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VIA E-MAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Financial and Consumers Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Re: CSA Notice and Request for Comments
Reducing Regulatory Burden for Investment Fund Issuers (the "Project")
Phase 2, Stage 1

Dear sirs/mesdames,

I am writing in respect of CSA Notice and Request for Comments (the "**Release**") on *Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1* (the "**Proposals**") which includes proposed amendments to the following

- National Instrument 14-101 Definitions ("**NI 14-101**"),
- National Instrument 41-101 General Prospectus Requirements ("**NI 41-101**"),
- National Instrument 81-101 Mutual Fund Prospectus Disclosure ("**NI 81-101**"),
- National Instrument 81-102 Investment Funds ("**NI 81-102**"),
- National Instrument 81-106 Investment Fund Continuous Disclosure ("**NI 81-106**"), and
- National Instrument 81-107 Independent Review Committee for Investment Funds ("**NI 81-107**"),

proposed consequential amendments to

- National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR), and
- Multilateral Instrument 13-102 System Fees for SEDAR and NRD

(collectively, the "**Proposed Amendments**"), and

proposed changes to

- National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions,
- Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements,
- Companion Policy 81-101CP to National Instrument 81-101 Mutual Fund Prospectus Disclosure,
- Companion Policy 81-102CP to National Instrument 81-102 Investment Funds,
- Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure ("**81-106CP**"), and
- Commentary in National Instrument 81-107 Independent Review Committee for Investment Funds

(collectively, the "**Proposed Changes**").

I have been employed as legal counsel for investment management firms for over 17 years, including 11 as General Counsel. As such, I am very familiar with the instruments and policies for which changes are proposed and believe I can offer helpful insight.

While it has been a lengthy wait for these proposals, the Proposals contained in the Release are certainly comprehensive and will be effective at reducing the regulatory burden for investment fund issuers which could result in cost savings for investors. In some places, the proposals do not go far enough, but given the impact these proposals will have, moving to a final rule as soon as possible after the comment period closes should be a priority. This would be consistent with the timelines set out in *Reducing Regulatory Burden in Ontario's Capital Markets*[1]. The Proposed Amendments and Proposed Changes do not go far enough in some cases, but such can be addressed in Phase 2, Stage 2 of this project.

Most of my comments are addressed in my responses to Schedule 1 *Specific Questions for Comment Relating to the Proposed Amendments and Proposed Changes* contained in Appendix A of the Release (the "**Questions**") and attached to this comment letter as Appendix A.

Workstream One: Consolidate the Simplified Prospectus and the Annual Information Form

The consolidation of the simplified prospectus and annual information form is long overdue, although it would have been preferable to remove additional items beyond those proposed. The Questions imply that the CSA is considering removing more items from the consolidated simplified prospectus in favour of posting those items on the investment fund's "designated website"[2]. In my response to Question 5, I suggest some items that can be moved to the designated website.

[1]Ontario Securities Commission, 2019 (the "Burden Reduction Report")
[2]As defined in proposed subsection 1.1(3) of NI 14-101.

The proposed Amendments emanating from Workstream One show that the CSA is serious about this Project and is working hard to strike the right balance between investor protection and market efficiency. This is demonstrated by three items that were removed from the old simplified prospectus. First, the removal of the impact and illustration of purchase options makes sense since these disclosures and discussion of purchase options are required under NI 31-103, s.14.2.1. Second, the dealer compensation from management fees, which is calculated at the firm level and not the individual fund level, is superfluous disclosure and fund level disclosure is already provided in the management report of fund performance. Third, the illustration of fund expenses borne by investors has effectively been replaced with more direct disclosure on this point from the dealer under amendments to NI 31-103[3].

In contrast duplicative items, such as disclosure of the principal holders of securities, remain. This information is already provided at the only time it is useful, in a management information circular. The risk disclosure for the fund already includes disclosure of holders of more than 10% of the fund regardless of series, as a means of conveying large redemption risk. Other than in relation to voting, there is no other use for this information. The cost of compiling disclosure of principal holders of securities is high and raises investor privacy concerns. Removing this disclosure requirement will, therefore, have no impact on investor protection. The CSA should repeal this disclosure requirement in Phase 2, Stage 2 of the Project, if not in the final version of the Proposed Amendments.

Workstream Two: Investment Fund Designated Website

While requiring an investment fund to have a designated website is appropriate, it cannot be dismissed that this comes with a cost. On balance, however, the benefit outweighs that cost.

For an investment fund that does not have a designated website currently, the burden is quite clear: creating and maintaining a website, posting regulatory documents to the website, and creating a system of supervision and controls over the website to ensure compliance with laws and regulations. Investment funds that already have a designated website already do these things and the proposed requirement adds no incremental burden to them.

It is currently required, under s.5.5 of NI 81-106, that if an investment fund has a website, it must post its interim and annual financial statements and management reports of fund performance to its website. Similarly, s.4.4(2)(b) of NI 81-107 requires that the annual report of the independent review committee of the fund be posted to the fund's, fund family's, or manager's website. In neither case is a website required, which places an unequal burden on those who do have websites. Most managers have websites. It is unfair to the investors in investment funds who currently do not have designated websites to not have the same access to information about their funds that others have.

Workstream Three: Codify Exemptive Relief Granted in Respect of Notice-and-Access Applications

As noted in the Release, the CSA has been granting relief to permit "notice-and-access" delivery of proxy-related materials for three years. The relief conditions are standard and those

[3] Reforms to Enhance the Client-Registrant Relationship (Client Focused Reforms), (2019), 42 O.S.C.B. (Supp-1), subclauses 14.2(2)(b)(ii) and (o), p.111, and clause 14.2.1(1)(d), p.112.

who have obtained this relief have found the conditions to be workable. As such, the proposed codification makes sense.

This relief has indeed been granted many times. The CSA should consider adopting, as an internal policy, a threshold number of applications that would trigger a review by the CSA as to whether codification of particular exemptive relief should be proposed. I would suggest a threshold number of three or four applications where the same relief has been sought and it has been granted with the same or similar conditions. The rationale for this approach is that, in practice, once several applications have been granted anyone who applies for the relief on the same basis will also be granted relief. Registrants should not be made to suffer that process and incur the expenses that come with it.

Implementation of the foregoing suggestion would clearly be easier to implement if the CSA members had the authority to issue blanket orders, as Ontario has committed to do in its Burden Reduction Paper.[4] Other CSA members that lack this authority should discuss this with their provincial finance minister. Lacking blanket relief authority, if a formal rule amendment must be proposed, the focused nature of any proposed amendment and the application history that led to the amendment should result in a quicker rulemaking process than usual. The process that I am suggesting be followed by the CSA should not automatically result in a proposal for codification, as the CSA may well find that it is preferable in some cases to continue to grant exemptions on an individual basis.

Workstream Four: Minimize Filings of Personal Information Forms

The preparation of personal information forms is overly burdensome and repetitive, especially for investment fund managers who offer to the public exchange-traded funds. Any attempts to reduce this burden are welcome. It would be helpful if the CSA engaged with the Toronto Stock Exchange and Aequitas NEO Exchange on this topic as they also require personal information forms and a streamlining of their requirements with CSA requirements is desirable.

Workstream Five: Codify Exemptive Relief Granted in Respect of Conflict Applications

The eight exemptions that would be codified under the Proposed Amendments are exemptions that have been granted by CSA members repeatedly over the years, all with the same conditions. This is a perfect example of the point I made above regarding codification of exemptions. This codification would be effective at reducing regulatory burden.

Workstream Six: Broaden Pre-Approval Criteria for Investment Fund Mergers

The broadening of the pre-approval criteria to eliminate the need for regulatory approval of a merger where a reasonable person may not consider the continuing fund to have substantially similar fundamental investment objectives is appropriate. The merger is subject to securityholder approval following a review, typically, by the fund's independent review committee. Regulatory approval for fund mergers (where required) has been granted routinely without any lessening of investor protection.

[4] Burden Reduction Report, *supra,* note 1, Recommendation A-1, p.29.

The broadening of the pre-approval criteria to eliminate the need for regulatory approval of a merger depending on the tax structure chosen is also well considered. Applying for pre-approval is time and resource consuming. It is not clear why securities regulators have an interest in the tax structure of a fund merger beyond ensuring it is fully disclosed.

This Proposed Amendment addresses an inherent unfairness in the law that favored tax-deferred mergers over taxable mergers by permitting a simpler process for the latter to be approved. In a tax-deferred merger, the accumulated gains of the terminating fund are transferred to the continuing fund and no tax arises at the time of the transaction. When the continuing fund eventually sells the portfolio assets that it inherited from the terminating fund it will incur a tax impact[5] despite not participating in the gains on those securities to the date of the fund merger. In most cases the continuing fund is larger than the terminating fund and therefore the potential gains are spread out over a wider base. This conflict is often determined by the fund manager to be inconsequential or immaterial, with the result that continuing fund securityholder have no say in the matter since they only vote on a fund merger if the transaction is material to the continuing fund. Under the Proposed Amendments, continuing fund securityholders would be directly represented by the fund's independent review committee, as discussed below, and, therefore, receive enhanced protection.

It should be noted that s.5.3(2) of NI 81-102 provides for circumstances in which securityholder approval for a fund merger is not required; in lieu of securityholder approval, the fund's IRC can approve the merger. One of the conditions refers to s.5.6(1)(a) and (b), which are impacted by this Proposed Amendment and, therefore, the impact of the Proposed Amendment is to not only remove regulatory approval but to allow these mergers to be approved by the IRC in lieu of securityholders. I believe this makes sense because securityholder engagement is pitifully low in the Canadian investment fund industry and this is exacerbated by extremely low quorum requirements for securityholder meetings. The IRC is typically comprised of sophisticated individuals some of whom could be expected to have knowledge of fund mergers but, regardless, can engage with and probe management directly on the issues to ensure that the proposal is uninfluenced by entities related to the manager or considerations other than the best interests of the fund and that the proposal achieves a fair and reasonable result for the investment fund.

Workstream Seven: Repeal Regulatory Approval Requirements for Change of Manager, Change of Control of a Manager, and Change of Custodian that Occurs in Connection with a Change of Manager

For the reasons set forth in the Release, these requirements represent an undue burden and their repeal is appropriate.

[5] By definition, the securities were transferred from the terminating fund to the continuing fund at the cost to the terminating fund. If the market value of those securities was higher on the date of the transfer of securities, then the continuing fund is importing a gain on those securities. If the price of the securities has declined since the date of the transfer, the continuing fund may still record a gain on those securities if the decline has not been below the cost of the securities. If the price of the securities has increased since the date of the transfer, the capital gain to the continuing fund is higher than had it acquired those securities at market value.

Workstream Eight: Codify Exemptive Relief Granted in Respect of Fund Facts Delivery Applications

The relief in question was granted after lengthy discussion between the applicants and the CSA. I believe it is appropriate to now codify this relief.

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My responses to the Questions are included in Appendix A. I would happy to discuss my comments and responses with the CSA should that be helpful.

Yours truly,

"Eric Adelson"

Eric Adelson

APPENDIX A

General

1. **Are there any areas that would benefit from a reduction of undue regulatory burden or streamlining of requirements, while preserving investor protection and market efficiency, which we should consider as part of Phase 2, Stage 2 (and onwards)? Please prioritize any suggestions you may have.**

The new form of simplified prospectus carries forward the requirement to list the principal holders of the fund's securities on a series by series basis. This is completely unnecessary for an investor and a burden for an investment fund to disclose.

Disclosure of the principal holders of securities by series is relevant only when there is a matter to be voted on at a series level. This is quite rare and, in any event, the investor is provided this information in the management information circular sent to securityholders of an investment fund by law when there is a matter to be voted upon. Otherwise, this disclosure alerts the investor to ownership concentration issues within the fund such that if there is a large holder and that holder redeems, that could well have an adverse impact on the fund. However, the investor is already alerted to this risk through the large unitholder disclosure in the simplified prospectus under the heading "Risks of investing in the fund." The investment fund is required to disclose if there are any investors holding more than 10% of the fund and, if so, what percentage is held. As such, the disclosure at a series level is unnecessary and risks creating undue hardship for a small investor who may be invested in a small series.

The Compliance Reports required by Part 12 are an unnecessary burden. The reports take much time and human resources to compile yet there is no discernable use for them. Historically, no one at the regulator reviewed these reports. If this has changed, then the relevant regulator should so state in response to this comment and explain the utility of these reports. Any violation reported on these reports is addressed within the policies and procedures of the IFM required under NI 31-103. There is no doubt that the matters addressed in these reports are matters for which written policies and procedures are required and typically these policies would address exceptions and breaches to the policies and procedures. It would be expected, further, that these would be conflict of interest matters and, therefore, violations of the policies and procedures would be reported to the IRC and then to the regulator as required by NI 81-107. As such, the Compliance Reports requirement should be repealed as there is no harm to investors by doing so, yet there is a significant burden reduction for the industry.

2. **With the exception of Workstreams 1, 2 and 3, the Proposed Amendments and Proposed Changes do not introduce any new requirements for investment funds. Instead, we are either removing requirements or introducing exemptions that are permissive in nature. As a result, we do not contemplate any prolonged transition period following the in-force date of the proposals. Are there any specific elements of the Proposed Amendments and Proposed Changes which investment funds and their managers would require additional time to comply with? If so, please explain why and provide suggestions for an appropriate transition period.**

The mere act of consolidating the simplified prospectus and annual information form and re-ordering elements is a time-consuming process. For those whose prospectuses renew shortly after the coming into force of the amendments, this would represent a significant burden. As such, an appropriate transition time would be 6 months from the minister's approval of the amendments.

Workstream One: Consolidate the Simplified Prospectus and the Annual Information Form
Consolidation of Form 81-101F2 into Form 81-101F1

3. **As described in footnotes 3 to 5 of the Notice, certain specific requirements from the existing Form 81-101F1 and Form 81-101F2 were not carried over into the proposed Form 81-101F1. Do you support or disagree with these changes? If so, please explain.**

As noted in the Question, several requirements were removed from the prior forms. These include:

(a) Disclosure regarding the impact and illustration of purchase options: Removing this item makes sense given corresponding obligations on dealers regarding disclosure of fees and charges prior to any transaction. Because the illustration is not contained in the fund facts document, it is unlikely that the investor will ever see it. The discussion between dealer and client is more proximate to the transaction, as required by s.14.2.1(1) of NI 31-103. The simplified prospectus disclosure that is proposed to be removed is superfluous. I support removal of this disclosure.
(b) Disclosure of the dealer compensation from management fees: To the extent this disclosure is relevant, it is relevant at the fund level rather than the fund complex level, disclosure of which is the current simplified prospectus requirement. The more relevant fund-level information is effectively provided in management report of fund performance ("**MRFP**"). I support removal of this disclosure.
(c) Introduction to Part B: It appears that this was removed from the simplified prospectus form and it is not clear why as it provides helpful context for the disclosure that follows and, in some circumstances, disclosure that may clarify other disclosures is provided in this section. The introduction should be maintained.
(d) Disclosure of start date of a fund and the type of securities: This disclosure serves little purpose in the context of the simplified prospectus and is more relevant where it is also located, in the MRFP.

(e) Illustration of fund expenses borne by investors: This disclosure is not included in the fund facts document. Therefore, it is unlikely to be seen by investors, currently. Given the percentage disclosure of fund expenses in the fund facts document, and the dealer obligations in sections 14.2 and 14.2.1 of NI 31-103 to explain these expenses, this illustration has become superfluous and no one is likely to be impacted by its removal. This disclosure is also quite burdensome to produce. I support removal of this disclosure.
(f) Disclosure that the transaction price is based on the next calculated NAV of the fund: It is not clear why the explicit reference to this disclosure was omitted, although it seems quite likely that an investment fund will include this disclosure regardless.
(g) Requirement to designate which principal holders of securities are controlled entities and principal distributor disclosure regarding principal holders of securities: This requirement, while not burdensome, is not necessary. It is sufficient to show the inter-relationships diagrammatically and it is probably more meaningful as well.
(h) Requirement to disclose management and IRC holding in the funds: While there are privacy issues that make this disclosure uncomfortable, some investors find such disclosure helpful and, when there are significant holdings, comforting. It is not clear that there is any other way to learn if management is invested in the funds and this information should be provided.

4. **Are there any disclosure requirements from the proposed Form 81-101F1 that are redundant or unnecessary and that can be removed or modified without impacting investor protection or market efficiency? If so, what are the reasons why the disclosure requirements should be removed or modified and how will investor protection and market efficiency be maintained? Are there any significant cost implications associated with sourcing the required disclosure? If so, please explain. Please comment in particular on the proposed Item 4.14 (Ownership of Securities of the Mutual Fund and the Manager) of Part A and whether it should be narrowed in scope or removed entirely.**

The guiding principle for the simplified prospectus form ought to be disclosure necessary or helpful to making an investment decision. Any other disclosure should either be removed in its entirety or required to be disclosed on the fund's designated website.

Consistent with that principle and for the reasons cited in my response to Question 1, item 14.4 of Part A as it relates to ownership of securities of the fund should be removed.

5. **As an alternative to complete removal, are there any disclosure requirements from the proposed Form 81-101F1 that could be relocated to another required disclosure document or to the proposed "designated website" for investment funds, while still maintaining investor protection and market efficiency? If so, why should these disclosure requirements be relocated and where should they be relocated to? Please comment in particular on any of the following proposed Items: a. Part A, Item 4 (Responsibility for Mutual Fund Operations); b. Part A, Item 7 (Purchases, Switches and Redemptions); c. Part A, Item 8 (Optional Services Provided by the Mutual Fund Organization); d. Part B, Item 8 (Name, Formation and History of the Mutual Fund).**

As noted above, the guiding principle for the simplified prospectus form ought to be disclosure necessary or helpful to making an investment decision. Any other disclosure should either be removed in its entirety or required to be disclosed on the fund's designated website.

Consistent with that principle, disclosure items 4.2 to 4.13 in Part A should be moved to the designated website. These disclosures are of interest, potentially, but an investment decision will not hinge on these disclosures. What is necessary or helpful for the investment decision is included in Item 4.1 of Part A. Items 4.2 to 4.13 are mere elaborations on the item 4.1 disclosure.

Disclosure relating to ownership of the manager in item 4.14 of Part A is not necessary for the investment decision but should be posted to the designated website.

Policies and procedures disclosure under item 4.17 of Part A tends to be boilerplate and general and, as such, it is unlikely to be used in the investment decision making process. Knowing the general practices of the fund manager in this regard may be helpful and, therefore, it should be posted to the fund's designated website.

The historical information relating to the mutual fund disclosed under Item 8 of Part B is generally unhelpful to an investment decision. There may be reason, however, why an investor would want to track the history of the fund and, therefore, that information should be posted on the fund's designated website.

6. **The proposed Item 7(2) of Part A of Form 81-101F1 requires a description of the circumstances when the suspension of redemption rights could occur. We are considering, however, whether to require specific disclosure in the prospectus regarding any liquidity risk management policies that have been put in place for the investment fund. This would include a list of any liquidity risk management tools that have been adopted as permitted by securities regulations, along with a brief description of how and when they will be employed and the effect of their use on redemption rights. Would the prospectus be the most appropriate place for this type of disclosure, or are there other alternatives that we should consider?**

The simplified prospectus is the appropriate place for the disclosure contemplated by this question. The status quo is that the investor is subject to the fund's liquidity which is a vital part of the investment decision, i.e. if you cannot get your money out, how can you reasonably decide to invest in the fund? The tools contemplated in the Question are not standard, by definition, and it is important for an investor to understand what tools may be employed by the manager, when and how, as that has a direct bearing on an assessment of liquidity risk.

7. **The current prospectus disclosure rules were drafted at a time when inventories of physically printed prospectuses were required to satisfy prospectus delivery requirements. In recognition of this, flexibility exists in terms of how to deal with amendments to avoid significant costs that might be associated with having to reprint large quantities of commercially prepared copies of the prospectus. With the transition to delivery of the Fund Facts and the ETF Facts documents in place of the**

prospectus, along with the advent of print-on-demand technology and electronic delivery, is it still necessary to maintain this flexibility? Would it be less burdensome for investment funds and investment fund managers to follow the approach taken with the Fund Facts document and ETF Facts document by requiring that all amendments be in the form of an amended and restated prospectus, prepared in accordance with the proposed Form 81-101F1? Why or why not?

If an amended and restated simplified prospectus were required each time a manager sought to amend a simplified prospectus, such would represent a significant burden. Diligent investment fund managers typically have a comprehensive review process involving many employees verifying information in the simplified prospectus that they have knowledge of. This process takes a significant amount of time. Even though there would only be, theoretically, small changes in the amended and restated simplified prospectus, for liability reasons the investment fund manager would want to re-engage this process.

Filing an amended and restated simplified prospectus would make it harder for an investor, or a regulator, to know what has changed and that information may be important to an investor to better understand the context of the fund and the decision-making approach of the manager. An unofficial consolidation can be generated easily if the marketplace deems that to be desirable, but requiring a full amended and restated simplified prospectus will add significant time to the amendment process both for the manager and for the regulator who reviews it.

8. **Item 11.2 (Publication of Material Change) of NI 81-106 sets out requirements that an investment fund must satisfy where a material change occurs in its affairs. Can these requirements be streamlined or modified in any way while maintaining investor protection and market efficiency?**

The requirement for the material change report in Form 51-102F3 is wholly unnecessary. Often this is a mere repetition of the press release and, therefore, it is submitted that just the press release be filed and the material change report requirement be repealed.

9. **Will any exemptive relief decisions be rendered ineffective as a result of the repeal of Form 81-101F2? If so, are there any transitional issues that need to be considered? Please explain.**

While this question must be addressed by each mutual fund issuer, an additional paragraph can be added to Item 13 of Part A or Item 12 of Part B to ensure that any such disclosures have a home.

10. **Are there any disclosure requirements in the proposed Form 81-101F1 that require additional guidance or clarity?**

As there are no new requirements, sufficient clarity and guidance exists.

11. Currently a final prospectus must be filed within 90 days of receiving a receipt for a preliminary prospectus. We are of the view that this requirement is more relevant to non-investment fund issuers and is not necessarily applicable to investment funds, particularly to investment funds in continuous distribution. As a result, we are currently considering whether to either extend the final filing deadline or remove this requirement entirely. Do you have any views on the applicability of this provision to investment fund issuers? If you agree that the provision is not required, please explain whether it would be preferable to extend or eliminate the filing deadline, including the reason for your preference. If an extension is preferred, would 180 days be sufficient?

The issuer cannot continue to distribute securities following the 1 year anniversary of the receipt for the prospectus. The information in a prospectus must be current to a specified date. These requirements serve as excellent guidelines to ensure prospectuses are renewed in a timely fashion. For new funds, the 90 days may represent a burden in the sense that the issuer may simply need more time to address regulatory concerns expressed during the review or a change in market or economic conditions that may impact some element of the structuring of the fund. Marketing on the preliminary simplified prospectus is not permitted and, therefore, the 90-day limit has no relevance. It should be repealed.

Investment Funds Not in Continuous Distribution

12. Should investment funds not in continuous distribution that have already prepared and filed an AIF using Form 81-101F2 be permitted to continue using that Form? If so, why?

It seems like overkill to prepare a full prospectus (as required by proposed s.9.4(2)(a) of NI 81-106) in lieu of an AIF where the fund is no longer in continuous distribution. This would represent a significant burden addition when compared to existing practice and requirements. The annual AIF process is well known and requires minimal updates annually. Changing forms would add significant work initially and the proposed simplified prospectus form would likely require more updating than the current AIF.

13. Should investment funds not in continuous distribution be relieved entirely of the requirement to file an AIF? If so, what impact would this have on an investor's ability to access an up-to-date consolidated disclosure record for an investment fund not in continuous distribution? Alternatively, please comment on whether elements from the current Form 81-101F2 should be incorporated into any of the following: a. Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance; b. a designated website; c. other forms of disclosure (please specify).

If the fund is not in continuous distribution, it is not clear what utility is served by the AIF. The items in an AIF for a fund not in continuous distribution that could remain relevant to an investor should be included on the fund's designated website and otherwise the requirement should be repealed. Please see my response to Question 5 for the items that should be moved to the fund's designated website.

Workstream Two: Investment Fund Designated Website

14. The proposed Part 16.1 of NI 81-106 requires reporting investment funds to designate a qualifying website on which the investment fund must post regulatory disclosure documents. This proposal represents the first stage of a broader initiative to both improve the accessibility of disclosure to investors and enhance the efficiency with which investment funds can meet their disclosure obligations. The CSA, however, recognize that electronic methods of providing access to information and documents besides websites may be used to provide information regarding investment funds. As a result, we ask for specific feedback on the following questions related to the issue of making the proposed Part 16.1 more technologically neutral:

a. Should the proposed Part 16.1 be revised to provide investment funds with the option to designate other technological means of providing public access to regulatory disclosure besides websites? In your response, please comment on the following issues: any potential investor protection concerns, consistency with securities instruments outside of the investment fund regime, and the benefits of making such a change.
b. What other technological means of providing public access to regulatory disclosure should be captured by the proposed amendments? Please be specific. Of these means, please identify which are currently in use and which are expected to be used in the future.
c. Should any parameters (e.g. free to access, accessible to the public) be applied to limit which technological means of providing public access to regulatory disclosure besides websites should be included in the proposed Part 16.1? If so, please state which parameters should apply and why.
d. If you agree that technological means of providing public access to regulatory disclosure besides websites should be included in the proposed Part 16.1, what terms could be used to refer to these means? What are the benefits and drawbacks of each possible option? Some examples include "digital platform", "electronic platform", and "online platform".
e. Are there any elements of the current proposed amendments and proposed changes under Workstream Two that would not work if an investment fund could designate other technological means of providing public access to regulatory disclosure besides websites?

The guiding principle for technological communication should be that the medium must be reasonably accessible to all investors. A designated website satisfies that principle.

15. Are there unintended consequences arising from the proposed section 16.1.2 of NI 81-106 that we should consider? For example, under the proposed section, an investment fund may designate a website that is maintained by a Related Person. We are of the view that this would avoid circumstances where an investment fund would have to create an entirely new and separate website, where to do so would not be desirable. Are there any practical issues associated with this that we should consider?

Allowing the fund a range of options to meet this requirement is a sound approach.

16. Are there any aspects of the proposed guidance provided in 81-106CP that are impractical or misaligned with current market practices?

Proposed clause 11.1(5)(a) states that the designated website should be designed so that a reasonable investor can "access, read, understand and search" the information. It is not clear how a designated website that can be accessed and read can do anything more to help the investor understand the information. The use of "understand" in this clause is inappropriate and introduces a new regulatory requirement which is not appropriate in a Companion Policy. The word "understand" should be removed.

17. Some investment funds may maintain a website that is accessible only by securityholders with an access code and a password (i.e. a private website). Would an investment fund currently maintaining a private website accessible only to its securityholders encounter any issues with the proposed requirement to post regulatory disclosure required by securities legislation on a designated website that is publicly accessible?

I have no information that would be helpful in responding to this question.

Workstream Three: Codify Exemptive Relief Granted in Respect of Notice-and-Access Applications

18. Will participation rates for investment fund securityholder meetings change under the notice-and-access system? In particular, is it anticipated that participation rates would change? Please provide an explanation for your answer.

Participation rates will not materially change. The status quo for meetings of investment fund securityholders is that between zero and two investors actually show up in person at a meeting. This is unlikely to either increase or decrease under notice-and-access. In terms of proxy returns, the numbers are low on a historical basis and despite very low quorum requirements (in the constating documents of the fund) for meetings of investment funds, it is sometimes a challenge to meet even these. If as a result of notice-and-access it becomes increasingly difficult to meet the quorum requirements, investment fund managers may determine that some form of overt proxy solicitation is appropriate. In that case participation may well increase.

Workstream Four: Minimize Filings of Personal Information Forms

No questions.

Workstream Five: Codify Exemptive Relief Granted in Respect of Conflicts Applications

19. The Proposed Amendments include new exemptions in sections 6.3 and 6.5 of NI 81-107 to permit secondary market trades in debt securities of related issuers and secondary market trades in debt securities with a related dealer, respectively. The exemptions are based on discretionary relief granted to date that includes pricing conditions. The pricing conditions are not the same under each exemption and also differ from what is currently codified under section 6.1 of NI 81-107.

- **In accordance with subsection 6.1(2) of NI 81-107, for inter-fund trades of portfolio securities between related reporting investment funds, non-reporting investment funds and managed accounts, the portfolio manager may purchase or sell a debt security if, among other conditions, all of the following apply:**
    - **the bid and ask price of the security is readily available as provided under paragraph 6.1(2)(c);**
    - **the transaction is executed at a price, which is the average of the highest current bid and lowest current ask determined on the basis of reasonable inquiry as provided under paragraph 6.1(2)(e) and subparagraph 6.1(1)(a)(ii).**
- **In accordance with the proposed paragraph 6.3(1)(d) of NI 81-107, reporting and non-reporting investment funds would be able to invest in non-exchange traded debt securities of a related issuer in the secondary market if, among other conditions, all of the following apply:**
    - **where the purchase occurs on a marketplace, the price is determined in accordance with the requirements of that marketplace as provided under the proposed subparagraph 6.3(1)(d)(i) of NI 81-107;**
    - **where the purchase does not occur on a marketplace, as provided under the proposed subparagraph 6.3(1)(d)(ii), the price is either of the following:**
        - **the price at which an arm's length seller is willing to sell the security;**
        - **not more than the price quoted publicly by an independent marketplace or the price quoted, immediately before the purchase, by an arm's length purchaser or seller.**

- **In accordance with the proposed subsection 6.5(1), reporting investment funds, non-reporting investment funds and managed accounts, may trade debt securities with a related dealer if, at the time of the transaction, among other conditions, all of the following apply:**

    - **the bid and ask price of the security transacted is readily available as provided under the proposed paragraph 6.5(1)(d);**

    - **the purchase is not executed at a price which is higher than the available ask price and the sale is not executed at a price which is lower than the available bid price, as provided in the proposed paragraph 6.5(1)(e).**

Should these pricing conditions be revised? Should they be more harmonized? Are there any self-regulatory organization rules or guidance for pricing methods that we should consider in such cases?

These pricing conditions should neither be revised nor further harmonized. The conditions are consistent with the conditions contained in exemptive relief and many funds have been operating under these conditions for years without incident. A change to the conditions would necessarily be disruptive as new processes and controls may have to be considered to meet any additional or different requirements.

Workstream Six: Broaden Pre-Approval Criteria for Investment Fund Mergers

20. **We propose to mandate new disclosure requirements in the Information Circular in subparagraph 5.6(1)(a)(ii) and paragraph 5.6(1)(b) of NI 81-102 as pre-approval criteria for investment fund mergers. Are there any additional disclosure elements that we should require beyond what has been proposed? If so, please provide details.**

A better approach to disclosure would be to remove subclause (i) of proposed clause 5.6(1)(b) and apply subclause (ii)(A) to all mergers, thereby giving investors an explanation as to why a particular course of action was taken from a tax perspective and why that action is in the best interests of securityholders of the fund.

In a fund merger, if there is a "qualifying exchange" under the *Income Tax Act* (Canada), then the following happens:

- Any accumulated losses held by the terminating fund are lost – this is a real cost to unitholders and a reason why often a poorly performing fund will seek an investment objective change rather than a merger, as the accumulated losses allow for investment gains to be sheltered from tax
- Any accumulated losses held by the continuing fund are lost – similarly, this is a real cost to secruityholders of the continuing fund who suffered through the losses but will not be able to realize a corresponding tax benefit

- Any accumulated gains of the terminating fund are transferred to the continuing fund – this is a cost to the unitholders of the continuing fund since any capital gains realized on the disposition of the incoming positions will be shared by continuing fund securityholders who did not benefit from the growth in value of that security

The foregoing shows that a qualifying exchange is not an innocuous event. It is important that investors understand these consequences when considering a fund merger.

Workstream Seven: Repeal Regulatory Approval Requirements for Change of Manager, Change of Control of a Manager, and Change of Custodian that Occurs in Connection with a Change of Manager

21. Given the oversight regime in place for investment fund managers, we are proposing to repeal the requirement for regulatory approval of a change of manager or a change of control of a manager under Part 5 (Fundamental Changes) of NI 81-102. Does this proposal raise any investor protection issues? If so, explain what measures, if any, securities regulators should consider in order to mitigate such issues. Alternatively, should we maintain the requirements for regulatory approval of these matters and seek to streamline the approval process by eliminating certain requirements in subsection 5.7(1) of NI 81-102? If so, please comment on whether such an approach would be preferable to the existing proposal, which has been put forward with consideration given to the presence of the investment fund manager registration regime.

While an approval requirement is justifiably unnecessary with the implementation of the investment fund manager registration category, a regulatory pre-notice requirement would be desirable as it would give the regulators an opportunity to intervene if there is a regulatory issue with the proposed new IFM. While a regulatory investigation ought not to interfere with the business of an IFM until the investigation is concluded, a matter under investigation may be considered sufficiently serious that investor protection requires intervention. The foregoing is similar in nature to the alternative raised in this question and in most cases it should be sufficient for the terminating IFM to simply file a letter with the principal regulator stating that as of a particular date, the continuing IFM will become the IFM of the affected funds and confirming that such person is registered as an IFM in the jurisdiction.

22. When there is a change of manager or a change of control of a manager, should securityholders have the right to redeem their securities without paying any redemption fees before the change? If so, what should be the period after the announcement of the change during which securityholders should be allowed to redeem their securities without having to pay any redemption fees?

It is not clear what the rationale would be for permitting the "free exit" contemplated by this Question. Recall that redemption charge securities were created at a time when investors paid upfront commissions for mutual fund subscriptions. Such is rarely the case today. In that context, the DSC was effectively a pre-payment penalty on a loan from the manager to the investor to fund that upfront commission. The loan would be repaid through the management fees earned on

the investment that gave rise to the commission. The standard redemption charge schedule was based on the amount of time it would take to be fully repaid for the loan based on certain performance assumptions, and the redemption charge itself was intended to cover the shortfall on the interest that the manager expected to earn on the loan from an early redemption. In a standard loan, there would never be loan forgiveness on the change of control of the lender and this situation is directly analogous. Therefore, there is no rationale for a "free exit" as contemplated above and this should be removed from consideration.

23. We propose to add to subsection 5.4(2) of NI 81-102 certain disclosure requirements in the Information Circular regarding a change of manager. Is there any other disclosure in the Information Circular that we should mandate, beyond what has been proposed? If so, please provide details.

No other disclosure should be mandated.

24. When a change of manager is planned, we are considering requiring that the related draft Information Circular be sent to securities regulators for approval before it is sent to securityholders in accordance with subsection 5.4(1) of NI 81-102. What concerns, if any, would arise from introducing this requirement? We expect that securities regulators would establish a process to review the Information Circular. If securities regulators took 10 business days to approve the Information Circular as part of the review process, would that create any issues with respect to the organization of the securityholder meeting?

A change of manager is rarely a surprise event. It is planned and scheduled with the interests of stakeholders in mind. Since the information circular carries with it prospectus-level liability it should be reviewed by the regulators and that review process should be built into project timelines. Building information circular reviews into project timelines is already standard when there is an application for relief that may impact the disclosure in the information circular and, while making it mandatory that all circulars be reviewed is an additional burden, it is one that will enhance investor protection and should be adopted.

25. Investment funds currently rely on the form of Information Circular provided for in Form 51-102F5 Information Circular of NI 51-102, which was developed primarily for non-investment fund issuers.

a. Should Form 51-102F5 of NI 51-102 be replaced with an Information Circular form that is tailored to investment funds?

Investment funds have been operating using form 51-102F5 for many years now. It is part of the routine and there have been no real complaints about use of the form such that a change of form is warranted at this time. To the extent that the form is not perfect an alternative form could be proposed for investment funds but it should be up to the investment fund manager to decide which form to use. For a seasoned investment fund manager, it would make sense to continue to use Form 51-102F5 since its precedents would all be in that form.

b. If investment funds had their own form of Information Circular, would this reduce costs or make it easier to comply with requirements to produce an Information Circular?

It is not particularly difficult to comply with the information circular requirements today and, so, it is difficult to imagine that a new form would make it easier. I would expect this particular proposal to be cost neutral.

c. If investment funds had their own form of Information Circular, are there certain form requirements that should be added which would provide investors with useful disclosure that is not currently required by Form 51-102F5? Alternatively, are there disclosure requirements that could be removed? Please provide details.

No items should be added to an investment fund form of information circular. The following items can be safely removed from Form 51-102F5:

- Item 5 of Form 51-102F5, Interest of Certain Persons or Companies in Matters to be Acted Upon, is not necessary in the investment fund context and this has become meaningless, boilerplate disclosure in investment fund information circulars.

- Item 7, Election of Directors, as this has no application to investment funds.

- Item 8, Executive Compensation, as this has no application to investment funds and how the investment fund manager is compensated is already provided for in other continuous disclosure documents applicable to investment funds.

- Item 9, Securities Authorized for Issuance Under Equity Compensation Plan, as this has no application to investment funds.

- Item 10, Indebtedness of Directors and Executive Officers, as an investment fund cannot lend money.

- Item 15, Restricted Securities, as this has no application to investment funds.

d. Should investors receive additional tailored disclosure adapted to their needs? Would investors benefit from receiving a summary of key information from the Information Circular in a simple and comparable format, in addition to the Information Circular itself or as a distinctive part of the Information Circular (e.g. as a summary appearing at the front of the document)?

Additional tailored disclosure is not necessary. The concept of comparability does not apply to information circulars in the same manner as fund facts documents or simplified prospectuses.

Workstream Eight: Codify Exemptive Relief Granted in Respect of Fund Facts Delivery Applications

26. Currently, a separate Fund Facts or ETF Facts must be filed for each class or series of a mutual fund or ETF that is subject to NI 81-101, or NI 41-101 respectively. The Proposed Amendments contemplate allowing a mutual fund to prepare a single consolidated Fund Facts that includes all the classes or series covered by certain automatic switch programs on the basis that the only distinction between the classes or series relates to fees.

a. Should the CSA consider allowing the preparation and filing of consolidated Fund Facts and ETF Facts where there are no distinguishing features between classes or series other than fees, even in circumstances where there is no automatic switch program? Alternatively, should the CSA consider mandating consolidation in such circumstances? In either case, we anticipate revising the form requirements of Form 81-101F3 to be consistent with paragraph 3.2.05(e) of NI 81-101 as set out in Appendix B, Schedule 8 of this publication.

The CSA should certainly allow the preparation and filing of consolidated Fund Facts and ETF Facts where there are no distinguishing features between classes or series other than fees. As previously argued by the industry, this is better disclosure as it lets a prospective investor know the full range of fee options and leads to useful inquiries.

b. Are there other circumstances where consolidation should be allowed or mandated? If so, what parameters should be placed on such consolidation? Additionally, what disclosure changes would need to be made to Form 81-101F3 to accommodate the consolidation?

I know of no other circumstances where consolidation is warranted and would result in investor protection being preserved.