BMO Nesbitt Burns Inc.
1 First Canadian Place
49th Floor P.O. Box 150
Toronto ON M5X 1H3

July 27, 2004

Via Email

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

c/o

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
E-mail: jstevenson@osc.gov.on.ca

- and -

Anne-Marie Beaudoin
Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage Montréal, Québec
H4Z 1G3
Fax: (514) 864-6381
e-mail: consultation-en-cours@lautorite.qc.ca

Re: Proposed National Instrument 81-106 – Investment Fund Continuous Disclosure – Comments of BMO Nesbitt Burns Inc.

Introduction

We appreciate the opportunity to offer comments with respect to the Canadian Securities Administrator's (the "CSA") Proposed National Instrument 81-106 – Investment Fund Continuous Disclosure (the "Proposed Rule"). We have also participated in preparing The Investment Funds Institute of Canada's ("IFIC") response to the CSA on the Proposed Rule on behalf of the fund industry. We welcome the CSA's efforts to harmonize and simplify continuous disclosure requirements among Canadian jurisdictions.

General Overview

Mutual fund financial statements provide little direct information about the performance of the fund or the reasons for that performance – in absolute or relative terms. Details on a fund's performance are the only information that a vast majority of unitholders find useful. The MRFP provides investors with a written analysis of overall fund performance. The Financial Highlights in the MRFP refer to information derived from the financial statements. The financial statements could be made available to unitholders on request, but without any requirement on the part of the fund manager to ask investors to respond if they want to receive the financial statements. Fund financial statements could also be made available on the fund manager's website and on SEDAR.

Our experience has been that a very small percentage (less than 5%) of the purchasers of our funds have requested annual financial statements. We are of the view that our experience is typical of the industry as a whole.

We would also point out that certain requirements in the Proposed Rule will result in significant cost increases. Most if not all of these additional costs will likely be passed on to unitholders as increased expenses to the funds. In order to manage the costs and to provide better value to unitholders by keeping fund expenses as low as possible, we strongly suggest the CSA consider requiring only delivery of annual and interim MRFP on request and remove the requirement for the delivery of annual and interim financial statements and proxy voting records.

Specific Comments on the Proposed Rule

In the event there are no material amendments to the Proposed Rule in relation to filing, delivery and binding of financial statements and MRFP, quarterly portfolio disclosure and proxy voting, we wish to offer the following comments:

Part 2 – Filing Deadlines for Financial Statements

We are concerned about the proposal to shorten filing deadlines for financial statements. Preparing financial statements is time intensive and involves the coordination of efforts of various internal departments and external service providers, including auditors, translators and printers. This is in addition to the time required for the submission and presentation of financial statements to our Board of Trustees for review and approval. The requirement to produce financial statements under shorter timelines may compromise the quality of the presentation of the financial statements. Organizing this process to occur within these proposed timelines would be extremely difficult.

We seriously question the value of shortened filing and delivery deadlines of financial statements when such a small percentage of unitholders rely on this information when making an investment decision. As a result, there does not appear to be any compelling reason to shorten the time periods for the filing of these documents, particularly in light of the challenges noted.

We strongly recommend that the CSA maintain the current timelines. Alternatively, we recommend that the CSA at least maintain the 60-day deadline for interim financial statements (and interim MRFP) and amend the filing deadline to 120 days for annual financial statements (and annual MRFP).

Part 4 – Management Reports of Fund Performance

The Proposed Rule requires the filing of the MRFP annually and semi-annually at the same time as the financial statements. This additional requirement to prepare and file a new report, have it reviewed and approved, coupled with the process of producing the financial statements, will make the deadlines, particularly the 45-day interim deadline, extremely difficult to meet.

The preparation and distribution of the MRFP will involve significant additional time and resources on the part of numerous internal departments (Fund Accounting, Legal, Operations, Marketing) as well as our external partners. Additional costs will likely be incurred in producing and distributing the MRFP. These costs are ultimately borne by the unitholders as increased expenses to the funds.

In addition, the prohibition on binding MRFP has the effect of requiring a separate report for each fund. This stand-alone presentation ignores the importance of overall client portfolio performance and diversification by concentrating on each individual fund's performance. We urge the CSA to allow MRFP to be bound together.

With respect to forward-looking financial information, we request clarification from the CSA as to whether it is optional or mandatory disclosure. The instructions in section 2.5 of Form 81-106F1 (Contents of Annual and Interim Management Reports of Fund Performance) appear to indicate such disclosure is mandatory, however, CSA comments in Appendix B to the Notice and Request for Comments indicate that the provision of

forward-looking information is optional. We have strong reservations about providing mandatory forward-looking information and we urge the CSA to include the provisions of such information in the Proposed Rule on an optional basis only. In addition, we suggest that the CSA include a template for what forward-looking information should look like in the Proposed Rule to ensure consistency in reporting.

Part 5 – Delivery of Financial Statements and MRFP

For the reasons noted above, we strongly suggest the CSA consider removing the requirement for delivery of annual and interim financial statements, and only require delivery of annual and interim MRFP on request. However, in the event there are no material amendments to the Proposed Rule, we wish to offer the following comments:

We ask the CSA to clarify and revise the language of section 5.2(5)4 of the Proposed Rule to indicate whether or not instructions received from clients through annual requests under previously issued exemptive relief orders can be relied upon in the same way as we understand instructions previously received under *National Instrument 54-101-Communication with Beneficial Owners of Securities of a Reporting Issuer* can be relied upon.

Section 5.2(3) of the Proposed Rule requires the sending of standing order instructions about delivery to existing clients within three months of the Proposed Rule coming into force (March 2005). This timeline falls during RRSP season, perhaps the busiest time of year for the fund industry and does not leave much time for organizations to begin capturing client instructions. We fail to understand the need to establish a deadline within which such standing orders must be secured. In its efforts to expedite the implementation of this Proposed Rule, we do not believe that the CSA has given adequate consideration to the magnitude of efforts which will be required to comply in a manner which is both appropriate and cost efficient to all stakeholders. We urge the CSA to extend this timeline.

Section 5.2(9) of the Proposed Rule requires funds sending financial statements and MRFP according to standing instructions to send an annual reminder to clients indicating that documents are being sent according to the client's instructions and how such instructions can be changed. However, in its response to comments (Appendix B to the Notice and Request for Comments), the CSA indicate that the reminder must include the client's current election. This response appears to indicate that the reminder must indicate each of the documents the client has requested (interim/annual MRFP, interim/annual financial statements, or any combination thereof). This would require an enormous amount of work, as the reminder would have to be programmed separately for each client. This would be an expensive undertaking as customized mailings are generally more costly to produce than generic mailings. We ask the CSA to clarify this issue and recommend that a client's current election not be required as part of the annual reminder.

Part 6 – Quarterly Portfolio Disclosure

We ask the CSA to consider amending the requirement to disclose only the top 10 holdings, rather than the top 25 for the following reasons:

Disclosing the majority, or in some cases all, of the portfolio holdings on a quarterly basis is a concern because our portfolio managers are not exclusively portfolio managers for our mutual funds but also portfolio managers for other non-mutual fund clients. By releasing the quarterly holdings of the mutual fund in the proposed format, we would be releasing the proprietary information of the portfolio manager and potentially exposing the portfolios to front running and shadowing or opportunities for market timing.

For an investment fund that maintains a relatively concentrated portfolio, the result of this requirement would be to disclose the fund's entire investment portfolio and strategy. For funds that maintain concentrated portfolio holdings of between 20 to 30 different securities, the entire portfolio along with the percentage holdings would have to be disclosed under this provision.

We ask the CSA to draw a distinction between funds with portfolios exceeding a set number of holdings (e.g. 50 or 100 individual securities), in respect of which the top 25 disclosure may be appropriate, and funds with portfolios with less than the threshold number of holdings, in respect of which the top 10 should continue to be applicable.

In addition, it does not appear that the Proposed Rule permits non-disclosure of a particular security position that is the subject of a buying program. We submit that such a provision should be made, along with details as to when disclosure would be required to be made in the event of non-disclosure due to a buying program.

Part 7 – Financial Disclosure – Binding

Section 7.4 of the Proposed Rule states that a fund may not bind MRFP for different funds. This requirement precludes the consolidation of the annual and semi-annual MRFP of each fund having the same manager or portfolio advisor and would also preclude the reports being bound together for delivery purposes. The CSA in Appendix B to the Notice and Request for Comments indicate that they will not allow binding so as to avoid "telephone books" being sent to clients. However, the binding of MRFP serves useful purposes for not only those preparing the information, but for distributors as well as clients that wish to see multiple funds in one comprehensive document, rather than separate and numerous documents per fund. As previously discussed under Part 4, we urge the CSA to allow MRFP to be bound together.

Section 7.4 of the Proposed Rule also states that a fund may not bind its financial statements with financial statements of another fund unless all information relating to the fund is presented together and not intermingled with the information relating to the other fund. We disagree with the CSA's comments that presenting information in parallel columns makes it hard to extract useful information from the financial statements. We

further disagree with the CSA's comments that the proposed changes will reduce costs, as a change in the layout of our financial statements will increase our costs.

Part 10 – Proxy Voting Disclosure

Section 10.4(2) of the Proposed Rule requires the delivery of a fund's proxy voting record upon request to any client. It would require managers to create a record, as per section 10.3, on a fund-by-fund basis showing what proxies were received and how they where voted.

We do not believe that a record of voting is widely desired by Canadian investors or is meaningful in assisting them to make buy, hold or sell decisions with respect to their investments. The preparation, maintenance and delivery of such a record would involve considerable expense and as a practical matter this information (due to its size and scope) would be very difficult and costly to compile.

People invest in mutual funds in order to delegate the complex process of investment management; proxy voting is a subset of that process. We question the logic in requiring disclosure in great detail about decisions made by a portfolio manager on this one aspect of investment management, but not other important aspects such as valuation, liquidity and strength of management.

Since we see very little demand for this information by investors, we are strongly opposed to the requirement to compile, maintain and deliver a proxy voting record. At the very least, if funds will be required to prepare and maintain a proxy voting record, the Proposed Rule should be narrowed to votes where the fund opposed management's recommendations.

Part 18 – Effective Date

If there are no material amendments to the Proposed Rule, its implementation will necessitate significant systems, operational and procedural changes. These changes will involve significant additional time and resources on the part of fund accounting, legal, marketing, operations, our Board of Trustees and the fund's auditors.

Since the comment period ends on July 27th, 2004 and it will be some time before the CSA will be in a position to publish the final version of the Proposed Rule, it will be unreasonable to have the Proposed Rule apply to financial statements and reports for financial years of a fund that end on December 31, 2004. It would be more appropriate to have the Proposed Rule apply to years ended after October 1, 2005, to allow the industry to properly prepare to implement the required changes.

Further Information

We thank you for the opportunity to submit our comments and trust that they will be given due consideration.

Yours truly,

BMO Nesbitt Burns Inc.

Connie Stefankiewicz
Senior Vice-President and Managing Director