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October 17, 2009

VIA E-MAIL

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

Attention: Mr. John Stevenson, Secretary, Ontario Securities Commission
Me Anne-Marie Beadouin, Corporate Secretary, Autorité des marchers financiers

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Implementation of Point of Sale Disclosure for Mutual Funds

We are writing in respect of the Request for Comments dated June 19, 2009 with respect to the proposed amendments to National Instrument 81-101 (the "Instrument") and related amendments. We appreciate the opportunity to comment on these important matters.

Invesco Trimark Ltd. is a wholly-owned subsidiary of Invesco, Ltd. Invesco is a leading independent global investment management company, dedicated to helping people

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worldwide build their financial security. Invesco Trimark is also affiliated with Invesco PowerShares, one of leading providers of exchange-traded funds ("ETFs") in the world. As of September 30, 2009, Invesco and its operating subsidiaries had assets under management of US$417 billion. Invesco operates in 20 countries in North America, Europe and Asia.

The Request for Comments published specific questions on which the Canadian Securities Administrators ("CSA") seeks comment and we have attempted to answer those questions in Appendix I of this letter. In all cases, we have attempted to respond to the question directly and, in some cases, we have also added additional commentary on the subject matter of the question. In reviewing the proposed amendments to the Instrument, including the related forms and Companion Policy, there are some clarifications/comments that we have specific to the text of the Instrument, Form or Companion Policy. These are noted in Appendix II. Minor drafting points are included in Appendix III. We note some broader issues in our comments below.

We have reviewed and participated in the formulation of the comment letters prepared by the Investment Funds Institute of Canada ("IFIC") and support the recommendations put forth by IFIC. IFIC is an organization with diverse membership of mutual fund management companies, including those with proprietary or captive distribution networks and those, like us, who operate in the independent channel. Because of the nature of the organization, IFIC is not able to comment specifically on aspects of the rule that may have a disproportionate impact on a subset of its members. We will address these issues below.

Invesco Trimark believes that mutual funds are an excellent product and have served Canadians very well over the years. We are supportive of a strong mutual fund industry as we believe it is truly in the best interests of all investors. We are also supportive of a strong regulatory structure for our industry because this structure has been an important factor in the benefits that have accrued to investors who have invested in mutual funds over time. As such, we fully support simplifying disclosure provided to investors and focusing those disclosures on the most relevant items. While we would encourage all investors to read the simplified prospectus for the funds they choose to buy, we understand that not all investors find all of the items to be relevant. We also support the idea that investors should obtain information about a prospective investment prior to making the investment decision. We have always carried on in the belief that this occurs, whether or not that information is obtained through the simplified prospectus.

We strongly encourage our investors and promote to them the use of financial advisors to assist them with their financial planning and/or investment decision-making. We believe investors generally fare better when they seek competent advice from a skilled and knowledgeable financial advisor, create a financial plan, and both listen to the advice and stick with that plan. Inherent in that is that investors do receive the information they need prior to making an investment decision.

Of course, there are some investors who neither receive nor perceive that they currently receive adequate information prior to making an investment in a mutual fund and that deficiency must be addressed. We believe, however, that there is merit in addressing

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this problem with solutions that impact current sales processes in the least disruptive manner possible.

Investors have choice of both product and distribution channel. We believe that the proposed regime requiring delivery of a fund facts document at or prior to the point of sale ("Point of Sale") will have an adverse impact on mutual funds relative to other investments that can best be viewed as substitutes for mutual funds ("product arbitrage") and on the independent distribution channel relative to other distribution channels for mutual funds or other products ("channel arbitrage").

Product Arbitrage

We acknowledge that the CSA has been briefed on the issue of product arbitrage by the mutual fund industry. In its responses to comments on Framework 81-406 the CSA disagreed with those who asserted that pre-trade delivery of the fund facts document will lead to product arbitrage on the basis that mutual funds are and will continue to be suitable for many investors. This response entirely misses the point in that dealers have no obligation to recommend specific investment vehicles to their clients and some dealers have ready access to substitute investment vehicles. All things being equal, we believe the evidence is that mutual funds win out as the vehicle of choice; but under Point of Sale, not all things are equal. Based on specific things we have heard from CSA members, we are concerned that there has been a misunderstanding and, as such, it is important to set out the facts.

Mutual funds can be readily substituted with, among others, exchange-traded funds ("ETFs") and separately managed accounts ("SMAs"). Other substitutes for mutual funds include closed-end funds and self-built portfolios with the assistance of a broker. That is, all investments available through an investment dealer are, effectively, interchangeable. However, the risks of product arbitrage can best be demonstrated by a comparison with ETFs and SMAs.

ETFs are an extremely close substitute for mutual funds. Until recently, the only difference was the passive management approach taken by ETFs, i.e. the investment portfolio of an ETF is based on an index. In this respect, ETFs are actually perfect substitutes for index mutual funds. At the retail level, the clientele is the same, the fee structures are similar. However, under the proposed amendments to the Instrument, it becomes easier for an investor to purchase shares of an ETF than units of an index mutual fund, since the investor is not required to receive pre-trade delivery of a fund facts document (and thus delay completion of the transaction in some instances) when purchasing shares of an ETF. This is because ETFs, while mutual funds, are not subject to the Instrument. Rather, they are subject to long-form prospectus requirements. However, because of this distinction, it will become comparatively easier for an IIROC-registered advisor to sell an ETF compared to an index fund once the amendments to the Instrument come into force and the advisor (and their dealer) will not have to worry about ensuring a fund facts document was delivered prior to the trade and ensuring the fund facts document was brought to the attention of the investor. Rather, the advisor can rely on the processes

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already in place to send the trade confirmation to the investor along with a copy of the long form prospectus (as is required under most ETF-relief orders granted by CSA members).

SMAs are a perfect substitute for all other mutual funds. SMAs are offered by IIROC registered advisors. The dealer engages a portfolio manager who devises, in most cases, a model portfolio. The dealer then carries out the trades in client accounts to ensure the holdings in the account reflect the model portfolio. The model shifts from time to time and the dealer carries out the trades in the client accounts to reflect these shifts. Like a mutual fund, there is a defined investment objective and strategy. Like a mutual fund, there is a fee charged for this service. Unlike a mutual fund, none of the investment protections in *National Instrument 81-102 – Mutual Funds* ("NI 81-102") apply and the investor owns stocks directly rather than units of a pooled investment vehicle. SMAs are a non-prospectused product and, therefore, not subject to the Instrument. To make matters worse from a conflict of interest perspective, SMAs are always proprietary products of the dealers who sell them.

To the extent, therefore, that IIROC-registered dealers find compliance with the Instrument to be burdensome, ETFs and SMAs provide them with a means to provide similar products to their clients without the regulatory burden. If the Point of Sale proposal is a worthwhile endeavour, then this has to be an unacceptable result. However, as the Point of Sale proposed is currently crafted, it is also an inevitable result, especially as ETFs and SMAs increase in popularity and ETFs embrace active management.

There is only one solution to this problem – concurrent application of Point of Sale requirements to all investments, including ETFs, SMAs and self-built securities portfolios. The response to date from the CSA has been that this will be examined after Point of Sale is implemented for mutual funds. Our fear is that it may be too late as during the period prior to extending Point of Sale requirements beyond mutual funds, one would expect both advisors and investors to alter their behaviour away from investing in mutual funds. To the extent pre-trade delivery causes frustrations among advisors and makes it difficult for them to do business, one would expect they would convince clients to invest in vehicles other than mutual funds. To achieve that, advisors would have to criticize mutual funds as an investment vehicle and play up the virtues of other investment vehicles at the expense of mutual funds. To get clients to return to mutual funds following an extension of Point of Sale requirements across the investment spectrum would, under those circumstances, be extremely difficult. We reiterate that SMAs are not subject to NI 81-102 (and the resulting investor protections) and investors in SMAs do not receive prospectus disclosure about their investment. As such, we cannot understand how it can be concluded that Point of Sale is necessary for mutual funds but not for SMAs and, similarly, for the other substitute products mentioned. Consistent implementation across these investment vehicles would further validate and strengthen the reasoning behind Point of Sale.

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Channel Arbitrage

For purposes of our comments, we refer to three distinct distribution channels:

1. Captive – The distributor and the fund manager are under common ownership and the distributor only distributes mutual funds sponsored by that fund manager.

2. Proprietary – The distributor and the fund manager are under common ownership and the distributor distributes mutual funds sponsored by that fund manager as well as independent third-party fund managers.

3. Independent – The distributor is not affiliated with any fund manager and vice versa. The distributor distributes mutual funds of all fund managers.

A further distinction should also be made between dealers who are members of the MFDA (and can only sell mutual funds) and those who are members of IIROC.

The context of our concern is the burden imposed on all participants with respect to compliance with the Instrument, as amended. We believe that there is a direct relationship between the compliance burden and the number of mutual funds (and series of those funds) distributed by a particular distributor. As such, a distributor who distributes fewer mutual funds (as long as those mutual funds meet the needs of their clients) is advantaged relative to a distributor who distributes more mutual funds.

As is evident from the discussion on product arbitrage, all dealers who distribute mutual funds risk losing all or a significant portion of their business if those fears are realized. The risk is greater for MFDA members as there is no other product they are legally permitted to sell. For purposes of the discussion that follows, this risk should be taken to apply to all.

For those who operate in the Captive channel the proposed amendments pose a risk to their business only to the extent their clients engage in product arbitrage.

For those who operate in the Proprietary channel, to the extent the compliance burdens become too great, there will be a significant temptation to reduce the number of mutual funds they offer. It is most likely that they will reduce the number of fund companies with whom they do business. The fund company under common ownership with them is not at risk in this scenario but the independent fund companies risk losing significant business.

For those who operate in the independent channel, there will also be a significant temptation to reduce the number of mutual funds they offer. They, too, can be expected to reduce the number of fund companies with whom they do business and, as such, the independent fund companies risk losing significant business as well.

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It is clear from the foregoing that independent fund managers, such as ourselves, face the most risk from Point of Sale. We risk losing our business not based on the merits of the products we offer but based on regulatory reforms the necessity of which we question. We believe that a clear inherent conflict of interest exists where a distributor purports to be independent but recommends products of affiliated fund managers to their clients. It is not possible to ascertain if that recommendation was made in the best interests of the client or of the dealer-fund manager organization (i.e. would the advisor have made the recommendation into the affiliated manager's product but for the affiliation?). While it may satisfy both interests, the possibility of self-dealing cannot be dispelled. It is ironic that those with the least amount of inherent conflicts in their business model would be expected to suffer most from the impact of a regulatory reform, in an age when so much attention is paid to conflicts of interest.

Next Steps

The conclusion one should draw from the foregoing is not necessarily an abandonment of Point of Sale reform. Rather, we believe that if Point of Sale reform is to proceed it is imperative to extend this reform to all investment products simultaneously. Further, we believe subtle changes can be made to the Instrument as proposed to reduce the risks discussed above. As such, we have focused our comments in the appendices attached hereto to improving the draft amendments to the Instrument to try to avoid some of these outcomes. We hope that the CSA reads our responses in that light.

Thank you for providing us with the opportunity to comment on this most important regulatory initiative. We would be pleased to discuss our comments with you should you so desire.

Yours very truly,

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APPENDIX I
ISSUES FOR COMMENT

I) Issues for Comment on the Notice and Request for Comment

1. We seek feedback on whether you agree or disagree with our perspective on the benefits of the Instrument. We particularly seek feedback from investors.

On its face, the Instrument would seem to be of benefit to investors. As fund managers who provide an easy-to-use web site, monthly fund fact sheets that contain much of the same information as will be required in the fund facts document, and information to third party information services to create similar content, we believe that we deliver most of the information that is mandated by the Instrument. We believe most of our competitors do the same. This colours our view of the perceived benefits of the Instrument.

To the extent that the fund facts document rationalizes some of our other disclosure obligations, such as the simplified prospectus, annual information form and management report of fund performance, we would recognize a benefit to investors through cost reduction. However, such is not being proposed and we fear that compliance with the Instrument will increase the costs to investors.

We believe that the findings of the Retail Investor Information Survey released in June 2009 by the Joint Standing Committee on Retail Investor Issues (the "JSC Survey") offer some support to this view. The JSC Survey, with a sample size of 1000, found that only 5% of respondents stated that they did not have the right amount of information to make their investment decision and fully 84% felt they did. Accordingly, the benefit of the fund facts document will not accrue to 84% of investors.

With respect to the 5% of JSC survey respondents who stated that they did not receive the right information, we do not know what information, if any, they are currently receiving. It is quite possible they are already receiving the information contained in the fund facts document and, therefore, that 5% would not perceive any benefits to the Instrument. If they are not receiving the fact sheets currently prepared, they would benefit from the Instrument, although it is not clear that the Instrument is necessary for that benefit to accrue.

2. We seek feedback on whether you agree or disagree with our perspective on the cost burden of the Instrument. Specifically, we request specific data from the mutual fund industry and service providers on the anticipated costs and savings of complying with the Instrument for the mutual fund industry.

As stated in the IFIC Response, we are unable to provide specific cost data with respect to our compliance with the Instrument. We would note that, to the extent any cost data could be supplied, such is proprietary information of each mutual fund company or dealer and public release of that information would be inappropriate. As the Instrument is revised

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further, we would encourage the CSA to seek cost data from mutual fund companies and dealers on a confidential basis and to release the aggregate results.

There are many types of costs associated with complying with the Instrument as drafted, including design costs associated with the initial fund facts document, labour costs that would be required to cope with preparing the fund facts document, technology and systems costs that would be required to establish the means to deliver the fund facts document to investors (whether pre- or post-trade), and technology and systems costs that would be required to ensure compliance with the requirements of the Instrument. We would note that even if the delivery aspects of the Instrument are removed as an interim measure, many of these costs would still arise. One example – and this is not meant to be exhaustive but merely illustrative – arises with respect to client name accounts. Many mutual fund managers send trade confirmations on behalf of the dealer to investors whose accounts are registered in client name, although the dealer sends the investor the simplified prospectus. If the fund facts document were to be sent with the trade confirmation, the fund manager would require a significant technological investment to be able to not only send the fund facts document but also to ensure it sends the right one or, if the dealer sent the trade confirmation, the dealer would require a significant technological investment (or expenditure to an outsourcer) to send trade confirmations and also to ensure the correct fund facts documents are sent. At this time, it is simply not possible to assign a dollar figure to these costs.

II) Issues for Comment on the Instrument

1. We are considering allowing fund managers greater flexibility to provide more current information to investors, by not restricting how frequently a fund manager may file an updated fund facts document. What are your views? How would this impact compliance with the requirement to deliver the most recently filed fund facts document?

One of our concerns with the fund facts document is implicitly acknowledged by this question and that is that the fund facts document will quickly become dated, specifically performance and top holdings information. We remind the CSA that prior to the introduction of *National Instrument 81-106 – Investment Fund Continuous Disclosure* ("NI 81-106"), this information was included in the simplified prospectus. Under NI 81-106 and consequential amendments to Form 81-101F1, that information was moved to the Management Report of Fund Performance ("MRFP"). The rationale for such move was that the increased frequency of the MRFP (including the quarterly holdings report) relative to the simplified prospectus would enhance the currency and relevancy of such information. Further, that information is given some context through the MRFP and that context is helpful to investors. None of the foregoing applies to the fund facts document and the historic issues are simply being re-raised.

One might conclude, based on information currency arguments, that requiring fund facts documents to be prepared more frequently than annually would be appropriate. However, this is not the case for two reasons. It would impose significant additional costs on fund

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managers – both in terms of direct and indirect costs – all of which would be passed onto fund investors and it would significantly impair the ability of dealers to meet the delivery obligations under the Instrument (even if delivery were simply a post-trade matter). The delivery obligations placed upon dealers with respect to the fund facts document are significantly different from the delivery obligations with respect to simplified prospectuses and amendments thereto. We believe it would be a monumental task for dealers to devise appropriate systems to ensure that the mutual fund's most recently filed fund facts document is sent to investors in compliance with the Instrument when the requisite document potentially changes every three months. Timely disclosure works in the context of the MRFP because (1) there is only one MRFP per fund, (2) the fund company is responsible for delivering its own MRFPs and no dealer tracking is required, (3) an investor is given the choice of whether or not to receive the MRFP, and (4) it is not necessary to track whether an investor received it - it is presumed that the investor has reviewed the MRFP if it chooses to do so. None of these considerations apply to the fund facts document as currently contemplated.

2. The intention of the requirement to 'bring the fund facts document to the attention of the purchaser' is to link for the investor the information in the fund facts document to a particular purchase. In subsection 7.3(3) of the Companion Policy we have provided guidance on this requirement. Is this guidance sufficient?

The guidance in subsection 7.3(3) of the Companion Policy with regard to bringing the fund facts document to the attention of the purchaser is insufficient. Below, we recommend how the guidance can be improved.

To the best of our knowledge, the only comparable pre-sale requirement that dealers face currently is with respect to leverage disclosure. In that case, dealers are guided by detailed requirements set out by the MFDA and/or IIROC. We believe that this requirement is intended to be less onerous than requirements relating to leverage disclosure and, therefore, the precedent supplied by the leverage disclosure requirement is inapplicable. It would be helpful for the CSA to be more specific about what it contemplated in devising this requirement, given its novelty coupled with the fact that it could give rise to a cause of action by an investor.

Whether the fund facts document is delivered prior to or following the sale, the communication required under subclause 3A.2(1)(b) of the Instrument from the advisor to the client ought to be similar. That is, the client should be advised that: there exists a document called the fund facts document that is being sent to the client either prior to the trade or with the trade confirmation, as the case may be (and that they have the right to receive it prior to the trade); the fund facts document contains basic information about the fund, including what it invests in, a sample of its top holdings, historical performance data and the costs of an investment; how the client can obtain fund facts documents on their own; and that once the investor makes the trade, regardless of whether they read the fund facts document, they have two days to cancel the trade (either from the date of the trade or the date of receiving the trade confirmation), receive back their fees and the lesser of their initial investment or the value of the investment on the day of cancellation. We believe

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these specific points should be set out in the Companion Policy, if not the Instrument itself, so that there will be no confusion as to what is required.

By adopting our recommendation, the investor is alerted to their rights and relevant information and, if this conversation occurs over the phone, the investor can complete the trade knowing they have these rights. This would be a significant difference and improvement over the situation today where investors do not understand that they even have cancellation rights and it would not disrupt the sales process in the manner that delivery as contemplated by the Instrument would.

3. In response to comments, we are considering requiring delivery of the fund facts document for subsequent purchases – either in instances where the investor does not have the most recently filed fund facts document, or in all instances with the confirmation of trade. What are your views? Would this approach make it easier to comply with the delivery requirements? What if this could result in the removal of the annual option to receive a fund facts document? Would this approach be more useful for investors? More practical for dealers?

We disagree with the concept of delivery of the fund facts document for subsequent purchases, short of a material change in the disclosure previously received. This approach is consistent with relief routinely provided by the CSA for pre-authorized chequing plans. There is no discernible benefit to subsequent delivery and it clearly has a cost. If there is a new fund facts document, delivery with the trade confirmation (but not prior to the trade) seems appropriate, although, our preference would be to dispense with delivery entirely absent any material changes to the fund itself (as opposed to changes in the fund facts document as the information that changes in the fund facts document is readily available to the public, especially those who deal with an advisor).

Furthermore, the annual option should be removed in its entirety. This is an inappropriate provision in a rule addressing prospectus and point of sale requirements. That is, the effect of section 3A.5 of the Instrument would be to turn the fund facts document into a continuous disclosure document as well as a primary disclosure document. All of the information relevant to continuous disclosure that is contained in the proposed fund facts document is contained in the MRFP. In addition, the MRFP provides context for that information. We note that investors have overwhelmingly voted against the MRFP, which is unfortunate, as the information provided therein is clearly of assistance. But there is no more reason to believe that investors will opt to receive the fund facts document annually than they will the MRFP. (Regardless of adoption rates, the costs of technological enhancements required to make annual delivery practical would have to be incurred.) We would encourage the CSA to educate investors about the continuous disclosure requirements applicable to mutual funds and how investors can receive continuous disclosure; this seems an obvious approach to the extent the regulatory goal is a better informed investor community.

Lastly, we note that MRFP delivery is the responsibility of the fund manager but annual delivery of the fund facts document as proposed is the responsibility of the dealer. Dealers

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have no mechanism in place currently to comply with this type of requirement and, therefore, they would have to incur some expense to comply. As there is no discernible benefit to annual delivery, it is unclear why dealers should be forced to make the necessary investment (which would, in all likelihood be passed on to the investor, either directly or through the mutual fund companies).

4. In response to comments, we are considering allowing delivery of the fund facts document with the confirmation of trade in instances where the investor expressly communicates they want the purchase to be completed immediately, and it is not reasonably practicable for the dealer to deliver or send the fund facts document before the purchase is completed. We request comment on this approach. If we made this change, what information should an investor receive before the purchase? In addition to delivery of the fund facts document with the trade confirmation, we think that at least some type of oral communication about the fund facts document would be necessary. What specific information should be conveyed in each instance to satisfy this aspect of delivery? Are there alternatives to this approach?

We agree with the approach articulated in subsection 3A.2(1) of the Instrument.

We believe the oral communication referred to in the question should be similar to the oral communication around bringing the fund facts document to the attention of investors, as suggested in our response to question II.2.

5. In response to comments, we are proposing some limited binding of fund facts documents. In section 4.1.5 of the Companion Policy we have provided guidance on this provision. Is this guidance sufficient? Do you agree with this approach?

The bundling requirement is contained in section 5.4 of the Instrument. Because the fund manager prepares the fund facts document, one might assume that this provision applies only to fund managers. It should be clear that dealers may also bundle fund facts.

Both fund managers and dealers should be permitted to determine the appropriate number of fund facts documents to bundle, having regard to the principles of the Instrument and their other obligations at law. The limit of 10 contained in the Companion Policy seems to be an arbitrary distinction without a factual basis and, as such, should either be omitted from the Companion Policy or expressed in softer language, i.e. that the CSA may consider whether the principles of the Instrument have been satisfied when more than 10 fund facts documents are bundled and may, in appropriate circumstances conclude that the principles have been satisfied.

Related to this issue is subsection 5.4(2) of the Instrument which states that bundling is not permitted for electronically delivered documents. It does not seem to make sense that it is okay to hand out a 20 page bound document but not to send that same document to an investor in PDF format. Accordingly, this subsection should be deleted. Further, we understand that the intention of subsection 5.4(2) was not to prohibit including multiple

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specific document hyperlinks in an email. If this subsection is not deleted from the Instrument, then the aforementioned understanding should be confirmed either in the Instrument or in the Companion Policy.

6. Is the transitional period for delivery of the fund facts document appropriate? If not, what period would be appropriate and why?

We do not believe that a response to this question is capable at this time as there has been insufficient study of the technology that would need to be developed and implemented for all market participants to comply with the Instrument. In our responses to the preceding questions, we have provided alternate suggestions to the delivery requirements as currently drafted and for those alternate suggestions to be effective, we believe a transition period of at least two years is necessary. However, we cannot definitively comment on whether the time period is sufficient at this time.

7. Depending on the comments we receive, we may decide to proceed with finalizing some parts of the Instrument while continuing to consult on other parts. For example, we may be able to move forward sooner with the requirement to prepare and file a fund facts document and have it posted to the website. If this were to occur, we would provide a reasonable transition period before anyone has to comply with the fund facts document requirements and we would consider a shorter transitional period for delivery. What are your views on this approach? What period would be appropriate?

As implied by our response to the previous question, as we cannot state how long an effective transition period is required, we support the proposal to finalize those parts of the Instrument relating to the fund facts document and for an amendment to the Instrument to be proposed when the technical aspects of delivery have been determined. As stated above, this will allow investors to acclimatize to the document and will enable them to determine its utility. If the Instrument is finalized such that delivery of the fund facts document satisfied legislative requirements to deliver the prospectus, then we would anticipate requiring at least a one year transition period.

Prior to introducing any amendments to the Instrument to require pre-trade delivery of the fund facts document, we would strongly encourage the CSA to consult afresh with investors. For these consultations to be meaningful, it is imperative that investors receive fund facts documents during the interim period so that they have an opportunity to review and assess the utility of the document and compare it to the status quo.

Because the changes proposed by the Instrument are so significant, especially replacing a bulky hard to read document with a 2 page reference sheet, we are concerned that the investor research undertaken to date has been done in a context in which it is impossible for investors to have a proper frame of reference. The effect of the interim period would be to provide that proper frame of reference.

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The question of pre-trade delivery ultimately will and must be determined by investors. (It will be determined by investors in the sense that if investors find pre-trade delivery to be obstructive as a result of potentially having to delay their investment in order to receive the fund facts document, they will simply seek out substitute products.)

Once delivery requirements are finalized, a transition period will be necessary for implementation. While one would expect work on technical requirements to have been undertaken and specifications established by then, the implementation of the technical requirements, if costly, would likely not begin until a rule is certain. Therefore, the length of time required would depend on the specifications developed.

III) Issues for Comment on Form 81-101F3 *Contents of Fund Facts Document*

1. In response to comments, we have provided some flexibility in the proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* for a fund facts document to be attached to, or bound with, one or more fund facts documents of other mutual funds. To date, however, we have not seen a sample fund facts document that contains multiple class or series disclosure that meets the principle of providing investors with information in a simple, accessible and comparable format as set out in *Framework 81-406: Point of Sale Disclosure for Mutual Funds and Segregated Funds* (Framework). For us to consider allowing flexibility to permit a single fund facts document per mutual fund, we request sample fund facts documents that demonstrate multiple class or series information presented in a manner consistent with the principles of the Framework.

We understand that IFIC has provided samples of fund facts documents with multiple series to the CSA and we have seen those samples and we believe that those samples are fully responsive to this question.

While we understand the CSA's concern in this regard, we believe some combination is beneficial to investors and, therefore, should be permitted. For example, Series A and the various versions of Series T should be combined as they are identical but for the distribution features. Similarly, Series A and the equivalent Hedged Series (where offered) should also be grouped together so the investor can have a true comparison of, among other things, fund performance and distribution features. The investor can certainly make this comparison if the Series A and T fund facts documents are bundled and read together, but as the differences between those two series are likely few in number, comprehension is simplified when multiple series are integrated into one fund facts document.

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2. We are considering whether it is more appropriate to require disclosure of the MER without any waivers or absorptions, since there is no guarantee such waivers or absorptions will continue. Do you agree with this approach?

We strongly disagree that it is more appropriate to disclose MER without waivers or absorptions as it is misleading to investors and not representative of what they will experience as a fund holder.

The practice has been for mutual fund managers to waive or absorb MER components in start-up or small fund situations in recognition of the fact that without such waivers or absorptions, the costs to an investor would be too high. As such, in many cases, the pre-waiver MER is an MER unlikely to ever be experienced by a retail investor. If the CSA is concerned that mutual fund managers might decide not to waive or absorb in a particular year after the investor has made a purchase, this could be addressed in many ways, including requiring policies and procedures around waivers and absorptions and explaining those policies in the simplified prospectus or annual information form.

We note that the posted MER is a statement of what the actual expense ratio was in a given year; a pre-waiver/absorption MER is, in fact, merely hypothetical. Otherwise, the MER is simply an indication of the MER an investor might receive. Based on assets and cost allocation methodologies, MERs might increase or decrease. A statement to this effect should be included in the fund facts document.

3. In response to comments, including concerns raised by investors and the Investment Funds Institute of Canada (IFIC) of the use of its risk scale, we are proposing for the manager to identify the mutual fund's risk level on a prescribed scale set out in the fund facts document, based upon the risk classification methodology adopted by the manager. We request comment on whether this approach achieves our objective to provide investors with a simple and comparable presentation of the level of investment risk associated with the mutual fund. Are there alternatives to achieve this objective?

Comparability can be met by the adoption of a prescribed risk scale or a prescribed methodology to determine risk level. While we understand the position taken by IFIC in previous comments, we believe that this issue could easily be resolved by the CSA adopting the IFIC Fund Risk Classification methodology as its own and including it in the Companion Policy or as a Schedule to the Instrument. It is important to understand that IFIC has only created a methodology and not a "plug and play" risk scale per se. However, if fund managers follow a uniform methodology, the result should be sufficiently comparable so as to achieve the CSA's objective. Otherwise, the CSA would have to create a prescribed risk scale or methodology in order to achieve the objective of comparability. While we understand that many in the industry have adopted IFIC's recommended methodology, it is not uniform and, therefore, as currently drafted, risk disclosure in fund facts documents will not be comparable.

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4. We would like feedback on whether the band we've prescribed for the scale is appropriate. Are there better ways to describe the range of investment risk for a mutual fund?

The corollary to our response to the previous question is that the CSA should adopt the 6-point scale included in IFIC's methodology and change the nomenclature of the "medium" band to "average".

We note that IFIC had recently changed the nomenclature "moderate" to "average" to ensure that its methodology was not misinterpreted. The MFDA especially has mandated that its members, through MR-0069, use the fund prospectus risk classification as a proxy for suitability. We think this is wrong and misapprehends the meaning of IFIC's methodology and the meaning of the risk classification contained in the prospectus. Suitability is an investor specific concept where the investor's personal circumstances must be taken into account, including their financial circumstances, other investments/assets, investment goals, time horizon and appetite for volatility, among other things. Of these factors, the current risk classification level used by most mutual funds in Canada addresses only the appetite for volatility.

We are supported in the above-noted concerns over the misuse of this type of disclosure by the CSA's responses to comments on the original and subsequent drafts of NI 81-101 where commenters suggested and the CSA agreed that suitability disclosure in a simplified prospectus should be based on the type of portfolio and cannot be investor-specific as the mutual fund does not possess any individual investor's "know-your-client" information. Nevertheless, the MFDA has decided to require its members to use this general information as the determinative factor is suitability analysis for mutual fund investments and the current amendment and comment process should be used to clarify that such requirement constitutes a misuse of the prospectus information.

IFIC, in the document outlining its recommended risk classification methodology, has stated that, while there are many measures of risk, most, if not all, are imperfect. IFIC's risk classification task force determined that standard deviation of returns is the best and most appropriate measure of risk that a mutual fund is able to calculate and that has the most meaning to an investor; therefore, it is the foundation of IFIC's recommended methodology. Standard deviation addresses volatility risk only and is not necessarily a substitute for an overall risk assessment. Accordingly, when a risk level determined using IFIC's methodology is used as a proxy for suitability at the investor level, a highly problematic result ensues in that investors are left with portfolios inconsistent with their desired level of risk. We believe that the CSA must address the issue created by the MFDA concurrently with finalizing this aspect of the Instrument.

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5. We recognize that managers with similar type mutual funds may adopt different methodologies to identify the mutual fund's risk level on the scale prescribed. We would like your view on whether this will detract from our objective to provide a simple and comparable presentation of the level of investment risk. Should we consider requiring a particular type of risk classification methodology be used? If so, what methodology would be appropriate?

As stated in our earlier responses above, we do not believe that risk classification can be compared between fund facts documents prepared by different fund managers if the methodology, and hence the definition of risk, differs among them. As stated above, we endorse IFIC's methodology in this regard.

6. In response to comments, we are considering allowing the disclosure in this section to be supplemented with a brief description of the key risks associated with an investment in the mutual fund. We request feedback on this approach. Should we limit this risk disclosure? If so, how?

We believe that statements beyond the prescribed "When you invest in a fund, the value of your investment can go down as well as up" would be beneficial as the prescribed statement does not convey particularly useful information. At Invesco Trimark, we delineate between primary and additional risks in the Fund Details for each Fund contained in the simplified prospectus. The CSA should consider making this delineation mandatory in the simplified prospectus form and then requiring managers to briefly address the primary risks in the fund facts document. We note that while the intent of Risk Factor disclosure is to disclose material risks only, the interpretation of that over the years has led to a "kitchen sink" approach to risk disclosure that does not serve investors well.

7. To better convey the impact on the investor of sales charges and ongoing fund expenses, we are considering requiring an illustration of the amounts payable in dollars and cents. What are your views?

We do not agree with the suggestion of providing an illustration of amounts payable for ongoing fund expenses in dollars and cents. We believe that when you tell an investor that the Fund had a return of 10% for the year, they understand what that means and, similarly, they understand what a 2.50% MER means. Using a 2.50% MER and a $100 investment as an example, the premise of the CSA's question would imply that the fund facts document should state that the investor will pay $2.50 in expenses for every $100 invested. It is hard for us to imagine that such is significantly better understood that 2.50% since the investor would effectively have to make the same calculation to figure out what they are paying for their investment (unless they are only investing $100). Arguably, this type of requirement would be more meaningful if based on the actual amount invested, but such is impossible in a mass produced document. If IIROC and the MFDA believe this is useful disclosure, then this should be a dealer requirement separate from this Instrument.

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8. We are also considering whether to require disclosure in the fund facts document of the trading expense ratio (TER), to provide investors with a more complete picture of the costs associated with an investment in a mutual fund. We request feedback on this proposal.

Whereas MER conveys to the investor information that could be used to determine their opportunity cost of investing in a mutual fund, TER does not. This is not a well understood metric by investors and given the limited space and quantity of information already prescribed for the fund facts document, adding a metric of limited use does more harm than good.

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APPENDIX II
TECHNICAL COMMENTS

Comments on the Instrument

1. Subclause 2.1(1)(d) of the Instrument states that if a mutual fund files an amendment to a simplified prospectus to add a new class or series to an existing fund, then it must concurrently file a preliminary fund facts document. Thereafter, the final fund facts document will be filed and a receipt for the three documents will be issued. In contrast, currently the fund would file an amendment to the simplified prospectus and annual information form only.

   The requirement to file a preliminary fund facts document should be removed as it is unnecessary. We note that comment periods apply to simplified prospectus and annual information form amendments and if a fund facts document (as opposed to a preliminary fund facts document) is filed with the other documents, the principal regulator could use the comment period to address any concerns it may have with the fund facts document. On occasion, the principal regulator asks a mutual fund issuer to make changes to and re-file an amendment and, therefore, the same could occur with the fund facts document. The situation described above implies that the mutual fund already has in existence at least one fund facts document, so some of the information in the fund facts document for the new series will not be new to the principal regulator reviewing it and, therefore, it ought not require a similar level of review as a preliminary fund facts document for a new mutual fund.

   Notwithstanding the prescribed currency dates for fund facts documents in Form 81-101F3, in the case of a new series added by amendment to a simplified prospectus, the mutual fund issuer should be permitted to use the information contained in the other fund facts documents of the mutual fund (such as total assets, MER, top holdings) for the fund facts document of the new series. We believe it becomes confusing when there are multiple official documents in circulation with different data points.

2. The Note to Reader after Subsection 2.2.1(1.1) of the Instrument states that consideration will be given to recommending *Securities Act* (Ontario) amendments to implement Part 2 and other parts of the Instrument. If it is determined that such amendments are not necessary, we would urge the CSA to so state in either the final rule or in a notice issued by the Ontario Securities Commission. It has been our experience that sometimes these conclusions are assumed but not all market participants (or their counsel) reach similar conclusions.

3. There are numerous references in Section 2.3 of the Instrument to filing a letter with respect to the Flesch-Kincaid grade level. First, we believe this is regulatory overkill. Second, we are concerned that the Flesch-Kincaid grade level 6.0 is simply too low to properly convey some of the concepts we must disclose. Third, we believe that it is important to clarify that this requirement only applies to the English version of the fund facts document. The Flesch-Kincaid grade level is built into many word

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processing programs, including Microsoft Word, and, as such, it can be run on documents written in other languages. However, this ignores the fact that the foundation of the Flesch-Kincaid scale is rules of English grammar. Accordingly, while one can obtain a Flesch-Kincaid score for a French document in Microsoft Word, the result has no validity.

This requirement, combined with the document length requirement, also poses a unique problem for index mutual funds. Index providers generally require a lengthy disclaimer to be included in the simplified prospectus relating to the use of the index. A shorter version is provided for marketing materials. If the index providers do not agree to use the shorter version in the fund facts document, then the page length restriction cannot be met. Typically, the long version has a Flesch-Kincaid grade level of approximately 16.5 and the shorter version is closer to 11.5, due to the legal concerns that gave rise to these disclaimers in the first place. The following is a sample of the shorter version:

> Index Name is a trademark of Indexer and has been licensed for use by Invesco Trimark. The product is not sponsored, endorsed, sold or promoted by Indexer and Indexer makes no representation regarding the advisability of investing in the Fund.

This passage has a Flesch-Kincaid grade level of 13.1.

4. Section 2.3.2 requires the mutual fund to post the fund facts document to its website no later than the date it is filed. This is problematic for two reasons.

   First, the simplified prospectus that is filed concurrently with the fund facts document might not be receipted on the day it is filed and a receipt might not be issued for a few days thereafter. It is possible that a change might be required to the simplified prospectus that would impact on the fund facts document. As such, we believe that the fund facts document should be posted to the manager's website only after the simplified prospectus has been receipted. Second, for a large fund complex with hundreds if not thousands of fund facts documents, it may not be possible to post all fund facts documents on the same day without undertaking a significant technological investment. Accordingly, we recommend that the fund manager be given 2-3 business days following the issue of a receipt for the simplified prospectus to post the fund facts document.

   The section requires the posting to occur "no later than" the date of filing, implying that the mutual fund manager is permitted to post the fund facts document to the website prior to its filing with securities regulators. This seems an odd result for a document incorporated by reference into the simplified prospectus and for which securities regulators could require modifications ahead of receipting the simplified prospectus. To correct this, section 2.3.2 should be changed so that the posting to the website is as soon as reasonably practicable following the issue of a receipt for the related simplified prospectus. Alternatively, we would suggest that the posting to the website occur within 3 business days following the issue of such receipt.

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5. We are concerned with the lack of uniformity among provinces arising from the exceptions in section 2.9 – Cancellation Rights. While we appreciate that the differences are minor, they are sufficiently different that it causes an ongoing compliance headache. One of the purposes of harmonization and the national instrument system is to simplify compliance for reporting issuers, especially those who are reporting issuers in multiple jurisdictions. We applaud the CSA's intention stated at the end of Part 2 of the Instrument to recommend harmonization of these rights.

6. At the end of section 3.2 it is suggested that an alternative approach to legislative amendments to replace delivery of the simplified prospectus with delivery of the fund facts document would be to require delivery of the simplified prospectus with the fund facts document. Where delivery of the fund facts document is required prior to the trade, such alternative approach will prove to be problematic from a compliance perspective as dealers would then be faced with the burden of different delivery requirements in different provinces, i.e. some provinces would require just the fund facts document and some would require the fund facts document with the prospectus. Further, we note that under this alternative, the cost analysis would have to be revised as one of the savings – prospectus printing – would not be realized.

7. We are concerned with the lack of uniformity among provinces arising from provincial exceptions in section 3.2.1 of the Instrument – Liability of Dealer. The concerns with different provincial requirements in relation to section 2.9 of the Instrument are the same as the concerns with respect to this provision and the CSA should recommend that all provinces amend securities legislation to ensure uniformity of these provisions.

8. The definition of "initial purchase" is over-inclusive and should be narrowed. Under the definition, if an investor held units of Fund A, Series A and redeemed those units and a month later decided to invest again in Fund A, Series A, the dealer would be required to provide a fund facts document to the investor prior to the purchase. However, as a previous holder of Fund A, Series A, it is fair to presume that the investor has full knowledge of the Fund. In that case, the investor should be permitted to verbally waive the requirement to receive the fund facts document. There is little, if anything, to be gained by requiring a fund facts document to be delivered in this situation.

9. Section 3A.3 of the Instrument (and further discussed in subsection 7.2(2) of the Companion Policy) makes a distinction between purchases made through full-service and discount brokers. The result of this distinction is completely backward. How can it be justified that a higher standard is required for investors who work with a fully licensed and regulated financial advisor, who is subject to know-your-client and product suitability obligations? How is it a valid assumption that "do it yourself" investors engage in proper research? Investors who rely on the advice channel generally get all of the information that the fund facts document seeks to provide. We do not believe it is necessarily appropriate for the CSA to presume that clients of

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discount brokers do adequate research and have the proper information. Some investors with discount brokerage accounts might simply be following the advice of well-intentioned friends; however, those friends are not subject to regulation, know-your-client, suitability or know-your-product obligations.

10. Subsection 3A.4(3) of the Instrument deems delivery by prepaid or registered mail to have been completed 7 business days after it has been sent. However, there are no similar deeming provisions for electronic delivery or fax delivery. This subsection should be revised to deem delivery complete by electronic delivery or fax delivery after a reasonable period of time, given the technology. We would suggest that 6 hours is an appropriate period.

11. We believe that section 6.2 of the Instrument (relief granted by issue of the simplified prospectus receipt rather than an order) should be re-thought as it could give rise to uncertainty. In subsequent years, as personnel of the fund manager (and of the regulator) have changed, without approval by the regulator in writing of an application for relief from the Instrument, doubt could arise as to whether an exemption had ever been granted. This could lead to duplication in filing applications for exemptive relief. We do not think it is overly onerous for a regulator to post a one or two line approval letter on SEDAR when approving an application for relief from this Instrument.

11. We fully support and endorse the concept behind section 7.4 of the Instrument, which requires that the fund facts document be delivered for each initial purchase (as currently defined) after the Instrument comes into force as it is imperative that investors get a real opportunity to evaluate the fund facts document and it is important for that effort that the widest possible range of investors receive the fund facts document.

Comments on the Fund Facts Document

12. As a general matter, Form 81-101F3 (the "Form") requires that information be as of a date within 30 days prior to the date of the fund facts document. Specific information that falls under this requirement is total value of the Fund, Top 10 investments and hypothetical performance. Our preference would be to draw this information from the most recently filed MRFP of the Fund, whether that be an annual or interim MRFP. Generating this data (other than total value of the Fund which we assume is the same as net asset value) "off-cycle" and transporting it into the fund facts document and then having the fund facts document go through the standard reviews applicable to all documents incorporated by reference into a simplified prospectus (such as high level management reviews and board reviews) is impossible to accomplish in a 30 day time frame. Furthermore, it would require the re-scheduling of prospectus renewals. The result would be that mutual fund issuers would uniformly have to renew prospectuses on the last day of the month as no other time could possibly work in the context of fund facts documents. This would clearly impose a burden on both the regulators and SEDAR.

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An example may help illustrate the previous point. Assume that the prospectus renewal date is August 15. For the type of information required, the most logical data point would be the previous month end, July 31. Between July 31 and August 15, performance data would need to be generated for each series of each fund offered by the mutual fund manager and hypothetical performance would have to be calculated. That and the top 10 positions would have to be downloaded into the fund facts document, reviewed, circulated and reviewed by the management of the fund company and circulated and reviewed by the Board of the fund manager and, in our case, the Fund Advisory Board. That timeline is simply not possible. To take the hypothetical performance, or the top 10 positions in the fund, as at July 15, is without precedent in investment performance reporting and adds a process to the fund manager's operations that would require the hiring of additional personnel, with insufficient time for quality control.

Comments on the Companion Policy (the "Companion Policy")

13. Parts 2.2 and 2.3 of the Companion Policy discuss the simplified prospectus and annual information form and subsection 2.3(2) stresses that information in the annual information form should not be a repeat of the simplified prospectus. An examination of the form requirements and the contents of these documents actually prepared by mutual funds belies this notion. Given that neither document will be automatically delivered to investors under the Instrument, it is clearly appropriate to rationalize the two documents into one and avoid this duplication. We strongly encourage the CSA to do so, if not prior to adoption of the Instrument, then during any transition period. We note that this would decrease the "cost" side of the ledger in any cost-benefit analysis.

14. Subsection 2.7(2) of the Companion Policy discusses when amendments to the simplified prospectus might trigger amendments to the fund facts document and states "We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the mutual fund to be material changes." The use of the word "generally" implies that there are instances where changes to those items would be considered material changes thus triggering the obligation to file an amended and restated fund facts document. Since it would be unprecedented to consider such changes to be material changes, either the CSA should re-word this sentence to remove the word "generally" or provide guidance as to what is contemplated.

15. Subsection 7.2(5) of the Companion Policy comments on dealer requirements to ensure delivery of the fund facts document and client waivers and notes that existing dealer practices will be sufficient in this regard. As the CSA must be aware, the dealer compliance concerns around delivery are enormous and, in our discussions with dealers, they are not aware of what the CSA means by the phrase "in accordance with existing practices". The Companion Policy should be abundantly clear and precise on what the expectations are for dealer compliance in this regard. If the CSA would be satisfied with contemporaneous notes to file, then it should say so. Must these be time stamped in electronic format or would handwritten notes

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suffice? What if the advisor is on the road at the time of delivery without access to the dealer's computer system – what then would be sufficient? Is more required? To the extent that no client signatures are ever required, this should be stated. There is simply too much uncertainty around these requirements such that dealers are likely to go too far to ensure compliance and seek to implement the most onerous measures. We have previously commented on how pre-trade delivery in and of itself impedes the sales process; the compliance requirements could add yet another significant layer.

16. Please elaborate on the last part of subsection 7.7(1) of the Companion Policy, "or directing the investor to a specific fund facts document on a website". If the email contains the hyperlink to the document and "access does not equal delivery", we do not know how to interpret the phrase quoted in the previous sentence. The elaboration in subsection 7.7(2) does not really make sense to us as it would be impossible for a dealer to prove that real time instructions were given by the advisor to the investor in the manner contemplated. If the phone call is from the dealer's office, where it could be recorded, then proof would be simple. But if the advisor is making the call from elsewhere, then proof would be impossible.

17. Subsection 7.7(4) of the Companion Policy suggests that National Policy 11-201 merely provides guidance on electronic delivery, implying that registrants need not follow the provisions of the NP. Please clarify if this interpretation of subsection 7.7(4) is correct. If not, then more forceful language ought to be used.

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APPENDIX III
DRAFTING COMMENTS

1. Subsection 2.3.1(3) of the Instrument notes that filing of the voluntary updates must be within 30 days of the end of the quarterly period. While we would interpret this provision as not requiring that pro forma fund facts document be filed for voluntary updates, the provision as drafted is not clear on this matter.

2. We believe that there is a drafting contradiction between subsection 5.1(3) of the Instrument which requires the simplified prospectus to be the first document when any of the documents listed in this section are bundled with the simplified prospectus in a larger document and subsection 5.4(4) of the Instrument which requires that the fund facts document be the first document in any such bundled document. We believe this is easily addressed by inserting the words "Notwithstanding any other section or subsection of this Instrument," at the beginning of subsection 5.4(4).

3. Paragraph 2.1(3)3 of the Companion Policy states that the Instrument further "permits" the use of the simplified prospectus and annual information form. "Permit" is a permissive word which is inappropriate for a mandatory requirement. We suggest that word be replaced with "requires".

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