

## Chapter 6

# Request for Comments

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



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

#### CSA NOTICE AND REQUEST FOR COMMENT

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*,  
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*,  
AND  
RELATED PROPOSED CONSEQUENTIAL AMENDMENTS AND CHANGES

AND

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

MODERNIZATION OF THE PROSPECTUS FILING MODEL FOR INVESTMENT FUNDS

January 27, 2022

#### Introduction

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

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

- **Stage 1** – As a first step, we are seeking feedback on proposed amendments that would reduce the frequency of prospectus filings by extending the lapse date period for pro forma prospectuses filed by investment funds in continuous distribution. The end result would be to shift the current prospectus renewal cycle from annual to biennial (every 2 years). There will be no change to when Fund Facts and the ETF Facts must be filed and delivered. The adoption of this change will be contingent on not having a negative impact on filing fees. Additionally, we are proposing to repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus (**90-day rule**) for all investment funds.
- **Stage 2** – In the longer term, we are also contemplating the possibility of introducing a new base shelf prospectus filing model that could apply to all investment funds in continuous distribution. We have developed a conceptual framework for this model based on an adaptation of the current shelf prospectus system and are seeking specific input on the viability of this framework.

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

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

proposed consequential amendments to

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

and proposed consequential changes to

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

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

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

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

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

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[www.asc.ca](http://www.asc.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.mbsecurities.ca](http://www.mbsecurities.ca)  
[www.osc.ca](http://www.osc.ca)  
[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)

### **Substance and Purpose**

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

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

As part of Stage 1, the Proposed Amendments will

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

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

## Background

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

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

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

### ***The Current Prospectus Filing Model for Investment Funds in Continuous Distribution***

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

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

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

### ***The Current 90-Day Prospectus Filing Requirement for Investment Funds***

Securities legislation requires that an investment fund issuer file a final prospectus no more than 90 days after the date of the receipt for the preliminary prospectus. If the investment fund issuer is unable to meet the 90-day filing deadline, then an exemptive relief application must be filed to seek an extension of the 90-day rule.

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

## Summary of the Proposed Amendments

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

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

The Proposed Amendments would result in the following changes:

**(i) Cost Savings**

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

**(ii) Biennial Prospectus Filing**

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

**(iii) Prospectus Amendments**

The Proposed Amendments would require every prospectus amendment to be filed as an amended and restated prospectus. Prospectus amendments would no longer be made in the form of a “slip sheet” amendment because the number of “slip sheet” amendments associated with a prospectus would increase over a 2-year period relative to a 1-year period, thereby making it more difficult to trace through how disclosure pertaining to a particular fund has been modified.

**(iv) Filing Processes**

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

**(A) Private Filings**

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

**(B) Auto-Public Filings**

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

**(v) Local Fee Rule Changes**

By moving to a biennial filing model without changes to local fee rules, there will likely be an impact on fees collected in connection with prospectus filings. We anticipate that affected CSA jurisdictions will make concurrent changes to their fee rules to ensure that the Proposed Amendments will not have a negative impact on filing fees. In some CSA jurisdictions, public consultation on changes to local fee rules may also be required. It is contemplated that local fee rules will be changed such that current filing fees for prospectuses for investment funds in continuous distribution will instead be replaced with filing fees for the Fund Facts and ETF Facts. For additional clarity, filing fees for the Fund Facts and ETF Facts in the years when a “renewal” prospectus is not being filed will be the same as in the years when a “renewal” prospectus is being filed.

The Lapse Date Extension would not affect the following:

**(i) Prospectus Form Requirements**

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

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

**(ii) Fund Facts and ETF Facts Requirements**

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

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

**(iii) Material Changes**

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

**(iv) Continuous Disclosure Documents**

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

Similarly, the Proposed Amendments would not affect the filing requirement or delivery requirement of an investment fund's annual management reports of fund performance and interim management reports of fund performance, in accordance with NI 81-106.

**(v) Investor Rights**

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

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

**(vi) Certificate Pages**

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

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

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

## Impact on Investors

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

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

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

As preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days, eliminating the 90-day rule does not raise any investor protection issues. The Proposed Amendments will help reduce regulatory burden as investment fund issuers would no longer be required to file an exemptive relief application in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt.

## Anticipated Costs and Benefits

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

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

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

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

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

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

## Local Fee Changes

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

## Transition

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

## Request for Comments

Please submit your comments on the Proposed Amendments, the Consultation Paper, and specifically, the Consultation Questions in this Notice. We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at [www.asc.ca](http://www.asc.ca), the Ontario Securities Commission at [www.osc.ca](http://www.osc.ca) and the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca). Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

## Deadline for Comments

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

**Where to Send Your Comments**

Address your submission to all of the CSA as follows:

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

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

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

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

**Content of Annexes**

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

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

## Questions

Please refer your questions to any of the following:

### *British Columbia Securities Commission*

James Leong  
Senior Legal Counsel,  
Corporate Finance  
British Columbia Securities Commission  
Tel: 604 899-6681  
Email: jleong@bcsc.bc.ca

Michael Wong  
Senior Securities Analyst, Corporate Finance  
British Columbia Securities Commission  
Tel: 604-899-6852  
Email: mpwong@bcsc.bc.ca

### *Alberta Securities Commission*

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

Jan Bagh  
Senior Legal Counsel, Corporate Finance  
Alberta Securities Commission  
Tel: 403-355-2804  
Email: jan.bagh@asc.ca

### *Financial and Consumer Affairs Authority of Saskatchewan*

Heather Kuchuran  
Director, Corporate Finance  
Securities Division  
Financial and Consumer Affairs Authority of  
Saskatchewan  
Tel: 306-787-1009  
Email: heather.kuchuran@gov.sk.ca

### *Manitoba Securities Commission*

Patrick Weeks  
Senior Analyst  
The Manitoba Securities Commission  
Tel: 204-945-3326  
Email: patrick.weeks@gov.mb.ca

### *Ontario Securities Commission*

Irene Lee  
Senior Legal Counsel, Investment Funds and  
Structured Products Branch  
Ontario Securities Commission  
Tel: 416-593-3668  
Email: ilee@osc.gov.on.ca

Stephen Paglia,  
Manager, Investment Funds and  
Structured Products Branch  
Ontario Securities Commission  
Tel: 416-593-2393  
Email: spaglia@osc.gov.on.ca

### *Autorité des marchés financiers*

Olivier Girardeau  
Senior Analyst, Investment Funds Oversight  
Autorité des marchés financiers  
Tel: 514-395-0037 ext. 4334  
Toll-free: 1 800 525-0337, ext. 4334  
Email: olivier.girardeau@lautorite.qc.ca

Louis-Philippe Nadeau  
Analyst, Investment Funds Oversight  
Autorité des marchés financiers  
Tel: 514-395-0337 ext. 2479  
Email: louis-philippe.nadeau@lautorite.qc.ca

*Financial and Consumer Services Commission of New Brunswick*

Joseph Adair  
Senior Securities Analyst  
Financial and Consumer Services Commission of New  
Brunswick  
Tel: 506-643-7435  
Email: joe.adair@fcnb.ca

Ella-Jane Loomis  
Senior Legal Counsel  
Financial and Consumer Services Commission of New  
Brunswick  
Tel: 506-453-6591  
Email: ella-jane.loomis@fcnb.ca

*Nova Scotia Securities Commission*

Junjie (Jack) Jiang  
Securities Analyst, Corporate Finance  
Nova Scotia Securities Commission  
Tel: 902-424-7059  
Email: jack.jiang@novascotia.ca

Peter Lamey  
Legal Analyst  
Nova Scotia Securities Commission  
Tel: 902-424-7630  
Email: peter.lamey@novascotia.ca

Abel Lazarus  
Director, Corporate Finance  
Nova Scotia Securities Commission  
Tel: 902-424-6859  
Email: abel.lazarus@novascotia.ca

ANNEX A

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

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

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

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

- (a) file, with an ETF facts document for each class or series of securities of the ETF, the following documents if there is a material change to the ETF in respect of the disclosure in the most recently filed ETF facts document:
    - (i) an amendment to the corresponding prospectus, certified in accordance with Part 5;
    - (ii) a copy of any material contract, and any amendments to a material contract, that have not previously been filed, and
  - (b) at the time an ETF facts document for each class or series of securities of the ETF is filed, deliver or send to the securities regulatory authority
    - (i) a copy of the ETF facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the most recently filed ETF facts document, and
    - (ii) if there is a material change to the ETF in respect of the disclosure in the most recently filed ETF facts document,
      - (A) if an amendment to the prospectus is filed, a copy of the prospectus blacklined to show changes, including the text of deletions, from the most recently filed prospectus, and
      - (B) details of any changes to the personal information form required to be delivered under subparagraph 9.1(1)(b)(ii), in the form of the personal information form, since the delivery of that information in connection with the filing of the prospectus of the ETF or another ETF managed by the manager..
6. ***Section 6.1 is amended by adding the following subsection:***
    - (3.1) Despite subsection (1), an amendment to a prospectus of an ETF must be an amended and restated prospectus..
  7. ***Paragraph 10.1(2)(a) is amended by replacing “or the amendment to the final prospectus” with “, the amendment to the final prospectus or the ETF facts document referred to in section 3D.1”.***
  8. ***Section 17.2 is amended to add the following subsection:***
    - (1.1) This section does not apply to an ETF..
  9. ***The following sections are added after section 17.2:***
    - 17.3 Lapse date of an ETF** – (1) This section applies only to an ETF.
      - (2) In this section, “lapse date” means, with reference to the distribution of a security that has been qualified under a prospectus, the date that is 24 months after the date of the most recent final prospectus relating to the security.
      - (3) An ETF must not continue the distribution of a security to which the prospectus requirement applies after the lapse date unless the ETF files a new prospectus that complies with securities legislation and a receipt for that new prospectus is issued by the regulator or, in Québec, the securities regulatory authority.

- (4) Despite subsection (3), a distribution may be continued for a further 24 months after a lapse date if
  - (a) the ETF files an ETF facts document for each class or series of securities of the ETF no earlier than 13 months and no later than 12 months before the lapse date of the previous prospectus,
  - (b) the ETF delivers a pro forma prospectus not less than 30 days before the lapse date of the previous prospectus,
  - (c) the ETF files a new final prospectus not later than 10 days after the lapse date of the previous prospectus, and
  - (d) a receipt for the new final prospectus is issued by the regulator or, in Québec, the securities regulatory authority within 20 days after the lapse date of the previous prospectus.
- (5) The continued distribution of securities after the lapse date does not contravene subsection (3) unless and until any of the conditions of subsection (4) are not complied with.
- (6) Subject to any extension granted under subsection (7), if a condition in subsection (4) is not complied with, a purchaser may cancel a purchase made in a distribution after the lapse date in reliance on subsection (4) within 90 days after the purchaser first became aware of the failure to comply with the condition.
- (7) The regulator or, in Québec, the securities regulatory authority may, on an application of an ETF, extend, subject to such terms and conditions as it may impose, the times provided by subsection (4) where in its opinion it would not be prejudicial to the public interest to do so.

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

- 10. This Instrument comes into force on •.

ANNEX B

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

1. *Companion Policy 41-101 General Prospectus Requirements is changed by this Document.*

2. *Part 5A of the Companion Policy is changed by adding the following section:*

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

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

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

3. This change become effective on •.

ANNEX C

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

1. ***National Instrument 81-101 Investment Funds is amended by this Instrument.***
2. ***Subsection 2.1(1) is amended by***
  - (a) ***deleting “and” at the end of subparagraph (d)(iii),***
  - (b) ***replacing “. ” at the end of subparagraph (e) with “; and”, and***
  - (c) ***adding the following paragraph:***
    - (f) that files a fund facts document without a simplified prospectus must file the fund facts document in the form of a fund facts document prepared in accordance with Form 81-101F3 for each class or series of securities of the mutual fund..
3. ***Subsection 2.1(2) is repealed.***
4. ***Section 2.2 is amended by***
  - (a) ***replacing subsection (1) with the following:***
    - (1) An amendment to a simplified prospectus must be an amended and restated simplified prospectus.,
  - (b) ***repealing subsection (2), and***
  - (c) ***replacing subsection (3) with the following:***
    - (3) An amendment to a simplified prospectus must be identified and dated as follows: “Amended and Restated [*identify document*] dated [*insert date of amendment*], amending and restating [*identify document*] dated [*insert date of document being amended*].”.
5. ***Section 2.3 is amended by***
  - (a) ***deleting “if the amendment to the simplified prospectus is in the form of an amended and restated simplified prospectus,” from subparagraph (4)(b)(i), and***
  - (b) ***adding the following subsection:***
    - (5.2) A mutual fund that files a fund facts document without a preliminary, pro forma or simplified prospectus must
      - (a) file, with a fund facts document for each class or series of securities of the mutual fund, the following documents if there is a material change to the mutual fund in respect of the disclosure in the most recently filed fund facts document:
        - (i) an amendment to the corresponding simplified prospectus, certified in accordance with Part 5.1;
        - (ii) a copy of any material contract, and any amendment to a material contract that have not previously been filed, and
      - (b) at the time a fund facts document for each class or series of securities of the mutual fund is filed, deliver or send to the securities regulatory authority
        - (i) a copy of the fund facts document for each class or series of securities of the mutual fund, blacklined to show changes, including the text of deletions, from the most recently filed fund facts document, and

- (ii) if there is a material change to the mutual fund in respect of the disclosure in the most recently filed fund facts document,
  - (A) if an amendment to the simplified prospectus is filed, a copy of the simplified prospectus blacklined to show changes, including the text of deletions, from the most recently filed simplified prospectus, and
  - (B) details of any changes to the personal information required to be delivered under subparagraph (1)(b)(ii), (2)(b)(iv) or (3)(b)(iii), in the form of the personal information form and authorization, since the delivery of that information in connection with the filing of the simplified prospectus of the mutual fund or another mutual fund managed by the manager..

**6. Section 2.5 is replaced with the following:**

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

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

**7. The following section is added after section 2.5:**

**2.5.1 Lapse Date – Ontario** – In Ontario, the lapse date prescribed by securities legislation for a receipt issued for a simplified prospectus is extended to the date 24 months from the date of issuance of the receipt in accordance with section 2.5..

- 8. This Instrument comes into force on •.

ANNEX D

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

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

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

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

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

3. This change become effective on •.

ANNEX E

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

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

**ANNEX F**

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

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

## ANNEX G

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

#### Introduction

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

#### Current Lapse Date Requirements and the Proposed Amendments

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

#### Base Shelf Prospectus

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

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

The base shelf prospectus regime under NI 44-102 provides an example of how to ensure a prospectus discloses all material facts and how to impose liability on any person or company required to certify that the prospectus discloses all material facts at the time of a distribution. These two principles then support the adoption of Part 2 of NI 44-102, which provides that the lapse date for a base shelf prospectus is the date 25 months from the date of issuance of the receipt. NI 44-102 further sets out the prospectus requirements in respect of a base shelf prospectus, shelf prospectus supplements (which are incorporated by reference into the base shelf prospectus), and any documents incorporated by reference into the base shelf prospectus. NI 44-102 further sets out the certification requirements so they may be forward-looking.

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

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

---

<sup>1</sup> [https://www.osc.ca/sites/default/files/pdfs/irps/ni\\_20190912\\_41-101\\_reducing-regulatory-burden-for-investment-fund-issuers.pdf](https://www.osc.ca/sites/default/files/pdfs/irps/ni_20190912_41-101_reducing-regulatory-burden-for-investment-fund-issuers.pdf)

## Consultation Questions

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

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

ANNEX H

LOCAL MATTERS

ONTARIO SECURITIES COMMISSION

1. Introduction

This Annex to the accompanying CSA Notice and Request for Comments (the **CSA Notice**) sets out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**). The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice.

The CSA are publishing for comment proposed amendments to:

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

and proposed changes to:

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

(collectively, the **Proposed Amendments**). The Proposed Amendments will:

- (i) reduce the frequency of prospectus filings by extending the lapse date period for pro forma prospectuses filed by investment funds in continuous distribution, and
- (ii) repeal the requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus (**90-day rule**) for all investment funds.

Please refer to the main body of the CSA Notice.

2. Overview

(a) The Current Prospectus Filing Model for Investment Funds in Continuous Distribution

Investment funds are required under securities legislation to file a new prospectus every 12 months in order to remain in continuous distribution. A pro forma prospectus must be filed not less than 30 days prior to the lapse date of the previous prospectus. A final prospectus must then be filed not later than 10 days following the lapse date of the previous prospectus and a receipt for the final prospectus must be obtained within 20 days following the lapse date of the previous prospectus.

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

(b) The Current 90-Day Prospectus Filing Requirement for Investment Funds

Investment funds are required under securities legislation to file a final prospectus no more than 90 days after the date of the receipt for the preliminary prospectus. If the investment fund issuer is unable to meet the 90-day filing deadline, then an exemptive relief application must be filed to seek an extension of the 90-day rule.

(c) Regulatory Burden

Given that the information in the annual prospectus and related documents generally does not change materially from year to year, the annual prospectus filing requirement is an unnecessary regulatory burden for investment funds in continuous distribution. Investment fund managers spend significant internal and external resources on the preparation and filing of annual prospectus and related documents.

The 90-day rule requirement is also an unnecessary regulatory burden for investment funds as an exemptive relief application needs to be filed in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. Such exemptive relief is routinely granted.

**(d) The Proposed Amendments**

The Proposed Amendments seek to modernize the prospectus filing model for investment funds without affecting the currency or accuracy of the information available to investors to make an informed investment decision. The Proposed Amendments will also reduce the regulatory burden on investment funds.

The Proposed Amendments will extend the lapse date for investment funds in continuous distribution from 12 months to 24 months. As a result, the frequency of routine prospectus filings will be reduced as investment funds in continuous distribution would be allowed to file their prospectus every two years, or biennially, rather than annually. Shifting to a biennial prospectus filing model should allow investment funds in continuous distribution to save the time and effort associated with refiling prospectus and related documents every year. Biennial prospectus filing would not affect the currency or accuracy of the information available to investors as the material change reporting requirements would continue to apply. The filing and delivery requirements of the Fund Facts and the ETF Facts, which provide key information about a fund for investors to make an informed investment decision, will remain unchanged.

The Proposed Amendments will also repeal the 90-day rule for investments funds. The Proposed Amendments will help reduce regulatory burden as investment fund issuers would no longer be required to file an exemptive relief application in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. As preliminary prospectuses for investment funds do not contain any material financial information that would be considered stale after 90 days, eliminating the 90-day rule does not raise any investor protection issues.

**3. Affected Stakeholders**

The stakeholders who will be impacted by the Proposed Rule are investment fund managers and investors.

**(a) Investment Fund Managers**

There are 112 investment fund managers managing 3,459 prospectus-qualified mutual funds in Canada.<sup>1</sup> We estimate that all 112 of these investment fund managers could be impacted by the Proposed Amendments.

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

With the repeal of the 90-day rule, investment fund managers will no longer be required to file exemptive relief applications in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt, which would save the time, effect and costs associated with filing an exemptive relief application. There is an average of 3 applications per year for exemptive relief from the 90-day rule.

The Proposed Amendments would not have any implications for investment fund managers with respect to competition and capital formation.

**(b) Investors**

Given the historical downward trend in management expense ratios (**MERs**) and management fees,<sup>2</sup> it is possible that cost savings from shifting to biennial prospectus filing may be passed onto investors so investors are expected to benefit from lower fund expenses as a result.

Investors would not be directly impacted by a lapse date extension to 24 months for prospectus renewals as the Fund Facts and the ETF Facts will continue to be delivered or sent to investors under current requirements.

The Prospectus Amendments would make it easier for investors to trace through how disclosure pertaining to a particular fund has been modified as the investment funds would be required to file every prospectus amendment as an amended and restated prospectus, rather than “slip sheet” amendments.

The Proposed Amendments would not affect investor rights relating to liability for misrepresentation in a prospectus.

The Proposed Amendments would not have any implications for investors with respect to competition.

---

<sup>1</sup> IFIC 2020 Investment Funds Report, [https://www.ific.ca/wp-content/themes/ific-new/util/downloads\\_new.php?id=26009&lang=en\\_CA](https://www.ific.ca/wp-content/themes/ific-new/util/downloads_new.php?id=26009&lang=en_CA).

<sup>2</sup> See page 1 of the Investor Economics Insight report June 2021.

**4. Qualitative and Quantitative Analysis of the Anticipated Costs and Benefits of the Proposed Amendments**

**(a) Benefits of the Proposed Amendments**

**(i) Investment Fund Managers**

The shift to a biennial prospectus filing model under the Proposed Amendments will benefit investment funds by reducing the unnecessary regulatory burden of filing a prospectus annually. We estimate that extending the lapse date from 12 months to 24 months will result in cost savings of \$15,792,030 annually across all CSA jurisdictions.<sup>3</sup>

The Proposed Amendments will benefit investment funds by reducing the unnecessary regulatory burden of filing exemptive relief applications in circumstances where the final prospectus filing occurs more than 90 days after the issuance of the preliminary receipt. We estimate that the repeal of the 90-day rule will result in cost savings of \$15,201 annually across all CSA jurisdictions.<sup>4</sup>

**(ii) Investors**

It is possible that investors may benefit from lower fund expenses as a result of shifting to biennial prospectus filing. However, we do not have sufficient cost information, such as the allocation of prospectus filing costs to each fund in a prospectus, to provide an estimate of the cost savings for investors.

**(b) Costs of the Proposed Amendments**

**(i) Investment Fund Managers**

We do not expect investment fund managers will incur any material incremental costs to comply with the Proposed Amendments.

• **Filing Fees**

We do not anticipate any negative impact to filing fees for investment funds as a result of the Proposed Amendments. Local fee rules will be changed such that current filing fees for prospectuses for investment funds in continuous distribution will instead be replaced with filing fees for Fund Facts and ETF Facts.

Concurrent with the adoption of the Proposed Amendments, Ontario Securities Commission Rule 13-502 *Fees (OSC Rule 13-502)* will be amended such that conventional mutual funds will pay an activity fee on the filing of a preliminary or pro forma Fund Facts or a preliminary or pro forma ETF Facts, as applicable, instead of an activity fee on the filing of a preliminary or pro forma prospectus. While the documents to which an activity fee is applicable will change, there will not be any changes to the frequency of the activity fees payable by conventional mutual funds and ETFs in OSC Rule 13-502. Also, while there will not be any changes to the amount of the activity fees payable by a conventional mutual fund, the amount activity fees payable by an ETF decreases from \$650 for each ETF in a prospectus to \$400 for each ETF in a prospectus, which is the same activity fee payable by a conventional mutual fund.

• **IT Systems, Policies and Procedures Costs**

We do not anticipate that investment fund managers will need to change their IT systems to comply with the Proposed Amendments. Investment Fund Managers may incur minimal one-time costs associated with updating their policies and procedures to comply with the Proposed Amendments but there should not be any incremental

---

<sup>3</sup> Estimated \$15,792,030 cost savings per year = 207 pro forma filings per year x (\$7,580 legal costs + \$115,000 audit costs + \$30,000 translation costs) ÷ 2 years. Hourly rates are based on information found in published fee surveys and compensation guides subject to certain adjustments (e.g., application of local market adjustments).

Average number of pro forma filings per year - The average number of pro forma annual simplified prospectus filings between 2016 and 2020 is 157. The average number of pro forma annual long form filings between 2016 and 2020 is 50. The average number of pro forma prospectus filings is 207 pro forma filings per year.

Legal costs – Assuming 40 hours of legal work by senior legal counsel at \$89/hour and 60 hours of legal work by junior legal counsel at \$67/hour, we estimate legal costs for preparing and filing a prospectus to be \$7,580.

Audit costs – We estimate an average of \$115,000 of audit costs per prospectus filing.

Translation costs – We estimate an average of \$30,000 of translation costs per prospectus filing.

<sup>4</sup> Estimated \$15,201 cost savings per year = 3 applications per year x (\$267 legal costs + \$4,800 filing fees)

Average number of exemptive relief applications per year - Between 2016 and 2020, there were 17 applications for relief from the 90-day deadline in s. 2.1(2) of NI 81-101 and 1 application for the same relief from s. 2.3(1) in NI 41-101. The average number of applications per year for relief from the 90-day rule is 3 applications per year.

Legal costs - Assuming 3 hours of legal work by senior legal counsel at \$89/hour, we estimate legal costs for preparing and filing such an application to be \$267.

Filing fees – The filing fee for an exemptive relief application is \$4,800.

costs relative to the costs that investment fund managers currently incur in complying with current regulatory requirements.

- **Fund Facts, ETF Facts, Prospectus and Related Disclosure Costs**

We do not anticipate any direct ongoing costs associated with the Proposed Amendments relating to the Fund Facts, ETF Facts, prospectus, and related disclosure. The Prospectus Amendments would require every prospectus amendment to be filed as an amended and restated prospectus. The investment funds that currently file prospectus amendments by way of an amended and restated prospectus would not be affected. However, investment funds that currently file by way of “slip sheet” amendments would need to alter their processes, which may result in non-material incremental costs. We have included a consultation question asking stakeholders to identify costs and to provide supporting data regarding slip sheet amendments in Annex E *Specific Consultation Questions Relating to the Lapse Date Extension*.

(ii) **Investors**

As the Proposed Amendments do not affect investor protection, we do not expect investors will incur any costs or experience any negative impact as a result of the Proposed Amendments.

**5. Alternatives Considered**

The Commission considered maintaining the status quo.

We are of the view that it is important to modernize the prospectus filing model for investment funds rather than maintain the status quo. The Proposed Amendments will reduce the regulatory burden on investment funds without affecting the currency or accuracy of the information available to investors to make an informed investment decision. We are of the view that the Proposed Amendments would reduce regulatory burden for investment fund managers while ensuring investor protection.

**6. Reliance on Unpublished Studies**

The Commission is not relying on any unpublished study, report, or other written material in proposing the Proposed Amendments.

**7. Rule-Making Authority**

The following provisions of the Act provide the Commission with authority to make the Proposed Amendments:

**Paragraph 143(1)16** of the Act authorizes the Commission to make rules regulating in respect of, or varying the Act to facilitate, expedite or regulate in respect of, the distribution of securities, or the issuing of receipts;

**Paragraph 143(1)39** of the Act authorizes the Commission to make rules requiring or respecting the filing of all documents, among other things, required under or governed by the Act, including preliminary prospectuses;

**Paragraph 143(1)52** of the Act authorizes the Commission to vary the requirements under the Act in respect of amendments to prospectuses, among other things; and

**Paragraph 143(1)53** of the Act authorizes the Commission to provide for exemptions from or varying the requirements of section 62, 65 or 71.