Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Staff Notice 11-334 Notice of Local Amendments and Changes in Certain Jurisdictions

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 11-334
Notice of Local Amendments and Changes in Certain Jurisdictions

January 19, 2017

From time to time, a local jurisdiction may amend a national or multilateral instrument or change a policy or companion policy that affects activity only in that jurisdiction. The CSA recognize that such a local amendment or change may nonetheless be of interest or importance beyond the local jurisdiction and CSA staff are issuing this Notice to identify amendments and changes implemented in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon. For public convenience, CSA members in other jurisdictions will update the text of the applicable material on their websites to reflect these local amendments and changes.

The local amendments and changes referred to in this notice include:

- Ontario changes to National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*, National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*, National Policy 11-205 *Process for Designation of Credit Rating Organizations in Multiple Jurisdictions* and an Ontario amendment to Form 45-106F1 *Report of Exempt Distribution*.

- Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon amendments to National Instrument 13-101 *System for Electronic Data Analysis and Retrieval (SEDAR)*.

- Alberta amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 45-102 *Resale of Securities*, Multilateral Instrument 45-108 *Crowdfunding* and National Instrument 58-101 *Disclosure of Corporate Governance Practices* and Alberta changes to Companion Policy 45-108 *Crowdfunding*.

- New Brunswick amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and National Instrument 45-106 *Prospectus Exemptions* and New Brunswick changes to Companion Policy 45-106 *Prospectus Exemptions*.

The local amendments and changes are summarized in Annexes A, B, C and D. The text of rule and policy consolidations on the websites of CSA members will be updated, as necessary, to reflect these local amendments and changes.

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ANNEX A

LOCAL AMENDMENTS AND CHANGES – ONTARIO

1. Section 8.1 of National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions is changed by adding the following after subsection 8.1(1):

(1.1) Despite subsection (1), in Ontario prefilings and waiver applications are submitted in accordance with Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*.

2. Section 5.5 of National Policy 11-203 Process for Exemptive Relieve Applications in Multiple Jurisdictions is changed by replacing "applications@osc.gov.on.ca***" with "***https://www.osc.gov.on.ca/filings***".***

3. Section 13 of National Policy 11-205 Process for Designation of Credit Rating Organizations in Multiple Jurisdictions is changed by replacing "applications@osc.gov.on.ca***" with "***https://www.osc.gov.on.ca/filings***".***

4. Schedule 1 of Form 45-106F1 is amended by adding the following below the heading "**f) Other information***" and before "***1. Is the purchaser a registrant? (Y/N)***":***

In Ontario, clauses (f)1. and (f)2. do not apply if one or more of the following apply:

(a) the issuer is a foreign public issuer;

(b) the issuer is a wholly owned subsidiary of a foreign public issuer;

*(c) the issuer is distributing eligible foreign securities only to permitted clients.***.**

The changes in items 1, 2 and 3 all became effective on February 19, 2014 and the amendment in item 4 became effective on July 29, 2016.

Blanket orders issued in all other CSA jurisdictions, except for Québec, have the same effect as the Ontario amendments noted in item 4. In Québec, no blanket order is required and this amendment has been made administratively and is reflected in the current Québec version of the form.[1]

[1] BC Instrument 45-537 (BC), Blanket Order 45-518 (AB), General Order 45-502 (SK), Blanket Order 45-504 (MB), Blanket Order No. 45-527 (NS), Blanket Order 45-510 (NB), Blanket Order Number 100 (NL), Blanket Order 45-512 (PE), Blanket Order 45-503 (NT), Superintendent order 2016/02 Y.S.A. (YK), Blanket Order 45-503 (NU).

ANNEX B

LOCAL AMENDMENTS – ALBERTA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, NORTHWEST TERRITORIES, NUNAVUT, PRINCE EDWARD ISLAND, QUÉBEC, SASKATCHEWAN AND YUKON

1. Appendix A – Mandated Electronic Filings of National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by adding the following:

(a) to section I Mutual Fund Issuers:

D. Exempt Market Offerings and Disclosure

1.	Form 45-106F1 *Report of Exempt Distribution*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
2.	Material required to be filed or delivered under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
3.	Disclosure document delivered to subscribers under section 37.2 of the *Securities Regulation* (Québec)	Que

(b) to section II Other Issuers (Reporting/Non-reporting):

E. Exempt Market Offerings and Disclosure

1.	Form 45-106F1 *Report of Exempt Distribution*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
2.	Material required to be filed or delivered under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
3.	Disclosure document delivered to subscribers under section 37.2 of the *Securities Regulation* (Québec)	Que
4.	Form 5 – *Start-up Crowdfunding – Report of Exempt Distribution* and offering document required to be filed or delivered under the start-up crowdfunding prospectus and registration exemptions	Sask, Man, Que, NB, NS
5.	Offering document, distribution materials, financial statements and notices required to be filed or delivered by an issuer under Multilateral Instrument 45-108 *Crowdfunding*	Sask, Man, Que, NB, NS

The amendments became effective in New Brunswick on May 23, 2016, in Saskatchewan on May 26, 2016 and in the other enumerated jurisdictions on May 24, 2016. Further amendments to section II.E are reflected in Annex C, below.

ANNEX C

LOCAL AMENDMENTS AND CHANGES – ALBERTA

1. Appendix A – Mandated Electronic Filings, section II Other Issuers (Reporting/Non-reporting), under E. Exempt Market Offerings and Disclosure of National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by replacing section 5. with the following:

5.	Offering document, distribution materials, financial statements and notices required to be filed or delivered by an issuer under Multilateral Instrument 45-108 *Crowdfunding*	Alta, Sask, Man, Que, NB, NS

2. Appendix A – Mandated Electronic Filings, section II Other Issuers (Reporting/Non-reporting), under E. Exempt Market Offerings and Disclosure of National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by adding the following:

6.	Offering document required to be filed or delivered under ASC Rule 45-517 *Prospectus Exemption for Start-up Businesses*	Alta

3. Section 10.1(1)(a) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by replacing "2.1 of the Schedule – Fees in Alta. Reg.115/95 – Securities Regulation***" with "***5 of ASC Rule 13-501 Fees***".***

4. Appendix D of National Instrument 45-102 Resale of Securities is amended

(a) by adding "1.***" before "***Except in Manitoba***"; and***

(***b***) ***by adding before "***Transitional and other Provisions" the following:

2. In Alberta, Ontario, Québec, New Brunswick, and Nova Scotia, the exemption from the prospectus requirement in section 5 [*Crowdfunding prospectus exemption*] of Multilateral Instrument 45-108 *Crowdfunding*.

The amendment in item 2 became effective on July 19, 2016, the amendments in items 1 and 4 became effective on October 31, 2016, and the amendments in item 3 became effective on December 1, 2016.

Related to items 1 and 4, Multilateral Instrument 45-108 *Crowdfunding* was adopted (along with all related Forms) as of October 31, 2016 in Alberta. The Alberta version of that Instrument includes the following amendments:

(a) the words "in Ontario" are replaced, wherever they occur, by the words "in Alberta and Ontario" in:

(i) the definition of "restricted dealer funding portal" in section 1,

(ii) paragraphs 5(1)(c) and (d),

(iii) subparagraphs 6(d)(iii) and (iv),

(iv) paragraphs 20(c) and (d),

(v) paragraph 26(e),

(vi) paragraphs 34(b) and (c),

(vii) paragraphs 36(c) and (d) and

(viii) subsection 44(3);

(b) section 41 is amended by:

(i) deleting the word "and" at the end of paragraph 41(a),

(ii) replacing the "." at the end of paragraph 41(b) with ", and", and

(iii) adding the following after paragraph 41(b):

(c) in Alberta, a distribution of securities made in reliance on Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses*, provided that the restricted dealer funding portal and a registered individual of the restricted dealer funding portal are in compliance with the terms, conditions, restrictions and requirements in this Instrument."

In addition, Companion Policy 45-108 *Crowdfunding* was adopted in Alberta, also as of October 31, 2016. (It had previously been adopted in SK, MB, ON, QC, NB and NS). The Alberta version of this Companion Policy includes the following changes:

(a) the words "in Ontario" are replaced, wherever they occur, by the words "in Alberta and Ontario" in:

(i) the second paragraph under the heading "(a) Restricted dealer funding portal" in Part 1,

(ii) subsection 5(1) under the heading "Investment Limits",

(iii) section 6 under the heading "Confirmation of investment limits", and

(iv) section 34;

(b) adding the following at the end of section 9:

In Alberta, a crowdfunding offering document has been designated as an offering memorandum and the rights available under the Securities Act (Alberta) apply. Refer to Alberta Securities Commission Designation Order Designation of a Crowdfunding Offering Document under Multilateral Instrument 45-108 Crowdfunding as an Offering Memorandum.

(c) adding the following immediately after the first sentence of the first paragraph of section 41:

In addition, in Alberta, a restricted dealer funding portal and a registered individual of the restricted dealer funding portal may act as an intermediary in connection with a distribution of securities under ASC Rule 45-517 Prospectus Exemption for Start-up Businesses.

(d) adding the following immediately after the first sentence of the second paragraph of section 41:

In Alberta, it also applies a distribution of securities under ASC Rule 45-517 Prospectus Exemption for Start-up Businesses.

Finally, effective December 31, 2016, Alberta implemented amendments to NI 58-101 *Disclosure of Corporate Governance Practices* (which had previously been implemented in MB, NB, NL, NWT, NS, NU, ON, QC, SK and YT). The amendments established, in Alberta, the disclosure requirements in Form 58-101F1 *Corporate Governance Disclosure* (captured in items 10 to 15 of that Form) with respect to the representation of women on the boards of directors and in executive officer positions of Alberta's non-venture issuers as well as with respect to the term or other mechanisms of board renewal for board directors. Further, to the extent that an issuer has not adopted the related mechanisms, policies, or targets, or does not consider the representation of women, it is required to disclose its reasons for not doing so.

ANNEX D

LOCAL AMENDMENTS – NEW BRUNSWICK

1. ***Subsection 8.12(3) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by adding "***New Brunswick,***" after "***Manitoba,***".***

2. ***Subsection 2.36(3) of National Instrument 45-106 Prospectus Exemptions is amended by adding "***New Brunswick,***" after "***Manitoba,***".***

3. ***Section 4.7 of Companion Policy 45-106 Prospectus Exemptions is amended by adding "***New Brunswick,***" after "***Manitoba,***".***

These amendments became effective on October 5, 2016.

1.1.2 Uranium308 Resources Inc. et al.

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, c. S.5 AS AMENDED

AND

IN THE MATTER OF
URANIUM308 RESOURCES INC., MICHAEL FRIEDMAN,
GEORGE SCHWARTZ, PETER ROBINSON and SHAFI KHAN

NOTICE OF WITHDRAWAL

WHEREAS:

1. On February 20, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in securities by Uranium308 Resources Inc. (“U308 Inc.”) shall cease and that all trading in Uranium308 Resources Inc. securities shall cease; that all trading in securities by Uranium308 Resources Plc. (“U308 Plc.”) shall cease and that all trading in Uranium308 Resources Plc. securities shall cease; that all trading in securities by Innovative Gifting Inc. (“IGI”) shall cease; and, that Michael Friedman (“Friedman”), Peter Robinson (“Robinson”), George Schwartz (“Schwartz”), and Alan Marsh Shuman (“Shuman”) cease trading in all securities (the “Temporary Order”);

2. On February 20, 2009, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

3. On February 23, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on March 6, 2009 at 10:00 a.m.;

4. The Notice of Hearing set out that the Hearing was to consider, inter alia, whether, in the opinion of the Commission, it was in the public interest, pursuant to subsections 127 (7) and (8) of the Act, to extend the Temporary Order until the conclusion of the hearing, or until such further time as considered necessary by the Commission;

5. On March 6, July 10, November 30, 2009 and on February 3, 2010, hearings were held before the Commission and the Commission ordered that the Temporary Order be extended;

6. On February 3, 2010, the Commission ordered that the Temporary Order be extended until March 8, 2010 and the hearing with respect to the matter be adjourned to March 5, 2010;

7. On March 2, 2010, the Commission issued a Notice of Hearing to consider, *inter alia*, whether to make orders, pursuant to sections 37, 127, and 127.1, against U308 Inc., Friedman, Schwartz, Robinson and Shafi Khan (“Khan”) (collectively the “Respondents”);

8. On March 2, 2010, Staff of the Commission issued a Statement of Allegations against the Respondents;

9. Staff served the Respondents with the Notice of Hearing dated March 2, 2010 and Staff’s Statement of Allegations dated March 2, 2010. Service by Staff was evidenced by the Affidavit of Service of Joanne Wadden, sworn on March 4, 2010, which was filed with the Commission;

10. On March 5, 2010, the Commission ordered that the Temporary Order be extended until April 13, 2010 and the hearing with respect to the matter be adjourned to April 12, 2010;

11. On March 5, 2010, counsel for Staff advised the Commission that Staff were not seeking to extend the Temporary Order against Shuman and the Commission did not extend the Temporary Order against Shuman;

12. On April 12, 2010, counsel for Staff, Khan, and counsel for Friedman appeared before the Commission. Counsel for Robinson was not present but he had provided information to counsel for Staff which was relayed to the Commission. Schwartz was also not present but he had provided information to counsel for Staff which was relayed to the Commission;

13. On April 12, 2010, counsel for Staff requested the extension of the Temporary Order as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc.;

14. On April 12, 2010, counsel for Staff provided counsel for Friedman and Khan with Staff's initial disclosure in this matter. Counsel for Staff advised the Commission that Staff's initial disclosure was also prepared and available for the other respondents to pick up from Staff;

15. On April 12, 2010, the Commission was of the opinion that it was in the public interest to order that, pursuant to subsection 127(8) of the Act, the Temporary Order is extended as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc. to July 2, 2010 and that the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order is adjourned to June 30, 2010, at 10:00 a.m. at which time a pre-hearing conference will be held;

16. On June 30, 2010, the Commission was of the opinion that it was in the public interest to order that, pursuant to subsection 127(8) of the Act, the Temporary Order is extended as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc. until the completion of the hearing on the merits in this matter;

17. On June 30, 2010, the pre-hearing conference was commenced and the parties present made submissions to the Commission;

18. On June 30, 2010, the Commission adjourned the pre-hearing conference to continue on July 22, 2010 at 10:00 a.m.;

19. On July 22, 2010, the pre-hearing conference continued and Khan and Schwartz were present at the pre-hearing conference. A student-at-law with the office of counsel for Robinson was also present. Counsel for Friedman and U308 Inc. was not able to attend on July 22, 2010, but Staff advised the Commission of the reason for their non-attendance;

20. On July 22, 2010, the Commission was of the opinion that it was in the public interest to order that the hearing with respect to this matter is adjourned to August 30, 2010, at 10 a.m. at which time the pre-hearing conference would be continued;

21. On August 30, 2010, the pre-hearing conference continued and the following persons were in attendance: Khan; counsel for Robinson; and counsel for Friedman and U308 Inc. Schwartz was not able to attend but Staff advised the Commission of the reason for his non-attendance. The parties present made submissions to the Commission;

22. On August 30, 2010, the Commission was of the opinion that it was in the public interest to order that the hearing with respect to this matter is adjourned to October 12, 2010, at 2:30 p.m. at which time the pre-hearing conference would be continued;

23. On October 8, 2010, the Commission approved a Settlement Agreement entered into between Staff, U308 Inc. and Michael Friedman. On October 8, 2010, the Commission issued an order, pursuant to sections 37 and 127(1) of the Act, against U308 Inc. and Friedman;

24. On October 12, 2010, the pre-hearing conference continued and the following persons were in attendance: Khan; counsel for Robinson; and Schwartz. The parties present made submissions to the Commission;

25. The Commission ordered that the hearing on the merits with respect to this matter commence on April 4, 2011 at 10 a.m. and continue on April 6, 7, 11, 12, 13, 14, 15, 18 and 20, 2011 (the "Hearing Dates");

26. On November 5, 2010, the Commission approved a Settlement Agreement entered into between Staff and Robinson;

27. On December 13, 2010, Schwartz and Victor York ("York"), who is a respondent in a related proceeding before the Commission, *York Rio Resources Inc. et. al* (the "Applicants"), together brought a motion for dismissal or adjournment of the proceedings against them (the "Dismissal or Adjournment Motion");

28. The Dismissal or Adjournment Motion was denied by way of an endorsement of the Commission dated December 15, 2010;

29. On March 23, 2011, Staff laid charges pursuant to section 122 of the Act against Schwartz in the Ontario Court of Justice;

30. Pursuant to the Information regarding the charges laid against Schwartz, Schwartz is to make his first appearance in the Ontario Court of Justice in answer to these charges on April 11, 2011 at 9:00 a.m.;

31. By letter dated March 29, 2011, on consent of Schwartz and Khan, Staff requested that the Hearing Dates be vacated and that the hearing on the merits with respect to this matter be adjourned to dates to be fixed by the Office of the Secretary;

32. Staff submit that it is in the public interest to adjourn the Hearing Dates in light of the proceeding initiated by Staff under section 122 of the Act;

33. Staff advised the Commission that all the parties consented to the adjournment of the Hearing Dates;

34. On March 30, 2011, the Hearing Dates were vacated and the hearing on the merits was adjourned to dates to be provided by the Secretary's Office and agreed to by the parties;

35. On February 24, 2012, in the Ontario Court of Justice, Schwartz entered pleas of guilt to one count of breaching a cease trade order contrary to s. 122(1)(c) of the Act and one count of unregistered trading contrary to s. 25(1)(a) of the Act;

36. On March 29, 2012, Schwartz was sentenced to 90 days jail, to be followed by 12 months probation and ordered to perform 100 hours of community service.

37. On May 2, 2012, Schwartz filed a notice of appeal against conviction and sentence in the Superior Court of Justice;

38. On August 1, 2013, Schwartz's appeal against conviction and sentence was dismissed by the Superior Court of Justice;

39. Schwartz applied to the Court of Appeal for Ontario for leave to appeal the decision of the Superior Court of Justice dismissing his appeal against conviction and sentence;

40. On November 8, 2013, the Court of Appeal for Ontario dismissed Schwartz's leave application.

41. The March 2, 2010 Statement of Allegations remain outstanding against Khan;

TAKE NOTICE that Staff withdraw the allegations against Khan.

January 13, 2017

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1.1.3 The Investment Funds Practitioner – December 2016 [Corrected]

[Editor's note: *The Investment Funds Practitioner* – December 2016 is being republished to correct the omission of footnote 1 on page 602 below.]

OSC

THE INVESTMENT FUNDS PRACTITIONER

From the Investment Funds and Structured Products Branch, Ontario Securities Commission

WHAT IS THE INVESTMENT FUNDS PRACTITIONER?

The Practitioner is an overview of recent issues arising from applications for discretionary relief, prospectuses, and continuous disclosure documents that investment funds file with the OSC. It is intended to assist investment fund managers and their staff or advisors who regularly prepare public disclosure documents and applications for exemptive relief on behalf of investment funds.

The Practitioner is also intended to make you more broadly aware of some of the issues we have raised in connection with our reviews of documents filed with us and how we have resolved them. We hope that fund managers and their advisors will find this information useful and that the Practitioner can serve as a useful resource when preparing applications and disclosure documents.

The information contained in the Practitioner is based on particular factual circumstances. Outcomes may differ as facts change or as regulatory approaches evolve. We will continue to assess each case on its own merits.

The Practitioner has been prepared by staff of the Investment Funds and Structured Products Branch and the views it expresses do not necessarily reflect the views of the Commission or the Canadian Securities Administrators.

REQUEST FOR FEEDBACK

This is the 18th edition of the Practitioner. Previous editions of the Practitioner are available on the OSC website www.osc.gov.on.ca under *Investment Funds & Structured Products* on the *Industry* tab. We welcome your feedback and any suggestions for topics that you would like us to cover in future editions. Please forward your comments by email to *investmentfunds@osc.gov.on.ca*.

CONTINUOUS DISCLOSURE

Portfolio Disclosure Practices of Exchange-Traded Funds

Staff have recently reviewed the practices of managers of exchange-traded mutual funds (ETFs) for disclosing the portfolio holdings of their ETFs. We have focused our review on instances where ETF managers disclose the daily portfolio holdings of their ETFs to authorized dealers, but not to the public.

Authorized dealers play a critical role in an ETF's liquidity. They are dealers who have entered into agreements with ETF managers that give them the ability to subscribe for securities in large blocks from the ETF at the net asset value per security calculated at the end of the day. Knowledge of the portfolio holdings of an ETF enables authorized dealers to assess whether there is a discrepancy between the market price of the ETF's securities and the underlying market value of the ETF's portfolio holdings (the underlying value) and to determine hedges for their positions. Where there is a divergence in these two values, authorized dealers carry out arbitrage trades that bring the market price of the ETF's securities closer to the ETF's underlying value. While investors who are not authorized dealers cannot engage in arbitrage trades with precise portfolio knowledge and the ability to transact directly with the ETF, the arbitrage activities generally help the ETF's securities to trade close to their underlying value with narrower bid-ask spreads.

Staff questioned whether disclosing an ETF's daily portfolio holdings to authorized dealers without concurrently disclosing the same information to the public creates a material information asymmetry between the authorized dealers and other investors, particularly retail investors. We focused on whether the information advantage that authorized dealers possess may make it possible for them to engage in unfair trading against other investors that is not consistent with market making activities to provide liquidity. As part of our review, we met with ETF managers, the Investment Industry Regulatory Organization of Canada (IIROC), the Toronto Stock Exchange, and other market participants to discuss our concerns and to better understand ETF portfolio disclosure practices and their impact.

We found that most ETF managers are disclosing portfolio holdings to the public daily and that the issue of asymmetric information is confined to a comparatively small segment of ETFs that are actively managed, where the ETF managers consider portfolio holdings to be proprietary.[1] This segment is, by our estimate, approximately 3% of the ETF market, comprising $3.5 billion in assets as of June 2016.

ETF managers submitted that entering into agreements with multiple authorized dealers for an ETF reduces the possibility of an authorized dealer unfairly benefitting from the portfolio holdings information, because competition for trades among the authorized dealers will narrow the quoted spread on the ETF's securities and bring the market price of the ETF's securities in line with their underlying value. We also heard submissions that ETF portfolio holdings information may be of limited use for retail investors, who are more concerned with the identity of the portfolio manager and the investment objectives, strategies and performance of the ETF.

Staff had extensive discussions with IIROC about the risks that may arise from the authorized dealers' possession of the portfolio holdings information of actively managed ETFs. IIROC currently conducts market surveillance and trading reviews of trades of all securities, including ETF securities. We understand that IIROC, as part of its Trading Conduct Compliance (TCC) reviews, will examine the appropriateness of supervisory controls an authorized dealer has implemented to monitor the use of portfolio holdings information.

Based on our review and discussions to date, we believe that access to actively managed ETFs affords additional choices to investors, and that any risks from asymmetric information can be limited by IIROC's oversight through its TCC reviews. Staff, along with IIROC, will continue to monitor these practices and other developments in the industry, including the introduction of platform trading for mutual funds by various exchanges, which may offer a new avenue for managers of actively managed ETFs to offer their products without the need to disclose daily portfolio holdings to authorized dealers. If the product landscape changes and we find any harm to investors or the public interest as a result of the current portfolio disclosure practices, staff will recommend appropriate regulatory action, including further action to regulate such practices, or any other remedy required by the circumstances.

Review of Scholarship Plans

Staff have started to review, on an issue-oriented basis, scholarship plans registered as Registered Education Savings Plans, to obtain further information on their general operational practices. The scope of our review concerns methods of allocating income earned, practices concerning accumulated income payments, disclosure practices, investment restrictions and the implementation of the key elements of the Undertaking[2] for those providers which have executed an Undertaking. Staff's review began in November 2016 with letters sent to all of the scholarship plan providers in Ontario.

Staff will communicate our findings from this review in a future communication, as appropriate.

INDEPENDENT REVIEW COMMITTEES (IRCs)

Consideration of Different Securityholder Interests

An investment fund manager's duty of care is set out in s. 116 of the *Securities Act* (Ontario). Members of an Independent Review Committee (IRC) have a similar duty with respect to conflict of interest matters referred to them by the investment fund manager. Section 3.9(1) of National Instrument 81-107 *Independent Review Committee for Investment Funds* imposes a fiduciary duty on a member of an IRC to (a) act honestly and in good faith, with a view to the best interests of the investment fund, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

To act in the best interests of the investment fund, IRC members should have a good understanding of the broad investor groups invested in the fund. Staff encourage IRC members to conduct their analyses of the issues presented by fund managers not only by considering the interest of the investment fund itself, but also the interests of the securityholders of the fund. While conducting these analyses the interests of the investors in the fund should not be considered at an individual level but rather, take into account the impact of the proposed action on different groups of securityholders invested in the fund. For example, the analysis could consider the impact of the proposed action on taxable versus non-taxable investors, on newer investors versus longer term investors in the fund, and on investors who purchased under a deferred sales charge versus investors who purchased on a front-end load basis.

[1] ETFs may be broadly classified into "index" ETFs that track a transparent index or asset and "non-index" ETFs that do not. Within the "non-index" group, there are (a) "rules-based" ETFs: ETFs that generally hold a portfolio that is rebalanced periodically in accordance with a rules-based investment methodology, and (b) "actively managed" ETFs: ETFs that have discretion to invest without regard to any index or rules-based methodology.

[2] A discussion of the Undertaking is provided in *The Investment Funds Practitioner* dated May 2013 under *Scholarship Plans*.

Staff remind IRC members of the need to balance and consider the varied interests of securityholders when determining whether a proposed action concerning a conflict of interest matter is in the best interests of the investment fund.

APPLICATIONS

Relief to Use Notice-and-Access Procedures for Securityholder Meetings

Staff have recently recommended exemptive relief from the requirement to deliver an information circular in connection with an investment fund securityholder meeting in order to deliver a "notice-and-access" document in connection with a notice-and-access procedure.[3] This relief allows an investment fund to deliver a notice-and-access document, which is a notice that provides basic information about the subject matter of the securityholder meeting, as well as instructions for how a securityholder can access the information circular online or request delivery of the information circular.

The terms of the relief are intended to be comparable to the notice-and-access procedure that non-investment fund reporting issuers are already permitted to use in connection with a securityholder meeting, under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (for communication with registered owners) or National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) (for communication with beneficial owners). Both NI 51-102 and NI 54-101 specifically exclude investment funds from using the notice-and-access procedures available under those instruments. Staff's recommendation of this relief recognizes that, in appropriate circumstances, the notice-and-access procedures can be adapted for an investment fund securityholder meeting. Staff are comfortable that, in certain situations, permitting the use of notice-and-access procedures will help to mitigate the costs of holding securityholder meetings without impacting the disclosure available to investors.

The terms of this relief have generally followed the same requirements for the use of notice-and-access procedures under NI 54-101 and NI 51-102, with slight modifications to reflect the nature of investment fund securityholder meetings. The terms of the relief also require that fund managers be cognizant of their fiduciary duty to the investment funds they manage in considering whether the use of notice-and-access procedures is appropriate in respect of a particular investment fund securityholder meeting.

Relief to Use Cleared Swaps

Staff have previously recommended exemptive relief to facilitate the use by mutual funds of over-the-counter (OTC) swaps that are subject to mandatory clearing under the *Dodd-Frank Wall Street Reform Act* or similar legislation in Europe. More recently, we have been asked to consider expanding this relief so that it also applies to swaps that are cleared on a voluntary basis, as well as those subject to mandatory clearing, provided the same procedures are used.[4] Staff have recommended granting this expanded relief because we are comfortable that the infrastructure for clearing derivatives offers appropriate safeguards and protections in the trading of OTC swaps. Accordingly, the policy rationale for granting such relief is not affected by whether or not the OTC swaps are subject to mandatory clearing or are cleared on a voluntary basis.

Although the recent relief is more expansive, the terms and conditions of the relief remain the same. Accordingly, filers who wish to apply for this relief for OTC swaps that are cleared on a voluntary basis should ensure that such swaps use the same clearing infrastructure as OTC swaps subject to mandatory clearing.

PROSPECTUSES

Scholarship Plans – Certificate of Annual Compliance with the Undertaking

In the May 2013 edition of the *Investment Funds Practitioner*, staff reported on our efforts to work with scholarship plan providers to consider the terms and conditions on which CSA staff would permit, by way of an Undertaking, scholarship plans to make limited investments of the income portion of the plans in equity securities, otherwise not contemplated by National Policy 15. This was in response to feedback that in the current low-interest rate environment, it has been difficult to obtain sufficient rates of return on plan investments that are currently limited to fixed income securities. To date, certain scholarship plan providers in Ontario have executed Undertakings which permit limited investments in equity securities.

Among the conditions of the Undertaking is that, on an annual basis, the manager will confirm the plans' compliance with the terms of the Undertaking by filing the Undertaking on SEDAR no later than the date of the final renewal prospectus for the plans. The Undertaking is to be filed as a public document on SEDAR and incorporated by reference into each plan's prospectus and the prospectus will state this fact. As an additional measure to certifying compliance, scholarship plan providers are reminded of

[3] See *Brandes Investment Partners & Co. et al.* dated December 5, 2016.

[4] See *In the Matter of RBC Global Asset Management Inc.* dated October 7, 2016 and also *In the Matter of Sun Life Global Investments Canada Inc.* dated May 10, 2016. In these decisions, the "cleared swaps" relief has also been granted for swaps cleared on a voluntary basis.

their obligation to also file an *Annual Certificate of Compliance with the terms of the Undertaking*. This certificate, to be executed by the manager's Chief Executive Officer, Chief Financial Officer and Chief Compliance Officer, should be filed with a copy of the original Undertaking when the plan provider files a final renewal prospectus.

Any questions regarding the certificate or its contents can be directed to staff.

REPORTS

Guidance on Mutual Fund Sales Practices

The Compliance and Registrant Regulation Branch of the Ontario Securities Commission has completed a focused review of mutual fund sponsored conferences organized and presented by investment fund managers to assess compliance with Part 5 of National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105).

Based on the results of this focused review, we wish to provide the following guidance relating to the selection of representatives attending mutual fund sponsored conferences.

Paragraph 5.2(b) of NI 81-105 permits an investment fund manager to provide a non-monetary benefit to a representative of a participating dealer by allowing the representative to attend a conference or seminar that the investment fund manager has organized if the selection of the participating representatives is made exclusively by the participating dealer, uninfluenced by the investment fund manager.

Paragraph 7.3(2) of the companion policy to NI 81-105 clarifies that the identification of specific representatives of a participating dealer by an investment fund manager to that participating dealer does not constitute compliance with section 5.2 of NI 81-105. The requirement in paragraph 5.2(b) of NI 81-105 reflects the CSA's position that investment fund managers should generally be dealing with participating dealers, rather than individual dealing representatives, in connection with mutual fund sponsored conferences. This permits participating dealers to maintain better supervisory control over their representatives and reduces the potential conflicts that may arise between the duties owed to clients by representatives and the benefits provided by investment fund managers to those representatives.

To avoid non-compliance with the requirements of paragraph 5.2(b) of NI 81-105, investment fund managers should put a process in place that will require the investment fund manager to:

a) first, contact a participating dealer's head office requesting its involvement in the selection of representatives to attend the investment fund manager's mutual fund sponsored conference and request that the participating dealer distribute the mutual fund sponsored conference invitation to its representatives;

b) ensure the opportunity to attend the mutual fund sponsored conference is available to all representatives;

c) ensure the mutual fund sponsored conference is widely advertised (for example, in the advisor section of an investment fund manager's website and/or through widely known industry publications); and

d) ensure that attendance is filled in a manner that does not influence the selection of representatives (for example, attendance is filled on a first come first served basis).

Staff will continue to monitor compliance with these requirements going forward.