June 23, 2004

To:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Office of the Administrator, New Brunswick
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Registrar of Securities, Nunavut

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Re: Response to Request for Comment – Changes to Proposed National Instrument 81-106 Investment Fund Continuous Disclosure, Form 81-106F1 and Companion Policy 81-106CP Investment Fund Continuous Disclosure (Second Publication) and Related Amendments

ADP Investor Communications (“ADP”) is pleased to respond to the request for comments by The Canadian Securities Administrators (the "CSA") on Proposed National Instrument 81-106 Investment Fund Continuous Disclosure (the “Rule”) and the Companion Policy 81-106CP Investment Fund Continuous Disclosure (the “Policy”).

ADP AND ITS BUSINESS

Since 1987, ADP has been an industry leader in providing investor communications services in the Canadian financial marketplace. Investor communication services range from beneficial and registered shareholder communications, regulatory document fulfillment, and transaction reporting production and mailing. ADP services over 230 banks, brokers, and dealers and the majority of the mutual fund industry in Canada. Unique to ADP is our industry, regulatory and data processing expertise. Clients rely on ADP for products and services that comply with securities laws and regulations, and as a result, depend on ADP to ensure they are in compliance. Clients leverage ADP's industry and regulatory knowledge to fulfill their obligations to deliver information to investors. ADP is responsible for distributing the majority of disclosure documents to investors in Canada, and is by far the largest provider of fulfillment of mutual fund annual reports, prospectuses and amendments, and public corporation materials.

ADP's role in the distribution of continuous disclosure materials for mutual funds puts us in a unique position to bring an informed and practical perspective to the proposals in the Rule and the Policy. Not only do we perform continuous disclosure mailings for a large portion of the mutual fund industry, we also fulfill point-of-sale delivery requirements for a significant portion of the dealers that sell mutual funds. ADP is the point at which the practical issues involved in continuous disclosure become evident.

DELIVERY OF CERTAIN DISCLOSURE DOCUMENTS (SECTION 5.1)

Section 5.1 of the Rule imposes on investment funds an obligation to send certain disclosure documents to registered and beneficial owners of securities issued by it, subject to certain exemptions. While an investment fund may be expected to know the identity of and pertinent delivery information for the registered holders of its securities, the Rule also assumes that all investment funds have the same access to information about their beneficial owners. However, in practice there is differential availability of data with respect to beneficial owners. Availability to an investment fund of data concerning its beneficial owners may be divided into three categories:

1. The investment fund has all beneficial owner information.

   If an investment fund has all necessary information for beneficial holders, then placing the delivery obligation on the fund is appropriate. Traditional mutual funds often have more information about the beneficial holders of their securities than other issuers. They have the investor data in order to facilitate the issuance by the fund of required tax slips to securityholders and because the fund company or a third party contracted by the fund company acts as the registrar and transfer agent for the mutual fund. However, ADP's experience is that most traditional mutual funds rarely have complete, updated and accurate information about all of the beneficial holders of its securities. In instances where ADP has relied on beneficial holder data provided solely by fund companies to mail materials to investors, ADP has experienced high rates of returned mailings indicating that the data is not complete or is outdated. It is far more common that a mutual fund has partial information about its beneficial holders

2. The investment fund has partial information with respect to beneficial holders.

   Partial information results from an investment fund possessing outdated beneficial holder information or where the securities issued by the fund are held in nominee form by the dealer.

Generally speaking, a mutual fund's information is outdated because the securityholder communicates with his or her dealer in providing changes to personal information and not with the mutual fund. The dealer has no obligation to pass this information on to the mutual fund and may or may not do so. In cases where the dealer holds its clients' securities in nominee name, it is unlikely that the mutual fund will have accurate and up to date beneficial holder information. Dealers who hold in nominee name bear the primary responsibility for client information and often do not share it with the mutual fund. In fact, such dealers may be prohibited from sharing the information by their obligations of privacy and confidentiality to their clients. In both situations, a mutual fund would be unable to effectively fulfill an obligation to send continuous disclosure materials to or otherwise communicate with its beneficial holders as required under the Rule.

3. The investment fund has no beneficial holder information.

Investment funds that are non-redeemable investment funds typically do not have information about their beneficial holders. Their securities are traded through market facilities and are held through various nominees of investment dealers. Therefore, these funds would be unable to comply with an obligation to send materials or other communications directly to the beneficial holders of their securities as proposed in the Rule. Similarly, a mutual fund the securities of which are all held in nominee name would be unable to comply with the proposed requirement.

In order for an investment fund to be able to comply with obligations to deliver disclosure documents to and communicate with beneficial holders the fund must be able to have access to accurate and up to date information about the beneficial holders of its securities. Only in this way will the objective of full communication with registered and beneficial holders be achieved.

To the extent that an investment fund does not have access to beneficial owner information due to holding in nominee accounts, the CSA might consider a technological solution. For example, ADP has the ability to update an investment fund's mailing list to include the majority of beneficial owner mailing information it holds for its investment dealer clients. The information would not be provided to the investment fund but the mailing would be completed to beneficial holders as required. While this process results in improved accuracy of mailing data, it still is not a complete answer as some mutual fund dealers who are not ADP clients also hold in nominee name. However, this solution would avoid use of the full procedures in National Instrument 54-101 ("NI 54-101"), some of which do not apply easily to traditional mutual funds.[1] This solution would also avoid a split mailing where part of the mailing is done directly by the mutual fund and part using the NI 54-101 nominee mailing processes. ADP's experience is that split mailings result in significant duplication of mailings with the associated extra costs. In our view it would be advisable for the CSA to perform further analysis to investigate adapting the NI 54-101 process for requesting beneficial ownership data within the Rule to ensure full beneficial ownership information is available to investment funds

To the extent that the investment fund does not have up to date information with respect to beneficial owners that are not in nominee accounts, the Rule should contain some mechanism to permit the investment fund to obtain accurate information from all dealers. As mentioned above, the full provisions of NI 54-101 do not apply well to traditional mutual funds: most traditional mutual funds have part or most of the information about the beneficial owners of their securities but need to complete the information they have where it is outdated or unavailable. The provisions of NI 54-101 require modification to be helpful to traditional mutual funds. Specific

[1] For example, few if any traditional mutual funds are held at CDS, so the requirements of NI 54-101 requiring notice to and information from CDS are not useful.

provisions directed to the provision of the necessary information to the investment fund would be a better solution.

To the extent that an investment fund is a non-redeemable investment fund or other fund that is listed and traded on a recognized exchange by investment dealers and held in nominee name usually at CDS, the procedures in NI 54-101 are relevant and would be helpful. The CSA should consider adopting the request for beneficial ownership information sections of NI 54-101 for these types of investments funds.

In addition to the differential access to beneficial owner information issue raised, Section 5.1 contains other provisions that may prove ambiguous in practice. In Subsection 5.1(3), an investment fund may use the annual instruction process "only if it is impracticable" to use the standing instruction process in Section 5.2. There is no guidance in the Rule of the Policy as to interpretation of this phrase in practice. Further the Policy indicates that if the standing instruction method is chosen, the annual instruction method may not be used later and all investment funds should switch to the standing instruction method as soon as possible. Neither of these points is reflected in the Rule.

- STANDING INSTRUCTION PROCESS (SECTION 5.2)

Subsection 5.2(4) raises again the issue of the differential ability of investment funds to access beneficial holder information. An investment fund has the obligation to solicit instructions when it accepts a purchase order from a registered or beneficial owner. If the purchase is made in nominee name, the investment fund will not know the identity of the beneficial holder. Even if the purchase is in the client's name, the investment fund may not have the necessary information at the time it accepts the order. Unless there is a mechanism that ensures the investment fund receives the beneficial holder information in a timely fashion, it is not practicable to impose the obligation to solicit instructions.

Paragraph 5.2(5)(b) specifies that instructions include instructions received by the investment fund under NI 54-101. However, an investment fund is not an intermediary nor, in most cases, is the manager of an investment fund. The fund, therefore, would not be in a position to receive instructions under NI 54-101. Further, the information to be provided in instructions under NI 54-101 is not the same as that which is requested under the Rule. It is therefore not clear how to interpret NI 54-101 responses when applied to the instructions to be solicited under the Rule. Finally, the references to use of instructions received under NI 54-101 seems unnecessary given that the Rule requires all investment funds to solicit instructions from all existing securityholders within three months from the effective date of the Rule.

- ANNUAL REQUEST PROCESS (SECTION 5.3)

This process raises again the issues of differential access to beneficial owner information by investment funds. An investment fund following the annual request process is required to send a request form annually to its registered and beneficial owners. For the reasons discussed earlier in this letter, the investment fund may not have the necessary information about the beneficial owners of its securities.

Subsection 5.3(3) provides that the annual request is to be sent by the earlier of the date of the fund's first written communication with a registered or beneficial owner in the year and six months after the end of the previous financial year. For example, as written, the investment fund would be required to send the request form to all of its registered and beneficial owners at the time it responds in writing to a question asked by even one investor. The situation is exacerbated if that response was made in the first few days of a financial year. It takes significant time for an investment fund to organize a mailing to all of its investors. It is highly impractical to require that

process to be conducted before an investor's request receives a response. Since the Rule would require the most recent disclosure documents to be sent to investors who have not already received them on their request, it is easy to imagine many situations in which the investment fund would be required to send the annual request to all investors on short notice very early in the financial year. There does not appear to be a policy advantage for this requirement.

- TIMING ISSUES ON IMPLEMENTATION (SUBSECTIONS 5.2(3), (6) & (9), 5.4(1); PART 18)

  The Rule and the Policy are proposed to be effective for financial years ending on or after December 31, 2004. This proposed effective date together with the timing requirements of the required mailings will present difficulties for investment fund compliance and will cause multiple and duplicative mailings. These mailings will add unnecessary costs to the investment funds, which will ultimately be borne by the investors in the investment funds.

  Subsection 5.2(3) requires that each investment fund send to each registered and beneficial owner a document explaining the investor's choices about disclosure documents and soliciting instructions within three months after the Rule is to come into force – which is apparently proposed to be no later than December 31, 2004. Designing and implementing such a mailing and setting up the systems required to track the mailing and responses are complex activities. ADP is advised that most of its fund company clients would not be able to implement such a system within three months. ADP and its clients are aware that the Rule and Policy are not yet final and it is difficult to predict the final requirements for planning and design purposes until the CSA have had the opportunity to consider all of the comments that will be received on the Rule and Policy. The three month period within which the initial request for instructions from existing holders is not likely to be workable at any time and particularly not if it begins on December 31, 2004.

  Further, it is not clear exactly to whom the initial solicitation is to be sent. Subsection 5.2(3) states that a mailing is to be made to each person that was a registered or beneficial owner of securities issued by the investment fund before the Rule came into force. Presumably, the intention is to send to those holders who were holders before the Rule comes into force and who remain holders at the time of the mailing. The language and cut-off point for those entitled to receive the mailing should be clarified.

  Section 18(5) requires an investment fund that is a reporting issuer to prepare and send to each registered and beneficial owner a management report of fund performance (an "MRFP") under Part 6 together with an explanation of the new disclosure requirements, including the availability of quarterly portfolio disclosure. This mailing must take place within 10 days of the date by which the MRFP must be filed - 120 days after the date of the last fiscal year end. If December 31, 2004 is chosen as the effective date, this requirement will apply to require an investment fund to prepare and file an MRFP for a financial year that ends on that date and to make the mailing no later than 130 days after the year end. At the same time the investment fund will have had to mail all of its registered and beneficial owners the solicitation documents required under Subsection 5.2(3) within 90 days from December 31, 2004. It is extremely difficult from a practical perspective to organize two separate mailings within such a short time. Also, much of the explanation required to be included in each mailing is duplicative. It is unfair to investment funds and their investors to require two duplicative mailings in such a short time. ADP also believes that receipt of two similar mailings in a short time would be confusing and possibly annoying to investors.

  This timing issue would be in large part resolved if the Rule and the Policy were to be effective for financial years ending after December 31, 2004. Investment funds would have time to implement the necessary systems for the initial mailing. The mailing of the MRFP would not be necessary within a similar time period but only the following year, thus removing the duplication and allowing

an investment fund to incur the expense of only one blanket mailing for implementation of the Rule in its first year of implementation. In connection with changing the proposed application to financial years ending after December 31, 2004, the CSA should also deal with current exemption orders that have been granted for previous years financial statement delivery. It may be necessary to extend such orders to accommodate the transition to the Rule.

An investment fund is also required to send an annual explanation of the disclosure rules to its registered and beneficial holders under Subsection 5.2(9). The proposed language indicates that the explanation is to state that the investment fund "is sending documents to the registered holder or the beneficial holder because of instructions given, or deemed to have been given". It is likely that some holders will instruct the investment fund that they do not wish to receive the material, in which case the proposed content of the reminder will be confusing. It would be duplicative for the investment fund, and confusing for the investor, if an annual reminder were required to be sent in the same year as the explanation required to be sent in either the initial solicitation of instructions or the initial annual MRFP.

ADP submits that the Rule should require only one explanatory mailing in a year to be sent to investors. The goal of clear information to investors would be met by one mailing, investors would not be confused and costs would be minimized.

Finally on this issue, the Rule should clarify that information required in different mailings can be combined, where appropriate, and ensure that the timing for the mailings works to achieve this objective. For example, pursuant to Subsection 5.2(6), an investment fund may send an explanatory document to its registered and beneficial owners in which it indicates that an investor's failure to respond will be deemed to be a response to receive all, some or none of the disclosure documents. The explanation is duplicative of the explanation in the initial solicitation of instructions, the annual reminder and the initial MRFP. The Rule should clearly require duplicative information to be sent in only one form in a year and should permit required content that is not duplicative to be combined.

- DELIVERY OBLIGATION TIMING DIFFERENCES (SECTION 5.4(1) & 7.1(2))

According to Subsection 5.4(1) of the Rule, financial statements and MRFP documents are to be sent to registered holders and beneficial owners no later than 10 days after the documents were filed with the regulators. However, where these documents being sent under Subsection 7.1(2) in response to a specific request, they must go out by the later of (a) the filing deadline for the documents and (b) 10 days after the receipt of the request. The language difference in the two italicised phrases means the investment fund will have at least two mailing deadlines for each set of documents, resulting in confusion, excess costs and the sending of financial documents to third parties before the fund's securityholders. For example, for an investment fund with a December 31 year end, the annual financial statements would have to be sent to securityholders no later than April 10 (100 days after year end), but must be mailed to anyone else who made a special request (received before March 21st) on March 31. Compliance would be simplified and costs minimized if the two deadlines were brought into alignment by changing Subsection 7.1(2)(a) to read "ten days after filing the document requested".

- INTERACTION OF NI 54-101 WITH THE RULE

It is not clear how the proxy solicitation provisions of Part 12 of the Rule work with NI 54-101. We have commented above that the provisions of NI 54-101 do not work well with traditional mutual funds. The securities of these funds are not held at CDS and references to the role of that organization in NI 54-101 are therefore confusing in the context of mutual funds. Similarly the

processes for distribution to beneficial holders in NI 54-101 seem unnecessary where the mutual fund company has records of all or virtually all its securityholders. While in many instances related to mutual funds, ADP feels that separate provisions dealing with proxy solicitation would be preferable, it would like to comment on the proposed interaction of the Rule with NI 54-101

Part 12 of the Rule says investment funds must send proxy-related materials to all securityholders entitled to notice of the meeting – which includes both registered and beneficial owners. Section 8.1 of the Policy says the requirements of NI 54-101 must be followed in sending of proxy-related materials to securityholders (without distinguishing between registered and beneficial owners). However, NI 54-101 by its terms only applies to sending these materials to beneficial owners. Presumably, the intention was to limit the application of NI 54-101 to sending proxy-related materials to beneficial owners of an investment fund's securities. This could be clarified by adding the appropriate limiting language to section 8.1 of the Policy.

Further, the process in NI 54-101 allows beneficial owners to indicate they do not wish to receive proxy-related materials for routine meetings of any issuers the securities of which they hold. (No opt-out is presently possible for meetings where non-routine business is on the agenda.) The language of Part 12 appears to require that an investment fund send materials to all securityholders, even those who have said they want no materials under NI 54-101. If this is not the intention, then it might be helpful to add some limiting language to the Rule or Policy.

Subsection 5.4(4) of the Rule exempts investment funds that comply with Part 5 from the financial statement delivery obligations of NI 54-101. However, both NI 54-101 and NI 51-102 contemplate that the financial statements may either be standalone documents or be part of the proxy-related materials that must be sent to securityholders. It is not clear under the Rule whether the exemption in subsection 5.4(4) applies in all cases, including where the financial statements are part of the proxy-related materials going out under NI 54-101, or only applies to the delivery of standalone statements.

- CONCLUSIONS

ADP thanks the CSA for the opportunity to provide its input on the Rule and Policy. The attention of the CSA to the issue of investment fund continuous disclosure is welcome. We have tried to identify some issues with the Rule and the Policy that are evident to ADP as a result of its role in the industry. ADP has identified in particular issues related to access to beneficial owner information, duplicative and unnecessary mailings, implementation timing concerns and proxy solicitation concerns. We would welcome the opportunity to meet with the CSA to discuss in more detail the issues raised in this response to the request for comments and to offer any help it can in satisfactorily resolving the issues for the benefit of the industry and investors.

Sincerely,

Sue Britton
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ADP Investor Communications
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Cc: Arden Cornford, President, ADP Investor Communications

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