

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

Dear Canadian Securities Administrators:

Re: Comments on proposals to modernize prospectus filing rules for mutual funds

Thank you for providing us with the opportunity to comment on the recent proposals to modernize prospectus filing rules for mutual funds published on January 27, 2022 (the **Proposals**).¹ Our comments provided below reflect the views of the authors of this letter and certain other individual members of our firm that participated in the preparation of this letter. Our comments do not necessarily reflect the views of our firm or of our clients, and are submitted without prejudice to any position that may in the future be taken by our firm on its own behalf or on behalf of any client.

Background to our comments

Fasken Martineau DuMoulin LLP (**Fasken**) is a leading Canadian law firm that provides advice to investment fund managers, portfolio advisers, dealers and service providers across Canada.

¹ CSA Notice and Request for Comment: Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds (January 27, 2022).

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Currently, eleven partners at Fasken devote a substantial portion of their practice to advising clients on structuring, offering and managing investment fund products and related services, and are supported by further partners with expertise in specific fields including tax, derivatives and financial institution regulation. Fasken is one of the largest Canadian legal practices in the investment products and wealth management area. Our client base includes managers of retail mutual funds, exchange-traded funds, alternative mutual funds, closed-end funds, hedge funds, pooled funds, segregated funds, private equity funds and separately managed account services. We regularly assist clients with developing innovative investment products including, where necessary, obtaining novel discretionary relief under Canadian securities legislation and advance tax rulings to accommodate those products.

Our comments below are based mainly on our experience advising clients in the investment funds industry. Prior to submitting this letter, we also consulted with a number of industry participants specifically about the Proposals. Though the comments in this letter are those of Fasken alone, we have taken into consideration the feedback we received from those we consulted.

Technical Issues

There appear to be two technical issues arising from the draft amendments for Stage 1 of the Proposals, which are described below.

- Under the Proposals, renewal fund facts and ETF facts will need to be filed between the 12th and 13th month (the **refiling window**) preceding the new 24-month prospectus lapse date.² Worded in this way, the refiling window does not appear to permit the renewal fund facts or ETF facts to be filed within 3 business days following their date unless the filing occurs at least 3 business days prior to the end of the refiling window. This loss of potentially 3 filing business days could cause logistical difficulties for some filings as illustrated below (assuming the Proposals were in effect today):

Current final prospectus date	June 30, 2022
Last day to file final prospectus with June 30, 2022 date	July 6, 2022*
Last day to file renewal fund facts or ETF facts with June 30, 2023 date	June 30, 2023
Prospectus lapse date	June 30, 2024
Last day to file renewal prospectus with June 30, 2024 date	July 4, 2024*
Deadline for filing renewal prospectus	July 10, 2024**

* Using 3 business day window.

** Using the 10 day grace periods in current section 17.2(4)(b) of NI 41-101 and current section 2.5(4)(b) of NI 81-101.

² Proposed section 17.3(4)(a) of NI 41-101 and proposed section 2.5(3)(a) of NI 81-101.

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Accordingly, we recommend that the renewal window be expanded slightly by adding the words “less 3 business days” after the words “12 months” in proposed section 17.3(4)(a) of NI 41-101 and proposed section 2.5(3)(a) of NI 81-101.

2. The Proposals appear to contemplate that fund facts and ETF facts will be refiled without a prospectus amendment only during the refiling window since the filing would need to use a “Year 2” designation as described in proposed section 5A.6 of CP 41-101 and proposed section 4.1.6 of CP 81-101. If the current features of SEDAR can accommodate refresh filings of fund facts and ETF facts at other times, we suggest that this be described in the changes to the companion policies.
3. It is likely that many renewal filings will include a combination of some fund facts and ETF facts that qualify for Auto Public treatment and others not so qualifying. It is not clear from the Proposals whether all such fund facts or ETF facts ultimately will bear the same date, since the versions submitted as Auto-Public will appear on the public portion of SEDAR immediately while the versions submitted as Private will not become available to the public until a later date. If the dates of all fund facts and ETF facts are the same, it may result in some purchases continuing to be made under the previous version of a document despite a revised version of the document eventually becoming available that will predate the purchase, as illustrated below:

Current fund facts / ETF facts	April 15, 2022
Year 2 fund facts / ETF facts when filed	March 15, 2023
Year 2 fund facts / ETF facts filed as Auto-Public released onto public portion of SEDAR	March 15, 2023
Purchase orders received for units described in Year 2 fund facts / ETF facts filed as Private	March 15-25, 2023
Principal regulator review of Year 2 fund facts / ETF facts filed as Private is completed and documents are released onto the public portion of SEDAR	March 25, 2023

It also could trigger complications if, in response to comments on the Private documents, changes are subsequently made to the documents previously submitted as Auto Public that already have been released to the public.

A possible solution is to manage these filings in the same manner that SEDAR currently treats the filing of a combined preliminary and pro forma prospectus: If all the fund facts and ETF facts are filed as Auto-Public, they are immediately released onto the public portion of SEDAR (similar to a preliminary prospectus filing). However, if some of the fund facts or ETF facts are filed as Private, then none are released onto the public portion of SEDAR until the principal regulator’s review has been completed, in which event the date of the fund facts and ETF facts will be brought forward to the public release date.

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Amended and restated prospectus amendments

We disagree with the CSA's rationale for proposing that all future prospectus amendments be filed as amended and restated versions of the prospectus, rather than continuing to permit standalone prospectus amendments.

First, the likelihood of investor confusion over prospectus amendments is low given that investors in almost all cases receive only the relevant fund facts or ETF facts.

Second, since blacklined versions of documents are not released onto the public portion of SEDAR, it is easier for an investor to identify the content which has changed by a standalone prospectus amendment rather than in an amended and restated version.

Third, there is some uncertainty regarding which information in the prospectus needs to be updated in an amended and restated version. If the CSA implement this requirement, it should be accompanied by further amendments which have the effect of not requiring that other information be updated, notwithstanding that the prospectus certificate states that the document provides full, true and plain disclosure of all material facts as of the date of the certificate.

Fourth, the CSA's concern with the difficulty of tracking prospectus amendments results mainly from the current operational limitations of SEDAR which, when searching for documents relating to a particular mutual fund, produces all documents relating to that mutual fund family. We recommend that this concern instead be addressed through upcoming enhancements in SEDAR+, rather than imposing a new burden on industry to effect all prospectus amendments through amended and restated documents.

Guidance on "material changes"

We agree with the CSA's proposed guidance whereby changes to fund facts or ETF facts that only impact the disclosures identified in proposed section 5A.6 of CP 41-101 or proposed section 4.1.6 of CP 81-101 are considered not material and therefore may be filed with Auto Public treatment. However, we note that the proposed guidance will conflict with other CSA guidance in section 2.7(2) of Companion Policy 81-101 where the CSA previously suggested (in our view, incorrectly) that any change to a fund's risk rating constitutes a "material change" under securities legislation.³ We therefore recommend that the words "or risk level" be removed from section 2.7(2) of Companion Policy 81-101 and section 5A.3(4) of CP 41-101 as part of the Proposals.

Step 2 Proposals

We agree with the CSA's proposal to explore the adoption of a base shelf prospectus approach to mutual fund prospectuses. However, we are mindful that any such change will impose an initial

³ See the comment letter dated December 11, 2019 from our firm to the CSA on the proposals described in Reducing Regulatory Burden for Investment Fund Issuers - Phase 2, Stage 1 where we explained how the announcement of a backward-looking calculation such as an investment fund's risk rating is not a "material change" according to the views expressed by the Supreme Court of Canada in the *Danier Leather* decision [2007] 3 S.C.R. 331.

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regulatory burden on industry to adapt to such change, which may be excessive following recent regulatory burdens to implement the Client Focused Reforms and to implement the amendments to NI 81-101 that came into effect on January 6, 2022. For these reasons, we defer to comments from industry participants on whether this proposed change is desirable at this time from a cost-benefit perspective.

In the event the CSA proceeds with this aspect of the Proposals, our comments thereon are provided below.

Comparison of key features of the base shelf prospectus regime and mutual fund prospectus regime

A base shelf prospectus is a variation of a short-form prospectus regulated by NI 41-101. The fundamental difference between a short-form prospectus and a traditional long form prospectus of a non-investment fund issuer is that, generally, the former only includes information relating to the securities being offered. Background information relating to the issuer is incorporated by reference into the short-form prospectus from continuous disclosure documents, such as the issuer's annual information form, annual and interim financial statements and related management discussion & analysis, and a portion of the issuer's annual management information circular. Changes to that background information are captured in material change reports which also are incorporated by reference into the short-form prospectus – there generally is no incorporation by reference.

In a long form prospectus of a non-investment fund issuer, all background information regarding the issuer is contained directly in the prospectus.

As a result, a short-form prospectus is much shorter in length than a long form prospectus, and requires less regulatory review at the time of filing: As per section 5.5(1) of National Policy 11-202, the first comments of the principal regulator on a preliminary short-form prospectus usually are provided within 3 business days, and the final short-form prospectus typically can be filed within 10 days following the preliminary short-form prospectus filing.

Structurally, a mutual fund's prospectus falls in between a traditional long form prospectus and a short-form prospectus:

- Like a short-form prospectus, a mutual fund prospectus incorporates by reference most of its financial disclosure from its financial statements and management reports of fund performance.
- Like a long form prospectus, a mutual fund prospectus still directly contains non-financial background information about the mutual fund.

A base shelf prospectus is essentially a short-form prospectus which describes generically the securities that will be offered in the future, with the details of the specific offering provided at a later date in a prospectus supplement. The CSA generally do not review prospectus supplements, and no receipt is required to be issued by the CSA for a prospectus supplement.

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Unlike a long form or short-form prospectus of a non-investment fund issuer, a mutual fund prospectus is not delivered to the prospective investor unless requested. Instead, through extensive research and modernization, the CSA have developed alternate point-of-sale disclosure rules for mutual funds which require the delivery of fund facts or ETF facts to the investor. The benefits of this prospectus disclosure regime for investors in mutual funds was recently confirmed in exemptive relief granted by the CSA to permit a non-redeemable investment fund to utilize a mutual fund prospectus format.⁴

Application of the base shelf prospectus principles to mutual funds

We believe that extending to mutual funds the same efficiencies that are available to non-investment fund issuers using a base shelf prospectus involves the following changes:

1. Shorten the simplified prospectus to contain only information relating to the offering (which we refer to as a **base simplified prospectus**). The resulting base shelf prospectus would most closely resemble current Part A of a simplified prospectus. Background information about each mutual fund would be contained in its continuous disclosure documents and would be incorporated by reference into the base simplified prospectus. Background information potentially includes the mutual fund's investment objectives, investment strategies and portfolio adviser, which would be relocated to the annual information. With these changes, the annual information form would be treated as a continuous disclosure document, and the prospectus certificate would be moved to the base simplified prospectus. We note that these changes would reverse the most recent amendments to NI 81-101 requiring that each mutual fund consolidate its simplified prospectus and annual information form into a single document resembling a long form prospectus (a change with which Fasken disagreed when it was first proposed).
2. Accompanying each base simplified prospectus (either at the time of filing or subsequently during the lifespan of the base simplified prospectus) would be prospectus supplements that contain any remaining information currently in Part B of a simplified prospectus and not relocated to the annual information form. Like the base shelf prospectus of a non-investment fund issuer, prospectus supplements filed by a mutual fund after the date of its base shelf prospectus would not be subject to review by the principal regulator (unless novel in nature) and would not require the issuance of a receipt. This would enable a mutual fund to offer a new class or series of securities at a later date by filing a prospectus supplement, provided the general description of the securities was contained in the base simplified prospectus.
3. Consistent with section 5.5(1) of National Policy 11-202, the CSA should target providing first comments on a base shelf prospectus within 3 business days of filing, with the target for the final prospectus filing being ten days. Should the CSA wish to review continuous disclosure documents of mutual funds, such reviews would take place outside the base simplified prospectus filing process.

⁴ See *Re Mackenzie Financial Corporation et al* (January 24, 2022).

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4. Material changes to a mutual fund would continue to trigger a requirement to file a prospectus amendment and amended and restated fund facts or ETF facts. In our view, the “materiality” threshold articulated by the CSA when refiling fund facts and ETF facts as either Auto Public or Private should become the general standard triggering a prospectus amendment for any mutual fund: If the change does not impact disclosure in the fund facts or ETF facts beyond those matters identified in proposed section 5A.6 of CP 41-101 or proposed section 4.1.6 of CP 81-101, the change is not material to the investor’s decision and should not trigger a prospectus amendment.

Despite the adoption of base shelf prospectus principles, we believe that investors in mutual funds should continue to receive the fund facts or ETF facts in the first instance, with the base simplified prospectus to be available upon request.

Responses to specific consultation questions

Please find below our responses to the specific questions contained in Annex F to the Proposals.

1. **Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.**

Yes, we believe the Lapse Date Extension would reduce some unnecessary regulatory burden by requiring that resources be devoted to the prospectus renewal process only once every two years, rather than annually. Those costs include the fees of external advisers and service providers. We defer to information provided by industry participants regarding the magnitude of those cost savings.

2. **Would cost savings from the Lapse Date Extension be passed onto investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.**

For mutual funds that bear the expenses associated with their prospectus filings, we expect that the cost savings would be directly realized by those mutual funds. For mutual funds where the expenses associated with their prospectus filings are borne by the mutual fund’s manager in return for an administration fee, we expect that the cost savings could be passed on to the mutual fund through a reduction to the administration fee. However, in both cases, the availability of a reduction would depend on whether there are other offsetting new regulatory expenses. We defer to the information provided by industry participants regarding the likelihood of there being net cost savings that would be passed on to investors.

3. **Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed investment decisions.**

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We do not believe the Lapse Date Extension would affect the currency or accuracy of any material information provided to investors. Currently, almost all investors choose to receive only the fund facts or ETF facts in connection with making their investment decision. The currency and accuracy of this information will not change as a result of the Lapse Date Extension. Further, the information contained in a simplified prospectus or annual information that is not summarized in fund facts or ETF facts is generic in nature and tends not to change during the lifespan of a simplified prospectus.

- 4. **Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of “slip sheet” amendments make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.**

We disagree with this aspect of the Proposal. Please see our comments above under “Amended and restated prospectus amendments”.

* * * * *

Thank you in advance for your consideration of the above commentary. Should you have any questions or wish to discuss the above commentary, please contact the undersigned.

Yours truly,

(signed) “Anil Aggarwal”
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BY EMAIL

April 27, 2022

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territory
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

**Attention: The Secretary, Ontario Securities Commission
Me Philippe Lebel, Autorité des marchés financiers**

Dear sirs or mesdames:

**Re: CSA Notice and Request for Comment
Proposed Amendments to National Instrument 41-101 *Prospectus Requirements*,
National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related
Proposed Consequential Amendments and Change (the “Proposed
Amendments”) and
Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds
in Continuous Distribution (the “Consultation Paper”)
Modernization of the Prospectus Filing Model for Investment Funds**

I am writing in respect of the Proposed Amendments and Consultation Paper relating to burden reduction initiatives for investment funds. Thank you for the opportunity to comment on these important proposals.

I have been employed as legal counsel for investment management firms for over 17 years, including 11 as General Counsel. I am currently in private practice serving the investment management industry. I have frequently commented on proposed regulation and have participated on OSC advisory bodies. As such, I am very familiar with the instruments and policies for which changes are proposed and believe I can offer helpful insight.

In general, I am supportive of the Proposed Amendments as reducing the frequency of prospectus filings for investment funds to a biennial cycle will certainly, on its face, reduce the regulatory burden currently faced by investment fund managers (“IFMs”). Furthermore, elimination of the 90-day rule will also reduce the regulatory burden, albeit less significantly. I commend the Canadian Securities Administrators for these initiatives.

Proposed Removal of “Slip Sheet” Prospectus Amendments

The Proposed Amendments fall short of achieving the goal of regulatory burden reduction as a result of the changes to subsection 2.2(1) to NI 81-101 and subsection 6.1(3.1) of NI 41-101, requiring all amendments to investment fund prospectuses to be in the form of amended and restated prospectuses (“ARPs”). This will increase the burden for prospectus amendments significantly both from the perspective of internal IFM resources as well as costs of external counsel, where used for these purposes. Furthermore, it is not clear that the stated benefit of this, overcoming the difficulty of tracing through “slip sheet” amendments, is achieved or desirable.

It is important to understand the process followed by an IFM in preparing a prospectus, a “slip sheet” amendment to the prospectus and an ARP:

- Prospectus: Typically led by a project manager in conjunction with the legal group, each department or function of the IFM is canvassed to ascertain whether there are any changes in the disclosure relating to matters for which that department or function is responsible. This typically involves multiple reviews by multiple individuals in each department or function, even when there are few if any changes since the previous prospectus. Discussions may occur among multiple departments or functions to draft particularly sensitive disclosure or disclosure of items that are confusing.
- “Slip sheet” amendment: Such amendments typically relate to changes to a fund’s investment strategies, offerings of new series or programs, or fundamental changes (as defined in Part 5 of NI 81-102 *Investment Funds*). The amendment is focused on the change so only departments or functions responsible for the subject matter of the change are involved in the drafting and review of the amendment. In addition to the involvement of the legal and compliance functions in all amendments, a change in investment strategies would typically involve the portfolio manager and the product management team as well. No other operational groups would be involved. For a fundamental change, there would likely be no involvement in the prospectus amendment beyond legal and compliance. For a new series or program, one would expect much broader involvement among IFM departments and functions.
- ARP: An ARP would typically be used for a substantial amendment, such as the complete overhaul of a major program offered by the IFM. Such amendments would typically impact much Part A disclosure and extensive Part B disclosure. An ARP is

used in these situations precisely because a slip sheet amendment would be difficult to follow. The same process as employed for a prospectus is likely to be used, although with less tolerance for minor changes.

Importantly, from a legal perspective, there is no difference between a prospectus and an ARP, which explains why a similar process is followed. The ARP fully replaces the prospectus and carries the same liability. While the internal reviews may be quicker for an ARP, they are unlikely to be much different than for a prospectus. This imposes a burden on departments and functions within the IFM that would have no involvement if such were a “slip sheet” amendment. For example, if a simplified prospectus is being amended to revise investment strategies of a fund, the only functions of the IFM that would be involved would be product management and investment management, alongside legal and compliance. By requiring an ARP for an amendment, other functions that would be involved in prospectus review would have to be involved in the review as well, just as they would for a prospectus.

Firms that outsource this work incur hard costs. Depending on the complexity of an amendment, external counsel may charge several thousand dollars for a “slip sheet” amendment. However, that cost will increase significantly for an ARP as counsel would need to be sure that no other parts of the prospectus have been amended (or require amendment) and the disclosure in the unamended parts remains current. These extra hours add up to thousands of dollars in cost.

If an IFM, and consequently an investment fund, is required to incur these additional costs and burdens, what would be the point of biennial renewal of the prospectus? If a prospectus has been amended and restated within the two-year period, the biennial renewal is not necessary. Perhaps the two-year period ought to run from the date of the amended and restated prospectus. I note that this seems similar in concept to that put forth in the Consultation Paper and I encourage the CSA down that path.

The stated benefit of the change to mandating the use of an ARP for amendments is to overcome the difficulty of tracing through “slip sheet” amendments. An investor who receives an amended and restated prospectus does not know what has been changed. Importantly, current investors of an investment fund would not be able to look at the amended and restated prospectus and know what has changed. The change itself for which the ARP is prepared could impact the subsequent purchase of an investment fund, yet it would not be very clear to such purchaser what has changed. Such an investor would only have recourse to the material change report and press release accompanying the amended and restated document to determine what has changed with a particular fund, yet investors do not typically know about such filings and such filing would not typically give the level of disclosure gleaned from a “slip sheet” amendment. The current investor could view a “slip sheet” amendment and immediately know what has changed. As such, the removal of the “slip sheet” amendment actually reduces investor protection.

The only way to determine what changes there were from the original prospectus to the ARP would be to run a blackline. Blacklines are required to be filed with an ARP so that regulators who review the document can see what has been revised. Investors do not have that benefit. While the benefit to regulators from removing the ability to “slip sheet” amendments is thus obvious, the benefit to investors is not. As such, the requirement that amendments to a prospectus be made only by way of ARP should be removed from the Proposed Amendments.

It is interesting that the proposal in the Consultation Paper for a base shelf prospectus would allow for amendment by a document incorporated by reference into the prospectus rather than an ARP. These positions seem inconsistent, yet no explanation for such inconsistency is apparent.

Consultation Paper

The Consultation Paper proposes that investment funds move to a base shelf prospectus model. This is an excellent idea. Referring to Form 81-101F1 *Contents of Simplified Prospectus*, much disclosure required under the new form is time sensitive. It is ordinary for IFM's to tweak the disclosure items over time, but generally changes to Part A of a simplified prospectus are minor from year to year. Under the new form, only the following items in Part A require annual updating:

- Item 4.3 Brokerage Arrangements – due to the need to identify what goods or services were used since the previous prospectus filing
- Item 4.16 Remuneration of Directors, Officers and Trustees – due to the disclosure requirement relating to compensation and expenses paid to IRC members
- Item 4.18 Legal Proceedings (if there are any)
- Item 11 Income Tax Considerations

In Part B of the simplified prospectus, the most likely item to change relates to the fund's risk classification. This is an annual calculation (at least) and we have seen many risk classification changes over time. These disclosures can easily be posted on and updated annually on the IFM's designated website.

Should you wish to discuss my comments further or require any clarification, please do not hesitate to contact me at your convenience.

Yours truly,

ADELSON LAW

Eric Adelson
Principal



April 27, 2022

Delivered By Email: comments@osc.gov.on.ca, consultation-en-cours@lautorite.gc.ca

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
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Dear Sirs and Mesdames:

RE: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base shelf Prospectus Filing Model for Investment Funds in Continuous Distribution -- Modernization of the Prospectus Filing Model for Investment Funds

Franklin Templeton Investments Corp. (“**Franklin Templeton Canada**”) appreciates the opportunity to comment on CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base shelf Prospectus Filing Model for Investment Funds in Continuous Distribution -- Modernization of the Prospectus Filing Model for Investment Funds (the “**Consultation**”).

Franklin Templeton Canada is registered as an investment fund manager, portfolio manager, mutual fund dealer and exempt market dealer with the securities regulatory authorities in various Canadian provinces and territories. Franklin Templeton Canada is an indirect, wholly owned subsidiary of Franklin Resources, Inc. [NYSE:BEN], a global investment management organization with subsidiaries operating as Franklin Templeton and serving clients in over 155 countries. Franklin Templeton's mission is to help clients achieve better outcomes through investment management expertise, wealth management and technology solutions. Through its specialist investment managers, the company offers boutique specialization on a global scale, bringing extensive capabilities in equity, fixed income, multi-asset solutions and alternatives. With offices in more than 30 countries and approximately 1,300 investment professionals, Franklin Templeton has 75 years of investment experience and approximately US\$1.5 trillion (approximately CAN\$1.9 trillion) in assets under management as of March 31, 2022.

Franklin Templeton Canada supports the Canadian Securities Administrators' ("CSA") initiative to reduce the regulatory burden for investment funds and commends the CSA for the Consultation. Addressing the issue of regulatory burden requires the fostering of healthy dialogue between the industry and regulators, and Franklin Templeton Canada appreciates the opportunity to provide its input in this regard.

Furthermore, Franklin Templeton Canada welcomes the CSA's proposals to extend the lapse date for investment funds in continuous distribution to 24 months and repeal the requirement to file a final prospectus within 90 days after the issuance of a receipt for a preliminary prospectus for an investment fund. We believe these proposals, if implemented, will benefit both investors and investment funds. However, we have concerns with the proposed requirement in the Consultation to file an amended and restated prospectus every time an amendment is required.

Franklin Templeton Canada is a member of the Investment Funds Institute of Canada ("IFIC") and generally supports the submissions made by IFIC with respect to the Consultation. Franklin Templeton Canada is concerned that the requirement to file an amended and restated prospectus every time an amendment is required is not an appropriate solution nor is it consistent with the goal of reducing regulatory burden. The increased costs of producing an amended and restated prospectus every time an amendment occurs, the time required by both internal and external personnel, and the lack of clarity for an investor in not being able to see the actual amended disclosure in an amended and restated prospectus, are factors that need to be considered before implementing such change.

It is also important to consider that, in many instances, amendments to the prospectus must be filed in a timely fashion, particularly when there has been a material change that affects the business, operations or affairs of a fund. Implementation of these changes would be further protracted if an amended and restated prospectus is required every time such a change is required.

Filing fees is also an area of concern. Would the CSA's expectation be that each time an amended and restated prospectus is filed, the fees payable would be for all funds in the prospectus or just the funds impacted by the amendment itself? The former would result in an increased cost burden than what exists under the current filing fee regime.

Franklin Templeton Canada also believes that, ultimately, it is the Fund Fact and ETF Fact documents that provide the point-of-sale disclosure and inform investors when making investment decisions. It is this document that should be the prime focus and not the prospectus.

Therefore, while Franklin Templeton Canada is supportive of initiatives that reduce regulatory burden for investment funds and we welcome the idea of extending the prospectus lapse date to 24 months, we are concerned that the corresponding requirement to file an amended and restated prospectus every time a change is made will negate any benefits that would accrue from extending the lapse date.

Thank you for your consideration of this submission. Please feel free to contact me at brad.beuttenmiller@franklintempleton.ca should you have any questions or wish to discuss our submission.

Yours truly,

FRANKLIN TEMPLETON INVESTMENTS CORP.

“Brad Beuttenmiller”

Brad Beuttenmiller
Senior Associate General Counsel

cc: Duane Green, President & CEO, Franklin Templeton Canada

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April 27, 2022

Via Email

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
 Securities Commission of Newfoundland and Labrador
 Registrar of Securities, Northwest Territories
 Registrar of Securities, Yukon Territory
 Superintendent of Securities, Nunavut

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Me Philippe Lebel, Corporate Secretary and
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 Québec (Québec) G1V 5C1
 Email : consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames

**Re: CSA Notice and Request for Comment
 Proposed Amendments to National Instruments 41-101 and 81-101 and
 Consultation Paper, published for comment on January 27, 2022 (the Proposed
 Amendments and the Consultation Paper)
 Comments of Borden Ladner Gervais LLP**

We are pleased to provide the members of the Canadian Securities Administrators (CSA) with comments on the above-noted Proposed Amendments and Consultation Paper. Our comments are those of the individual lawyers in the Investment Management practice group of Borden Ladner Gervais LLP listed below, and do not necessarily represent the views of BLG, other BLG lawyers or our clients.

We commend the CSA for moving forward with the Proposed Amendments and for publishing the Consultation Paper for comment. We have long supported the reduced regulatory burden for publicly offered mutual funds and their managers that would arise from a lengthened lapse date of a prospectus, particularly, as recognized by the CSA, now that only the Fund Facts and ETF Facts are provided to investors.

Please note that when we use the phrase “mutual fund” in this letter, we are referring to mutual funds whose securities are qualified by a prospectus and include ETFs. Further, when we use the term “prospectus”, we are referring to the simplified prospectus under NI 81-101 and the investment fund prospectus under NI 41-101 for ETFs.

Comments on the Proposed Amendments

While we agree with the concept behind the Proposed Amendments, we have comments on the drafting, as well as a few of the principles of the CSA behind the Proposed Amendments.

1. **Regulatory Filing Fees Should be Commensurate with Regulatory Activity** – We note that the CSA state in the accompanying notice that the CSA will be moving forward with the Proposed Amendments in tandem with amending the regulatory filing fees, as appropriate, to “ensure that the Proposed Amendments will not have a negative impact on filing fees” from the perspective of the applicable regulators. Today, regulatory filing fees are different for all provinces and territories – with some being flat fees and others being based on distributions in the jurisdiction. With the above-noted statement, we understand the CSA to be signaling that the Proposed Amendments will not affect the amount of filing fees to be paid in the jurisdictions, with the timing of required payments tied to the annual filing of ETF Facts or Fund Facts.

We have long held that a regulatory filing fee review for mutual funds (including ETFs) is overdue at a CSA level. There is little to no justification for the fees to be so different amongst the different jurisdictions. Our comments are about the fees payable annually and also for prospectus amendment filings. While we understand that public mutual funds are accessing the capital markets in the jurisdictions where they have filed a prospectus and hence some fees should be payable, we note that the fees payable in the jurisdictions are not representative of the regulatory activity necessary to monitor them and to process the various filings in the jurisdiction. This issue will be even more apparent with the Proposed Amendments – it is likely that in the “off-years”, even though ETF Facts or Fund Facts must be filed, there will be little or no regulatory action required in respect of these filings. Therefore, we urge the CSA to amend the various fee rules in conjunction with the Proposed Amendments to reflect the following:

- Lower overall regulatory filing fees to recognize the lesser regulatory activity involved in processing today’s annual prospectus filings that will be inherent in moving to a biennial prospectus renewal system.
- Tie annual regulatory filing fees to a per fund fee payable only if there are “material changes” to an ETF Facts or a Fund Facts document.

- Amend filing fees payable on an amendment to a prospectus, including ETF Facts or Fund Facts so that the fees are commensurate with the work involved in reviewing them (ideally a lower flat fee per jurisdiction that is consistent across Canada).
 - Principal jurisdictions for a mutual fund may charge additional fees in respect of mutual fund filings, while all other jurisdictions should charge less in recognition of the lesser regulatory activity associated with the filing.
 - Clarify that amendment fees are payable only for the fund or funds being amended, if a prospectus of the fund family is amended, as is currently the case.
 - Clarify when regulatory fees will be paid - on each filing of an amendment or the ETF Facts or Fund Facts, would be our recommendation – and not simply on each biennial prospectus filing.
2. **Consider Transition to the Proposed Amendments** – We urge the CSA to consider transition and the coming into force of the Proposed Amendments. If the Proposed Amendments are to come into force in 2023, for example, we urge the CSA to allow mutual funds the option of waiting until their next renewal to implement the new system. This will consistent with past transition dates. We question whether the CSA intend all mutual funds to commence the biennial filings at the same time – that is, 2025 for the first biennial filing of the prospectus for all mutual funds? Some clarity on this point would be appreciated.
3. **Clarity on Filings to Qualify a New Mutual Fund** – It should be clarified in the Proposed Amendments (preferably in the Companion Policy to both NI 41-101 and NI 81-101) how a fund manager can qualify a new mutual fund or new fund series in a specific fund family. Most mutual funds are included in a single prospectus for the fund family. Is it intended that the prospectus would be amended to include a preliminary prospectus for the new fund and to include a new series? Many fund managers time their launches of new funds and/or new series to the annual prospectus renewals. We anticipate this will continue to be the case, such that annually, as appropriate, new funds will be launched. Please see our comment below about the need for the continued ability to amend prospectuses as permitted today – this comment is particularly important to allow for launches of new funds or series.
4. **Ability to Continue to File Prospectus Amendments** – We strongly consider that the CSA should continue to allow the option of amendments to prospectuses, rather than requiring all prospectus amendments to be filed as an “amended and restated prospectus”. We consider the CSA concerns about an investor’s ability to determine the “prospectus” of a mutual fund, when it has been amended, to be overstated. This is particularly so, in light of the fact that investors generally only review the Fund Facts or ETF Facts of a mutual fund. In general, amendments can more clearly delineate which funds they cover and the disclosure being amended and are generally only filed when there is a material change to a fund or to qualify a new series of a mutual fund. Thus we expect that amendments will be easier for an investor to follow, compared to an amended and restated document, which does not highlight the funds nor the disclosure being amended, making it more challenging for investors to easily spot the changes. The phrase used by the CSA is “slip sheet”, which we consider a term that confuses what an amendment is about – all amendments should clearly

state which funds they include and the disclosure being amended. In addition, the use of the phrase “amended and restated” in subsection 2.7(2.1) of NI 81-101CP, which provides that the fund facts data is required to be updated, has created confusion about what the CSA means by this phrase in the current instance. As you know, amendments generally do not update all data points in the prospectus.

5. We also consider that the CSA need to set service standards for their review of these amendments. Specifically, will a receipt be issued? Will a formal comment letter be issued? How long will this review take? These are important details, given the need to make sure information about material changes to a fund are disseminated promptly to new investors.
6. **Support for the Repeal of the “90-day” rule** – We fully support of the proposed repeal of the “90-day” rule for filing of final prospectuses after the filing of a preliminary prospectus.
7. **Support for the concept of “Auto-Public Filings”** – We understand the need for Fund Facts and ETF Facts to be updated annually and commend the CSA for the concept of “auto-public filings” where there are no material changes to these documents. We urge the CSA to clarify whether a receipt will be issued for these documents. Presumably not, since they will be public documents on filing. This is an important issue given the need to use the updated filed documents as soon as possible after filing. The Companion Policy discussion about this point should also include clarity on this point and our comments below.
8. **Additional Clarity when Fund Facts/ETF Facts are amended on the annual filing** – We consider additional clarity must be provided on service standards on the part of the CSA on reviewing (or not reviewing) the annual Fund Facts and ETF Facts where these documents are amended in ways that make them not “auto-public filings”. Similar to our comment above, will receipts be issued for these documents and, even if no receipts will be issued, how long will any review take, given the need for investors to be provided these documents as soon as possible?

Comments on the Consultation Paper

The questions posed by the CSA are important questions, albeit very difficult to answer in a vacuum and particularly during this comment period and a continued very busy regulatory period. We wanted to ensure we provided comments on the Proposed Amendments as a priority matter.

While we agree with the *concept* of an evergreen document (base prospectus) for a fund, we consider that additional thought should be given by the CSA to determine the base facts about a mutual fund that could be provided in an evergreen document. Ideally, this would be a “back to first principles” review and not be simply a modification of the existing prospectus document, given the fact that further analysis will be necessary about each item of disclosure. It would be useful to understand if this will apply to all publicly offered investment funds in continuous distribution.

We recommend a regulatory/industry working group be established to kick this project off. Legal counsel should be included in this working group and we would be very pleased to be part of this working group, given our long and extensive experience in working with fund managers to prepare prospectus documents.

Thank you for considering our comments. Please contact any of the authors of this letter if you require any clarification of our comments.

Yours very truly,

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April 27, 2022

VIA EMAIL

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 of New Brunswick
 Superintendent of Securities, Department of Justice and Public Safety, Prince Edward
 Island
 Nova Scotia Securities Commission
 Securities Commission of Newfoundland and Labrador
 Registrar of Securities, Northwest Territories
 Registrar of Securities, Yukon Territory
 Superintendent of Securities, Nunavut

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Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds (collectively, the “Proposed Amendments”)

The Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following general comments on the Proposed

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first,

Amendments. We are generally supportive of the CSA's burden reduction initiatives, and agree that the Proposed Amendments will result in a reduction of some unnecessary regulatory burden without having a material negative impact on investor protection. However, we do have a concern that the increased time frame may result in some stale information in the prospectuses of certain issuers, as explained in more detail below.

We support the first stage of the Proposed Amendments that would require a prospectus to be renewed every two years instead of every year, as well as the repeal of the requirement to file a final prospectus no more than 90 days after the issuance of the preliminary prospectus receipt. We agree with the commentators who stated that investment fund managers spend significant resources on the preparation and filing of prospectuses and related documents.

We believe there will be significant cost savings to the industry as a result of a Lapse Date Extension. We understand that the savings could be as high as \$3 million per issuer group for large bank-affiliated investment fund issuers, and similarly significant when extrapolated across the industry. We note that to the extent these fees are already covered as part of any fixed administration fee, savings may not however immediately or directly benefit investors. In addition to out-of-pocket costs, issuers usually invest significant internal resources for periodic prospectus review and renewal.

We would surmise the Lapse Date Extension might also result in resource savings at the CSA level, as staff members would no longer have to review each prospectus on an annual basis. While we agree that the costs of annual renewal may not justify the benefits of this admittedly frequent review of a fund's prospectus, if the frequency of the lapse date is reduced as proposed, we are in favour of additional targeted (either thematic or issuer-focused) analysis and actions to help mitigate the potential downside of losing the annual review by an issuer, its advisors and regulatory staff.

We would welcome additional commentary with respect to any proposed use of staff time savings – i.e. whether cost-cutting will occur, or if these staff will be redeployed to proactively review disclosure based on thematic or issuer-focused risk assessments. Regulatory resources could also be used to communicate more proactively and frequently with the industry on perceived best practices for investment fund prospectus disclosure. It would be increasingly helpful (with the loss of the annual opportunity for review and discussion particularly) for issuers and their advisors to be provided with “real-time” information and staff views on salient disclosure issues rather than waiting for a summary of issues in staff's annual reports, formal guidance, or individually through audits or increasingly periodic prospectus reviews. Proactive education and reform when thematic or systemic issues are discovered so that other issuers can update related disclosure issues as needed would result in continuous disclosure improvements for investment funds across the industry.

markets function at their best, and economies grow. There are more than 180,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on [LinkedIn](#) and Twitter at [@CFAINstitute](#).

We also believe it important that the Fund Facts and ETF Facts documents continue to be filed annually and delivered under the current requirements, as we understand those are the documents most likely to be reviewed by end investors.

We agree that for the most part, in the event a material change occurs in a fund between renewal dates, despite potential debate as to the materiality of the change, the requisite disclosure will be picked up through various mechanisms (i.e. required prospectus amendment/filing, material change reporting). However, there may be incremental changes that occur throughout the life of an investment fund that themselves individually do not amount to a material change, but that could be considered material in aggregate and that might be caught and updated through prospectus disclosure during the existing annual renewal cycle. For example, there may be some degree of organic evolution over time of a fund's investment practices or strategy as disclosed in the prospectus and articulated through the description of a fund's fundamental investment objectives and/or investment strategies. There could also be changes to wording such as in the risk factors section of a prospectus as a result of adherence to perceived industry best practices/language, or market or industry developments that are best addressed through risk factor acknowledgment and observations throughout the year, but again individually may not amount to a material change. In addition, funds and their managers that are adapting to secular industry-wide changes, such as addressing DEI or ESG-related considerations, are unlikely to be described the way they are now after a period of 24 months, just due to evolving industry practices, norms, and related disclosure language. Such changes might not otherwise be captured through required supplementary or updated disclosure prior to a prospectus renewal, resulting in some disclosure becoming stagnant (if not potentially misleading) over time.

The proposal to require every prospectus amendment to be filed as an amended and restated prospectus rather than in the form of a "slip sheet" amendment may have unintended consequences. While we acknowledge that the number of amendments could be greater in a 2-year period, certain amendments are easy for an investor to trace using the "slip sheet" method (i.e. a change in fees) and the cost of a full amended and restated prospectus in those instances might negate the benefits the Proposed Amendments seek to achieve. An alternative might be a specified and permitted list of the type of amendments that could be made using the "slip sheet" method.

We are not currently in favour of the potential new base shelf prospectus filing model. We agree that it would be prejudicial to the public interest for a base shelf prospectus to not be subject to a lapse date as it would exacerbate the issues relating to potentially stagnant disclosure described above. We do not currently have a view as to whether the base shelf prospectus would have a negative impact on the liability rights of investors, as we are unaware of any recent public enforcement actions relating to investment fund prospectus disclosure.

Concluding Remarks

We support a number of the changes that have been made in the Proposed Amendments, particularly those that allow for burden reduction through reduced frequency of prospectus filing requirements, provided that there is a reallocation of the related regulatory resources to result in a concurrent increase in targeted and/or risk-

based investment fund disclosure reviews and more proactive and frequent communication and guidance regarding investment fund prospectus disclosure best practices.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

**The Canadian Advocacy Council of
CFA Societies Canada**



Advancing Standards™

VIA E-MAIL

April 27, 2022

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

Attention:

Me Philippe Lebel
 Corporate Secretary and Executive
 Director, Legal Affairs
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Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – *Modernization of the Prospectus Filing Model for Investment Funds*

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**), is pleased to have the opportunity to submit the following comments regarding the CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds (**Consultation**).

PMAC represents over [300 investment management firms](#) registered to do business in Canada as portfolio managers (**PMs**) with the members of the Canadian Securities Administrators (**CSA**). In addition to this primary registration, 70% of our members are also registered as investment fund managers (**IFMs**) and/or exempt market dealers (**EMDs**). Some member firms manage large mutual funds or pooled products, and others manage separately managed accounts on behalf of private clients or institutions such as pension plans and foundations. PMAC's members encompass both large and small firms and manage total assets in excess of \$3 trillion.

KEY RECOMMENDATIONS

- 1. Do not require prospectus amendments to be filed as an amended and restated prospectus.** The CSA's stated purpose for the proposed biennial prospectus renewal cycle is to reduce regulatory burden. The proposed elimination of the "slip sheet" amendment system will remove all burden reduction benefits of the proposed changes and will create significant additional regulatory burden for firms. We strongly urge the CSA not to require an amended and restated prospectus for every prospectus amendment. The costs of doing this far outweigh the benefits of the proposed biennial renewal. The slip sheet system for amendments should be retained.
- 2. Provide additional detail on the Base Shelf Prospectus proposal for further consultation.** The questions included in the Consultation are premature. The proposal does not include sufficient detail as to how the proposed system would work to allow members to provide meaningful comment.

GENERAL COMMENTS

Biennial filing

PMAC supports the work of the CSA to modernize the prospectus filing model for investment funds and its efforts to reduce regulatory burden. We agree with the proposal to eliminate the 90-day rule. Subject to our comments below, we are supportive of the move to a biennial filing model, but encourage the CSA to permit issuers to continue to use the current renewal process, if they choose to do so. We agree that updating the Fund Facts and ETF Facts annually provides investors with the appropriate information and updated disclosures sufficient to inform their investment decisions.

We strongly disagree with the proposed requirement to file an amended and restated prospectus for all prospectus amendments. We urge the CSA to adopt a flexible, principles-based approach, and to avoid a one-size-fits-all solution, by allowing fund issuers to determine when, in their view, it is appropriate to file a slip sheet amendment rather than an amended and restated prospectus.

All issuers have an obligation to provide full, true, and plain disclosure. This applies to prospectus information and continuous reporting of material and non-material changes. Under the current regime, investors have access to this information on a timely basis in order to inform their investment decisions. The Fund Facts and ETF Facts documents were created with the specific goal of providing investors with meaningful disclosure. We believe that a biennial filing of the prospectus is a welcome change that could be achieved in a manner that balances investor protection and burden reduction for issuers. However, a requirement to produce an amended and restated prospectus for *every* change will not achieve this balance and will only add regulatory burden compared to the current framework.

PMAC strongly disagrees with the requirement to create an amended and restated prospectus for every prospectus amendment. We believe this will add, rather than eliminate, regulatory burden; several members commented that they would prefer the current regime of making updates using the slip sheets. We urge the CSA to maintain flexibility in this respect. The IFM should have the discretion to amend and restate the prospectus when it deems necessary, in accordance with its obligation to provide full, true and plain disclosure. If there are substantial changes being made, the issuer may decide that it would be advisable to amend and restate the prospectus. However, it would not be reasonable to expect an amendment and restatement for minor changes, such as the intention to hold a shareholder meeting, the intention to terminate a fund or a series of funds. Or, for example, if the change only impacts one fund or one series, the entire prospectus should not require amendment and restatement, for example, regarding the reduction of management fees. This could result in the need to file several amended and restated prospectuses annually – the

costs of doing this far outweigh the benefits of the proposed biennial filing because translation costs, compliance costs associated with the Accessibility for Ontarians with Disabilities Act (**AODA**) and internal costs of producing an amended and restated prospectus are significant, and are substantially equivalent to a renewal prospectus filing.

Filing Process

Members are supportive of the added flexibility of being able to file the prospectus every two years instead of annually. However, they have many questions regarding how the filing system would function, and noted potential unforeseen consequences, which are described below.

Reduce filing frequency

Without further detail and clarification, it is not evident how this proposal would reduce burden for fund issuers. The burden reduction benefit is allowing issuers to do something that they are currently required to do annually on a less frequent basis. Changing the filing process would require building and training for new procedures, which will increase burden in the short term. In the long term, there may be burden reduction benefits; however, the new proposed requirement that all amendments be effected by filing amended and restated prospectuses significantly negates these benefits.

Prospectus amendment process

Prospectus amendments often need to be made on a time-sensitive basis. As an example, due to unforeseen changes such as those resulting from Federal or Provincial budget announcements, risk rating changes and other unplanned events. The requirement to amend and restate the prospectus does not align with a quick filing when an amendment is needed, and would be especially problematic for amendments caused by material change requirements, when an amended and restated prospectus would be required within 10 days. This is not reasonable for a 400+ page document that requires review from multiple internal and external stakeholders to ensure accuracy and clarity to meet the full, true, and plain disclosure obligation.

Lack of clarity regarding information to be updated

It is not clear what prospectus information would need to be updated for filing an amended and restated prospectus, and what information could be maintained. It is also not clear how the issuer would make non-material changes to the prospectus. As noted below, the amended and restated prospectus does not track changes for investors to identify amendments, making changes more difficult for investors to track.

Fund Facts/ETF Facts Renewal

The Consultation indicates that the Fund Facts/ETF Facts would need to be filed in the year where no prospectus is being filed. If there are material changes in the disclosure, a prospectus review process would be triggered. If the changes to the Fund Facts/ETF Facts are related to information in the prospectus, a blackline of the prospectus would also be filed. Members question whether this would trigger the need to file an amended and restated prospectus, as it seems to amount to an amendment to the prospectus.

Firms often time certain prospectus amendments to coincide with the annual prospectus renewal. With a biennial filing schedule, it is not clear how interim amendments would be made (including material changes that do not require an update to the Fund Facts/ETF Facts, but which may result in a material change report). Members question whether they will be permitted to submit immaterial changes to a prospectus at the time of Fund Facts/ETF Facts renewal or at any time without filing a Fund Facts/ETF Facts (as no information in the Fund Facts/ETF Facts would change), and if the immaterial changes would result in the payment of additional fees. As noted above and discussed further below, if an amendment and restatement of the prospectus is required, this would add significant costs compared to the current system (including the cost of the filing fees, firm resources such as employee time and fund advisory board time, and external service provider fees, including for translation and AODA compliance on the entire document). If the filing is auto-public, members suggest that the manager should include a certificate stating that there are no changes other than to the variable information, and that no blackline of the Fund Facts / ETF Facts would be required. Members do not understand the rationale for the blackline, if the filing is auto-public, since the document will be made public without regulatory review.

Members are concerned that the filing process will be challenging during a renewal. For large firms, some of which may have over 100 funds, this would require the implementation of a new process to separate Fund Facts/ETF Facts for funds that are being renewed with material changes from those Fund Facts/ETF Facts for funds that are being renewed without material changes. Splitting the Fund Facts/ETF Facts into these two categories would be time consuming and introduces risk, as it would be a cumbersome manual process. Further, the division of the Fund Facts/ETF Facts in this manner may also make it more difficult for investors to find the Fund Facts/ETF Facts for a particular fund, as it will not be evident to an investor whether their fund has had a material change.

We read the Consultation to state that, if any change to a section outside of the sections enumerated in the form (for example, "What does the ETF Invest In?") would disqualify filing under auto-public, even if the change was not material, and that the

full material change filing process would be triggered. We do not believe that immaterial changes to other sections should deem the change to be a material change. Further, we note that one of the enumerated sections which the Consultation indicates does not trigger a material change is a change to “Risk rating”, which staff at securities regulatory authorities have noted that, in their view, should be considered a material change.

There is also a risk of a comment being made on the documents filed under the private/material change regime, that could impact drafting for documents that have been made auto-public (some comments can carry across all Fund Facts / ETF Facts given that they often follow the same format). It is not clear how that situation would be addressed. The proposed system would also result in some documents being public prior to others during the same filing process, which complicates current AODA processes and website postings.

Furthermore, if the prospectus is only renewed every two years, changes to conform to rapidly evolving best practices, regulatory changes and regulatory expectations, such as those related to liquidity risk management and ESG, for example, may not be reflected in the prospectus for a longer period of time. Members also questioned how exemptive relief would be handled, given that such relief is often required to be reflected in the prospectus prior to relying on it. Members are also unclear as to whether these types of changes to prospectuses will be permitted without filing a Fund Facts/ETF Facts and incurring the fees associated with that filing. We note that currently, these changes are typically made on prospectus renewal, and filing fees are not paid to make the changes, as they are part of the renewal process.

Members are unclear as to whether the CSA will expect more frequent prospectus updates to reflect such regulatory changes. If so, the proposed regime will result in higher costs to issuers, since currently these are typically done on prospectus renewal and no additional fees are paid to make the changes.

Lastly, if information is updated in the Fund Facts/ETF Facts, this is usually because the prospectus has been updated. If such updates require an amendment and restatement of the entire prospectus, the costs would be significant. We ask the CSA to clarify the anticipated frequency and cost of prospectus restatement.

90-day Rule

We agree that the “90-day Rule” should be eliminated. As we noted in [our response to the 2019 Reducing Regulatory Burden for Investment Funds request for comment](#), many PMAC members find that this 90-day deadline can be restrictive and find it does not address the overarching policy rationale for the time limit. We agree that the elimination of the need to obtain exemptive relief to extend the deadline will result

in substantial cost savings. These costs often exceed the cost to file the original preliminary prospectus.

As PMAC stated in our 2019 letter, investment fund issuers do not typically market funds using the preliminary prospectus, unlike corporate issuers. Additionally, since the preliminary prospectus does not contain any material financial information that would be considered stale after 90 days, we do not see an investor protection rationale for requiring the 90-day deadline.

Transition Date

Depending on the changes that are made to the filing schedule and requirements, we believe that some transition time may be needed to allow issuers to familiarize themselves with the changes and adjust their documents accordingly. This is especially the case if new filing requirements are implemented. The transition period required is dependent on the extent of any rule changes. If the only change is to revise the lapse date under section 2.5 to 24 months rather than 12 months, then little transition time would be needed. Presumably changing to a 24-month lapse would not require a fund issuer to wait the 24 months prior to renewal. They could opt to refile at 12 months as per the current requirement if they so choose.

Costs implications

While supportive of these burden reduction initiatives, members emphasized that even small changes are very difficult and expensive for firms to implement. If issuers are permitted to file slip sheet amendments and not an amended and restated prospectus, these proposals have the long-term potential for cost savings for some firms. In the short term, implementing changes to processes, systems and forms represents a significant time and financial expenditure for firms which we do not see having a corresponding benefit for investors, particularly if the longer-term goal is to move to a base shelf prospectus system, which will require further revisions to the prospectus and filing procedures for issuers. The costs involved will depend on the size of the firm, the number and nature of funds offered, and the requirements in terms of filing frequency and process. It is premature to comment as to whether there would be cost savings that could be passed on to investors.

SPECIFIC CONSULTATION QUESTIONS RELATING TO THE LAPSE DATE EXTENSION

1. Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.

PMAC would like to thank the CSA for their receptivity to stakeholder feedback on the 2019 Reducing Regulatory Burden for Investment Funds requests for comment. In [our response to the 2019 consultation](#), PMAC specifically requested that disclosure requirements be streamlined by reducing the frequency of prospectus renewals from an annual renewal to a 24-month period, and to rely on the continuous disclosure requirements in National Instrument 81-106 – *Investment Fund Continuous Disclosure (NI 81-106)* with respect to timely amendments reflecting material changes. As we noted in 2019, we agree that most of the information contained in the simplified prospectus (or long form ETF prospectus) does not require annual updating, given that investors will receive the updated Fund Facts or ETF Facts. Material changes would trigger an amendment to the simplified prospectus (long form ETF prospectus) under the material change report regime in Part 11 of NI 81-106.

It is very difficult to determine what cost savings will result if the proposed changes are adopted. As noted in the Consultation, the fees payable with respect to renewals will not change, given that current filing fees for prospectuses for investment funds in continuous distribution will be replaced with filing fees for Fund Facts and ETF Facts. We support the proposed change to reduce the amount of the fee for filing an ETF prospectus to align it with that of a mutual fund prospectus.

The work involved in updating the prospectus every two years will not necessarily be half the work of updating it annually. There will likely be more work involved, given the additional passage of time and regulatory and other developments in the interim. Many firms also use the annual filing process to streamline the introduction of new funds or new series into the prospectus. It is difficult to anticipate how these processes will adapt and what costs will be involved if there is a move to biennial filings.

We strongly disagree with the statement in Annex H that "...investment funds that currently file by way of "slip sheet" amendments would need to alter their processes, which may result in *non-material incremental costs*" (emphasis added). If an amended and restated prospectus is required to be created for every prospectus amendment, this will significantly increase the time and costs involved in making amendments, because the entire document will need to be reviewed and other amendments incorporated (and not only the information affected by the amendments). As detailed further below, this would result in significant additional costs including staff time, legal review and translation, potential auditor involvement and AODA compliance.

We also disagree with the metrics set out in Annex H to calculate the estimated savings to the industry. The savings appear to be significantly over-stated. We note that the legal costs and time associated with a renewal prospectus are not accurate. Additionally, the analysis also does not appear to take into account the internal cost of employee time and for funds with advisory boards, the advisory board costs. While we are supportive of conducting a cost analysis for the proposed changes, the data for this analysis should come from registrants and from appropriately qualified professionals who work in investment management.

Additional costs of preparing an amended and restated prospectus include AODA (which can be between \$12,000 to \$15,000 for each amended and restated prospectus depending on the length of the prospectus), and fees for translation, and design, layout, and printing costs.

As noted above, we agree that there will be cost savings associated with the elimination of the need to obtain exemptive relief if the 90-day lapse period is removed.

2. Would cost savings from the Lapse Date Extension be passed onto investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.

As noted above, it is difficult to estimate the amount of cost savings (if any) that would result from these changes that could be passed on to investors. In part, this will depend on the approach to the "slip sheet" filings and the need to file an amended and restated prospectus to reflect changes.

Whether costs can be passed on to investors also depends on the operating expense structure of the funds; for example, with respect to funds that pay their own fees, this could result in savings for the fund. If the fund is unitized and the manager pays the fees, the manager may save fees, but not the funds. Many funds charge a fixed administrative fee and therefore, whether a prospectus is produced annually or biennially, the administrative fee charged to the fund (and indirectly, the investors) remains the same; a change to the filing period will have no impact on the fees paid by the investors.

3. Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed investment decisions.

It is not clear whether this question is focused on the accuracy of the information, or the accessibility of the information to investors. We note that investors typically do not read the entire prospectus, but rather rely on the

Fund Facts/ETF Facts, and the continuous disclosure of material changes. Given that the Fund Facts/ETF Facts would be updated annually, there would be no significant change to information available to investors to make an informed investment decision. However, as noted above, it is not clear how interim amendments would be made under the proposals. If information is only updated every two years, it would not be as up to date as under the current system. If immaterial information must be updated more frequently, there would not be a currency issue. However, if such amendments are by way of an amended and restated prospectus, will issuers be required to pay filing fees for filing the amended and restated prospectus even if there are no changes to the Fund Facts/ETF Facts? If issuers will be required to pay filing fees, then the costs to issuers will increase. Further, as noted below, the information would not be as traceable and may be more difficult for investors to identify. Ultimately, we understand these proposals to be about balancing regulatory burden reduction with investor protection and comprehension. We do not believe the balance has been struck, as proposed.

4. Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of "slip sheet" amendments make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.

We do not agree that prospectus amendments will necessarily increase over a two-year period; this would depend on the circumstances of each fund. We strongly disagree that an amended and restated prospectus is required for every prospectus amendment. Under the current framework, there is no limit to the number of amendments that can be filed before an amended and restated prospectus is required. Unlike a "slip sheet" amendment, an amended and restated prospectus does not highlight the changes that are made to the document. Therefore, changes will be more difficult for investors to track.

Moreover, since the Fund Facts / ETF Facts documents replaced the prospectus as the delivery document to purchasers of mutual funds that are reporting issuers and ETFs, there is less investor reliance on the disclosure contained in the prospectus.

It would be preferable to maintain the current "slip sheet" system for making changes to the prospectus. Suggested alternatives include a restatement of

the affected paragraphs only, or the ability to provide the amendment text and then a blackline to show the change(s) from the original prospectus. However, some members noted that any blacklining of the amended and restated prospectus would need to be made AODA compliant. Another proposed alternative is to make Part A renewable on a 2-year cycle and make Part B renewable on an indefinite cycle, only to be amended and restated for that particular fund when there is a change (similar to the Base Shelf Prospectus proposal). However, for certain changes made to Part A between a renewal cycle (e.g., exemptive relief with the condition that it be disclosed in the prospectus prior to relying on it), a slip sheet Part A amendment could be made without having to amend and restate the entire Part A at that time.

Amendments made by way of "slip sheets" are currently made accessible to investors by firms in various ways, including by providing links to the original prospectus and amendments on the website. Therefore, the changes made in the slip sheet will not be "lost" by investors. We note that it may be more difficult for investors to locate the amendments on SEDAR, but this could be remedied by making changes to SEDAR. We also note that firms rarely get requests for hard copies of the prospectus.

Some members indicated that on average, they make 2-5 amendments per year. Most issuers would make amendments at least once per year, if not more frequently. Creating an amended and restated prospectus would require updating of all the information in the document (beyond information affected by the amendments – such as changes to directors and officers and other non-material changes), resulting in significant additional costs. These costs include staff time, compliance and legal review, tax review, translation and AODA costs, layout, design, printing and destruction costs, all of which would increase the burden on issuers. Currently if a prospectus amendment occurs as a slip sheet amendment and the amendment itself does not impact the disclosure in the Fund Facts/ETF Facts, then the Fund Facts/ETF Facts do not need to be updated. It is unclear from the Consultation whether Fund Facts/ETF Facts would need to be re-done if the entire prospectus is amended and restated under the proposed changes. If all of the Fund Facts/ETF Facts documents would also need to be re-done, there would be significant cost implications. These documents require significant internal review and approvals. The issuer would also be required to pay the filing fee, and fees for filing the associated updated Fund Facts/ETF Facts, if necessary. Some issuers manage hundreds of funds and may be making frequent changes; even for smaller issuers, the costs would be prohibitive. Given this uncertainty, some members asked to retain the ability to use the current slip sheet amendments with an annual prospectus renewal cycle, if they so choose.

Information regarding material changes is provided to investors in the material change report, the press release, the prospectus amendment and the Fund Facts/ETF Facts documents. There is no investor benefit to requiring a fully amended and restated prospectus as opposed to an amendment, and in fact, the additional costs of this requirement could negatively impact investors. The ability to amend information using a shorter amendment document is also consistent with other regulatory regimes, such as the U.S. “sticker” regime.

Base Shelf Prospectus

We believe that the questions included in the Consultation are premature. Our primary focus is on achieving a balance between investor protection and burden reduction for issuers. It is difficult to evaluate the potential costs and benefits of a new Base Shelf Prospectus filing model without understanding what format the prospectus would take. Members are not clear whether the Base Shelf Prospectus will be consistent with the new consolidated prospectus format. It is not clear when the filings would be required for a product that is in continuous distribution. There is no indication of whether the ETF long form prospectus would also be streamlined.

It would also be beneficial to understand whether other jurisdictions are employing such a model, and what their experiences have been.

CONSULTATION QUESTIONS REGARDING THE BASE SHELF PROSPECTUS FILING MODEL

Please note that we have only included those questions for which PMAC members provided comments.

1. Please identify the disclosure required in a simplified prospectus (SP) or an ETF prospectus that is unlikely to change year-to-year.

We would like to emphasize that there is no one-size-fits-all response to this question. What a “material” change is depends on the investment manager’s perspective, based on their professional judgment and the nature of the fund. We encourage the CSA to maintain flexibility and take a principles-based approach, rather than creating prescriptive requirements for information updates.

Examples of information that is unlikely to change year-to-year include: purchases and redemptions, organization and management (excluding information on directors and officers), legal structure, and distribution policy. Members noted that most fund families would have multiple amendments every year, but that these would not implicate every fund in the fund family.

Members believe that the proposed base shelf prospectus would make more sense if there was an individual prospectus for each fund that could be maintained for periods longer than 24 months without requiring a renewal.

However, if there were a move to an individual prospectus model (away from the fund family approach), the workload involved in renewing multiple prospectuses at the same time would far exceed the current fund family approach.

(c) Would it be appropriate for Part A of an SP under the Project RID amendments to form the equivalent of a base shelf prospectus for a group of investment funds under a Base Shelf Prospectus regime? Please explain.

We agree that the information in Part A is unlikely to change year-over-year and may be appropriate to include in the base shelf prospectus. However, under current rules, for a conventional simplified prospectus, under NI 81-101 Part 2.2, when the Part B is bound separately from the part A, an amendment to the part B of any one fund requires a full amended and restated part B. Therefore, members prefer to keep part A and part B bound together into a single document, unless a change to this policy is contemplated, in which case additional clarity would be needed.

We note that it is not clear what would be included in a Base Shelf Prospectus for ETFs. Additional clarity on this point is necessary in order for us to provide meaningful comment.

(d) Would it be appropriate for Part B of an SP under the Project RID amendments to form the equivalent of a prospectus supplement establishing an offering program for an investment fund under a Base Shelf Prospectus regime? Please explain.

We agree that this approach would make sense. As funds or series of funds are added to the prospectus, these could be inserted into the supplement, eliminating the need to fully amend the information in the prospectus. Other information such as changes in directors could be amended by way of the supplement rather than a full amendment.

Again, additional clarity would be required with respect to the proposed format for ETF prospectuses.

2. Please identify the disclosure required in an SP and an ETF prospectus that is likely to change year-to-year.

Information that is likely to change from year-to-year includes: strategies, risk factors, expenses, income tax, material contracts, director and officer information, and series.

3. Please identify, categorize, and estimate the annual costs saved by an investment fund in continuous distribution if it were not required to file an SP or an ETF prospectus. In this regard, we note that any Stage 2 proposal for a Base Shelf Prospectus should not have a negative impact on filing fees. Accordingly, any costs savings identified should not include reduced filing fees.

The cost savings are difficult to estimate, particularly as the details of the Base Shelf Prospectus regime have not been fully laid out. For example, it is not clear whether filing fees will be imposed when there are amendments to the Base Shelf Prospectus and when there are amendments to the prospectus supplement, or only when the prospectus supplement is amended. Internal processes will also need to be modified, which will reduce cost savings in the short term.

4. Please identify any adverse impacts a Base Shelf Prospectus may have on the disclosure investors need to make informed investment decisions.

Investors rely on the Fund Facts/ETF Facts documents to obtain information about their investment. Assuming that the introduction of a Base Shelf Prospectus regime will not change the requirement to provide the Fund Facts/ETF Facts, we do not believe that moving to a Base Shelf Prospectus system would have any negative impact on the disclosure that investors need to make an informed investment decision.

5. Please identify any adverse impacts a Base Shelf Prospectus may have on the liability rights investors currently have under the requirement to file an SP or an ETF prospectus.

We do not believe the Base Shelf Prospectus would have an adverse impact on the liability rights investors currently have. The liability regime would need to account for the updated information incorporated by reference into the Base Shelf Prospectus. We would need to review the forward-looking regime in more detail to understand if there would be any impact on manager liability.

CONCLUSION

We appreciate the work of the CSA to reduce regulatory burden for investment funds and welcome the opportunity to provide feedback on these proposals.

The proposed elimination of the "slip sheet" amendment system and requiring an amended and restated prospectus for all changes will create significant additional regulatory burden for investment funds. This would eliminate all potential burden reduction of the proposed biennial prospectus renewal, and would not provide any investor protection benefit. We therefore urge the CSA to maintain the slip sheet system for amendments.

With respect to the Base Shelf Prospectus, PMAC members would be pleased to respond in greater detail through a survey or comment letter when additional information on the matters outlined above is available. The requested detail will allow us to provide meaningful feedback at the appropriate time.

Please do not hesitate to contact Katie Walmsley at (416)504-7018 if you have any questions or would like to discuss our comments in more detail.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

"Katie Walmsley"

Katie Walmsley

President
Portfolio Management Association of
Canada

"Margaret Gunawan"

Margaret Gunawan

Chair, PMAC Industry, Regulation and
Tax Committee

Managing Director – Head of Canada
Legal & Compliance,
BlackRock Asset Management Canada
Limited



BY ELECTRONIC MAIL: comment@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

April 27, 2022

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
comment@osc.gov.on.ca

M^e 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
consultation-en-cours@lautorite.qc.ca

Dear Sirs / Mesdames:

RE: Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds (“Proposed Amendments”)

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (the “CSA”) on the Proposed Amendments.

Fidelity Investments Canada ULC (“**Fidelity**”) is the 3rd largest mutual fund company in Canada. As at March 31, 2022, Fidelity managed more than \$203 (CAD) billion in retail mutual funds, exchange traded funds and institutional assets. Many Canadians entrust us with their savings and we take their trust very seriously.

With respect to the CSA’s specific questions in the Proposed Amendments, we have responded to them, as applicable, in the main body of this letter.

We generally agree with the comments made by the Investment Funds Institute of Canada on the Proposed Amendments.

Executive Summary

We are pleased that the CSA is taking steps to reduce regulatory burden for investment funds by proposing to modernize the prospectus filing process. Fidelity is supportive of the CSA’s proposal to reduce the frequency of prospectus filings by extending the lapse date period for *pro forma* prospectuses filed by funds from an annual to biennial cycle and preserving the current filing and delivery process for Fund Facts and ETF Facts. These aspects of the CSA’s proposal will undoubtedly result in reduced burden for fund issuers. However, Fidelity is not supportive of the CSA’s proposed requirement to file a prospectus amendment, in each instance, as an amended and restated prospectus (“**A&R Prospectus**”). In our view, this aspect of CSA’s proposal will undermine the burden reduction benefits of the CSA’s lapse date extension proposal and produce a more onerous and burdensome offering disclosure regime than what currently exists.

With the introduction of the Fund Facts and ETF Facts as the primary selling documents that are delivered to investors instead of the prospectus, the lengthy and arduous prospectuses are available upon request and rarely used by retail investors. To illustrate this point, in 2020 and 2021, Fidelity received **only**: (i) 26 and 24 requests, respectively, to deliver the Fidelity Funds simplified prospectus (electronically or by mail); and (ii) 3 and 2 requests, respectively, to deliver the Fidelity ETF prospectus. In our view, it is crystal clear that the prospectus is rarely used by retail investors and by extension investors are not tracing through prospectus amendments to see how disclosure pertaining to a fund has been changed, as the CSA would suggest.

Therefore, we respectfully submit that the proposed requirement to file each prospectus amendment in the form of an A&R Prospectus is completely unnecessary and unduly burdensome.

Fund Facts and ETF Facts

In developing a simplified point of sale disclosure regime (which was subsequently extended to ETFs), the Joint Forum, consisting of the Canadian Association of Pension Supervisory Authorities, Canadian Council of Insurance Regulators and the CSA, had one vision – to provide investors with meaningful information about a fund before they make their decision to invest¹. The Joint Forum wanted investors to have disclosure that gave them a basic and correct understanding of the benefits, risks and costs of investing in a fund in a simple and summary fashion that investors could meaningfully compare to other funds. The Joint Forum sought solutions that would achieve their vision without imposing undue costs.

¹ https://www.osc.ca/sites/default/files/pdfs/irps/rule_20081024_81-406_framework-pos.pdf and https://www.jointforum.ca/en/init/point_of_sale/proposed_framework_81-406.pdf

In its reasons which led to the development of the Fund Facts disclosure regime, the Joint Forum said, among other things, that:

- many investors do not use the prospectus when making purchase decisions.
- investors have trouble finding and understanding prospectus disclosure.
- prospectuses tend to be long, dense, complex and examples of information overload.
- investors find it difficult to compare information about funds using a prospectus.
- the vast majority of Canadian mutual fund investors consult with their financial advisor before making a purchase decision.

Furthermore, in its 2003 point of sale proposal², the Joint Forum said of the problems associated with prospectus disclosure:

“Our proposals grow out of our recognition that the point of sale disclosure regimes for segregated funds and mutual funds do not operate as we intended. ***We have learned that consumers do not use the information folder or prospectus to inform their purchase decisions because most do not realize the significance of the information they contain. Many do not read them at all before tossing them into the recycling bin. Sales representatives tend to dismiss the utility of these documents and most do not use them in the sales process [emphasis added].*** Insurance companies and mutual fund management companies find the current mandated disclosure documents costly to produce and deliver.

Although regulators and the industry have made significant strides over the past several years to improve and simplify disclosure documents, ***we believe our disclosure systems have become disconnected from industry practice and consumer needs [emphasis added].*** This disconnect means our systems do not meet our objective of providing consumers with the information necessary for informed decision-making...”

Based on the foregoing research of the CSA and Joint Forum, retail investors do not consume prospectus disclosure when making purchase decisions and therefore by extension, we believe, do not sift through slip-sheet amendments to trace through how disclosure of a fund has been modified. Given the contradictory research, we believe it is not in the CSA’s interest to increase regulatory burden by only requiring a prospectus amendment to be filed in the form of an A&R Prospectus when investors do not consume prospectus disclosure when making investment decisions. While we appreciate that this change would likely reduce the review time for the principal regulator, we do not feel that this benefit is outweighed by the increased burden on fund issuers.

Review of Prospectus Amendments

In its 20th edition of its Investment Funds Practitioner³ (March 2018), Ontario Securities Commission (“OSC”) staff observed an increase in prospectus amendments that fundamentally change the name, nature, type of securities offered and features of an existing fund. OSC staff indicated that in certain cases involving conventional mutual funds, these types of amendments

²https://www.jointforum.ca/en/init/point_of_sale/final%20consultation%20paper%20with%20appendices%20E.pdf

³ <https://www.osc.ca/sites/default/files/2021-01/Investment-Funds-Practitioner-Archive-Consolidated-February-2021.pdf>

require amending a substantial portion of the disclosure required under Part B of Form 81-101F1 *Contents of a Simplified Prospectus*.

For these types of amendments, the OSC asked filers to consider filing an A&R Prospectus. Specifically, OSC staff said, “**Where a substantial portion of the disclosure is being amended [emphasis added]**, staff may ask filers to file an amended and restated prospectus.” The OSC went on to say, “As the review of such an amendment or amended and restated prospectus requires more time for staff to complete than a standard amendment, **we will follow the same service standard and timeline that is applicable to reviews of preliminary prospectuses in these cases [emphasis added]**.” We could not agree more with the OSC’s thinking on this point. Similarly, the resources required to complete an A&R Prospectus is more akin to a preliminary prospectus filing than it is for a slip-sheet amendment.

In terms of the Proposed Amendments, it is also not clear why the CSA would want to replace the current amendment filing process. In the normal course and in our experience, a prospectus amendment does not result in a substantial portion of a fund’s disclosure being amended and does not, in our view, justify the increased resources that would accompany the filing of an A&R Prospectus as opposed to a slip-sheet amendment, as further outlined in Appendix A.

In the absence of the CSA removing this proposal entirely, we recommend that the CSA adopt an approach consistent with the OSC’s practitioner note whereby the filing of an A&R Prospectus would only be required in circumstances where a substantial portion of the disclosure of an existing fund is being amended.

A&R Prospectus Filings vs. Slip-Sheet Amendment Filings

We believe the benefits, if any, to retail investors associated with the proposed requirement to file amendments in the form of A&R Prospectuses are minor at best. If investors are tracing through slip-sheet amendments, the only benefit is that investors will no longer have to do so. However, we believe that this benefit is diminished because the blackline documents do not form part of the public record and investors will not understand what has changed since the last prospectus filing. Unlike a slip-sheet amendment where it is explicitly clear at the outset on what changes have been made, fund issuers do not state what has changed in an A&R Prospectus.

Fidelity’s current prospectus documents are lengthy and take-up many resources to complete. For example, the simplified prospectuses for the Fidelity Funds and Fidelity Capital Structure Corp. (“**FCSC**”) funds are now approaching 700 and 350 pages in length, respectively. Normally, we amend our prospectuses by way of slip-sheet amendments unless we determine that an A&R Prospectus is warranted like we determined in 2021 with the changes from our multi-series preferred pricing structure to a fee rebate program. In that case, we determined that an A&R Prospectus was needed as we amended a substantial portion of our existing funds’ disclosure.

In addition, the resources required for us to complete a slip-sheet amendment versus an A&R Prospectus are drastically different. As illustrated in the table in Appendix A, the resources required to complete an A&R Prospectus is equivalent to those required to complete a preliminary prospectus. Often, amendments are required to be filed in a timely manner, especially when a material change has been triggered. Having the ability to produce slip-sheet amendments in these circumstances can be prepared, approved by our Board of Directors and filed within the time required by NI 81-106 *Investment Fund Continuous Disclosure* (“**NI 81-106**”). However, the same cannot be said of an A&R Prospectus filing. If this proposal is adopted as currently drafted, will the CSA be revising the material change requirements in NI 81-106 to afford more time than

the current 10-day requirement for fund issuers to file their A&R Prospectuses? We hope that will be the case.

Finally, if the CSA determines that the current amendment process remain in place, we believe that slip-sheet amendments should be self-explanatory so an investor can understand what has changed. For example, amendments that replace only a part of sentence in a paragraph instead of restating the full paragraph with an introduction makes it impossible for an investor to follow without context. Therefore, we suggest that the slip-sheet amendment contain the whole paragraph emphasizing the words that are changing with a lead-in sentence or paragraph that describes such change.

Base Shelf Prospectus Model

We appreciate the CSA's efforts to consult on a base shelf prospectus filing model for investment funds at the same time as its Stage 1 proposal. We believe, however, that it is premature to comment on the CSA's Stage 2 proposal until such time as its Stage 1 proposal has been finalized, implemented and measured. In theory, a base shelf prospectus model for investment funds may be appropriate over the longer-term, but right now, regulatory reviews and the issuance of prospectus receipts have been an important tool that is used by fund issuers to, for example, address various foreign markets operational matters in an age of increased anti-money laundering and know your client requirements – e.g., applications for funds to commence trading in certain foreign markets.

In addition, as fund managers are also working through the new form requirements for a new combined simplified prospectus and annual information at this time, we believe that the Stage 2 proposal or other filing rationalization initiatives be deferred until such time as fund issuers are fully able to understand the implications of a base shelf prospectus regime for investment funds.

Conclusion

Based on the foregoing, we respectfully submit that the proposed requirement to file each prospectus amendment in the form of an A&R Prospectus is completely unnecessary and unduly burdensome. We are comfortable with all other changes as part of the CSA's Stage 1 proposal.

Once again, we would like to thank the CSA for the opportunity to comment on the Proposed Amendments and we would be pleased to discuss any of our comments.

Yours sincerely,

“Rob Sklar”

Rob Sklar
Director, Legal Services
Fidelity Investments Canada ULC

c.c. Rob Strickland, President
W. Sian Burgess, Senior Vice President, Fund Oversight
Robyn Mendelson, VP, Legal and Procurement
Dan Calderaro, Regulatory Reporting Manager
Stefania Zilinskas, Senior Legal Counsel
Marissa Mymko, Legal Counsel

Appendix A – Fidelity Resources

Fidelity Resources	Slip-Sheet Amendment (average hours)	A&R Prospectus (average hours)
Legal Services <ul style="list-style-type: none"> • Drafting and review of documents • SEDAR preparation and filing 	17	40
Translation	10	45
Reviews by Business Groups <ul style="list-style-type: none"> • Compliance • Product • Tax • Fund Treasury • Operations • Finance 	18	77
Board of Directors Process <ul style="list-style-type: none"> • Posting • Preparation • Review • Board meeting, if required 	5	15
Totals	50	177



180 Queen Street West, 16th Floor, Toronto, Ontario M5V 3K1

April 27, 2022

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

The Secretary
Ontario Securities Commission
20 Queen Street West 22nd Floor
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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

Re: CSA Notice and Request for Comment on Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution (collectively, the “Proposed Amendments”)

On behalf of IGM Financial Inc. (“IGM”) asset management subsidiaries, IG Investment Management Ltd. (“IGIM”), Mackenzie Financial Corporation (“Mackenzie Investments”), and Counsel Portfolio Services Inc. (“Counsel”), we are pleased to provide comments on the Proposed Amendments.

Our Company

IGM, a member of the Power Financial group of companies, is a leading wealth and asset management company supporting financial advisors and the clients they serve in Canada, and institutional investors throughout North America, Europe and Asia. Through its operating companies, IGM provides a broad range of financial planning and investment management services to help Canadians meet their financial goals. Our services are carried out principally through our subsidiaries including; IGIM, Mackenzie Investments, and Counsel. Each company operates distinctly within the asset management segments of the financial services industry.

General Comments

We strongly support the Canadian Securities Administrators' ("CSA") continued efforts to reduce regulatory burden and streamline regulatory requirements. While we generally support the Proposed Amendments, we believe certain aspects should remain as status quo or require further consideration. We also believe that there are additional areas that were not raised in the Proposed Amendments, that would benefit from a reduction of regulatory burden while maintaining investor protection. It is from this viewpoint that we offer the following feedback on specific aspects of the Proposed Amendments.

Specific Comments on the Proposed Amendments and the CSA's Burden Reduction Initiative

Lapse Date Extension

We support the proposal to extend the prospectus lapse date for investment funds and would agree that such an extension would result in reducing unnecessary regulatory burden of the current prospectus filing requirements. Although not necessarily quantifiable in monetary terms, preparing for a renewal is very costly in that it is time consuming and requires extensive internal review and consultation. We also support the CSA's proposal to repeal the 90-day rule requirement for all investment funds.

We do, however, strongly recommend the CSA reconsiders requiring all amendments to be amended and restated as currently proposed. We believe investment fund managers should continue to have the discretion to choose to file either an amended and restated prospectus or to file "slip sheet" amendments. These "slip sheet" amendments can be easier for investors to understand what changes have been made to their specific funds and are more efficient and cost effective for investment funds. Many amendments to investment funds are filed in a short period of time and only apply to a limited number of funds, such as when announcing the results of a special meeting. Requiring this type of material change to be filed by way of amended and restated prospectus could not only add significant internal review time; obligate the board of directors to review more than 300 pages before signing off on the amendment; but also require additional time and expense to make such a large document AODA (Accessibility for Ontarians with Disabilities) compliant before posting to the investment funds designated website. These lengthy steps would also compromise the ability of the investment fund to file the amendment within the regulatory 10 days of the material change requirement.

We also believe that constantly amending and restating the prospectus would make it more difficult for investors to trace the history of their investment funds since a blackline highlighting the change is not made public. In addition, the "slip sheet" amendments include recitals that are useful for investors because they explain the purpose of the specific amendment. Finally, the SEDAR profile for all funds would be updated each time an amended and restated prospectus is filed and would therefore include amendments that do not relate to many funds in the same prospectus. In our view, requiring a prospectus, which is no longer the point-of-sale document, to always be amended and restated would therefore increase regulatory burden for investment funds without clear benefit to investors.

Base Shelf Prospectus

We support the notion of investment funds filing a base shelf prospectus that would have a longer lapse date than the current 24-month proposal, however we believe further guidance from the CSA is required before we could provide any meaningful comments. We further support the concept that the simplified prospectus could be divided as Part A forming the basis for the base shelf prospectus and Part B forming the basis for a prospectus supplement. However, we encourage the CSA to

take a thoughtful approach to considering exactly how the base shelf prospectus and prospectus supplement would work specifically in the investment funds context and not rely on existing formats. With respect to the long form prospectus, we do not believe the current form easily converts into a base shelf and prospectus supplement. We would therefore encourage the CSA to allow ETFs to file the same form for mutual funds once the form for the base shelf and supplement prospectus has been created.

Additional Suggestions

In addition to the forgoing, we believe there are other regulatory filings that can be streamlined or eliminated, including:

Funds Not in Continuous Distribution. For the same reasons the CSA is proposing to adopt a lapse date extension and base shelf prospectus for funds in continuous distribution, we encourage the CSA to also consider at this time extending the same amendments to funds that are not in continuous disclosure but continue to file an annual information form (“Standalone AIF”). The disclosure in the Standalone AIF rarely materially changes during the course of a given year (other than to add additional funds that are no longer in continuous distribution); it is not reviewed by the regulators; and it is not sent to investors who continue to hold the fund(s). The preparation and filing of the Standalone AIF is a costly exercise that requires significant internal and external resources to complete. Providing a longer lapse date or base shelf regime would meaningfully reduce regulatory burden for these funds.

Management Report of Fund Performance (“MRFPs”) and Financial Statements. Given that all investment funds are now required to have a designated website, we continue to believe that “access equals delivery” will reduce effort and costs for investment fund managers while still ensuring that investors have access to all relevant disclosure documents. In this vein, and as previously stated in Mackenzie Investments’ comment letter dated December 11, 2019, on Phase 2, Stage 1 of Reducing Regulatory Burden for Investment Fund Issuers, we strongly urge the CSA to re-examine MRFPs and the mailing of financial statements, in the same way the CSA has currently published proposals for non-investment fund reporting issuers under Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*. Currently, Mackenzie Investments and IGIM spend annually approximately \$300,000 and \$350,00 respectively, in printing and mailing MRFPs and financial statements and the opt-in rate by our investors is extremely low. Access equals delivery for continuous disclosure documents, like the MRFPs and financial statements, would not only reduce regulatory burden, but also have a positive environmental impact given the amount of unnecessary printing that is done to produce and mail these documents. We also continue to believe that it is an unnecessary use of resources to require investment fund issuers to send MRFPs to investors twice a year and recommend eliminating the interim MRFP and streamlining the annual MRFP.

Revise and Streamline the Long Form Prospectus or Allow for Simplified Prospectus. There are several sections of the long form prospectus that are duplicative which we believe may cause confusion for investors. Simplifying the long form prospectus and removing the requirement for a prospectus summary would lead to the disclosure for ETF’s to be more streamlined and similar to a simplified prospectus. In the alternative, as stated above, if the CSA is considering allowing ETFs to file a base shelf prospectus, we believe the new simplified prospectus form would be easier to separate into a base shelf prospectus and a prospectus supplement than a long form prospectus and therefore support the consideration of allowing ETFs to file a simplified prospectus rather than a long form prospectus without requiring relief.

Conclusion

We thank you for the opportunity to provide comments on the Proposed Amendments. We would welcome the opportunity to engage with you further on this topic. Please feel free to contact myself or Johanna Di Staulo at jdistaul@mackenzieinvestments.com if you wish to discuss our feedback further or require additional information.

Yours truly,

IGM FINANCIAL INC.

“Rhonda Goldberg”

Rhonda Goldberg
Executive Vice-President & General Counsel
IGM Financial Inc.



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DU CANADA

IFIC Submission

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution - Modernization of the Prospectus Filing Model for Investment Funds

April 27, 2022



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DU CANADA

April 27, 2022

Delivered By Email: consultation-en-cours@lautorite.qc.ca, comments@osc.gov.on.ca

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
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22nd Floor
Toronto, Ontario M5H 3S8

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

Dear Sirs and Mesdames:

RE: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on *CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds (Consultation)*

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors and industry service organizations, to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

IFIC welcomes initiatives to reduce regulatory burden and commends the CSA for the Consultation. However, we are concerned with the proposed requirement to file an amended and restated prospectus each time an amendment is made, instead of the current options to either file a stand-alone amendment or to file an amended and restated prospectus. IFIC does not believe removing this flexibility would improve the investor experience. Removing this flexibility would unduly restrict the options fund managers currently have without commensurate benefit to investors. We strongly recommend that the current options be retained.

Below please find our responses to the questions contained in the Consultation.

1. Would the Lapse Date Extension result in reducing unnecessary regulatory burden of the current prospectus filing requirements under securities legislation? Please identify the cost savings on an itemized basis and provide data to support your views.

As discussed in more detail in the response to question 4 below, our members would prefer that the proposed requirement to file an amended and restated prospectus for each amendment not be mandatory, but should instead be one option for filing an amendment, while retaining the current option to alternatively file a stand-alone amendment. While there will be burden reduction by reducing the requirement to prepare and file a prospectus from the current requirement to do so every 12 months to doing so every 24 months, burden reduction will best be achieved if investment fund managers also have the option of either filing a stand-alone amendment or filing an amended and restated prospectus.

2. Would cost savings from the Lapse Date Extension be passed on to investors so they would benefit from lower fund expenses as a result? Please provide an estimate of the potential benefit to investors.

If the proposed requirement to file an amended and restated prospectus for every amendment is changed to permit the use of either a stand-alone amendment or an amended and restated prospectus, there may be cost savings that could be passed on to investors in certain circumstances. However, while lower fund expenses are an important factor, cost savings to investors should not be the only reason to adopt burden reduction initiatives. One of the main advantages to this proposed burden reduction initiative would be the ability to reallocate investment fund managers' staff time to matters of more added value to their businesses and their investors.

3. Would the Lapse Date Extension affect the currency or accuracy of the information available to investors to make an informed investment decision? Please identify any adverse impacts the Lapse Date Extension may have on the disclosure investors need to make informed investment decisions.

IFIC does not believe that the Lapse Date Extension will affect the currency or accuracy of the information available to investors to make an informed investment decision. We note that:

1. Any material changes must be addressed through an amendment during the interim period;
2. Interim and annual financial statements will still be filed on a semi-annual and annual basis;
3. Management reports of fund performance will still be filed semi-annually and annually; and
4. Fund Facts and ETF Facts will be updated annually, or more often if required.

4. Prospectus amendments would increase over a 2-year period relative to a 1-year period. Would requiring every prospectus amendment to be filed as an amended and restated prospectus instead of “slip sheet” amendments make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified since the most recently filed prospectus? In the initial stakeholder feedback received on the Project RID amendments, some commenters indicated that such a requirement would be difficult and increase the regulatory burden for investment funds. Please explain and identify any cost implications on an itemized basis and provide data to support your views.

IFIC recommends that the proposal permit fund managers to file a prospectus amendment either as an amended and restated prospectus or as a stand-alone amendment, as is currently the case, for several reasons:

1. Current prospectuses are very lengthy documents, often in the hundreds of pages¹. To amend and restate a prospectus each time an amendment is made would increase the time and cost of preparing an amendment, particularly where an amendment affects a significant number of funds and/or fund series or classes offered². Maintaining the current flexibility allows firms to determine whether to prepare a stand-alone amendment or an amended and restated prospectus, depending upon a variety of circumstances. There are also translation and AODA costs associated with each document that is prepared, which would be expected to increase if each amendment must be filed as an amended and restated document.
2. Because blacklined versions of documents are not filed publicly on SEDAR, requiring each amendment to be filed as an amended and restated prospectus actually decreases, rather than increases, the ability of investors to understand what has been amended. Even a blacklined version would result in a search for the relevant change(s), which can be difficult within a lengthy document. Stand-alone amendments provide clarity about what is being amended. Further, SEDAR reflects the filing of an amended and restated prospectus as effecting changes to every fund included in the prospectus, not just the fund(s) to which the amendment relates; this also makes it less clear to investors what has been changed.

If there are regulatory concerns about the comprehensibility of one or more stand-alone amendments, then rather than eliminate their potential use a preferable approach would be to require appropriate changes to stand-alone amendments.

3. A number of our members are concerned that filing an amended and restated prospectus could, either by law because of the language of the certificate and/ or by internal practice, require reviewing and updating all information in the amended and restated prospectus to the date of the certificate. The cost and time involved in updating all the information in the amended and restated prospectus, including the costs and time of internal staff and external service providers, would be significant. For example, prospectuses are often reviewed by members of a manager’s legal, product and/or portfolio management, tax, and fund administration teams, among others. A mandatory requirement to reflect each material change through an amended and restated prospectus will not reduce burden, either in terms of the time required to produce compliant documents or the cost involved with each filing. The option to file a stand-alone amendment for many material changes is clearly preferable.

¹ This is prior to the recent amendments that will combine the simplified prospectus and annual information form into one document, which, in many cases, will be lengthier than the current simplified prospectus.

² For example, if all funds included in one prospectus do not provide for hedging, and the fund manager wants to amend the prospectus to permit all funds to engage in hedging, in a stand-alone amendment all funds could be named in the stand-alone document which would then amend the disclosure for each fund by one statement that all funds are now permitted to engage in hedging. In an amended and restated prospectus, each fund description would need to be amended separately to permit hedging.

4. Often the need to prepare and file an amendment to reflect a material change arises quickly and time can be of the essence. A stand-alone amendment can be prepared, approved and filed in a timely manner, while an amended and restated simplified prospectus or long form prospectus may take longer.
5. We assume the fee to file an amended and restated prospectus will be the same as currently and will be only in respect of the fund(s) that are the subject of the amendment; otherwise the cost will increase significantly.

IFIC believes that requiring an amended and restated prospectus instead of maintaining the option to file a stand-alone amendment does not practically improve the sources of information for investment fund investors. Investors receive their information from primarily two sources:

1. Investment fund clients are, predominantly, advised clients³, who look to their advisors for information and advice regarding their investments.
2. The Fund Facts and ETF Facts documents are the disclosure documents provided to investors at the time of investment and contain key information related to their proposed investment. Retail investors do not typically look to the longer disclosure documents, such as the simplified prospectus, the annual information form or the long form prospectus, for their investment information. Therefore, there is no practical benefit to retail investors in requiring fund managers to file longer amended and restated prospectuses in lieu of shorter stand-alone amendments. Further, as noted above, since blacklined documents cannot be publicly filed on SEDAR, the filing of amended and restated prospectuses would reduce the transparency to investors of the changes being made, not improve it

We acknowledge that, for investors or other readers of the long disclosure documents (including regulators), the current SEDAR system is not designed to easily facilitate the understanding of stand-alone amendments as it is not always clear to which fund(s) an amendment relates, unless the link is opened. We suggest that in connection with the SEDAR+ project, SEDAR be upgraded so that search results will better link a stand-alone amendment with the fund(s) to which it relates.

CONSULTATION PAPER ON A BASE SHELF PROSPECTUS FILING MODEL FOR INVESTMENT FUNDS IN CONTINUOUS DISTRIBUTION

IFIC acknowledges the work the CSA has begun to consider a further burden reduction model for investment funds in continuous distribution. Our members support creative opportunities to streamline the regulatory regime that will permit them to be more agile. However, at this time, our members are actively working to prepare the new combined simplified prospectus and annual information form, and in addition have concerns about some of the proposed requirements relating to the Lapse Date Extension, as discussed above. Our members have indicated they would prefer to take the time required to familiarize themselves with the new combined disclosure document and to finalize their considerations and planning relating the Lapse Date Extension before devoting significant attention to this proposal.

* * * * *

³ According to the 2021 Pollara survey, 80% of mutual fund investors report buying their last mutual funds from someone who provided advice and guidance. https://www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=26660&lang=en_CA

Me Philippe Lebel and The Secretary, OSC

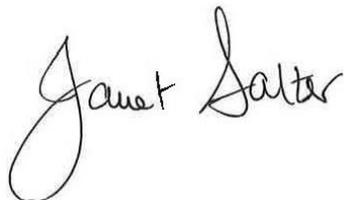
Re: CSA Notice and Request for Comment - Modernization of the Prospectus Filing Model for Investment Funds

April 27, 2022

IFIC appreciates this opportunity to provide our input to the CSA on this important initiative. We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at jsalter@ific.ca by phone 416-309-2328.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Janet Salter
Senior Policy Advisor



April 27, 2022

VIA EMAIL

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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M^e Philippe Lebel
Corporate Secretary and Executive Director
Legal Affairs
Autorité des marchés financiers
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2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Email: consultation-en-cours@lautorite.qc.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds

TSX Inc. (the “**Exchange**” or “**we**”) welcomes the opportunity to comment on the notice and request for comment published by the Canadian Securities Administrators (“**CSA**”) on January 27, 2022 entitled “*Proposed Amendments to National Instrument 41-101 General Prospectus Requirements, National Instrument 81-101 Mutual Fund Prospectus Disclosure, and Related Proposed Consequential Amendments and Changes and Consultation Paper on a Base Shelf Prospectus Filing Model for Investment Funds in Continuous Distribution – Modernization of the Prospectus Filing Model for Investment Funds*” (the “**Request for Comment**”). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Request for Comment.

INCLUDES COMMENT LETTERS RECEIVED

The Exchange is part of TMX Group Limited, a company that is focused on supporting and promoting innovation, capital formation, good governance and financial markets in Canada and globally through its exchanges, including the Toronto Stock Exchange and the TSX Venture Exchange for equities, and the Montreal Exchange for financial derivatives. The Exchange is a globally recognized, robust stock exchange that lists growth-oriented companies with strong performance and track records, and is a top-ranked destination for global capital.

The interests of the CSA and the Exchange are aligned. It is vital to our clients and to all investors that the capital markets in Canada remain fair, efficient and competitive. Our business relies on our customer's continued confidence and participation in Canada's capital markets. We believe that achieving the right balance between investor protection and regulatory burden is essential to creating an environment where companies and the Canadian economy can grow and successfully compete on an international level. The Exchange is very supportive of regulatory initiatives to reduce the regulatory burden on all market participants without impeding the ability of the CSA to fulfill its regulatory responsibility to protect investors. We therefore applaud the CSA for continuing to consider options to reduce the regulatory burden for all market participants, including investment fund issuers (each a "Fund").

Proposed Amendments - Stage 1

Lapse Date Extension for Funds in Continuous Distribution

The Exchange welcomes measures to simplify, streamline and eliminate duplicative information in the prospectus and related documents for Funds in continuous distribution. We believe that the current prospectus filing and delivery model for Funds in continuous distribution is burdensome as duplicative key information about the Fund must be disclosed in the prospectus and related documents each year, requiring considerable time and cost expenditures, often without a corresponding value to the investor or the market.

The Exchange supports the CSA's proposal to extend the lapse date ("**Lapse Date**") for Funds in continuous distribution from 12 months to 24 months to allow Funds in continuous distribution to file their *pro forma* prospectuses every two years rather than each year. This change in Lapse Date will reduce the time and expense incurred to prepare and file the annual prospectus and will allow Funds to re-allocate these resources, every other year, to other aspects of the business, and could result in reduced costs for investors. Further, we understand that most investors currently rely on the Fund Facts or ETF Facts to make an informed investment decision, rather than the annual prospectus. We further believe there will be no negative impact to investor protection given securities laws (e.g. National Instrument 81-106 *Investment Fund Continuous Disclosure*) require Funds to disclose all material changes and thus investors will continue to be informed of material changes and prospectus amendments in a timely manner. We believe that the Lapse Date amendment strikes the correct balance of reducing regulatory burden without compromising investor protection.

For similar reasons, the Exchange supports the proposed amendments to the filing process for the Fund Facts and ETF Facts, allowing those documents that do not contain any material changes since the most recently filed Fund Facts or ETF Facts, as the case may be, to be made public automatically without being subject to a prospectus review process. Such an amendment will be more efficient for both Funds and the CSA, and TMX Group is in favor of regulators taking a pragmatic, risk-based approach to regulation.

Repeal of the 90-Day Rule for Investment Funds

The Exchange is also supportive of repealing the requirement to file a final prospectus no more than 90 days (the “**90-Day Rule**”) after the issuance of a receipt for a preliminary prospectus for a Fund as it strikes the balance between reducing regulatory burden without compromising investor protection. It is sometimes the case that a Fund will not be able to meet this 90-Day Rule and must file an application for exemptive relief with the applicable securities regulator. This exemptive relief application often results in unwarranted costs for the Fund as preliminary prospectuses for Funds do not contain any material financial information that would be considered outdated after 90 days and investors do not often rely on the preliminary prospectus when making investment decisions. In our view, the importance of reducing the regulatory burden on Funds by repealing the 90-Day Rule outweighs the potential value of keeping the 90-Day Rule for the investor and the market.

We appreciate the opportunity to respond to the Request for Comment. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

“Loui Anastasopoulos”

Loui Anastasopoulos

CEO, Toronto Stock Exchange and Global Head, Capital Formation