April 24, 2022

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

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Dear Sirs/Mesdames:

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

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

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

Responses to Specific Consultation Questions Relating to the Lapse Date Extension

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Although CETFA reserves the ability to provide further comment once additional details are provided, as a general matter, CETFA is supportive of a new prospectus filing regime that balances the importance of material and current disclosure and is also supportive of a prospectus regime that would only require periodic updates of certain material information on a more frequent basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours truly,

CANADIAN ETF ASSOCIATION:

By: (Signed) *"Pat Dunwoody*"

Pat Dunwoody
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