

6.1.4 Proposed OSC Rule 81-801 Implementing National Instrument 81-106 Investment Fund Continuous Disclosure

**PROPOSED
ONTARIO SECURITIES COMMISSION RULE 81-801
IMPLEMENTING NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE**

PART 1 – DEFINITIONS

1.1 DEFINITIONS

- (1) In this Rule, "NI 81-106" means "National Instrument 81-106 *Investment Fund Continuous Disclosure*".
- (2) In this Rule, "Act" means *Securities Act* (Ontario).
- (3) Each term used in this Rule that is defined or interpreted in Part 1 of NI 81-106 has the meaning ascribed to it in that Part.

PART 2 – APPLICATION

2.1 APPLICATION

Except as specifically provided otherwise in this Rule, this Rule applies to

- (a) an investment fund that is a reporting issuer; and
- (b) a mutual fund in Ontario.

PART 3 – INTERRELATIONSHIP WITH LEGISLATION

3.1 ANNUAL FINANCIAL STATEMENTS - CONTENT

- (1) The financial statements required under section 78 of the Act must include the statements and notes described in subsection 2.1(1) of NI 81-106.
- (2) Sections 2.2, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.11 of NI 81-106 apply to financial statements and auditor's reports required under section 78 of the Act as if any reference to financial statements or auditor's reports in those sections is a reference to section 78 of the Act.
- (3) This section applies for financial years ending on or after December 31, 2004.

3.2 INTERIM FINANCIAL STATEMENTS - CONTENT

- (1) The financial statements required under section 77 of the Act must include the statements and notes described in section 2.3 of NI 81-106.
- (2) Sections 2.4, 2.5, 2.6, 2.9, 2.11 and 2.12 of NI 81-106 apply to financial statements required under section 77 of the Act as if any reference to financial statements in those sections is a reference to section 77 of the Act.
- (3) This section applies for interim periods ending after the period determined in subsection 3.1(3).

3.3 FILING ANNUAL FINANCIAL STATEMENTS – EXEMPTION

Section 78 of the Act does not apply to an investment fund that is a reporting issuer or to a mutual fund in Ontario that complies with sections 2.1, 2.2, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.11 of NI 81-106 for financial years ending on or after December 31, 2004.

3.4 FILING INTERIM FINANCIAL STATEMENTS – EXEMPTION

Section 77 of the Act does not apply to an investment fund that is a reporting issuer or to a mutual fund in Ontario that complies with sections 2.3, 2.4, 2.5, 2.6, 2.9, 2.11 and 2.12 of NI 81-106 for interim periods ending after the period determined in section 3.3.

3.5 DELIVERING FINANCIAL STATEMENTS - EXEMPTION

Section 79 of the Act does not apply to an investment fund that is a reporting issuer or to a mutual fund in Ontario that complies with Part 5 of NI 81-106 in the case of

- (a) annual financial statements for financial years ending on or after December 31, 2004; and
- (b) interim financial statements for interim periods ending after the period determined in subsection (a).

3.6 MATERIAL CHANGE REPORTS - FORM

Every report required under subsection 75(2) of the Act must be a completed Form 51-102F3, as modified by s. 11.2(1)(c) of NI 81-106, except that the reference in Part 2, Item 3 of Form 51-102F3 to section 11.2 of NI 81-106 shall be read as referring to subsection 75(1) of the Act and references in Part 2, Items 6 and 7 of Form 51-102F3 to subsections 11.2(2), 11.2(4) or 11.2(5) of NI 81-106 shall be read as referring to subsections 75(3), 75(4) or 75(5), respectively, of the Act.

3.7 ISSUANCE OF MATERIAL CHANGE NEWS RELEASE – EXEMPTION

Subsection 75(1) of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 11.2(1)(a) of NI 81-106, from and after ●, 2004 [effective date].

3.8 FILING MATERIAL CHANGE REPORT – EXEMPTION

Subsection 75(2) of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 11.2(1)(c) of NI 81-106, from and after ● 2004 [effective date].

3.9 ANNUAL FILING - EXEMPTION

Investment funds that are reporting issuers are exempt from subsection 81(2) of the Act from and after December 31, 2004.

3.10 INFORMATION CIRCULARS - FORM

An information circular referred to in clause (a) or (b) of subsection 86(1) of the Act must be a completed Form 51-102F5.

3.11 FILING INFORMATION CIRCULAR – EXEMPTION

Subsection 81(1) of the Act does not apply to an investment fund that is a reporting issuer that complies with section 12.4 of NI 81-106, from and after ●, 2004 [effective date].

3.12 SOLICITATION OF PROXIES – EXEMPTION

Section 85 of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 12.2(1) of NI 81-106, from and after ● 2004 [effective date].

3.13 SENDING INFORMATION CIRCULAR – EXEMPTION

Section 86 of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 12.2(2) of NI 81-106, from and after ● 2004.

PART 4 – EFFECTIVE DATE

4.1 EFFECTIVE DATE

This Rule comes into force on ●.

PROPOSED

COMPANION POLICY 81-801CP - TO ONTARIO SECURITIES COMMISSION RULE 81-801 IMPLEMENTING NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE

- 1.1 Introduction** -- The purpose of this Companion Policy is to provide information relating to the manner in which the Ontario Securities Commission (the Commission) interprets or applies certain provisions of Commission Rule 81-801 *Implementing National Instrument 81-106 Investment Fund Continuous Disclosure* (the Implementing Rule) and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).
- 1.2 Interrelationship between NI 81-106 and the *Securities Act* (Ontario) (the Act)** -- NI 81-106 is intended to provide a single source of harmonized continuous disclosure obligations for investment funds. As a result, NI 81-106 sometimes repeats (without any substantive change) certain requirements that are also dealt with in the Act under Part XVIII *Continuous Disclosure* and Part XIX *Proxies and Proxy Solicitation*. In addition, NI 81-106, through the Implementing Rule, varies or adds to some of the requirements contained in Parts XVIII and XIX of the Act. The cumulative effect of NI 81-106 and the Implementing Rule is that NI 81-106 supersedes the requirements found in Parts XVIII and XIX of the Act (other than sections 76 and 87, the subject matter of which are not dealt with in NI 81-106). Investment funds that are reporting issuers and mutual funds in Ontario can and should therefore refer to NI 81-106 in place of the requirements contained in Parts XVIII and XIX of the Act (other than sections 76 and 87).