



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

April 27, 2022

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

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Dear Sirs / Mesdames:

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

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

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

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

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

Executive Summary

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

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

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

Fund Facts and ETF Facts

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

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

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

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

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

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

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

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

Review of Prospectus Amendments

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

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

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

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

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

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

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

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

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

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

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

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

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

Base Shelf Prospectus Model

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

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

Conclusion

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

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

Yours sincerely,

“Rob Sklar”

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Director, Legal Services
Fidelity Investments Canada ULC

c.c. Rob Strickland, President
W. Sian Burgess, Senior Vice President, Fund Oversight
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Appendix A – Fidelity Resources

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