CANADIAN BANKERS ASSOCIATION

Box 348, Commerce Court West
199 Bay Street, 30th Floor
Toronto, Ontario, Canada M5L 1G2
www.cba.ca

Daniel Iggers
Legal Counsel

Tel.: [416] 362-6093 Ext. 291
Fax: [416] 362-7708
diggers@cba.ca

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Alberta Securities Commission
British Columbia Securities Commission
Manitoba Securities Commission
Securities Administration Branch, New Brunswick
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice,
Government of the Northwest Territories
Nova Scotia Securities Commission
Registrar of Securities, Legal Registries Division,
Department of Justice, Government of Nunavut
Ontario Securities Commission
Office of the Attorney General, Prince Edward Island
Commission des valeurs mobilières du Québec
Saskatchewan Securities Commission
Registrar of Securities, Government of Yukon

C/o John Stevenson
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Email: jstevenson@osc.gov.on.ca

- and -

Denise Brosseau, Secretary
Commission des valeurs mobilières du Québec
Stock Exchange Tower
800 Victoria Square
P.O. Box 246, 22nd Floor
Montréal, Québec H4Z 1G3

Dear Sirs and Madames:

Re: National Instrument 81-106, Investment Fund Continuous Disclosure

The Canadian Bankers Association ("CBA") appreciates this opportunity to provide comments on proposed National Instrument 81-106 *Investment Fund Continuous Disclosure* ("NI 81-106"), Companion Policy 81-106CP, and Form 81-106F1

Contents of Annual and Quarterly Management Reports of Fund Performance (the "draft rule") and the issues raised in the accompanying Notice of Request for Comments, as published by the Canadian Securities Administrators (the “CSA”).

Our members have participated in the detailed review of the draft rule that has been undertaken by the Investment Funds Institute of Canada (“IFIC”), and support the positions that were outlined in some detail in IFIC's comment letter. We endorse the main comments that IFIC has made concerning the draft rule, which are consistent with the views of our members.

We accordingly have set out brief comments to highlight our main concerns:

Annual and Quarterly Management Reports

Under the draft rule, annual and quarterly management reports on fund performance (“AMRs and QMRs”) would be required to be prepared, will have to provide both quantitative and qualitative information about the fund and a management discussion of fund performance (“MDFP”) in a concise and plain language manner. The QMR of a fund's performance serves to highlight any significant changes from the information in the last AMR of the fund. We do not believe that the QMR would be useful to investors, since publication and delivery of QMRs to mutual fund investors may encourage investors to adopt an undesirable short-term perspective on fund performance.

Delivery of request forms

Unlike the current regime where all financial statements that are required to be filed with regulators are also required to be sent to all securityholders, the draft rule proposes to give securityholders the option to choose whether to receive any or all of a fund’s financial statements and management reports. The draft rule requires that request cards must be sent annually to registered and beneficial owners of a fund’s securities. A supplemental mailing list must be maintained, and financial statements and management reports will only be sent to those who return the request card or otherwise have asked to receive these documents.

We agree that investors should have to option to choose whether to receive all of a fund's financial statements and management reports. The default position should be that financial statements and management reports would only be delivered on request. By adopting this approach, investors that wish to receive materials will be able to receive them, but the enormous cost of delivering materials to those who do not wish to receive them will be greatly reduced. As stated above, the draft rule requires a fund annually to send a request form to each registered holder and beneficial owner of its securities asking whether they wish to receive a copy of the fund's financial statements and management reports. Under National Instrument 54-101 (“NI 54-101”), intermediaries are required to obtain instructions as to whether clients wish to receive or

decline to receive certain types of materials, including financial statements and annual reports, but they are only required to do so upon the opening of the account, not annually. We would submit that, similarly, an investment fund should only be required to seek instructions from a client once, and not annually.

Further, the draft rule provides that the request form *shall* be sent to beneficial owners in accordance with NI 54-101. Under NI 54-101, clients of an intermediary may decline to receive certain materials, including (a) financial statements and annual reports that are not part of proxy related materials and (b) materials that are not required by corporate or securities laws to be sent. The request form contemplated by the draft rule does not fall into either of these categories because (a) it is not itself a financial statement or annual report and (b) it is required by securities law to be sent. Accordingly, a client who holds mutual fund securities through a dealer and who has informed the dealer under NI 54-101 that they do not wish to receive financial statements would, nevertheless, receive a request form under the draft rule from each fund company whose products the client owns asking whether the client wishes to receive financial statements.

Accordingly, we would submit that an investment fund should only be required to send the request form to the beneficial owners of its securities in accordance with the requirements of NI 54-101*, "provided that an investment fund shall not send the request form to beneficial owners who have declined in accordance with NI 54-101 to receive financial statements and annual reports."* Arguably, investment funds should not have to send the request form to anyone who holds securities through a dealer (whether in client name or nominee name), since, in accordance with 54-101 the dealer has to obtain their instructions as to whether they decline to receive financials or agree to receive financials and we should simply be able to rely on the instruction received by the dealer.

Proxy Voting

The draft rule requires that AMRs disclose how the portfolio advisers or the manager of the fund voted on matters relating to issuers of portfolio assets of the fund, other than routine business of those issuers. In our view, proposed requirements to disclose details of proxy voting are not appropriate. Striving for transparency with too much information can lead to opaque, less transparent results. However, an approach which would require mutual funds to make their proxy voting policies public, but would not require the portfolio managers or adviser to disclose how they actually voted, may be an appropriate option.

Forward-Looking Information

Forward-looking MDFP explains past events, decisions, circumstances and performance in the context of whether they are reasonably likely to have a material impact on future performance. It also describes not only anticipated future events, decisions, circumstances, opportunities and risks that management considers reasonably likely to materially impact future performance, but also matters such as management's vision, strategy and targets. Forward-looking disclosure involves anticipating a future trend or event or anticipating a less predictable effect of a known event, trend or uncertainty. In our view, it is not always in the interests of mutual fund unitholders to disclose forward-looking information (trends, events, market conditions and uncertainty.) Such disclosure might tend to encourage a short-term outlook on the part of some investors, and would be inconsistent with the character of mutual funds as vehicles for long-term investment. If forward-looking information is to be required, in our view there should be a safe harbor provided in legislation to protect against possible litigation if future results do not match forward-looking information.

Change of Auditors

We recommend that the CSA remove the requirement for a unitholder vote to remove auditors.

Part 14.1 of proposed NI 81-106 refers to change of auditors and provides that "an investment fund shall not change its auditor unless it complies with section 4.14 of National Instrument 51-102 as if that section applied to the investment fund…" Subsection (7) of section 4.14 of NI 51-102 requires, among other things, that "a change of auditor notice must be approved by the board of directors of the reporting issuer." We note that this provision in NI 81-106 would not be inconsistent with the removal or revision of the requirement in section 5.1 of National Instrument 81-102 that requires securityholder approval to change the auditor of a mutual fund.

Binding of Management Reports

Annual and interim financial statements and notes thereto pertaining to more than one fund may be bound into one document, if all information for a fund is presented, and not interspersed with information for any other fund. AMRs and QMRs, however, cannot be bound with the information contained in a management report of fund performance for another fund. Under the proposed rule, it is not permitted to bind management reports together, but management reports may be bound with annual financial statements for the same fund. In our view, this restriction on binding management reports together is unnecessary.

Timeframes

The time for filing annual financial statements (and proposed timing for AMRs) has been reduced from 140 to 90 days after year-end, while the time for filing interim financial statements (and proposed timing for QMRs) has been reduced from 60 days to 45 days after the end of the interim period. The AMR is required to be filed at the same time as the annual financial statements. In our view, there is no need for shortening timeframes for filing and delivering financial statements.

Board Review of Interim Financial Statements

The proposed rule requires that annual financial statements be approved by the board of directors of a fund that is a corporation or by the manager or the trustee or trustees of an fund that is a trust, or another person or company authorized to do so by the constating documents of the fund, and it also requires that interim financial statements must be reviewed by those authorized to approve annual financial statements. In our view, board review of interim financial statements seems unnecessary.

In Closing

We have appreciated the opportunity to express our views regarding the proposed National Instrument 81-106. We would be pleased to answer any questions that you may have about our comments.

Yours very truly,

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