

Chapter 6

Request for Comments

6.1.1 Notice of Proposed Amendments to NI 81-101 Mutual Fund Prospectus Disclosure and Form 81-101F2 Contents of Annual Information Form and to NI 41-101 General Prospectus Requirements and Form 41-102F2 Information Required in an Investment Fund Prospectus

**NOTICE OF PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*
AND
FORM 81-101F2 *CONTENTS OF ANNUAL INFORMATION FORM***

AND TO

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

Substance and Purpose of the Proposed Amendments

The CSA, with this Notice, are publishing for a 90-day comment period amendments to the following investment fund prospectus disclosure forms (the Forms):

- (a) Form 81-101F2 *Contents of Annual Information Form* under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, and
- (b) Form 41-101F2 *Information Required in an Investment Fund Prospectus* under National Instrument 41-101 *General Prospectus Requirements*.

These proposed amendments are consequential to, and are being published concurrently with, the final publication of National Instrument 23-102 *Use of Client Brokerage Commissions* (NI 23-102).

The substance and purpose of these amendments is to ensure consistency between the disclosure requirements under NI 23-102 relating to client brokerage commissions and similar disclosure prescribed for investment funds in the Forms.

Summary of the Proposed Amendments to the Forms

The amendments proposed in Form 81-101F2 consist of a change to an existing disclosure requirement relating to brokerage arrangements involving client brokerage commissions, while the amendments proposed to Form 41-101F2 consist of the addition of a new disclosure item concerning such matters. These amendments are intended to ensure consistency with similar disclosure requirements in NI 23-102.

The disclosure is intended to provide investment fund investors with relevant qualitative information concerning goods and services other than order execution obtained in connection with client brokerage commissions.

This qualitative disclosure is further intended to complement the related quantitative disclosure requirement concerning client brokerage commissions that currently applies to investment funds under National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).

Authority for Proposed Amendments (Ontario)

In those jurisdictions in which the proposed amendments to the Forms are to be adopted or made as rules or regulations, the securities legislation in each of those jurisdictions provides the securities regulatory authority with rule-making or regulation-making authority.

In Ontario, the following provisions of the *Securities Act* (Ontario) (the Act) provide the Ontario Securities Commission (the OSC) with authority to make the proposed consequential amendments to the Forms:

Request for Comments

- Paragraph 143(1)16 of the Act authorizes the OSC to make rules in respect of the distribution of securities, including by establishing requirements in respect of distributions of securities by means of a simplified prospectus or other form of disclosure document.
- Paragraph 143(1)31 of the Act authorizes the OSC to make rules regulating investment funds and the distribution and trading of securities of investment funds, including by prescribing additional disclosure requirements in respect of investment funds.
- Paragraph 143(1)39 of the Act authorizes the OSC to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents.

Alternatives Considered and Anticipated Costs and Benefits

The CSA have not considered any alternatives to the proposed amendments as they consider it essential that the amendments be made to ensure consistency between the disclosure requirements pertaining to client brokerage commissions under NI 23-102 and similar disclosure requirements under the Forms.

The revised disclosure requirement will provide investment fund investors with enhanced transparency on how order execution goods and services and research goods and services are obtained in connection with client brokerage commissions paid on the investment fund's portfolio transactions.

Investment funds that use Form 81-101F2 should not incur additional costs in complying with the proposed disclosure requirements given that they are already subject to, and have been complying with, a similar existing disclosure requirement in Form 81-101F2 pertaining to brokerage arrangements and client brokerage commissions.

Investment funds that use Form 41-101F2 may incur additional costs in complying with the proposed disclosure requirements given that these disclosure requirements are new for investment funds that offer securities under the long form prospectus. The CSA are of the view that investment funds using a long form prospectus should be subject to the same qualitative disclosure requirements pertaining to client brokerage commissions as open-end investment funds using a simplified prospectus (Form 81-101F2), particularly when we consider that the current quantitative disclosure requirement under NI 81-106 is applicable to all types of investment funds.

The CSA expect that the costs entailed in complying with the new disclosure requirements will consist mainly of legal costs associated with the preparation of disclosure documents. For greater detail on the costs that portfolio advisers of investment funds may incur to comply with the requirements of NI 23-102, please refer to the cost-benefit analysis at Appendix B to the Notice of Proposed National Instrument 23-102 *Use of Client Brokerage Commissions as Payment for Order Execution Services or Research Services* published on January 11, 2008 at (2008) 31 OSCB 489.

Unpublished Materials

In proposing the amendments to the Forms, the CSA have not relied on any significant unpublished study, report, or other material.

Request for Comments

We invite interested parties to make written submissions concerning the proposed consequential amendments.

Please submit your comments in writing before **January 7, 2010**. If you are not sending your comments by fax, mail or hand delivery, please forward an electronic file containing your submission in Word, Windows format.

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

Where to Send Your Comments

Please address your comments to all of the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission

Request for Comments

Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Nova Scotia Securities Commission
Financial Services Regulation Division, Consumer and Commercial Affairs Branch, Department of Government Services,
Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Superintendent, Securities Office, Government of Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

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Questions

Please refer your questions to any of:

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Request for Comments

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Request for Comments

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The text of the proposed amendments follows or can be found on a CSA member website.

October 9, 2009

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

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.
2. Form 81-101F2 *Contents of Annual Information Form* is amended by repealing Item 10.4, including the Instructions under that Item, and substituting the following:

"10.4 – Brokerage Arrangements

- (1) If any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state
 - (a) the process for, and factors considered in, selecting a dealer to effect securities transactions for the mutual fund, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;
 - (b) the nature of the arrangements under which order execution goods and services or research goods and services might be provided;
 - (c) each type of good or service, other than order execution, that might be provided; and
 - (d) the method by which the portfolio adviser makes a good faith determination that the mutual fund, on whose behalf the portfolio adviser directs any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of any order execution goods and services or research goods and services, by the dealer or a third party, receives reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid.
- (2) Since the date of the last annual information form, if any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or third party, other than order execution, state
 - (a) the information required to be disclosed under subsection (1) other than subparagraph (1)(c);
 - (b) each type of good or service, other than order execution, that has been provided to the manager or the portfolio adviser of the mutual fund; and
 - (c) the name of any affiliated entity that provided any good or service referred to in paragraph (b), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity.
- (3) If any brokerage transactions involving the client brokerage commissions of the mutual fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state that the name of any other dealer or third party that provided a good or service referred to in paragraph (2)(b), that was not disclosed under paragraph (2)(c), will be provided upon request by contacting the mutual fund or mutual fund family at [insert telephone number] or at [insert mutual fund or mutual fund family e-mail address].

INSTRUCTIONS:

Terms defined in NI 23-102 – Use of Client Brokerage Commissions have the same meaning where used in this Item."

3. This Instrument comes into force on _____, 2009.

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

1. National Instrument 41-101 *General Prospectus Requirements* is amended by this Instrument.
2. Form 41-101F2 *Information Required in an Investment Fund Prospectus* is amended by adding the following Item and accompanying Instructions immediately after Item 19.2:

“19.2.1 – Brokerage Arrangements

Under the sub-heading “Brokerage Arrangements”,

- (a) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state
 - (i) the process for, and factors considered in, selecting a dealer to effect securities transactions for the investment fund, including whether receiving goods or services in addition to order execution is a factor, and whether and how the process may differ for a dealer that is an affiliated entity;
 - (ii) the nature of the arrangements under which order execution goods and services or research goods and services might be provided;
 - (iii) each type of good or service, other than order execution, that might be provided; and
 - (iv) the method by which the portfolio adviser makes a good faith determination that the investment fund, on whose behalf the portfolio adviser directs any brokerage transactions involving client brokerage commissions to a dealer in return for the provision of any order execution goods and services or research goods and services, by the dealer or a third party, receives reasonable benefit considering both the use of the goods or services and the amount of client brokerage commissions paid;
- (b) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, since the date of the investment fund’s last prospectus or last annual information form, whichever one is the most recent, state
 - (i) the information required to be disclosed under paragraph (a) other than subparagraph (iii);
 - (ii) each type of good or service, other than order execution, that has been provided to the manager or the portfolio adviser of the investment fund; and
 - (iii) the name of any affiliated entity that provided any good or service referred to in subparagraph (ii), separately identifying each affiliated entity and each type of good or service provided by each affiliated entity; and
- (c) If any brokerage transactions involving the client brokerage commissions of the investment fund have been or might be directed to a dealer in return for the provision of any good or service, by the dealer or a third party, other than order execution, state that the name of any other dealer or third party that provided a good or service referred to in paragraph (b)(ii), that was not disclosed under paragraph (b)(iii), will be provided upon request by contacting the investment fund or investment fund family at [insert telephone number] or at [insert investment fund or investment fund family e-mail address].

INSTRUCTIONS:

Terms defined in NI 23-102 – Use of Client Brokerage Commissions have the same meaning where used in this Item.

3. This Instrument comes into force on _____, 2009.