

Chapter 5

Rules and Policies

5.1.1 Amendments to NI 81-106 Investment Fund Continuous Disclosure, Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, Companion Policy 81-106CP, and Related Amendments to Form 81-101F2 Contents of Annual Information Form, NI 81-102 Mutual Funds, Companion Policy 81-102CP, and Form 41-101F2 Information Required in an Investment Fund Prospectus

NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE AMENDMENT INSTRUMENT

1. Section 1.1 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by repealing the definition of “net asset value” and substituting the following:

“net asset value” means the value of the total assets of the investment fund less the value of the total liabilities of the investment fund, as at a specific date, determined in accordance with Part 14;”
2. Section 2.9 of NI 81-106 *Investment Fund Continuous Disclosure* is amended
 - (a) in subparagraph (4)(a)(i) by striking out “and a statement of investment portfolio”; and
 - (b) in subparagraph (4)(b)(i) by striking out “and a statement of investment portfolio”.
3. Section 2.10 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by
 - (a) repealing paragraph (a) and substituting the following:

“(a) the investment fund terminating or ceasing to be a reporting issuer;”;
 - (b) repealing paragraph (h) and substituting the following:

“(h) if applicable, the names of each party that terminated or ceased to be a reporting issuer following the transaction and of each continuing entity;”.
4. Section 3.1 of NI 81-106 *Investment Fund Continuous Disclosure* is amended in item 15 by striking out “net asset value” and substituting “net assets”.
5. Section 3.2 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by adding the following after item 10:

“10.1 commissions and other portfolio transaction costs.”.
6. Section 3.6 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by
 - (a) repealing subparagraph 3.6(1)3. and substituting the following:

“3. to the extent the amount is ascertainable, the soft dollar portion of the total commissions and other portfolio transaction costs paid or payable to dealers by the investment fund, where the soft dollar portion is the amount paid or payable for goods and services other than order execution.”; and
 - (b) adding the following after subparagraph 3.6(1)4.:

“5. the net asset value per security as at the date of the financial statements compared to the net assets per security as shown on the statement of net assets, and an explanation of each of the differences between these amounts.”.
7. Subsection 3.11(2) of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “ net asset value per security ” and substituting “ net assets per security ”.

8. Subsection 8.2(c) of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “net asset value” and substituting “net assets”.
9. Section 8.4 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “net asset value” and substituting “net assets”.
10. Section 9.2 of NI 81-106 *Investment Fund Continuous Disclosure* is repealed and the following is substituted:

“9.2 Requirement to File Annual Information Form – An investment fund must file an annual information form if the investment fund has not obtained a receipt for a prospectus during the last 12 months preceding its financial year end.”
11. Section 10.3 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by striking out “reporting issuer” and substituting “reporting issuer or the equivalent of a reporting issuer in a foreign jurisdiction”.
12. Section 14.2 of NI 81-106 *Investment Fund Continuous Disclosure* is amended
 - (a) by repealing subsection (1) and substituting the following:

“(1) The net asset value of an investment fund must be calculated using the fair value of the investment fund’s assets and liabilities.”;
 - (b) by adding the following after subsection (1):
 - “(1.1) The net asset value of an investment fund must include the income and expenses of the investment fund accrued up to the date of calculation of the net asset value.
 - (1.2) For the purposes of subsection (1), fair value means
 - (a) the market value based on reported prices and quotations in an active market, or
 - (b) if the market value is not available, or the manager of the investment fund believes that it is unreliable, a value that is fair and reasonable in all the relevant circumstances.
 - (1.3) The manager of an investment fund must
 - (a) establish and maintain appropriate written policies and procedures for determining the fair value of the investment fund’s assets and liabilities; and
 - (b) consistently follow those policies and procedures.
 - (1.4) The manager of an investment fund must maintain a record of the determination of fair value and the reasons supporting that determination.”;
 - (c) in subsection (2) by striking out “Despite subsection (1), for” and substituting “For”; and
 - (d) in subsection (5) by striking out “Despite subsection (3)” and substituting “Despite paragraph (3)(a)”.
13. Section 15.1 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by repealing clause (1)(a)(i)(A) and substituting the following:

“(A) total expenses of the investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the financial year or interim period, as shown on its statement of operations; and”.
14. Section 15.2 of NI 81-106 *Investment Fund Continuous Disclosure* is amended by
 - (a) repealing subparagraph (1)(a)(i) and substituting the following:

“(i) multiplying the total expenses of each underlying investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the financial year or interim period, by”; and

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(b) repealing paragraph (1)(b) and substituting the following:

“(b) the total expenses of the investment fund, excluding commissions and other portfolio transaction costs, before income taxes, for the period.”.

15. Sections 18.2, 18.3, 18.4 and 18.5 of NI 81-106 *Investment Fund Continuous Disclosure* are repealed.
16. This Instrument comes into force on September 8, 2008.

**FORM 81-106F1 CONTENTS OF ANNUAL AND INTERIM
MANAGEMENT REPORT OF FUND PERFORMANCE
AMENDMENT INSTRUMENT**

1. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 1 of Part A by adding the following after subsection (e):

“(f) Terminology

All references to “net assets” or “net assets per security” in this Form are references to net assets determined in accordance with Canadian GAAP as presented in the financial statements of the investment fund. All references to “net asset value” or “net asset value per security” in this Form are references to net asset value determined in accordance with Part 14 of the Instrument.

Investment funds must use net assets as shown on the financial statements in the “The Fund’s Net Assets per [Unit/Share]” table. All other calculations for the purposes of the MRFP must be made using net asset value.”.

2. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 3 of Part B by
- (a) striking out the sentence “This information is derived from the Fund’s audited annual financial statements.” at the end of the introduction in subsection 3.1(1);
 - (b) repealing the “*The Fund’s Net Asset Value (NAV) per [Unit/Share]*” table in subsection 3.1(1) and substituting the following:

The Fund’s Net Assets per [Unit/Share] ⁽¹⁾

	[insert year]	[insert year]	[insert year]	[insert year]	[insert year]
Net Assets, beginning of year	\$	\$	\$	\$	\$
Increase (decrease) from operations:					
total revenue	\$	\$	\$	\$	\$
total expenses	\$	\$	\$	\$	\$
realized gains (losses) for the period	\$	\$	\$	\$	\$
unrealized gains (losses) for the period	\$	\$	\$	\$	\$
Total increase (decrease) from operations ⁽²⁾	\$	\$	\$	\$	\$
Distributions:					
From income (excluding dividends)	\$	\$	\$	\$	\$
From dividends	\$	\$	\$	\$	\$
From capital gains	\$	\$	\$	\$	\$
Return of capital	\$	\$	\$	\$	\$
Total Annual Distributions ⁽³⁾	\$	\$	\$	\$	\$
Net assets at [insert last day of financial year] of year shown	\$	\$	\$	\$	\$

- (1) *This information is derived from the Fund’s audited annual financial statements. The net assets per security presented in the financial statements differs from the net asset value calculated for fund pricing purposes. [An explanation of these differences can be found in the notes to the financial statements./This difference is due to [explain].]*
- (2) *Net assets and distributions are based on the actual number of [units/shares] outstanding at the relevant time. The increase/decrease from operations is based on the weighted average number of [units/shares] outstanding over the financial period.*
- (3) *Distributions were [paid in cash/reinvested in additional [units/shares] of the Fund, or both].*

- (c) repealing the “Ratios and Supplemental Data” table in subsection 3.1(1) and substituting the following:

Ratios and Supplemental Data

	[insert year]	[insert year]	[insert year]	[insert year]	[insert year]
Total net asset value (000's) ⁽¹⁾	\$	\$	\$	\$	\$
Number of [units/shares] outstanding ⁽¹⁾					
Management expense ratio ⁽²⁾	%	%	%	%	%
Management expense ratio before waivers or absorptions	%	%	%	%	%
Trading expense ratio ⁽³⁾	%	%	%	%	%
Portfolio turnover rate ⁽⁴⁾	%	%	%	%	%
Net asset value per [unit/share]	\$	\$	\$	\$	\$
Closing market price [if applicable]	\$	\$	\$	\$	\$

- (1) *This information is provided as at [insert date of end of financial year] of the year shown.*
- (2) *Management expense ratio is based on total expenses (excluding commissions and other portfolio transaction costs) for the stated period and is expressed as an annualized percentage of daily average net asset value during the period.*
- (3) *The trading expense ratio represents total commissions and other portfolio transaction costs expressed as an annualized percentage of daily average net asset value during the period.*
- (4) *The Fund's portfolio turnover rate indicates how actively the Fund's portfolio adviser manages its portfolio investments. A portfolio turnover rate of 100% is equivalent to the Fund buying and selling all of the securities in its portfolio once in the course of the year. The higher a fund's portfolio turnover rate in a year, the greater the trading costs payable by the fund in the year, and the greater the chance of an investor receiving taxable capital gains in the year. There is not necessarily a relationship between a high turnover rate and the performance of a fund.*

- (d) repealing subsection 3.1(2);

- (e) repealing subsection 3.1(6) and substituting the following:

“(6) Except for net assets, net asset value and distributions, calculate per unit/share values on the basis of the weighted average number of unit/shares outstanding over the financial period.”;

- (f) repealing subsection 3.1(12) and substituting the following:

“(12) (a) Calculate the trading expense ratio by dividing

(i) the total commissions and other portfolio transaction costs disclosed in the statement of operations, by

(ii) the same denominator used to calculate the management expense ratio.

(b) If an investment fund invests in securities of other investment funds, calculate the trading expense ratio using the methodology required for the calculation of the management expense ratio in section 15.2 of the Instrument, making reasonable assumptions or estimates when necessary.”;

- (g) repealing subsection 3.1(13) and substituting the following:

“(13) Provide the closing market price only if the investment fund is traded on an exchange.”;

- (h) repealing the introduction to the “*Financial & Operating Highlights (with comparative figures)*” table in section 3.2 and substituting the following:

“An investment fund that is a scholarship plan must comply with Item 3.1, except that the following table must replace “The Fund’s Net Assets per [Unit/Share]” table and the “Ratios and Supplemental Data” table.”; and

- (i) repealing the Instruction in section 3.3 and substituting the following:

“The disclosure must list the major services paid for out of the management fees, including portfolio adviser compensation, waived or absorbed expenses, trailing commissions and sales commissions, if applicable. Services may be grouped together so that commercially sensitive information, such as the specific compensation paid to a portfolio adviser or the manager’s profit, is not determinable.”.

3. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 4 of Part B by

- (a) repealing subsection 4.1(3) and substituting the following:

“(3) Set out in the footnotes to the chart or table required by this Item the assumptions relevant to the calculation of the performance information, including any assumptions or estimates made in order to calculate the return on the short portfolio, if applicable. Include a statement of the significance of the assumption that distributions are reinvested for taxable investments.”; and

- (b) striking out “or” in paragraph 4.3(1)(a) and substituting “and”.

4. Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* is amended in Item 5 of Part B by

- (a) striking out “net assets” and substituting “net asset value” in paragraph (2)(b);

- (b) striking out “net assets” and substituting “net asset value” in paragraph (2)(d);

- (c) striking out “another” and substituting “one other” in Instruction (8);

- (d) striking out “net assets” and substituting “net asset value” in Instruction (8); and

- (e) adding the following after Instruction (9):

“(10) *A labour sponsored or venture capital fund must disclose its top 25 positions, but is not required to express any of its venture investments as a percentage of the fund’s net asset value if it complies with the conditions in Part 8 of the Instrument to be exempt from disclosing the individual current values of venture investments in its statement of investment portfolio.”.*

5. This Instrument comes into force on September 8, 2008.

**COMPANION POLICY 81-106CP-
TO NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE
AMENDMENT INSTRUMENT**

1. Section 2.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by repealing subsection (1).
2. Part 2 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by adding the following after section 2.5:

“2.5.1 Disclosure of Investment Portfolio – If an investment fund invests substantially all of its assets directly, or indirectly through the use of derivatives, in securities of one other investment fund, the investment fund should provide in the statement of investment portfolio, or the notes to that statement, additional disclosure concerning the holdings of the other investment fund, as available, in order to assist investors in understanding the actual portfolio to which the investment fund is exposed. The CSA is of the view that such disclosure is consistent with the requirements in the Handbook relating to financial instrument disclosure.”.
3. Section 2.9 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is repealed.
4. Section 4.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by repealing the last paragraph of subsection (1) and substituting the following:

“The choices are intended to provide some flexibility concerning the delivery of continuous disclosure documents to securityholders. An investment fund can use any combination of the delivery options for its securityholders. However, the Instrument specifies that once an investment fund chooses option (b) for a securityholder, it cannot switch back to option (c) for that securityholder at a later date. The purpose of this requirement is to encourage investment funds to obtain standing instructions and to ensure that if a securityholder provides standing instructions, the investment fund will abide by those instructions unless the securityholder specifically changes them.”.
5. Section 4.2 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by repealing the second paragraph and substituting the following:

“We recognize that different types of investment funds have different access to beneficial owner information (for example, mutual funds are more likely to have beneficial owner information than exchange-traded funds) and that the procedures in National Instrument 54-101 may not be efficient for every investment fund. We intend the provisions in Part 5 of the Instrument to provide investment funds with flexibility to communicate directly with the beneficial owners of their securities. If an investment fund has the necessary information to communicate directly with one or more beneficial owners of its securities, it can do so, even though it may need to rely on National Instrument 54-101 to communicate with other beneficial owners of its securities.”.
6. Part 4 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by adding the following after section 4.4:

“4.5 Website Disclosure – The Instrument does not specify the length of time that continuous disclosure documents must remain on an investment fund’s website. In the CSA’s view, the documents should stay on the website for a reasonable length of time, and at least until they are replaced by more current versions.”.
7. Part 9 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by
 - (a) striking out the heading “PUBLICATION OF NET ASSET VALUE PER SECURITY” and substituting the heading “NET ASSET VALUE”; and
 - (b) by adding the following after section 9.1:

“9.2 Fair Value Guidance – Section 14.2 of the Instrument requires an investment fund to calculate its net asset value based on the fair value of the investment fund’s assets and liabilities. While investment funds are required to comply with the definition of “fair value” in the Instrument when calculating net asset value, they may also look to the Handbook for guidance on the measurement of

fair value. The fair value principles articulated in the Handbook can be applied by investment funds when valuing assets and liabilities.

9.3 Meaning of Fair Value – The Handbook defines fair value as being the amount of the consideration that would be agreed upon in an arm’s length transaction between knowledgeable, willing parties who are under no compulsion to act. Accordingly, fair value should not reflect the amount that would be received or paid in a forced transaction, involuntary liquidation or distress sale.

9.4 Determination of Fair Value

(1) A market is generally considered active when quoted prices are readily and regularly available from an exchange, dealer, broker, industry group, pricing service or regulatory agency, and those prices reflect actual and regularly occurring market transactions on an arm’s length basis.

(2) A market is not considered to be active, and prices derived from it may be unreliable for valuation purposes, if, at the time the investment fund begins to calculate its net asset value, any of the following circumstances are present:

- markets on which portfolio securities are principally traded closed several hours earlier (e.g. some foreign markets may close as much as 15 hours before the time the investment fund begins to calculate its net asset value)
- trading is halted
- events occur that unexpectedly close entire markets (e.g. natural disasters, power blackouts, public disturbances, or similar major events)
- markets are closed due to scheduled holidays
- the security is illiquid and trades infrequently.

If an investment fund manager determines that an active market does not exist for a security, the manager should consider whether the last available quoted market price is representative of fair value. If a significant event (i.e. one that may impact the value of the portfolio security) has occurred between the time the last quoted market price was established and the time the investment fund begins to calculate its net asset value, the last quoted market price may not be representative of fair value.

(3) Whether a particular event is a significant event for a security depends on whether the event may affect the value of the security. Generally, significant events fall into one of three categories: (i) issuer specific events – e.g. the resignation of the CEO or an after-hours earnings announcement, (ii) market events – e.g. a natural disaster, a political event, or a significant governmental action like raising interest rates, and (iii) volatility events – e.g. a significant movement in North American equity markets that may directly impact the market prices of securities traded on overseas exchanges.

Whether a market movement is significant is a matter to be determined by the manager through the establishment of tolerance levels which it may choose to base on, for example, a specified intraday and/or interday percentage movement of a specific index, security or basket of securities. In all cases, the appropriate triggers should be determined based on the manager’s own due diligence and understanding of the correlations relevant to each investment fund’s portfolio.

9.5 Fair Value Techniques – The CSA do not endorse any particular fair value technique as we recognize that this is a constantly evolving process. However, whichever technique is used, it should be applied consistently for a portfolio security throughout the fund complex and reviewed for reasonableness on a regular basis.

9.6 Valuation Policies and Procedures – An investment fund’s valuation policy should be approved by the manager’s board of directors. The policies and procedures should describe the process for monitoring significant events or other situations that could call into question whether a quoted market price is representative of fair value. They should also describe the methods by which the manager

will review and test valuations to evaluate the quality of the prices obtained as well as the general functioning of the valuation process. The manager should also consider whether its valuation process is a conflict of interest matter as defined in NI 81-107.”.

8. Section 10.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by
- (a) striking out “of all types” in subsection (2); and
 - (b) repealing subsection (4) and substituting the following:

“While brokerage commissions and other portfolio transaction costs are expenses of an investment fund for accounting purposes, they are not included in the MER. These costs are reflected in the trading expense ratio.”.
9. Appendix B of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* is amended by
- (a) striking out the title “CONTACT ADDRESSES FOR FILING OF NOTICES” and substituting the title “CONTACT ADDRESSES”;
 - (b) in the address for the Alberta Securities Commission, striking out “Attention: Director, Capital Markets” and substituting “Attention: Corporate Finance”;
 - (c) striking out the address for the Manitoba Securities Commission and substituting the following:

“Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba
R3C 4K5
Attention: Corporate Finance”; and
 - (d) striking out “Securities Commission of Newfoundland and Labrador” and substituting “Newfoundland and Labrador Securities Commission”.
10. This Instrument comes into force on September 8, 2008.

**NATIONAL INSTRUMENT 81-101
MUTUAL FUND PROSPECTUS DISCLOSURE
FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM
AMENDMENT INSTRUMENT**

1. Form 81-101F2 *Contents of Annual Information Form* is amended in Item 6 by adding the following after subsection (1):

“(1.1) If the valuation principles and practices established by the manager differ from Canadian GAAP, describe the differences.”.
2. This Instrument comes into force on September 8, 2008.

**NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS
AMENDMENT INSTRUMENT**

1. Section 1.1 of NI 81-102 *Mutual Funds* is amended by adding the following after the definition of “mutual fund conflict of interest reporting requirements”:

““net asset value” means the value of the total assets of the investment fund less the value of the total liabilities of the investment fund, as at a specific date, determined in accordance with Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.”
2. Section 9.4 of NI 81-102 *Mutual Funds* is amended by repealing subsection (3).
3. Section 10.4 of NI 81-102 *Mutual Funds* is amended by repealing subsection (4).
4. This Instrument comes into force on September 8, 2008.

**COMPANION POLICY 81-102CP-
TO NATIONAL INSTRUMENT 81-102 MUTUAL FUNDS
AMENDMENT INSTRUMENT**

1. Section 2.15 of Companion Policy 81-102CP *Mutual Funds* is amended by striking out “(which include a statement of portfolio transactions)” in subsection (4).
2. This Instrument comes into force on September 8, 2008.

**NATIONAL INSTRUMENT 41-101
GENERAL PROSPECTUS REQUIREMENTS
FORM 41-101F2 INFORMATION REQUIRED IN AN INVESTMENT FUND PROSPECTUS
AMENDMENT INSTRUMENT**

1. Form 41-101F2 *Information Required in an Investment Fund Prospectus* is amended in Item 20.2 by
 - (a) striking out “and” at the end of subsection (a); and
 - (b) adding the following after subsection (a):
 - “(a.1) If the valuation principles and practices established by the manager differ from Canadian GAAP, describe the differences, and”.
2. This Instrument comes into force on September 8, 2008.