THE INVESTMENT FUNDS INSTITUTE OF CANADA
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA
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Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission

In care of:

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Dear Sirs/Mesdames:

Re: Proposed NI 41-101 *General Prospectus Requirements and Related Amendments*

We are writing to provide the comments of the Members of The Investment Funds Institute of Canada ("IFIC")[1] on the CSA Notice, on Proposed National Instrument 41-

[1] Founded in 1962, IFIC is the national association of the Canadian investment funds industry. Membership comprises mutual fund management companies, retail distributors and affiliates from the

101 *General Prospectus Requirements and Related Amendments* and the accompanying Appendices describing the proposed amendments to related instruments, published for public comment by the Canadian Securities Administrators ("CSA") on December 22, 2006 (respectively, the "Notice" and "Proposed Instrument"). We understand that several of our Members have also submitted individual comment letters.

General Comments:

We applaud the CSA's efforts, reflected in the Proposed Instrument, to harmonize the prospectus disclosure rules and requirements across all jurisdictions of Canada and, where appropriate, across various reporting issuers. Of specific value to our Members is the intent of the Proposed Instrument to make NI 81-101 a complete, stand-alone rule with respect to prospectus disclosure for mutual funds, eliminating the current need to refer to multiple instruments for such rules. [But we shouldn't treat them the same if it makes no sense to treat them the same.]

We recognize that the Proposed Instrument deals primarily with long and short-form prospectus issuers (non-NI 81-102 mutual funds). Appendix I of the Proposed Instrument enumerates specific amendments that are proposed to be made to NI 81-101 *Mutual Fund Prospectus Disclosure* and related Forms F1 *Contents of Simplified Prospectus* and F2 *Contents of Annual Information Form*. Our comments are limited to the implications of these specific amendments and we do not comment on those aspects of the proposals that do not apply to NI 81-102 mutual funds.

Our Members have several, significant concerns with the Proposed Instrument. These concerns include:

(a) the lack of true harmonization achieved among Canadian jurisdictions;
(b) the imposition of impractical and redundant requirements concerning financial statements; and
(c) the imposition of proposed requirements that our Members believe to be inappropriate in the context of mutual funds.

In addition, there are some provisions that are unclear, on which our Members request clarification, as well as some technical drafting issues. These concerns are discussed below.

Harmonization among Canadian jurisdictions:

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legal, accounting and other professions from across Canada, who work in an open, consultative process to ensure all views are considered and met. Members' assets under administration – the amount Canadians have invested in the mutual fund industry – currently stand at over $679 billion.

Several proposed requirements in Appendix I, namely certificate, lapse date, amendment, statement of rights, obligation to deliver prospectus during waiting period and other requirements, are expressly stated to apply to all jurisdictions *except* Ontario. The rationale is that Ontario already has similar provisions within the Securities Act (Ontario).

We note that many Canadian jurisdictions, other than Ontario, already currently have such provisions in their legislation [examples are BC, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec and Saskatchewan in the case of amendments]. Nevertheless, all of these jurisdictions are agreeing to adopt the Proposed Instrument to replace their legislative provisions.

Without Ontario's committed participation, taking into account the size of the industry resident in Ontario, true harmonization is not achieved, and therefore the benefits of harmonization will not be realized. We believe it is imperative the Ontario participates by amending its legislation in line with all other jurisdictions.

Imposition of Redundant and Impractical Requirements:

Proposed section 2.6 expressly confirms that financial statements, other than interim financial statements, included in or incorporated by reference in a simplified prospectus must meet the audit requirements in Part 2 of National Instrument 81-106. Proposed section 2.8 requires, as a precondition to the filing of a simplified prospectus, that each financial statement and each Management Report of Fund Performance included in or incorporated by reference in the simplified prospectus be approved by management, also as required by Part 2 of NI 81-106.

Proposed section 2.7 requires any unaudited interim financial statements included or incorporated by reference in a simplified prospectus to be reviewed in accordance with the relevant standards set out in the CICA Handbook for a review of interim financial statements by the fund's auditor. Unlike the requirements in proposed sections 2.6 and 2.8, which harmonize with an existing requirement in NI 81-106, the review of such interim financial statements is a significant deviation from the requirements of NI 81-106.

Section 2.12 of NI 81-106 currently requires that a fund's interim financial statements, if not reviewed by an auditor, be accompanied by a notice advising that they have not been so reviewed. When such statements have been so reviewed, and the auditor provides an unqualified report, NI 81-106 currently requires no positive statement to be provided (section 3.4). The proposal in section 2.7 is therefore more burdensome than, and goes far beyond the intent of, the current requirement. Other than imposing consistent requirements on mutual funds as those in place for certain other issuers, no satisfactory policy basis has been provided for this significant change to current requirements.

In addition, this proposal imposes significant timing difficulties for managers, possibly impairing their ability to comply with their obligations under NI 81-106. Mutual funds have 60 days in which to prepare, file and deliver their interim statements and their Management Reports of Fund Performance. Our audit firm members advise it will be difficult to complete the work required by the proposed review requirement within this 60 day period, especially as the work will be required to be performed at a time when many other fund complexes are in the midst of this same process. This can only result in significantly higher auditor costs, costs which will be borne by fund investors, with little indication of any added tangible benefit to those investors. In light of these concerns and difficulties, and the assurances concerning financial statements already afforded by the provisions in NI 81-106, we encourage the CSA not to proceed with the requirement proposed in section 2.7 with respect to mutual funds.

Several of our Members did discuss these concerns with Mark Mulima of the OSC in a conference call on March 23. We had initially believed this new requirement to have been an unanticipated result of the CSA's desire to harmonize the disclosure among non-NI 81-102 funds. Mr. Mulima assured us that the application of this requirement to mutual funds is intentional. To ensure the CSA receives good empirical data on the impact of this requirement, Mr. Mulima has agreed to allow us to file a supplementary letter to demonstrate the real impact of this provision on our Members' funds.

Another new requirement, which we believe to be redundant is contained in proposed section 2.3(1)(a) which would require, with respect to corporate funds, the filing on SEDAR of the articles of incorporation, bylaws and any amendments to these documents. Initially, we believe it is inappropriate to characterize articles of incorporation as "material contracts" - they are part of the constating documents of a corporate fund. In any event, articles of incorporation are already in the public domain, as they must be filed under the corporate laws of the applicable jurisdiction upon creation of such a fund. As well, the annual information form already must contain disclosure of mandated essential information about the formation of the fund. We see no additional benefit in a requirement to file another copy of the articles for corporate mutual funds on SEDAR. If the concern is that an investor cannot otherwise locate a copy of those materials, we believe it would be much more useful to investors who wish such information to be provided a link or reference to the corporate constating documents of a fund, rather than duplicating the filings on SEDAR.

Imposition of Inappropriate Requirements for Mutual Funds:

Proposed section 2.2.(4), regarding amendments to a preliminary simplified prospectus, is not applicable in the context of most mutual funds as they are typically not sold on the basis of a preliminary prospectus, although we acknowledge it is simply putting into rule what is already in the legislation in many jurisdictions.

Very often the manager/promoter will make changes in the proposed structure or operations or objectives of a new fund between the time of filing of a preliminary and final prospectus. The industry practice is not to file an amendment to the preliminary prospectus, but rather to file final materials with the changes.

The proposed rule should accommodate the ways in which mutual funds are offered, not simply track the requirements for prospectuses of other issuers, for which the filing process is often very different than for mutual funds. Non-mutual funds securities are often marketed on the strength of a preliminary prospectus, whereas mutual fund units are rarely if ever marketed in that manner. Accordingly, we believe there should be no requirement to file an amendment to a preliminary prospectus unless the fund actually is marketing its units based on the preliminary prospectus and annual information form.

Depending on the degree of change, the manager will sometimes pre-file a blacklined version, highlighting the changes made to the preliminary prospectus, in order to bring changes to the attention of the regulators before filing the final versions, which will always include a full blacklined copy highlighting all changes that have been made to the preliminary document. Again, Provided fund units are not being sold on the basis of the preliminary prospectus, there are no adverse consequences to (as no one is affected by) such intervening changes, even if the changes might theoretically be considered "material [adverse]" (for example, a change in the fees to be charged to the fund which could be considered important in making an investment decision).

The proposed rule should not reinforce provisions which are inappropriate in the mutual fund context, just to ensure consistency with the requirements for other issuers.

Similarly, several of the proposed new filing requirements for supporting documents are not applicable to mutual funds, and appear to have been included because they have been added as requirements for non-mutual funds. Specifically, subsections 2.3(1)(a)(iii)(C) - requiring the filing of securityholder or voting trust agreements - and 2.3(1)(a)(iii)(E) – requiring the filing of "any other contract of the issuer or a subsidiary that … materially … affects the rights or obligations of the issuer's securityholders generally" – have no practical application to the mutual fund context. We prefer the current broad requirement to file "any other supporting documents"; we believe it works correctly, and the greater specificity in the proposals adds little and causes such inapplicable references as above. Once again we recommend that the requirements in NI 81-101 not mirror word-for-word similar requirements for non-mutual fund issuers simply to apply consistency, when the context of those requirements would not arise, and therefore the requirements would never be applicable, in the fund context.

Issues Requiring Clarification:

1. Proposed subsections 2.3(1)(b)(ii), 2.3(2)(b)(iv), 2.3(3)(b)(iii), 2.3(4)(b)(iii) and 2.3(5)(b)(i) all make reference to the phrase "personal information of the mutual fund".

There is no definition provided in the current rule or the Proposed Instrument for the phrase “personal information of the mutual fund”. For greater certainty as to what is intended here, we recommend that a clear definition be provided.

2. In proposed section 2.5, it is not clear what is meant by the phrase at the beginning of subsection 2.5(3), "Subject to subsection (2)”.

3. In subsection 2.5(4) there is a reference to "previous prospectus" which we believe should be a reference to "previous simplified prospectus". Similarly, the reference in subsection 2.5(6) to "extension granted under subsection (5)” should be changed to read “extension granted under subsection (6)”. Finally in this section, we believe that subsection 2.5(7) should make reference to a "mutual fund" and not a "reporting issuer". Although the proposed language tracks section 62 of the Securities Act (Ontario), it should be adapted to the mutual fund rules.

4. With respect to the proposed amendments to NI 81-101CP we believe that a fund which has previously offered its securities under a simplified prospectus should be able to add classes/series of securities of the fund by inclusion in another prospectus of the same fund manager (as some fund managers have multiple prospectuses for certain of their funds) by way of an amendment to the second prospectus without having to file a preliminary simplified prospectus for that new class/series. The fund itself will have been previously qualified, just not under the same prospectus. In this situation current practice is more efficient and should be maintained.

5. With respect to the proposed amendments to NI 43-201, the proposed language for the reminder in Item 10.9 is essentially a requirement to cease distribution until a receipt for an amendment has been issued. This change will be administratively very difficult for mutual funds which are in continuous distribution. The industry experience is that some regulators who require a cessation of distributions are unwilling to review pre-filed amendments so as to ensure that a receipt can be issued on the same day as the documents are filed. We would suggest that in place of the proposed language which is unworkable in a mutual fund context, the CSA has an opportunity at this time to change the rule so it properly applies to the mutual fund context.

Technical Drafting Issues:

1. In the proposed amendments to NI 81-101, rather than making reference throughout to “Appendix A to NI 41-101”, we suggest it would be clearer to simply attach Appendix A to NI 41-101 as an appendix to NI 81-101?

2. In proposed section 6.3 we submit that the references should correctly be to "preliminary simplified prospectus”, “simplified prospectus” and “amendment to the simplified prospectus" (and perhaps "amendment to the annual information form") rather than the current language in the proposal, namely "a prospectus or an amendment to a

prospectus" to make this section consistent with all other references in 81-102. These changes would also recognize the scenario that there might only be an amendment to an annual information form.

3. In the proposed provisions in Item 19(1)(c) concerning the annual information form, we believe that the reference in the fourth line to "simplified prospectus" should be to the "amended and restated simplified prospectus".

4. With respect to the proposal concerning OSC Rule 81-101, in subsection 3.1(1) we recommend that this section also refer to the certificate requirements in the proposed new NI 81-101.

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We thank you providing our Members with the opportunity to comment on the Proposed Instrument. Please contact the undersigned directly or Ralf Hensel, Senior Counsel, at (416) 309-2314 or rhensel@ific.ca, should you have any questions or wish to discuss these comments.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

"ORIGINAL SIGNED BY JOANNE DE LAURENTIIS"

By: Joanne De Laurentiis
President & Chief Executive Officer

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