

1.1.2 OSC Staff Notice 81-714 – Compliance with Form 41-101F2 – Information Required In An Investment Fund Prospectus

OSC STAFF NOTICE 81-714

COMPLIANCE WITH FORM 41-101F2 – INFORMATION REQUIRED IN AN INVESTMENT FUND PROSPECTUS

Purpose

This notice sets out the views of staff of the Ontario Securities Commission (Staff) on the disclosure required by Form 41-101F2 – *Information Required in an Investment Fund Prospectus* (the Form or Form 41-101F2) and the types of comments Staff will generally raise in the course of a review of an investment fund prospectus required to be filed in the form of Form 41-101F2.

Background

National Instrument 41-101 *General Prospectus Requirements* (NI 41-101) prescribes the use of Form 41-101F2 by all investment funds filing prospectuses, other than mutual funds that file prospectuses under National Instrument 81-101 – *Mutual Funds*. The Form includes specific disclosure requirements for investment funds that are in addition to the general requirement in securities legislation to provide full, true and plain disclosure of all material facts in the prospectus relating to the securities to be distributed.

Compliance with Form 41-101F2

Compliance with the disclosure requirements of Form 41-101F2 is important because the Form is intended to provide clear and concise information about the investment fund to investors that will assist them in making informed investment decisions. Staff expect the disclosure to comply with the plain language principles listed in section 4.1 of Companion Policy 41-101CP and to be presented in the order and using the headings specified in the Form. This allows the prospectus disclosure to be presented in an easy-to-read format that can be understood by investors and more easily compared to other investment funds.

Recently, Staff have seen a number of prospectuses required to be in the form of Form 41-101F2 that have departed from the general requirements relating to the use of plain language, brevity and the ordering of information and use of headings. In our reviews, Staff have begun to raise specific concerns with cover page and prospectus summary disclosure and disclosure related to the investment objectives of the fund. Staff have also begun to consider whether the requirements and purpose of the Form are being met in a multi-fund prospectus.

Cover Page and Prospectus Summary Disclosure

Increasingly, Staff have observed cover page and prospectus summary disclosure that contain too much detail about the investment fund's strategies, manager, portfolio advisor and distribution policies and the sector(s) that the fund will invest in, as well as information not specifically contemplated by the Form. In some instances, entire disclosure items from other sections of the Form have been included in the cover page and prospectus summary, including performance data, charts and graphs. Staff have also seen the introduction of headings, such as Investment Rationale, as well as an increase in promotional and marketing language in the cover page and prospectus summary. For example, there has been disclosure about the managers' beliefs regarding the economy and why an investment strategy adopted by the fund should be considered attractive by investors.

In our prospectus reviews, Staff will consider the purpose of the Form, and specifically, the intent of the cover page and prospectus summary disclosure, which is to ensure investors are presented with information about the investment fund in a clear, concise and comparable format that assists them in making informed investment decisions.

Generally, Staff's view is that the cover page disclosure should only provide a brief description of the investment fund and the securities to be distributed and be limited to the disclosure specifically mandated by Item 1 of Form 41-101F2. Consequently, in our reviews Staff may ask that cover page disclosure be reduced or request that certain disclosure be removed. Similarly, Staff expect that the prospectus summary disclosure will generally only provide a brief summary of the information that appears elsewhere in the prospectus, as set out by Item 3.3 of Form 41-101F2. In our reviews, Staff may request some disclosure in the prospectus summary be removed and be replaced with cross-references to the more detailed disclosure that appears elsewhere in the prospectus, as mandated by Item 3.3(2), in order to maintain the brevity of the section. Generally, Staff have requested that charts and graphs not mandated by the Form be removed from the prospectus summary.

As part of our reviews, we have reminded filers and their counsel that information not contemplated under any other section of the Form may be disclosed under "Other Material Facts" as specified by Item 35 of the Form.

In instances where the investment fund has complex or unique risks, features or costs, Staff have begun to request that additional, tailored disclosure that is specific to the securities to be distributed be added to the cover page or the prospectus

summary disclosure to ensure investors are provided with full, true and plain disclosure of all material facts. This tailored disclosure has included the request by Staff for the inclusion of a plainly worded, brief warning presented in bold type or in text boxes in these sections.

Disclosure About Investment Objectives

Item 5.1 of the Form requires information that describes the fundamental nature of the investment fund, or the fundamental features of the investment fund, that distinguish it from other investment funds. The Instructions to Item 5.1 of the Form specifically require a statement of the type(s) of securities in which the investment fund will primarily invest under normal market conditions.

Staff have observed investment objectives limited to a statement about the nature of the returns that the investment fund seeks to provide to investors. For example, Staff have seen disclosure that states that the objective of the investment fund is to provide shareholders with the opportunity for capital appreciation, without sufficient accompanying detail. Generally, Staff expect that filers will comply with all aspects of Item 5 of Form 41-101F2. In our reviews, Staff have requested that some investment strategies that are an essential aspect of the investment fund, as described in Instruction (3) to Item 5.1 of the Form, be disclosed as an investment objective of the investment fund. Staff may also ask that certain disclosure that does not form part of the investment objective, such as an investment fund's initial indicative yield, be removed.

Prospectuses For Multiple Investment Funds

Recently, exchange traded mutual funds (ETFs) have filed prospectuses that combine disclosure for multiple ETFs in the same document. As the number and types of ETFs have proliferated, Staff have observed multiple ETF prospectuses that combine disclosure for different types of ETFs, including index participation units, actively managed ETFs, inverse and leveraged ETFs and commodity pools.

Generally, Staff's view is that the number of investment funds offered in a prospectus should be limited to investment funds with substantially similar investment objectives, strategies and features. In our reviews of multiple ETF prospectuses, Staff will consider whether the combination of multiple investment funds into one single prospectus impacts the ability of investors to be provided full, true and plain disclosure. When the number of investment funds incorporated into one prospectus interferes with the presentation of key information in a clear, concise and comparable format for investors, Staff will request that the filer separate the investment funds into different prospectus documents.

Further Information

Filers and their counsel are encouraged to contact Staff at an early stage in the planning of any distribution that may give rise to any questions concerning the issues discussed in this Notice.

Questions

If you have any questions, please refer them to:

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