THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

IFIC Submission

Re: CSA Notice and Request for Comment

Reducing the Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1

December 9, 2019

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December 9, 2019

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British Columbia Securities Commission
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Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission 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
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Dear Sirs and Madames:

RE: CSA Notice and Request for Comment: *Reducing the Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1*

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on the Canadian Securities Administrators' (**CSA**) Proposed Amendments and Proposed Changes [1] (together, the **Proposal**), which form part of the CSA's efforts to reduce regulatory burden for investment fund issuers.

IFIC is the voice of Canada's investment funds industry. IFIC brings together 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

[1] "Proposed Amendments" and "Proposed Changes" have the same meaning as in the CSA Notice and Request for Comment *Reducing the Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1*.

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.

We commend the CSA for its efforts to reduce the regulatory burden on investment fund issuers. Investment funds make up 39% of Canadians' financial wealth[2]. As a result, this work will help the industry in its efforts to serve the interests of investors. We encourage the CSA to continue this important work. Regulatory requirements that are no longer necessary or no longer serve their intended purpose impose compliance costs on firms and the economy in the form of reduced resources to allocate to growth opportunities, reduced competition and reduced efficiency. All of these costs are ultimately borne by investors.

IFIC provides its broad comments on the CSA's burden reduction initiative within this letter, including on the opportunity presented by the proposed requirement for a designated website. Our responses to certain questions posed by the CSA are set out in Appendices A through H, together with comments specific to each of the eight workstreams other than Workstream 4 (Minimize Filings of Personal Information Forms). We provide our additional comments on the personal information forms within this letter in the context of operational efficiencies.

Reassessment of Investment Fund Disclosure Requirements

Our members welcome the CSA's Proposal to consolidate the simplified prospectus (**SP**) and annual information form (**AIF**). Given the overlap in disclosure between the SP and AIF as well as the introduction of the Fund Facts and ETF Facts disclosure documents, this change is long overdue.

The regulatory burden reduction project presents an opportunity to critically reassess the disclosure regime. We encourage the CSA, as part of its ongoing work to reduce the regulatory burden for investment fund issuers, to reassess all aspects of investment fund disclosure. The current regime of disclosure for investment fund issuers is based on disclosure requirements for corporate issuers or has become obsolete or redundant following the introduction of the Fund Facts document and ETF Facts. As such, we suggest assessing the existing disclosure from the perspective of disclosure that is meaningful to the investor, disclosure that is required for registrants in fulfilling their know your product obligations, and information that is desired by the regulators to fulfill their mandate. In this way, the disclosure that investment fund issuers must provide, and the manner in which it is provided, can be evaluated to better meet the needs of each stakeholder. This will ultimately result in disclosure that is more meaningful and relevant to each stakeholder.

Specific recommendations include:

- Revisiting the content of the consolidated SP to assess the relevance of the disclosure to each stakeholder group noted above. In this regard, please see our responses to the questions posed for Workstream 1 in Appendix B;
- Eliminating the requirement to annually renew and file a prospectus[3] for investment fund issuers, along with all accompanying documents other than the Fund Facts or ETF Facts documents. In this regard, see our recommendation to the Ontario Securities Commission's (**OSC**) Burden Reduction Task Force[4];
- Removing duplicative information within the same document, as in the case of parts of the long form prospectus for exchange traded fund (**ETF**) issuers, as well as between the prospectus and the Fund Facts document or ETF Facts;

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[2] Investor Economics, *Household Balance Sheet (2019)*

[3] We use the term "prospectus" within this submission to reference both the long form prospectus and the simplified prospectus. Where we use the term "simplified prospectus" or "SP" we mean the form of prospectus set out in Form 81-101F1 *Contents of Simplified Prospectus*. Where we use the term "long form prospectus" we mean the form of prospectus set out in Form 41-101F2 *Information Required in an Investment Fund Prospectus*. Where we use the term "consolidated simplified prospectus" or "consolidated SP", we mean the proposed Form 81-101F1 found in the Proposal.

[4] See https://www.ific.ca/wp-content/uploads/2019/02/IFIC-Submission-OSC-Staff-Notice-11-784-Burden-Reduction-March-1-2019.pdf/21945/ at page 5.

- Removing duplicative information across documents. For example, the long form prospectus requires inclusion of information, such as the TER, that is also provided in the Management Reports of Fund Performance (**MRFP**). Given the MRFP is incorporated by reference within the long form prospectus, we question the need to provide it in the long form prospectus itself. Rather, we suggest that the long form prospectus cross-reference the information available in these documents.
- Creating a form of information circular that is tailored to investment fund issuers. While we do not offer specific recommendations due to the short timeline to provide comments on this broad consultation, our members would be pleased to collaborate with the CSA on this work. While we acknowledge the view of the OSC that the current form offers sufficient flexibility, we respectfully disagree[5]. In this regard, we refer to our response to Question 25; and
- Reassessing the investment fund continuous disclosure regime, specifically, the quarterly portfolio disclosure (**QPD**) for those funds which provide more frequent portfolio transparency and the MRFPs and financial statements given the low opt-in rates of less than 2% of investors who wish to receive this information.

Designated Website

While most, if not all, of our investment fund manager members have websites through which they provide information on the investment funds they offer, it is important to note that the introduction of the designated website requirement does not, by itself, reduce regulatory burden. However, we assume that the introduction of this requirement is a precursor to permitting investment fund issuers to provide certain regulatory disclosures through the designated website such that disclosure and/or delivery is not required by other means. We would welcome this change as it will ultimately result in a reduction of the regulatory burden and a reduction in costs for the investment fund industry.

The requirement to have a designated website must provide for flexibility in design, building and maintenance of the website. Following implementation of this requirement, the CSA must ensure that there is an alignment of compliance expectations between the investment funds group and registrant regulation groups that is consistent across the CSA members.

As the CSA considers which disclosures are appropriate to provide through the designated website, we recommend the CSA also consider which disclosure must be "pushed" to the investor and which disclosure can be available for investors to "pull" from the designated website. As noted above, given the low opt-in rates for the MRFPs and financial statements, allowing this information to be available on the designated website would align well with the current investor focus on environmental and social responsibility. We believe our members can help the CSA review the disclosures and determine the best method of "delivery" to each stakeholder.

Reducing the Regulatory Burden through Operational Efficiencies

IFIC encourages the CSA to continue to seek opportunities to reduce the regulatory burden through operational efficiencies in its processes. Codification of routinely granted relief and elimination of the personal information form (**PIF**) requirement for certain individuals where the information is otherwise available to the CSA are good first steps. These operational efficiencies serve to reduce the burden on both the regulator and the investment fund issuer.

We suggest the CSA review the information collected through the PIF as part of its burden reduction work. In particular, we recommend that section 9.C(ii) of the PIF be amended to only require an officer or director to disclose a settlement agreement entered into by an issuer if the officer or director was an officer or director of the issuer at the time the settlement was entered into. In the absence of this change, a director who joins an issuer's board many years after the issuer entered into a settlement agreement would be required to disclose the same in the PIF even though they had no relationship with the issuer at that point in time.

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[5] See the OSC's recent report entitled *Reducing Regulatory Burden in Ontario's Capital Markets 2019* in which the OSC indicates its belief that there is sufficient flexibility in the current content requirements. See https://www.osc.gov.on.ca/documents/en/20191119_reducing-regulatory-burden-in-ontario-capital-markets.pdf at page 52.

With respect to the codification of routinely granted relief, we recommend the CSA improve its process to codify such relief more quickly. For example, relief granted multiple times in a two-year period should be codified more quickly. In this regard, we note the recent Release of the U.S. Securities and Exchange Commission (**SEC**) *Amendments to Procedures with Respect to Applications under the Investment Company Act 1940*[6]. The SEC has made it a priority to propose and adopt exemptive rules such that market participants no longer have to file applications to obtain the relief. This will enable the SEC to allocate staff resources to more novel applications that promote further innovation and choice for investors[7]. Under the new rules, the SEC will also establish an expedited review procedure for applications that are substantially identical to two recent precedents issued within two years of the application date.

Given the time required for the CSA to codify routinely granted exemptive relief, we recommend the CSA establish an expedited review process that enables market participants to quickly obtain relief substantially similar to recent precedent, while also reducing the associated costs. Once the OSC is granted the power to issue blanket exemptive relief[8], the CSA should issue blanket industry relief for exemptive relief that is issued two or more times within a two-year period. This will support greater innovation and efficiency within the investment fund industry, which ultimately benefits investors.

The elimination of the filing of PIFs for certain individuals is a welcome reduction in the regulatory burden. We urge the CSA to work with the stock exchanges to help facilitate similar reductions in the regulatory burden for ETF issuers. ETF issuers currently file PIFs with both the exchange on which the product is listed and with the securities regulator. Coordination between the efforts of the CSA and the exchanges to reduce the duplication in the information provided is also necessary to reduce the regulatory burden created by the PIF filing requirements. In this regard, we support the Canadian ETF Association's recommendation to the OSC's Burden Reduction Task Force[9] that there be information sharing between the CSA and the exchanges.

We echo our comments to the OSC's Burden Reduction Task Force regarding improvements to the prospectus review process[10] to improve operational efficiencies for investment fund issuers. We also believe that staff should not raise substantive new requirements through guidance during the prospectus renewal process. This creates inefficiency, cost and results in inconsistent application across the industry. Such comments should instead be part of a broader consultation process through which stakeholders have an opportunity to comment[11].

Finally, we encourage the CSA to continue to work together on burden reduction initiatives. Many of the current efforts to be undertaken by the OSC[12] will, of necessity, require coordination amongst the CSA members in order to achieve the objective of reducing regulatory burden.

Cost Benefit Analysis

We appreciate the OSC's efforts to conduct a quantitative cost benefit analysis for each workstream. This must be a part of any rule-making exercise as it helps policy makers understand the market impact of their policy decisions. We encourage the CSA to conduct a more robust cost benefit analysis than was set out in the Notice. We offer the following suggestions for future cost benefit analyses, based on the experience of our members:

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[6] https://www.sec.gov/rules/proposed/2019/ic-33658.pdf

[7] https://www.sec.gov/rules/proposed/2019/ic-33658.pdf at page 10.

[8] See *A Plan to Build Ontario Together – 2019 Ontario Economic Outlook and Fiscal Review* at page 69 (https://budget.ontario.ca/2019/fallstatement/pdf/2019-fallstatement.pdf) and *Bill 138 An Act to implement Budget measures and to enact, amend and repeal various statutes* at page 118

[9] See https://www.osc.gov.on.ca/documents/en/Securities-Category1-Comments/com_20190308_11-784_dunwoodyp.pdf at page 2 (https://www.ola.org/sites/default/files/node-files/bill/document/pdf/2019/2019-11/b138_e.pdf)

[10] See https://www.ific.ca/wp-content/uploads/2019/02/IFIC-Submission-OSC-Staff-Notice-11-784-Burden-Reduction-March-1-2019.pdf/21945/ at page 7.

[11] By way of example, we reference commentary provided through the prospectus renewal process regarding Default Mutual Fund Distributions. See (2015), 38 OSCB 2950 (https://osc.gov.on.ca/documents/en/InvestmentFunds/ifunds_20150402_practitioner.pdf) at page 2.

[12] See https://www.osc.gov.on.ca/documents/en/20191119_reducing-regulatory-burden-in-ontario-capital-markets.pdf.

- Generally, the cost of external counsel used by the CSA is not reflective of the fees paid for specialised securities and tax law expertise or the use of a variety of external counsel staff, including paralegals (who are primarily responsible for filings), students, associates and partners, each of whom has a different billing rate;
- It is important to note that there are operational costs that apply to regulatory change management, including the need to review, interpret and implement even the smallest change to rules or guidance, in addition to the necessary adaptation of compliance programs;
- Translation and typesetting costs, which can be substantial, should be considered for any changes that affect websites or public-facing documents; and
- In the case of changes such as the consolidation of the SP and AIF and the codification of conflicts relief, a review of internal policies and processes will be required to identify necessary revisions and changes. In some cases, external counsel advice may also be required.

While each of these items may not apply to all workstreams, these are factors that should be considered as the process for quantifying the cost evolves to be more comprehensive.

In addition to the cost benefit analysis, we would also encourage use of a regulatory impact analysis in the rule-making process. As noted in our submission to the OSC's Burden Reduction Task Force[13], a robust regulatory impact analysis begins with identification of the problem that needs to be solved, the possible solutions, the desired benefits or outcomes, and finally, the cost benefit analysis, which should go beyond just the hard dollar costs[14] and include the time and resources that firms must dedicate to implement any regulatory change.

Presentation of the Proposal

We request that the CSA provide comprehensive blacklines when proposing large-scale amendments such as these (for example, in the 81 series of instruments within this consultation) to aid in our review and assessment. The presentation by workstream of the Proposed Amendments and Proposed Changes made it challenging to have a comprehensive view of the proposed amendments to the National Instruments and the related companion policies.

* * * * *

IFIC wishes to reiterate its support for this important initiative undertaken by the CSA. We look forward to continued engagement as the CSA identifies and prioritizes short, medium and long-term opportunities. We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at mupadhyaya@ific.ca or by phone at 416-309-2314.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Minal Upadhyaya
Vice President, Policy & General Counsel

[13] See https://www.ific.ca/wp-content/uploads/2019/02/IFIC-Submission-OSC-Staff-Notice-11-784-Burden-Reduction-March-1-2019.pdf/21945/ at page 2.

[14] In this regard, we refer to the OSC's recent report entitled *Reducing Regulatory Burden in Ontario's Capital Markets 2019* in which the OSC indicates its intention to conduct a deeper and more comprehensive regulatory impact analysis. See, for example, https://www.osc.gov.on.ca/documents/en/20191119_reducing-regulatory-burden-in-ontario-capital-markets.pdf at page 31.

Appendix A – General Questions

Questions

1. **Are there any areas that would benefit from a reduction of undue regulatory burden or streamlining of requirements, while preserving investor protection and market efficiency, which we should consider as part of Phase 2, Stage 2 (and onwards)? Please prioritize any suggestions you may have.**

   IFIC has provided suggestions to reduce regulatory burden through several forums, including IFIC's submission to the OSC's Burden Reduction Task Force[15]. Our members continue to support opportunities that have been previously identified, including, in order of priority:

   - Removing the requirement for investment fund issuers to file a prospectus annually;
   - Creating a new, streamlined form requirement for information circulars required by Part 5 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) that is tailored to investment fund issuers;
   - Making certain changes to financial reporting requirements to align with the direction of the International Accounting Standards Board, including addressing regulatory overlap and inconsistencies;
   - Making changes to the investment fund continuous disclosure requirements to either eliminate the MRFP and interim financial statements or, alternatively, to eliminate the interim MRFP and financial statements, and streamline the annual MRFP;
   - Investment fund issuers that provide portfolio transparency more frequently than quarterly (e.g. many ETFs provide daily or monthly portfolio transparency) should not also be required to publish the QPD. Rather, the publication of the QPD should be a minimum requirement;
   - Permitting access equals delivery for continuous disclosure documents, in particular the financial statements and MRFP (if the requirement for an MRFP is retained), and eliminating the need for opt-in cards, annual instructions and annual reminder of standing instructions and redemption process;
   - Eliminating the requirement to have interim financial statements reviewed by the investment fund's auditor where they are incorporated by reference in the prospectus renewal after the filing of the interim MRFP;
   - Eliminating the SEDAR Form 6 requirement found in Section 4.3(3) of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;
   - Conducting a thorough review of all guidance, such as the Investment Fund Practitioners, to review, update, rationalize and, where appropriate, delete guidance that is no longer relevant. In particular, we point to the guidance on rehypothecation, which has now been superseded. As guidance is rationalized, it would be useful for investment fund managers to understand if the position is solely that of one regulator or if the guidance is representative of the CSA more broadly. Given the national instruments are intended to set out a harmonized approach to regulation, we urge the CSA to work to put out similarly harmonized guidance; and
   - Engaging in a discussion about what constitutes guidance. In our view, it should provide guidance on practices the CSA considers acceptable but not be the only acceptable manner in which to comply with the applicable regulatory requirement.

[15] See See https://www.ific.ca/wp-content/uploads/2019/02/IFIC-Submission-OSC-Staff-Notice-11-784-Burden-Reduction-March-1-2019.pdf/21945/, including Appendix B to that submission.

2. **With the exception of Workstreams 1, 2 and 3, the Proposed Amendments and Proposed Changes do not introduce any new requirements for investment funds. Instead, we are either removing requirements or introducing exemptions that are permissive in nature. As a result, we do not contemplate any prolonged transition period following the in-force date of the proposals. Are there any specific elements of the Proposed Amendments and Proposed Changes which investment funds and their managers would require additional time to comply with? If so, please explain why and provide suggestions for an appropriate transition period.**

   We encourage the CSA to adopt a flexible approach to implementation. Our members generally support quick adoption of the Proposal, with the exception of Workstream 1.

   While our members are very supportive of the proposed amendments in Workstream 1, it will take some time to adjust processes to prepare a consolidated SP. As such, we recommend the proposal for Workstream 1 come into effect at least 8 months after publication of the final rule. Investment fund issuers will adopt the consolidated SP at the next filing or regular renewal after that time. This provides sufficient lead-time for firms to change their processes and prepare to file under the consolidated SP form. Given that investors receive the Fund Facts or ETF Facts, differences in the form of the SP during this transition period would not raise investor protection concerns.

APPENDIX B – Workstream One: Consolidate the Simplified Prospectus and the Annual Information Form

General Comments

While consolidation of the SP and AIF as proposed is unlikely to reduce the regulatory burden initially, we believe that review of the disclosure as set out in Appendix A and our cover letter can meaningfully reduce the regulatory burden.

As noted above, the proposed consolidated SP creates a single large document through the combination of the existing SP and AIF while retaining most of the disclosure requirements. We encourage the CSA to critically reassess the content to determine which information is immaterial or irrelevant to an investor, a registrant or the regulator in the context of an investment fund. Where information is relevant only to the regulator, it should be provided through different means. With respect to relevant information that is provided as at a point in time, we recommend giving investment fund issuers the flexibility to provide it through the designated website.

We also recommend a relaxation of the stringent form requirements of the consolidated SP given it is no longer the primary disclosure document for investors.

As noted in our letter, the CSA should also look at the long form prospectus requirements for ETF issuers to remove the duplication of information within that document. For example, we note that the annual returns, management expense ratios and trading expense ratios chart is required to appear twice within the same document as are the investment objectives and investment strategies of the ETFs offered under the long form prospectus.

Finally, we believe the CSA should reconsider the requirement for alternative investment funds to be filed in a separate SP from conventional mutual funds. The rationale for this requirement was to ensure that alternative investment funds were clearly identified for investors. However, we believe this is accomplished by virtue of the point of sale disclosure in the Fund Facts document, which requires the investment fund to be identified as an alternative mutual fund and disclose how its investment strategies differ from other types of mutual funds, the use of leverage and the risks of an alternative mutual fund. As a result, the requirement to have a separate SP is an unnecessary and costly requirement.

Questions

3. **As described in footnotes 3 to 5 of the Notice, certain specific requirements from the existing Form 81-101F1 and Form 81-101F2 were not carried over into the proposed Form 81-101F1. Do you support or disagree with these changes? If so, please explain.**

   While IFIC supports the changes noted in footnotes 3 to 5 of the Notice, we note that the requirement in subsection 4.14(2) of Part A of the consolidated SP retains the obligation to disclose the holding of more than 10 percent of any class or series of the mutual fund held by any person or company. We believe this requirement should also be deleted. While this information may be useful to investors in a public issuer, it is irrelevant to investors in a mutual fund.

   From the perspective of the investment fund issuer, obtaining the information for this disclosure requires a significant allocation of resources, particularly given it must be within 30 days of the date of the SP. From the investor perspective, the information is stale dated once available and does not affect their investment decision.

4. **Are there any disclosure requirements from the proposed Form 81-101F1 that are redundant or unnecessary and that can be removed or modified without impacting investor protection or market efficiency? If so, what are the reasons why the disclosure requirements should be removed or modified and how will investor protection and market efficiency be maintained? Are there any significant cost implications associated with sourcing the required disclosure? If so, please explain. Please comment in particular on the proposed Item 4.14 (Ownership of Securities of the Mutual Fund and the Manager) of Part A and whether it should be narrowed in scope or removed entirely.**

   - Part A, section 4.2(2), (3), (4) requires disclosure of information related to partners, directors and

executives of the Manager. We do not believe this information is relevant to the investment decision of mutual fund investors and requires, in some organizations, considerable effort to collect and maintain. We also believe it may raise privacy concerns for some of the named individuals. This information is available to the CSA through other means. Similarly, Part A section 4.6 should also be removed.

- Part A, section 4.9 requires disclosure of the municipalities in which the registers of securities of the mutual fund are held. This information may have been relevant when physical certificates were issued and required to be presented to a registrar, but is irrelevant now that records are generally electronic.
- Part A, section 4.14(2), is discussed in our response to question 3, above.
- Part A, section 4.17(5) requires disclosure of information on how the manager exercised its discretion with respect to voting rights attached to securities of other mutual funds held by the fund. As proxy-voting details are disclosed pursuant to National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**), disclosure within the consolidated SP is duplicative and unnecessary.
- Part A, Item 14 requires disclosure of all exemptive relief under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, NI 81-102 and National Instrument 81-105 *Mutual Fund Sales Practices*. This is broader than the disclosure requirement under Item 4(2) of the current form of AIF, which is limited to relief obtained to vary any of the investment restrictions and practices contained in securities legislation, including National Instrument 81-102. For example, investment fund issuers will have to disclose notice and access relief, relief related to Lipper or Fundata awards/rankings and relief from the cooperative marketing practices requirements to permit paying the direct costs of financial planning activities. This additional disclosure is not relevant to an investor's purchase decision. We recommend that this requirement be removed and the requirement in Part B, Item 6(2) (which mirrors the existing requirement) be retained.
- Part B, Item 3 Instruction 1 should be removed as the requirement to provide the date on which the mutual fund started is no longer required.
- Part B, section 9(2) requires disclosure of information related to securities of the fund representing more than 10% of the net asset value held by a securityholder as of a date within 30 days of the date of the SP. This requirement is adequately addressed through risk factor disclosure related to large investors. The quantification is generally not relevant to the mutual fund investor and is stale dated by the time it is published. Disclosure of a large investor risk factor is the more salient information for investors.
- Part B, section 9(7) requires disclosure of any securities held by a fund that represented more than 10% of the net asset value of the fund during the 12-month period immediately preceding the date that is 30 days before the date of the SP. This information is adequately addressed through disclosure of a concentration risk factor. Similar to Part B section 9(2), this quantification is generally not relevant to the mutual fund investor and is stale dated by the time it is published. The concentration risk factor disclosure is the more relevant information for investors.
- Part B, section 11 requires disclosure related to the suitability of the mutual fund for particular investors. This disclosure is also found in the Fund Facts and ETF Facts, which are the investor facing disclosure documents. As a result, it is unnecessary to duplicate this disclosure in the prospectus, which incorporates the Fund Facts and ETF Facts by reference.

5. As an alternative to complete removal, are there any disclosure requirements from the proposed Form 81-101F1 that could be relocated to another required disclosure document or to the proposed "designated website" for investment funds, while still maintaining investor protection and market efficiency? If so, why should these disclosure requirements be relocated and where should they be relocated to? Please comment in particular on any of the following proposed Items:

We have no additional comments at this time.

6. **The proposed Item 7(2) of Part A of Form 81-101F1 requires a description of the circumstances when the suspension of redemption rights could occur. We are considering, however, whether to require specific disclosure in the prospectus regarding any liquidity risk management policies that have been put in place for the investment fund. This would include a list of any liquidity risk management tools that have been adopted as permitted by securities regulations, along with a brief description of how and when they will be employed and the effect of their use on redemption rights. Would the prospectus be the most appropriate place for this type of disclosure, or are there other alternatives that we should consider?**

   It may be premature to consider such disclosure as discussions continue regarding liquidity risk management practices.

7. **The current prospectus disclosure rules were drafted at a time when inventories of physically printed prospectuses were required to satisfy prospectus delivery requirements. In recognition of this, flexibility exists in terms of how to deal with amendments to avoid significant costs that might be associated with having to reprint large quantities of commercially prepared copies of the prospectus. With the transition to delivery of the Fund Facts and the ETF Facts documents in place of the prospectus, along with the advent of print-on-demand technology and electronic delivery, is it still necessary to maintain this flexibility? Would it be less burdensome for investment funds and investment fund managers to follow the approach taken with the Fund Facts document and ETF Facts document by requiring that all amendments be in the form of an amended and restated prospectus, prepared in accordance with the proposed Form 81-101F1? Why or why not?**

   Flexibility in how to deal with amendments must be maintained. It is unnecessary to require all amendments to a prospectus to be in the form of an amended and restated document. Moreover, given that the Fund Facts documents and ETF Facts must be amended and restated, we believe requiring the prospectus to be amended and restated is unnecessary, unduly burdensome and costly, without any corresponding benefit to the investor. In particular, if an amended and restated prospectus is filed, the entire document must be updated and reviewed which requires more time and resources than an amendment. The investment fund issuer should have the flexibility to determine which approach works best in the specific context of the amendments required.

   We also suggest that the CSA consider implementing an expedited review process for amendments to aid investment fund issuers to obtain a receipt for these filings more quickly.

8. **Item 11.2 (Publication of Material Change) of NI 81-106 sets out requirements that an investment fund must satisfy where a material change occurs in its affairs. Can these requirements be streamlined or modified in any way while maintaining investor protection and market efficiency?**

   We recommend that the obligation to file a material change report containing the information set out in the news release be deleted as it is unnecessary and duplicative. The news release provides information to the market. If the fund is distributing its securities under a prospectus, the material change will be reflected in an amendment to that prospectus.

9. **Will any exemptive relief decisions be rendered ineffective as a result of the repeal of Form 81-101F2? If so, are there any transitional issues that need to be considered? Please explain**.

   It is difficult to comment on transitional issues for each relief order. We believe each relief order must be reviewed by the recipient of the relief to determine whether there are transitional issues to be considered.

10. **Are there any disclosure requirements in the proposed Form 81-101F1 that require additional guidance or clarity?**

    Although IFIC does not have comments at this time, additional guidance or clarity may be required as firms seek to implement the proposed form.

11. Currently a final prospectus must be filed within 90 days of receiving a receipt for a preliminary prospectus. We are of the view that this requirement is more relevant to non-investment fund issuers and is not necessarily applicable to investment funds, particularly to investment funds in continuous distribution. As a result, we are currently considering whether to either extend the final filing deadline or remove this requirement entirely. Do you have any views on the applicability of this provision to investment fund issuers? If you agree that the provision is not required, please explain whether it would be preferable to extend or eliminate the filing deadline, including the reason for your preference. If an extension is preferred, would 180 days be sufficient?

We believe the CSA should provide flexibility to investment fund issuers through elimination of the 90-day deadline.

12. Should investment funds not in continuous distribution that have already prepared and filed an AIF using Form 81-101F2 be permitted to continue using that Form? If so, why?

Yes, investment funds not in continuous distribution should be permitted to continue to use Form 81-101F2 in order to minimize the regulatory burden on these funds of preparing a new document under proposed Form 81-101F1.

13. Should investment funds not in continuous distribution be relieved entirely of the requirement to file an AIF? If so, what impact would this have on an investor's ability to access an up-to-date consolidated disclosure record for an investment fund not in continuous distribution? Alternatively, please comment on whether elements from the current Form 81-101F2 should be incorporated into any of the following:

Yes, investment funds not in continuous distribution should be relieved of the requirement to file an AIF. Any necessary elements of the information contained in the AIF can be provided through the investment fund's designated website.

APPENDIX C – Workstream Two: Investment Fund Designated Website

General Comments

As noted in our letter, while the implementation of a designated website does not initially represent a reduction in regulatory burden, IFIC members support this initiative as a precursor to further burden reduction.

Questions

14. The proposed Part 16.1 of NI 81-106 requires reporting investment funds to designate a qualifying website on which the investment fund must post regulatory disclosure documents. This proposal represents the first stage of a broader initiative to both improve the accessibility of disclosure to investors and enhance the efficiency with which investment funds can meet their disclosure obligations. The CSA, however, recognize that electronic methods of providing access to information and documents besides websites may be used to provide information regarding investment funds. As a result, we ask for specific feedback on the following questions related to the issue of making the proposed Part 16.1 more technologically neutral:

a. Should the proposed Part 16.1 be revised to provide investment funds with the option to designate other technological means of providing public access to regulatory disclosure besides websites? In your response, please comment on the following issues: any potential investor protection concerns, consistency with securities instruments outside of the investment fund regime, and the benefits of making such a change.

In today's rapidly evolving technological landscape, it is important to adopt rules that are technology neutral. Although we are not currently aware of other technological means of providing effective public access to regulatory disclosure, we believe that the CSA should seek to adopt rules that continue to facilitate innovation whenever possible.

b. What other technological means of providing public access to regulatory disclosure should be captured by the proposed amendments? Please be specific. Of these means, please identify which are currently in use and which are expected to be used in the future.

We believe that public websites are the most common and effective way of providing public access to regulatory disclosure today. While this is generally an effective method of making information available to investors, as technology evolves there may be more effective ways to communicate with investors. As such, the CSA should seek to be technology neutral whenever possible.

c. Should any parameters (e.g. free to access, accessible to the public) be applied to limit which technological means of providing public access to regulatory disclosure besides websites should be included in the proposed Part 16.1? If so, please state which parameters should apply and why.

Regulatory disclosure should be facilitated through technology that is broadly available to an average investor and free to access. Technology should continue to facilitate broad access to key information, without unnecessary barriers or costs. Without a sense of what technology may be available in the future, it is difficult to provide any additional parameters that should apply.

d. If you agree that technological means of providing public access to regulatory disclosure besides websites should be included in the proposed Part 16.1, what terms could be used to refer to these means? What are the benefits and drawbacks of each possible option? Some examples include "digital platform", "electronic platform", and "online platform".

It is our understanding that digital or online platforms are types of "electronic platforms"[16]. As such, "electronic platform" may be the more appropriate terminology to use.

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[16] See IIROC Notice 19-0051 https://www.iiroc.ca/documents/2019/4926ed1b-b31f-4a48-ae84-7aff9fa05363_en.pdf wherein it states that a digital signature is a type of electronic signature.

e. Are there any elements of the current proposed amendments and proposed changes under Workstream Two that would not work if an investment fund could designate other technological means of providing public access to regulatory disclosure besides websites?

As previously stated, it is difficult to provide constructive feedback on evolving or future technology.

15. Are there unintended consequences arising from the proposed section 16.1.2 of NI 81-106 that we should consider? For example, under the proposed section, an investment fund may designate a website that is maintained by a Related Person. We are of the view that this would avoid circumstances where an investment fund would have to create an entirely new and separate website, where to do so would not be desirable. Are there any practical issues associated with this that we should consider?

We support allowing a website that is maintained by a Related Person.

To ensure that the proposed amendment cannot be interpreted to restrict an investment fund's ability to outsource the maintenance of its website to a third party, we suggest proposed section 16.1.2(b) of NI 81-106 be amended to read as "established and maintained by**, or on behalf of,** the fund or by**, or on behalf of,** one of more of the following".

Given the amendments seek to avoid circumstances where an investment fund would have to create a new or separate website, we would appreciate confirmation that it is equally acceptable for an investment fund manager with multiple brands to have either separately branded websites or a co-branded website.

16. Are there any aspects of the proposed guidance provided in 81-106CP that are impractical or misaligned with current market practices?

The companion policy to NI 81-106 (**81-106CP**) should clarify that a fund manager "designates" a website through disclosure of the website in the investment fund issuer's regulatory disclosure such as the prospectus. The guidance should also clarify that if there is a change to the website, it would be sufficient for the old website to redirect the investor to the new website, without requiring an amendment in the prospectus. The new designated website could be updated upon the next prospectus renewal.

17. Some investment funds may maintain a website that is accessible only by securityholders with an access code and a password (i.e. a private website). Would an investment fund currently maintaining a private website accessible only to its securityholders encounter any issues with the proposed requirement to post regulatory disclosure required by securities legislation on a designated website that is publicly accessible?

We do not believe there would be any difficulty maintaining a designated website that is freely available to the public and also maintaining a secure website. This is what many investment fund issuers do today.

APPENDIX D – Workstream Three: Codify Exemptive Relief Granted in Respect of Notice-and-Access Applications

General Comments

IFIC supports the codification of the notice-and-access relief as proposed. Our members generally support initiatives that encourage investors to "pull" a greater amount of information from electronic platforms rather than rely upon paper solutions that do not align with the current investor focus on environmental and social responsibility.

The need to maintain material on the designated website for a year following the date of the meeting and making paper copies available during this period seems unnecessary and may in some circumstances be confusing to the investor.

81-106CP, Section 8.2(1) seems to unnecessarily constrain an issuer's ability to use notice-and-access. Additionally, the restriction in section 12.2.1(k) of NI 81-106 prohibits including an investor friendly communication with the notice, which may create unnecessary barriers to investor understanding and industry adoption. As such, we would ask the CSA to revisit these provisions in Workstream 3.

New section 12.2.2 "*Restrictions on Information Gathering*" of NI 81-106 serves to introduce duplicative and potentially conflicting privacy restrictions into securities legislation, which would introduce new regulatory burden. Rather, investment fund managers should continue to comply with the applicable privacy legislation.

Questions

18. Will participation rates for investment fund securityholder meetings change under the notice-and-access system? In particular, is it anticipated that participation rates would change? Please provide an explanation for your answer.

We do not believe that participation rates are low because of the method of communication of investment fund securityholder meetings. As such, we do not expect that a change in how information is communicated, or otherwise made available, to securityholders will result in a change in participation rates.

APPENDIX E – Workstream Five: Codify Exemptive Relief Granted in Respect of Conflicts Applications

General Comments

Workstream 5 proposes to amend NI 81-102 and National Instrument 81-107 *Independent Review Committee for Investment Funds* to codify frequently granted relief in respect of certain conflicts of interest prohibitions. The CSA anticipates that this will create cost savings from not having to prepare and file exemptive relief applications and serve to centralize the exemptions within these two national instruments. We respectfully disagree. Generally, issuers who can benefit from the relief tend to obtain relief in quick succession. Codification can only reduce the regulatory burden for both industry and the regulators, resulting in cost savings for both, if done more quickly.

In this regard, IFIC suggests the CSA consider, as noted in our letter, an expedited review process, provide industry relief more quickly, or consider an approach similar to the issuance of no action letters by the SEC. As part of the CSA's ongoing phases of this burden reduction project, we suggest the CSA consider codifying other sets of relief that have been provided multiple times more recently. For example, the CSA has granted relief at least twice in the last two years to permit inter-fund trades in securities between investment funds subject to NI 81-102 and U.S. mutual funds and U.S. pooled funds managed by the same or an affiliated manager[17]. Similarly, the CSA has granted relief to many industry participants to reference the Lipper or Fundata awards and rankings in sales communications.

Finally, we believe the CSA should always provide issuers the flexibility to rely on the codified relief or an issuer's existing relief, provided it does not contain a sunset provision. The codified relief often adopts conditions that are the product of an evolution in analysis and usage or it may capture the most common fact patterns. In contrast, relief obtained by an issuer is based on the issuer's specific facts or business needs which may be less common across the industry. As a result, the specific relief provided to an issuer may differ from the codification. It would not be a reduction of the regulatory burden for those issuers who have already spent time and money to obtain and implement the relief if they must also review and revise their internal policies and processes to adhere to the codified relief.

Fund on Fund Investments by Investment Funds that are not Reporting Issuers

As currently drafted, this codification may result in investment funds that are not reporting issuers being subject to restrictions they are not otherwise subject to today. We offer the following comments (*noted in square brackets and italics*) and drafting suggestions (noted in strikethrough, bold and double underlined) with respect to this aspect of the codification to create a more tailored exemption:

> **1.2 Application**
>
> (2.1) Despite subsection (1), all of the following sections apply in respect of investment funds that are not reporting issuers:
>
> (a) section 2.5**.1**;
>
> (b) **trades done in accordance with sub**section**s** 9.4**(7) and (8)**;
>
> (c) **trades done in accordance with sub**section**s** 10.4**(6) and (7)**.
>
> ***2.5.1 Investments in Other Investment Funds by Funds Not Reporting Issuers*** – (1) In subsection (2), "substantial security holder" and "significant interest" have the meanings assigned within the investment fund conflict of interest investment restrictions.

[17] See for example https://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20181004_2112_franklin.htm and https://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20190711_211_manulife-asset.htm.

(2) The investment fund conflict of interest investment restrictions and the investment fund conflict of interest reporting requirements do not apply to **the purchase or holding of securities of another investment fund by** an investment fund ~~which purchases or holds securities of another investment fund if~~ **that is not a reporting issuer, subject to the following:**

(a) ~~the investment fund's securities are distributed solely pursuant to exemptions from the prospectus requirement,~~

~~(b)~~ if the other fund is a reporting issuer, the purchase or holding is made in accordance with section 2.5,

(b~~.1~~) if the other investment fund is not a reporting issuer, the purchase or holding would be made in accordance with section 2.5 if paragraphs 2.5(2)(a), (a.1) and (c) were disregarded,

(c) the other fund complies with section 2.4, *[We note that this restriction should not apply where the underlying fund is also not a reporting issuer. Otherwise, it is adding a limitation that has not been included in recent relief applicable to fund on fund investments where both the top and underlying funds are not reporting issuers[18]. If the underlying fund is a reporting issuer, it is already subject to the illiquid asset limitation set out in section 2.4 of NI 81-102]*

(d) the other fund is subject to and complies with National Instrument 81-106 *Investment Fund Continuous Disclosure* **to the extent applicable**, *[We note that investment funds that are not reporting issuers are not subject to NI 81-106 in its entirety.]*

(e) the other fund has the same redemption and valuation dates, *[We note that some investment funds that are not reporting issuers may not have redemption and valuation dates that comply with the requirements of NI 81-102]*

(f) the investment in the other fund is effected at an objective price, **such as a price** calculated in accordance with section 14.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, *[We note that this section would not apply to the other fund if it is not a reporting issuer subject to Part 14 of NI 81-106. We also note that recently granted relief only references an objective price in this regard and does not require it to be calculated in accordance with section 14.2 of NI 81-106 (see relief cited at footnote 18).]*

(g) a disclosure document is provided to each investor in the investment fund prior to the time of the investor's investment, which discloses *[We note that this is much more prescriptive than what Section 2.5 of NI 81-102 requires for investment funds that are reporting issuers. This provision should be limited to fund of fund investments that need relief from the conflict of interest provisions because they are "related funds".]*

(i) that the fund may purchase securities of other related funds from time to time,

(ii) that the investment fund manager of the fund is the manager or portfolio adviser to each of the other funds,

(iii) the approximate or maximum percentage of net assets of the fund that is intended to be invested in securities of the other fund**(s)**,

[18] See for example https://osc.gov.on.ca/en/SecuritiesLaw_ord_20190321_214_td-asset.htm, which does not contain this limitation.

(iv) the fees, expenses and any performance or special incentive distributions payable by the other fund**(s)**,

(v) the process or criteria used to select the other fund**(s)**,

(vi) ~~for each~~ **if any** officer, director or substantial security holder of the fund's investment fund manager, or of the fund, ~~that~~ has **or may have** a significant interest in the other fund, ~~and for the officers and directors and substantial security holders who together in aggregate hold a significant interest in the other fund, the approximate amount of the significant interest they hold, on an aggregate basis, expressed as a percentage of the applicable other fund's net asset value, and~~ **describe** the potential conflicts of interest which may arise, and *[We do not believe that disclosure of the approximate amount held by an officer, director or substantial securityholder is relevant to the investor's investment decision. Rather, we suggest that this requirement be amended as set proposed here. Otherwise, it adds a regulatory burden to obtain and maintain this information, is a requirement that is not in previously granted relief[19] and will create an unequal playing field.]*

(vii) that investors are entitled to receive, on request and free of charge

(A) a copy of the offering memorandum or other similar disclosure document of each other fund, if available, and

(B) the annual audited financial statements and interim financial reports (if any) relating to each other fund, and

(h) ~~investors are informed annually of their right to receive, on request and free of charge, a copy of the documents referred to in subparagraph (g)(vii)~~. *[This is an additional requirement that is not included in previously granted relief and creates additional regulatory burden. Investors generally will make this request of their advisor should they want to obtain a copy of the documents referred to in subparagraph (g)(vii).]*

Investment Funds that are Reporting Issuers to Purchase Non-Approved Rating Debt Under a Related Underwriting

We encourage the CSA to consider broadening the scope of this codification to permit a dealer managed investment fund to invest in securities of a reporting issuer in respect of which the dealer manager or an associate or affiliate of the dealer manager acts as an underwriter in the distribution. Specifically, we suggest that the codification permit dealer managed investment funds to also invest in securities issued in a related underwriting in other jurisdictions in which the dealer manager or an associate or affiliate of the dealer manager acts as underwriter. The same policy rationale applies to permit the investment fund issuer to invest in related underwritings in other jurisdictions and this is relief the CSA has previously granted[20]. As a result, we would suggest that proposed paragraph 4.1(4)(b) be amended to capture distributions in other jurisdictions.

***In Specie* Subscriptions and Redemptions Involving Related Managed Accounts and Mutual Funds**

With respect to the codification of *in specie* relief previously provided to investment fund issuers, we question the need for paragraphs 9.4(7)(c), 9.4(8)(d), 10.4(6)(d) and 10.4(7)(d) given the same registrant is on both sides of the transaction. As a result, the registrant owes a duty of care to each investment fund or managed account and has an obligation to act fairly in determining the amount of the illiquid asset to be transferred from one to the other and the price at which it should be transferred. A registrant has an

[19] See, for example, https://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20121129_212_rbc-global.htm.

[20] See, for example, https://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20150813_212_rbc-global.htm.

obligation to fairly value the portfolio holdings. In the absence of this transfer, that valuation is acceptable in determining the valuation. As a result, we question why the transfer from one from to another should then require an independent quote. Moreover, depending on the nature of the illiquid asset, it may be difficult to obtain such a price quote, resulting in a *pro rata* portion of the illiquid asset not being transferred. This would be detrimental to the client that must retain it.

Proposed Changes to Commentary in National Instrument 81-107 *Independent Review Committee for Investment Funds*

We note that references to "inter-fund trades" in Commentary 2 to section 6.2, the commentary following new section 6.3 and new section 6.4 will need to be amended to reference "transactions in securities of related issuers", "transactions in securities of related issuers in the secondary market" and "transactions in securities of related issuers in primary offerings", respectively.

Questions

19. The Proposed Amendments include new exemptions in sections 6.3 and 6.5 of NI 81-107 to permit secondary market trades in debt securities of related issuers and secondary market trades in debt securities with a related dealer, respectively. The exemptions are based on discretionary relief granted to date that includes pricing conditions. The pricing conditions are not the same under each exemption and also differ from what is currently codified under section 6.1 of NI 81-107.

Should these pricing conditions be revised? Should they be more harmonized? Are there any self-regulatory organization rules or guidance for pricing methods that we should consider in such cases?

The pricing conditions in the Proposed Amendments may be too prescriptive. We recommend more principles-based pricing conditions be adopted. Starting with the investment fund manager's duty of care and fair valuation principles, the commentary can provide additional guidance on possible fair valuation methods and the criteria that an investment fund manager may consider. Otherwise, similar to relief provided to conduct inter-fund trades at the last sale price rather than the current market price, it may be necessary to grant further relief in the future.

APPENDIX F – Workstream Six: Broaden Pre-Approval Criteria for Investment Fund Mergers

General Comments

We support the CSA's decision to codify relief that has been routinely granted to broaden the pre-approval criteria for investment fund mergers contained in section 5.6 of NI 81-102. We note, however, that the codification departs from previously granted relief in one important area. Both subparagraph 5.6(1)(a)(ii)(B) and subparagraph 5.6(1)(b)(ii)(C) include a requirement that the disclosure explain the investment fund manager's belief that the transaction is in the "best interests of securityholders". In contrast, the exemptive relief granted to date[21] has required that the investment fund manager believes the transaction is "beneficial to securityholders". To remain consistent with the relief granted, we recommend that "best interests of securityholders" be changed to "beneficial to securityholders".

The proposed amendments to NI 81-102 set out within Workstream 6, will also need to include an amendment to subsection 5.3(2) of NI 81-102, which sets out the circumstances under which securityholder approval is not required. As securityholder approval will continue to be required even though approval of the securities regulatory authority is no longer required for these investment fund mergers, subparagraph 5.3(2)(a)(iii) should be amended to refer to "the investment fund complies with the criteria in paragraphs 5.6(1)(a)**(i) and (ii)(A)**, (b)**(i)**, (c),".

Questions

20. We propose to mandate new disclosure requirements in the Information Circular in subparagraph 5.6(1)(a)(ii) and paragraph 5.6(1)(b) of NI 81-102 as pre-approval criteria for investment fund mergers. Are there any additional disclosure elements that we should require beyond what has been proposed? If so, please provide details.

We have no additional comments at this time.

[21] See, for example, https://www.osc.gov.on.ca/en/SecuritiesLaw_ord_20190815_211_counsel-portfolio.htm at paragraph 31.

APPENDIX G – Workstream Seven: Repeal Regulatory Approval Requirements for Change of Manager, Change of Control of a Manager, and Change of Custodian that Occurs in Connection with a Change of Manager

General Comments

We welcome the repeal of the requirement to obtain regulatory approval for a change of manager, change of control of manager or a change of custodian that occurs in connection with a change of manager. Instead, reliance on the existing registration requirements and process for investment fund managers set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) reduces duplicative processes. It would be useful for investment fund managers to understand whether the scope of review under NI 31-103 will be the same, or if that review will be expanded to include a review of matters relating to NI 81-102.

In light of these proposed amendments, we recommend that the OSC repeal OSC Staff Notice 81-710 *Approvals for Change in Control of a Mutual Fund Manager and Change of a Mutual Fund Manager under National Instrument 81-102 Mutual Fund* (the **Staff Notice**). We note that as a result of this Staff Notice, many changes of control of manager become treated in practice as a change of manager that requires securityholder approval under paragraph 5.1(1)(b) of NI 81-102. As a result, the requirement in NI 81-102 to obtain securityholder approval for a change of manager is expanded, outside of the rulemaking process, to also apply to a change of control of manager. Moreover, the Staff Notice can serve to prevent parties to a business transaction from achieving the synergies and efficiencies that the transaction was intended to achieve.

Questions

21. **Given the oversight regime in place for investment fund managers, we are proposing to repeal the requirement for regulatory approval of a change of manager or a change of control of a manager under Part 5 (Fundamental Changes) of NI 81-102. Does this proposal raise any investor protection issues? If so, explain what measures, if any, securities regulators should consider in order to mitigate such issues. Alternatively, should we maintain the requirements for regulatory approval of these matters and seek to streamline the approval process by eliminating certain requirements in subsection 5.7(1) of NI 81-102? If so, please comment on whether such an approach would be preferable to the existing proposal, which has been put forward with consideration given to the presence of the investment fund manager registration regime.**

    We do not believe that repealing the requirements for regulatory approval of a change of manager or a change of control of a manager under Part 5 of NI 81-102 raises any investor protection concerns. Regulatory oversight of the transaction will continue to be exercised under sections 11.9 and 11.10 of NI 31-103, any conflict of interest matter will be subject to the oversight of the fund's independent review committee, and securityholders will have the opportunity to vote on any changes included in section 5.1 of NI 81-102.

22. **When there is a change of manager or a change of control of a manager, should securityholders have the right to redeem their securities without paying any redemption fees before the change? If so, what should be the period after the announcement of the change during which securityholders should be allowed to redeem their securities without having to pay any redemption fees?**

    We do not believe securityholders should be allowed to redeem their securities without the payment of any redemption fees before any change. Such a right does not exist for any other fundamental changes set out in section 5.1 of NI 81-102. Moreover, such a requirement may not be workable for ETFs, which typically only redeem at net asset value the prescribed number of securities (and not smaller numbers of securities).

23. We propose to add to subsection 5.4(2) of NI 81-102 certain disclosure requirements in the Information Circular regarding a change of manager. Is there any other disclosure in the Information Circular that we should mandate, beyond what has been proposed? If so, please provide details.

We have the following drafting suggestions on the proposed disclosure requirements in paragraph 5.4(2)(a.2):

(a.2) if the matter is one referred to in paragraph 5.1(1)(b),

(i) information regarding the business, management and operations of the new investment fund manager, including details of the history and background of its **executive** officers and directors **within the five years preceding the date of the notice or statement**,

(ii) ~~how~~ the **material impacts that the** change of manager will ~~affect~~ **have on** the business, operations or affairs of the investment fund and its securityholders, and

(iii) information on any material contract regarding the administration of the investment fund that will be either **materially** amended or restated;

24. When a change of manager is planned, we are considering requiring that the related draft Information Circular be sent to securities regulators for approval before it is sent to securityholders in accordance with subsection 5.4(1) of NI 81-102. What concerns, if any, would arise from introducing this requirement? We expect that securities regulators would establish a process to review the Information Circular. If securities regulators took 10 business days to approve the Information Circular as part of the review process, would that create any issues with respect to the organization of the securityholder meeting?

A requirement to obtain regulatory approval before the information circular is sent to securityholders is unduly burdensome and will require the investment fund manager to build in additional time to obtain approval. The investment fund will also have to coordinate the approval with timing requirements set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and the investment fund's declaration of trust or other constating documents. We question the purpose of the regulatory approval given the disclosure in the information circular remains the obligation of the investment fund issuer.

25. Investment funds currently rely on the form of Information Circular provided for in Form 51-102F5 *Information Circular* of NI 51-102, which was developed primarily for non-investment fund issuers.

a. Should Form 51-102F5 of NI 51-102 be replaced with an Information Circular form that is tailored to investment funds?

Yes. Many of the requirements of Form 51-102F5 are not applicable to investment funds generally, and in particular to investment funds in the context of a meeting of securityholders to approve a fundamental change. For example, information related to the election of directors, equity compensation plans, executive compensation, and indebtedness of directors and executive officers, while important in the context of an annual meeting of investors in a corporate issuer, are not relevant to a meeting of securityholders of an investment fund to approve a fundamental change.

b. If investment funds had their own form of Information Circular, would this reduce costs or make it easier to comply with requirements to produce an Information Circular?

While the introduction of a new form of information circular would require the expenditure of some time and effort to become familiar with the form requirements and creation of the initial document, we believe that there would be a benefit to investment fund issuers and their investors over the long-term to have a tailored form of information circular.

c. If investment funds had their own form of Information Circular, are there certain form requirements that should be added which would provide investors with useful disclosure that is not currently required by Form 51-102F5? Alternatively, are there disclosure requirements that could be removed? Please provide details.

Given the relatively short comment period for the Proposal, we have not had the opportunity to focus our limited resources on considering what information would be useful to provide and what items should be removed from the current form of Information Circular. Our members would be pleased to collaborate with the CSA on this work.

d. Should investors receive additional tailored disclosure adapted to their needs? Would investors benefit from receiving a summary of key information from the Information Circular in a simple and comparable format, in addition to the Information Circular itself or as a distinctive part of the Information Circular (e.g. as a summary appearing at the front of the document)?

We believe that investment funds should have the flexibility to provide additional tailored disclosure where an issuer believes it will assist investors in understanding the matters to be voted on and thus, encourage participation in the process (see also our answer to question 18). However, as each transaction or series of transactions is unique, we do not believe such disclosure should be mandated, nor can it be “comparable” to disclosure for other meetings.

APPENDIX H – Workstream Eight: Codify Exemptive Relief Granted in respect of Fund Facts Delivery Applications

General Comments

Our members appreciate the codification of exemptive relief granted in respect of Fund Facts delivery for managed accounts, portfolio rebalancing plans and automatic switch programs. The basic premise behind all of these exemptions is that the investor does not make the decision to take an investment action. In the case of managed accounts, the portfolio manager makes the investment decision. In the case of portfolio rebalancing plans, the investment action is based on predetermined criteria established under a contract or arrangement entered into by the investor. Finally, in the case of automatic switch programs, the investment action is determined based on eligibility requirements set out in the investment fund's SP and Fund Facts document.

Automatic Switch Programs

The definition of automatic switch program is too restrictive and would only permit a switch in situations in which the investor fails to meet the eligibility criteria because of redemptions by the investor. Investment fund issuers set out the terms of the automatic switch program very clearly in the investment fund's prospectus. As a result, the investor is made aware of the right of the investment fund manager to switch the investor based on the eligibility criteria. This should apply whether the failure to meet the eligibility criteria is the result of a purchase, redemption or market movement.

The reference to "purchaser" within the definition of automatic switch programs and within section 3.2.05 is not appropriate as the investor is switched to another class or series by the investment fund issuer or its investment fund manager only after the investor has already purchased or is holding securities of the mutual fund or mutual fund family.

As a result, we suggest the following drafting changes:

1. Amend the definition of "automatic switch program" as follows:

   "automatic switch program" means a contract or other arrangement under which automatic switches on a predetermined ~~dates~~ **basis** are made for a ~~purchaser~~ **holder** of securities of a class or series of a mutual fund as a result of the ~~purchaser~~ **securityholder satisfying or failing to satisfy the eligibility criteria relating to minimum investment amounts set out in the mutual fund's offering documents;**

   ~~(a) satisfying the minimum investment amount of that class or series, and~~

   ~~(b) failing to satisfy the minimum investment amount for the class or series of securities of the mutual fund that were subject to the automatic switch, in whole or in part, because securities of the class or series were previously redeemed;~~

2. Amend proposed section 3.2.05 *Delivery of Fund Facts for Automatic Switch Programs* as follows:

   Despite subsection 3.2.01(1), a dealer is not required to deliver or send to a ~~purchaser~~ **securityholder** of a security of a class or series of securities of a mutual fund the most recently filed fund facts document for the applicable class or series of securities of the mutual fund in connection with the ~~purchase~~ **switch** of a security of the mutual fund made pursuant to an ~~automatic switch in an~~ automatic switch program if all of the following apply:

   (a) ~~the purchase is not the first purchase under the automatic switch program;~~

   ~~(b) the dealer has provided a notice to the purchaser that states,~~

   ~~(i) subject to paragraph (c), the purchaser will not receive a fund facts document after the date of the notice, unless the purchaser specifically requests it,~~

~~(ii) the purchaser is entitled to receive upon request, at no cost to the purchaser, the most recently filed fund facts document by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address,~~

~~(iii) how to access the fund facts document electronically, and~~

~~(iv) the purchaser will not have a right of withdrawal under securities legislation for subsequent purchases of a security of a mutual fund under the automatic purchase program, but will continue to have a right of action if there is a misrepresentation in the prospectus or any document incorporated by reference into the prospectus;~~

~~(c) at least annually, the dealer notifies the purchaser in writing of how the purchaser can request the most recently filed fund facts document;~~

~~(d) the dealer delivers or sends the most recently filed fund facts document to the purchaser if the purchaser requests it;~~

~~(e) for the first purchase under the automatic switch program,~~ the fund facts document delivered to the purchaser contains all of the following disclosure modifications to Form 81-101F3 Contents of Fund Facts Document for all the classes or series of securities of the mutual fund in the automatic switch program:

3. As proposed, the automatic switch program carried out by the investment fund manager is conditional on the obligation of the dealer to deliver a notice to the purchaser under proposed subsection 3.2.05(b). However, the investment fund manager does not have actual knowledge of whether the notice has, in fact, been provided. We suggest that a better approach is to require disclosure in the Fund Facts document that is substantially similar to the following:

> The manager operates a program that automatically switches your investment between different series within the fund depending on the size of your investment. You will not receive the fund facts document for the series to which you are being switched under the program unless you specifically request it. You also can obtain, at any time and free of charge, the most recently filed fund facts document for your investment in the fund by contacting us at **[insert manager toll-free number, e-mail address and mailing address]**. You also can access the fund facts document at www.sedar.com and searching the name of the fund, or by visiting our website at **[insert designated website]**.
>
> You do not have a right of withdrawal under securities legislation after a switch is made under this program, but you continue to have a right of action it there is a misrepresentation in the fund's prospectus or in any document incorporated by reference into that prospectus.

Where an investment fund manager begins to offer an automatic switch program at a later stage, the proposed amendment should contemplate a notification plan through which the investment fund manager can notify existing investors of the key features of the automatic switch program, including:

- the differences in management fees between the class or series of fund within the automatic switch program;
- the eligibility criteria for each such class or series;
- that the investor may be switched to higher or lower fee series based on the eligibility criteria; and
- that the management fee will not exceed the management fee of the highest management fee class or series.

4. Under the proposed amendment, investment fund issuers that offer an automatic switch program will be required to consolidate the Fund Facts document for each of the class or series in the automatic switch program. In contrast, the notice to the Proposal suggests consolidation is permissive rather than mandatory. A permissive approach would be consistent with the relief obtained by some investment fund issuers who may prefer not to consolidate their Fund Facts documents[22].We recommend that the consolidation of Fund Facts documents be permissive rather than mandatory to enable investment fund managers to determine which approach best suits their automatic switch program.

Annual Reminder Notice

The proposed amendments for both the portfolio rebalancing program and the automatic switch program require the dealer to provide the investor with a notice at least annually setting out how the most recently filed Fund Facts document can be obtained. Similar to other obligations under securities legislation applicable to the investment fund industry to send annual reminders to investors, we urge the CSA to reconsider this requirement as it adds to the regulatory burden, often with no corresponding benefit given the low opt-in rates. Regular account level reporting provides investors with information on the securities they hold and investors are likely to contact their advisor about their holdings or to request more information on any of their holdings. As such, an annual reminder of how to obtain the Fund Facts document is unnecessary.

Managed Accounts and Permitted Clients

The proposed amendments to provide an exemption from delivery of the Fund Facts document for managed accounts and permitted clients should also apply to delivery of the ETF Facts for managed accounts and permitted clients as the policy rationale is the same for both types of investment funds.

Questions

26. Currently, a separate Fund Facts or ETF Facts must be filed for each class or series of a mutual fund or ETF that is subject to NI 81-101, or NI 41-101 respectively. The Proposed Amendments contemplate allowing a mutual fund to prepare a single consolidated Fund Facts that includes all the classes or series covered by certain automatic switch programs on the basis that the only distinction between the classes or series relates to fees.

a. **Should the CSA consider allowing the preparation and filing of consolidated Fund Facts and ETF Facts where there are no distinguishing features between classes or series other than fees, even in circumstances where there is no automatic switch program? Alternatively, should the CSA consider mandating consolidation in such circumstances? In either case, we anticipate revising the form requirements of Form 81-101F3 to be consistent with paragraph 3.2.05(e) of NI 81-101 as set out in Appendix B, Schedule 8 of this publication.**

Yes, the CSA should permit the preparation and filing of consolidated Fund Facts and ETF Facts even in the absence of an automatic switch program. For most funds that offer multiple series, the differences between series is limited to fees, account minimums, dealer compensation and distributions. While each series participates in a single portfolio, and as such has the same holdings, the other differences mean a different net asset value and performance for each series. Performance for the series with the highest management fee can be reported in a manner similar to applicable portions of proposed paragraph 3.2.05(e) of NI 81-102. This makes presentation of a consolidated Fund Facts and ETF Facts easier, while still maintaining transparency for investors.

[22] See, for example, https://osc.gov.on.ca/en/SecuritiesLaw_ord_20180705_215_canadian-imperial-bank.htm

b. **Are there other circumstances where consolidation should be allowed or mandated? If so, what parameters should be placed on such consolidation? Additionally, what disclosure changes would need to be made to Form 81-101F3 to accommodate the consolidation?**

As set out in our response to questions 26a. above, we support allowing consolidation in other circumstances. We acknowledge that any such consolidation would need to address the potential for client confusion. While the comment period does not permit us to propose a consolidated Fund Facts template for the CSA's consideration, our members would be happy to collaborate with the CSA to explore options for such a template.