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**COMPANION POLICY 81-101CP
TO NATIONAL INSTRUMENT 81-101
MUTUAL FUND PROSPECTUS DISCLOSURE**

PART 1 PURPOSE OF THE COMPANION POLICY

1.1 Purpose of the Companion Policy

The purpose of this Companion Policy is to state the views of the Canadian Securities Administrators (CSA or we) on various matters relating to the Instrument, including,

- (a) a discussion of the general approach taken by the CSA in, and the general regulatory purpose for, the Instrument;
- (b) explanation and discussion of various parts of the Instrument; and
- (c) examples of some matters described in the Instrument.

PART 2 PURPOSE AND GENERAL APPROACH OF THE INSTRUMENT

2.1 Purpose of the Instrument

- (1) The purpose of the Instrument is to ensure that the offering disclosure regime for mutual funds provides investors with disclosure documents that clearly and concisely state information that investors should consider in connection with an investment decision about the mutual fund, while recognizing that different investors have differing needs in receiving disclosure.
- (2) The disclosure regime for mutual funds is built on two main principles:

- providing investors with key information about a mutual fund; and
 - providing the information in a simple, accessible and comparable format.
- (3) We use the following approaches in the Instrument to achieve the principles referred to in subsection (2):
1. The Instrument has been designed so that fund companies prepare offering disclosure documents that investors would find helpful in making investment decisions.
 2. The Instrument contemplates the use of two disclosure documents by a mutual fund:
 - a simplified prospectus; and
 - a summary document called the 'fund facts', which contains key information about a mutual fund.
- Together with the financial statements, the management reports of fund performance and other documents incorporated by reference, these documents contain full, true and plain disclosure about the mutual fund.
3. Subsection 4.1(1) of the Instrument requires that the simplified prospectus and fund facts document be prepared using plain language and in a format that assists in readability and comprehension. The Instrument and related forms provide detailed requirements on the content and format of these documents.
- (4) Mutual funds, managers and participants in the mutual fund industry should prepare disclosure documents and carry out delivery in a manner that is consistent with the spirit and intent of the Instrument.

2.1.1 Fund Facts Document

- (1) The Instrument requires that the fund facts document be in plain language, be no longer than 4 pages in length, and highlight key information important to investors, including performance, risk and cost. The fund facts document is incorporated by reference into the simplified prospectus.
- (2) The Instrument and Form 81-101F3 set out detailed requirements on the content and format of a fund facts document, while allowing some flexibility to accommodate different kinds of mutual funds. The requirements are designed to ensure that the information in a fund facts document of a mutual fund is clear, concise, understandable and easily

comparable with information in the fund facts document of other mutual funds.

- (3) To help write the fund facts document in plain language, mutual fund companies can use the Flesch-Kincaid methodology to assess the readability of a fund facts document. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level and can be determined by the use of Flesch-Kincaid tests built into commonly used word processing programs. The CSA will generally consider a grade level of 6.0 or less on the Flesch-Kincaid grade level scale to indicate that a fund facts document is written in plain language. For French-language documents, mutual fund companies may wish to consider using other appropriate readability tools.
- (4) The Instrument requires delivery of the fund facts document, which satisfies the prospectus delivery requirements under applicable securities legislation. The CSA also encourages the use and distribution of the fund facts document as a key part of the sales process in helping to inform investors about mutual funds they are considering for investment.

2.2 Simplified Prospectus

- (1) A simplified prospectus is the prospectus for the purposes of securities legislation. While the Instrument requires delivery of a fund facts document to an investor in connection with a purchase, an investor may also request delivery a copy of the simplified prospectus, or any other documents incorporated by reference into the simplified prospectus.
- (2) The Instrument and Form 81-101F1 set out detailed requirements on the content and format of a simplified prospectus. The requirements enable the information about a mutual fund to be clear, concise, understandable, well-organized and to easily compare one mutual fund with another.
- (3) A person granted an exemption from a requirement in Form 81-101F1 or Form 81-101F2 prior to January 6, 2022, is exempt, after January 5, 2022, from any substantially similar requirement in Form 81-101F1.
- (4) A person granted an exemption from a requirement in securities legislation prior to January 6, 2022 on the condition that certain disclosure be provided in an annual information form prepared in accordance with Form 81-101F2, may, after January 5, 2022, provide such disclosure in a simplified prospectus prepared in accordance with Form 81-101F1.

2.3 [Repealed]

2.4 Financial Statements and Management Reports of Fund Performance

The Instrument requires that the mutual fund's most recently audited financial statements, any interim financial reports filed after those audited statements, the mutual fund's most recently filed annual management report of fund performance and any interim management report of fund performance filed after that annual management report be provided upon request to any person or company requesting them. Like the fund facts document, these financial statements and management reports of fund performance are incorporated by reference into the simplified prospectus. The result is that future filings of these documents will be incorporated by reference into the simplified prospectus, while superseding the financial statements and management reports of fund performance previously filed.

2.5 Filing and Delivery of Documents

- (1) Section 2.3 of the Instrument distinguishes between documents that are required by securities legislation to be "filed" with the securities regulatory authority or regulator and those that must be "delivered" or "sent" to the securities regulatory authority or regulator. Documents that are "filed" are on the public record. Documents that are "delivered" or "sent" are not necessarily on the public record. All documents required to be filed under the Instrument must be filed in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.
- (2) Section 1.1 of the Instrument defines "business day" as any day other than a Saturday, Sunday or a statutory holiday. In some cases, a statutory holiday may only be a statutory holiday in one jurisdiction. The definition of business day should be applied in each local jurisdiction in which a prospectus is being filed. For example, section 5.1.2 of the Instrument states that the date of the certificates in a simplified prospectus must be within 3 business days before the filing of the simplified prospectus. The certificates in the simplified prospectus are dated Day 1. Day 2 is a statutory holiday in Québec but not in Alberta. If the simplified prospectus is filed in both Alberta and Québec, it must be filed no later than Day 4 in order to comply with the requirement in section 5.1.2 of the Instrument, despite the fact that Day 2 was not a business day in Québec. If the simplified prospectus is filed only in Québec, it could be filed on Day 5.

Personal Information Forms

- 2.5.1**
- (1) If mutual funds are relying upon a previously delivered personal information form or predecessor personal information form, mutual funds are reminded that the responses to certain questions in the form must still be correct. Accordingly, in order to meet these requirements mutual funds should obtain appropriate confirmations from the individual concerned.
 - (2) Paragraphs 2.3(1.1)(c) and 2.3(2.1)(c) of the Instrument require that in certain circumstances a mutual fund deliver a copy of a previously

delivered personal information form, or "alternative information that is satisfactory to the regulator". Our interpretation of what would potentially be alternative information that is satisfactory to the regulator is, with respect to the previous delivery of an individual's personal information form, the System for Electronic Document Analysis and Retrieval (SEDAR) project number and name of issuer. In most cases this information will be sufficient. Staff will contact mutual funds in cases where it is not. Mutual funds wishing to proceed in this manner should provide the information in the cover letter for the preliminary or pro forma simplified prospectus.

- (3) If a mutual fund is delivering a copy of a previously delivered personal information form pursuant to paragraphs 2.3(1.1)(c) and 2.3(2.1)(c) of the instrument, the mutual fund should deliver it as a personal information form on SEDAR, in the same way that a new personal information form would be delivered.

2.6 Supporting Documents

- (1) REVOKED
- (2) Subsection 2.3(6) of the Instrument permits certain material contracts to be filed with certain commercial or financial information deleted in order to keep this information confidential. For example, specific fees and expenses and non-competition clauses could be kept confidential under this provision. In these cases, the benefits of disclosing the information to the public are outweighed by the potentially adverse consequences to mutual fund managers and portfolio advisers. However, the basic terms of these agreements must be included in the contracts that are filed, such as provisions relating to the term and termination of the agreements and the rights and responsibilities of the parties to the agreements.

2.7 Amendments

- (1) Subsection 2.3(5.1) of the Instrument requires an amendment to a simplified prospectus to be filed whenever an amendment to a fund facts document is filed. If the substance of the amendment to the fund facts document would not require a change to the text of the simplified prospectus, the amendment to the simplified prospectus would consist only of the certificate page referring to the mutual fund to which the amendment to the fund facts document pertains.
- (2) Paragraph 2.1(1)(e) of the Instrument requires a mutual fund to file an amendment to a fund facts document when a material change to the mutual fund occurs that requires a change to the disclosure in the fund facts document. This mirrors the requirement in paragraph 11.2(1)(d) of National Instrument 81-106 *Investment Fund Continuous Disclosure*. We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the mutual fund to be material

changes. We would generally consider changes to the mutual fund's investment objective to be material changes under securities legislation.

- (2.1) General Instruction (8.1) of Form 81-101F3 permits a mutual fund to disclose a material change and proposed fundamental change, such as a proposed merger, in an amended and restated fund facts document. We would permit flexibility in selecting the appropriate section of the amended and restated fund facts document to describe the material change or proposed fundamental change. However, we also expect that the variable sections of the fund facts document, such as the Top 10 investments and investment mix, to be updated within 60 days before the date of the fund facts document. In addition, if a mutual fund completes a calendar year or files a management report of fund performance prior to the filing of the amended and restated fund facts document, we expect the fund facts document to reflect the updated information.
- (3) A commercial copy of an amended and restated simplified prospectus can be created by reprinting the entire document or by putting stickers on an existing document that provide the new text created by the amendment. If stickers are used, one sticker will be required for the substance of the amendments and a separate sticker will be required for the cover page of the document that describes the type and date of the document, as applicable.
- (4) Subsection 2.2(4) of the Instrument requires that any amendment to a fund facts document can only take the form of an amended and restated fund facts document. Accordingly, the commercial copy of an amended and restated fund facts document can only be created by reprinting the entire document.
- (5) The requirements in section 2.2 of the Instrument apply to an amendment to a full simplified prospectus and to an amendment only to a Part A or Part B section of a simplified prospectus in cases where the Part A and Part B sections are bound separately. Section 2.2 of the Instrument requires amendments to various parts of a multiple SP to be evidenced as follows:
 1. **Multiple SP with Part A and the Part B sections bound together.** An amendment to either or both of the Part A or Part B sections could be in the form of a free standing amending instrument that would be delivered to investors with the rest of the multiple SP. The amending instrument would be identified, in accordance with subsection 2.2(3) of the Instrument, as "Amendment No. [insert number], dated [date of amendment] to the simplified prospectus document for the [name of funds] dated [date of original document]". Or, the amendment could be in the form of a restated and amended multiple SP document, identified as such in accordance with subsection 2.2(3).

2. **Multiple SP with Part A and the Part B sections bound separately.** If there is an amendment to the Part A section of the document but not to a Part B section, the amendment could be in the form of an amending document or an amended and restated Part A document. An amending document could be identified as "Amendment No. [insert number], dated [date of amendment], to the Part A section of the simplified prospectuses of the [name of funds] dated [original date of multiple SP]", and the amended and restated Part A document could be identified as "Amended and Restated Simplified Prospectuses dated [date of amendment] of the [name of funds], amending and restating the Simplified Prospectuses dated [original date of document]."
 3. In the circumstances described in paragraph 2 above, no amendment is required to be made to the Part B sections of the multiple SP. The footer that is required by Item 1 of Part B of Form 81-101F1 to be on the bottom of each page of a Part B section will continue to show the date of the original Part A document. For this reason, the amended Part A document must be identified in a way that shows the date of the amendments and the original date of the document so that investors know that it relates to the corresponding Part B sections.
 4. If there is an amendment to a Part B section of a multiple SP with Part A and Part B sections bound separately the amendment must be made by way of an amended and restated Part B document, whether or not an amendment is being made to the Part A section. If no amendment to the Part A section is being made, no amendment is required to the Part A document. The amended and restated Part B document will include a statement in the footer required by Item 1 of Part B of Form 81-101F1 that identifies the document as a document that amends and restates the original Part B document.
- (6) Subsection 2.2(4) of the Instrument requires an amendment to a fund facts document to be in the form of an amended and restated fund facts document. An amended fund facts document does not have to be otherwise identified, except for the date of the amendment.
 - (7) An amendment to a prospectus of a mutual fund, even if it amends and restates the prospectus, does not change the date under Canadian securities legislation by which the mutual fund must renew the prospectus. That date, which is commonly referred to as the "lapse date" for the prospectus, remains that date established under securities legislation. An amendment to a fund facts document will also not change the lapse date for a prospectus.

- (8) Securities legislation says that a person or company must not distribute securities, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued by the securities regulatory authority or regulator. This requirement also applies to mutual funds. If a mutual fund adds a new class or series of securities to a simplified prospectus that is referable to a new separate portfolio of assets, a preliminary simplified prospectus must be filed, together with a preliminary fund facts document. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by an amendment to the simplified prospectus. In this case, a preliminary fund facts document for the new class or series must still be filed, as set out in subparagraph 2.1(1)(d)(iii) of the Instrument.

2.8 Websites

Section 2.3.1 of the Instrument requires a mutual fund to post its fund facts document on its designated website. A fund facts document should remain on the designated website at least until the next fund facts document for the mutual fund is posted. A fund facts document must be displayed in an easily visible and accessible location on the designated website. It should also be presented in a format that is convenient for both reading online and printing on paper.

PART 3 PLAIN LANGUAGE AND PRESENTATION

3.1 Plain Language

Subsection 4.1(1) of the Instrument requires that a simplified prospectus and fund facts document be written in plain language. The reason for using “plain language” is to communicate in a way that the audience could immediately understand what you tell them. The plain language approach focuses on the needs and abilities of the audience to ensure that the content of a communication is relevant, the organization of the information is logical, the language is appropriate and the presentation is visually appealing.

Mutual funds should consider the following plain language techniques in preparing their documents:

- Organize the document into clear, concise sections, paragraphs and sentences.
- Use:
 - common everyday words
 - technical, legal and business terms only when unavoidable and provide clear and concise explanations for them
 - the active voice
 - short sentences and paragraphs
 - a conversational and personal tone
 - examples and illustrations to explain abstract concepts.

- Avoid:
 - superfluous words
 - unnecessary technical, legal and business jargon
 - vague boilerplate wording
 - glossaries and defined terms unless they aid in understanding the disclosure
 - abstractions by using more concrete terms or examples
 - excessive detail
 - multiple negatives.

3.2 Presentation

(1) Subsection 4.1(1) requires that a simplified prospectus and fund facts document be presented in a format that assists in readability and comprehension. The Instrument and related forms also set out certain aspects of a simplified prospectus and fund facts document that must be presented in a required format, requiring some information to be presented in the form of tables, charts or diagrams. Within these requirements, mutual funds have flexibility in the format used for simplified prospectuses and fund facts documents.

The formatting of documents can contribute substantially to the ease with which the document can be read and understood. Mutual funds should consider using the following formatting ideas when preparing their documents:

- reasonably-sized, easy-to-read typefaces
- headings that are clearly differentiated from the body text
- bulleted or numbered lists
- margins, boxes or shading to highlight information or for supplementary information
- tables, graphs and diagrams for complex information
- "question and answer" format to organize information
- sufficient white space on each page
- images, colour, lines and other graphical elements
- avoiding the use of upper-case, bold, italic or underlining in blocks of text
- avoiding full-justified margins.

- (2) We think documents would be easier to read and understand with the use of the design features set out in subsection (1). The use of logos and pictures that accurately depict aspects of the mutual fund industry, the mutual fund or mutual fund family or products and services offered by the mutual fund family may also aid in comprehension and readability. However we think that an excessive use or crowding of design features might make the documents more difficult to read or understand.
- (3) On occasion, we have seen amendments to simplified prospectuses prepared in highly legal and technical styles. For example, some amendments merely reference specific lines or sections of a simplified prospectus that are being amended, without providing the reader with a restated section or an explanation for the changes. In addition, some amendments have been presented in the form of photocopies of some other documents, such as meeting materials, with the word “amendment” written on the top of the photocopy. We think that these approaches are inappropriate ways of amending a simplified prospectus under the Instrument.

Material changes to mutual funds must be described in a format that assists in readability and comprehension, as required by subsection 4.1(1) of the Instrument. Amendments should be expressed clearly, and in a manner that enables the reader to easily read and understand both the amendment and the revised sections of the relevant document. This manner of expression may require the preparation of either an amended and restated simplified prospectus or a clearly worded amendment insert for the existing simplified prospectus or annual information form. Any amendment to a fund facts document must be in the form of an amended and restated fund facts document.

PART 4 THE MULTIPLE SP

4.1 General Provisions Relating to a Multiple SP

- (1) A consolidated “simplified prospectus” pertaining to a number of mutual funds is in law a number of separate simplified prospectuses, one simplified prospectus for each mutual fund. Further, a receipt issued by the securities regulatory authority or regulator in connection with a consolidated “simplified prospectus” in law represents a separate receipt for the simplified prospectus pertaining to each mutual fund. The Instrument and Form 81-101F1 make clear that a simplified prospectus under the Instrument pertains to one mutual fund and use the term “multiple SP” to refer to a document that contains more than one simplified prospectus.
- (2) Under the Instrument, a simplified prospectus consists of two sections: a Part A section, which provides introductory information about the mutual fund, general information about mutual funds and information applicable to the mutual funds managed by the mutual fund

organization, and a Part B section, which contains specific information about the mutual fund.

- (3) The Instrument states that simplified prospectuses must not be consolidated to form a multiple SP unless the Part A section of each simplified prospectus is substantially similar. We think, the term "substantially similar" would be applicable in this context if there is a high degree of similarity among the Part A sections of the simplified prospectuses that are proposed to be consolidated. This option would be available generally to mutual funds in the same mutual fund family that are administered by the same entities and operated in the same manner. There may be some deviation between the disclosure that would be provided for some of the mutual funds; those deviations have been largely contemplated by Form 81-101F1.
- (4) In order to maximize flexibility for mutual fund organizations and improve the accessibility of disclosure provided to investors, the Instrument allows the Part B sections of a multiple SP to be bound separately from the Part A section. In addition, the Instrument permits the physical separation of each Part B section that pertains to a different mutual fund. This would permit an investor to be provided with a Part A section that described the mutual fund family and mutual fund organization generally, and only the mutual fund-specific disclosure that relates to the mutual fund or mutual funds in which the investor is interested. This approach could permit a "back pocket" approach in which the Part B sections of a simplified prospectus could be inserted in a pocket of the Part A section of the document.
- (5) The Instrument contains no restrictions on how many simplified prospectuses can be consolidated into a multiple SP.
- (6) REVOKED

4.2 Adding Additional Funds to a Multiple SP

- (1) Mutual funds may create and file a document that contains both a pro forma simplified prospectus and a preliminary simplified prospectus in order to include the disclosure of a new mutual fund in documents that already pertain to existing mutual funds.
- (2) A new mutual fund may be added to a multiple SP that contains final simplified prospectuses. In this case, an amended multiple SP containing disclosure of the new mutual fund, as well as a new fund facts document for each class or series of the new mutual fund would be filed. The preliminary filing would constitute the filing of a preliminary simplified prospectus and fund facts document for the new mutual fund, and a draft

amended and restated simplified prospectus for each existing mutual fund. The final filing of documents would include a simplified prospectus and fund facts document for the new mutual fund, and an amended and restated simplified prospectus for each previously existing mutual fund. An amendment to an existing fund facts document would generally not be necessary. (3) An amendment to a prospectus of a mutual fund does not change the "lapse date" of the prospectus under Canadian securities legislation. Mutual funds are encouraged to pay particular attention to this issue when following the procedures described in subsection (2).

PART 4.1 THE FUND FACTS DOCUMENT

4.1.1 General Purposes

The general purposes of the offering disclosure regime for mutual funds and of the fund facts document are described in section 2.1 of this Policy. This Part provides guidance to preparers of the fund facts document in meeting those purposes.

A sample fund facts document is set out in Appendix A to this Policy. The sample is provided for illustrative purposes only.

4.1.2 Multiple Class Mutual Funds

The purpose for the requirements on the content and format of a fund facts document is to give investors the opportunity to easily compare the key information of one mutual fund to another. For many mutual funds, the class or series may affect not only the management expense ratio and performance, but a number of other considerations as well, such as minimum investment amounts, distributions, suitability, dealer compensation and sales charge options. For this reason, the Instrument requires a fund facts document to be prepared for each class and each series of a mutual fund that is referable to the same portfolio of assets.

4.1.3 Filings

- (1) Section 2.1 of the Instrument requires that a fund facts document for each class and series of the securities of a mutual fund be filed concurrently with the mutual fund's simplified prospectus.
- (2) The most recently filed fund facts document for a mutual fund is incorporated by reference into the simplified prospectus under section 3.1 of the Instrument, with the result that any fund facts document filed under the Instrument after the date of receipt for the simplified prospectus supersedes the fund facts document previously filed.
- (3) Section 2.3.1 of the Instrument requires a fund facts document filed under Part 2 of the Instrument to be posted by the mutual fund on its designated website. Only a final fund facts document filed under the Instrument

should be posted on a designated website. A preliminary or pro forma fund facts document, for example, should not be posted.

4.1.4 Additional Information

Paragraph 4.1(3)(d) of the Instrument requires a fund facts document to include only information that is specifically mandated or permitted by the required Form 81-101F3.

4.1.5 Format

The Instrument requires a mutual fund to use the headings and sub-headings stipulated in the Instrument and Form 81-101F3.

PART 5 THE SIMPLIFIED PROSPECTUS

5.1 General Purposes

The general purposes of a simplified prospectus are described in section 2.1 of this Policy. This Part provides guidance to preparers of simplified prospectuses in meeting those purposes.

5.2 Catalogue Approach

The Instrument requires that a multiple SP must present the fund-specific, or Part B, disclosure about each fund using a catalogue approach. That is, the disclosure about each mutual fund must be presented separately from the disclosure about each other mutual fund.

5.2.1 Accessibility of a Simplified Prospectus

Mutual funds, managers, and dealers should encourage investors who want more information about a mutual fund to request and read the simplified prospectus and any of the documents incorporated by reference into the simplified prospectus. The Instrument requires that a simplified prospectus or any of the documents incorporated by reference be sent within three business days of a request.

5.3 Additional Information

- (1) Paragraph 4.1 (2)(a) of the Instrument provides that a simplified prospectus must provide all information briefly and concisely. Paragraph 4.1 (2)(e) of the Instrument requires that a simplified prospectus must include only educational material or information that is specifically mandated or permitted by Form 81-101F1.
- (2) REVOKED.
- (3) Item 12 of Part A and Item 14 of Part B of Form 81-101F1 permit disclosure of information required or permitted by securities legislation or by an order

or ruling of the securities regulatory authority pertaining to the mutual fund that is not otherwise required to be disclosed by Form 81-101 F1. This addition has been made to ensure that such information is not technically prohibited from being included in a simplified prospectus by paragraph 4.1(2)(e) of the Instrument. Instruction (1) to Item 12 of Part A of Form 81-101 F1 contains examples of the type of disclosure that may be appropriately included under these Items.

5.4 Inclusion of Educational Material

- (1) Paragraph 4.1(2)(e) of the Instrument permits educational material to be included in a simplified prospectus. There are no requirements on the location of any educational material. However, the CSA thinks that educational material will be more useful if placed close to mandated disclosure to which it substantively relates.
- (2) Educational material contained in a simplified prospectus is subject to the general requirements of the Instrument and should be presented in a manner consistent with the rest of the simplified prospectus. That is, the educational material should be concise, clear and not detract from the clarity or presentation of the information in the simplified prospectus.
- (3) The definition of "educational material" contained in section 1.1 of the Instrument excludes material that promotes a particular mutual fund or mutual fund family, or the products or services offered by the mutual fund or mutual fund family. A mutual fund, mutual fund family or those products or services may be referred to in educational material as an example if the reference does not promote those entities, products or services. Mutual funds should ensure that any material included within, attached to or bound with a simplified prospectus is educational material within the meaning of this definition.

5.5 Format

A simplified prospectus must use the headings and specified sub-headings exactly as they are set out in the Instrument. If no sub-headings are specified, a simplified prospectus may include additional sub-headings under the required headings.

PART 6 [Repealed]

PART 7 Delivery

7.1 Delivery of the Simplified Prospectus

The Instrument contemplates delivery to all investors of a fund facts document in accordance with the requirements in securities legislation. It does not require the delivery of the simplified prospectus, or any other documents incorporated by reference into the simplified prospectus, unless requested. Mutual funds or dealers may also provide investors

with any of the other disclosure documents incorporated by reference into the simplified prospectus.

7.2 Pre-Sale Delivery of the Fund Facts Document

- (1) The Instrument requires a fund facts document to be delivered before a dealer accepts an instruction for the purchase of a security of a mutual fund. The purpose of pre-sale delivery of a fund facts document is to provide a purchaser with key information about the mutual fund that will inform a purchase decision. What constitutes “before” is intended to be flexible, provided it occurs within a reasonable timeframe before the purchaser’s instruction to purchase. Accordingly, the Canadian securities regulatory authorities would generally expect that delivery of a fund facts document will occur within a timeframe that provides a purchaser with a reasonable opportunity to consider the information in the fund facts document before proceeding with the transaction. It should not be delivered so far in advance of the purchase of a security of a mutual fund that the delivery cannot be said to have any connection with the purchaser’s instruction to purchase the mutual fund.
- (2) Where a purchaser has already received a fund facts document for a particular class or series of securities of a mutual fund, it is not necessary to deliver to the purchaser another fund facts document for a subsequent purchase of that same class or series of securities of a mutual fund, unless a more recent version of the fund facts document has been filed.

7.3 Post-Sale Delivery of the Fund Facts Document

- (1) While the Instrument generally requires pre-sale delivery of the fund facts document, it also sets out specific requirements that would permit post-sale delivery of the fund facts document in circumstances where the purchaser has indicated that they require the purchase of a security of a mutual fund to be completed immediately, or by a specified time, and it is not reasonably practicable for the dealer to effect pre-sale delivery of the fund facts document within the timeframe specified by the purchaser.
- (2) The requirements for post-sale delivery of the fund facts document are set out in section 3.2.02 and should be interpreted consistently with the dealer’s general duties to act fairly, honestly and in good faith and to establish and maintain a compliance system in accordance with securities legislation. Accordingly, the Canadian securities regulatory authorities expect dealers will adapt their business models to comply with the general requirement for pre-sale delivery of the fund facts document.
- (3) Section 3.2.02 requires dealers to provide a summary of the information contained in the fund facts document. This should include describing the purpose of the fund facts document, the type of information it contains, and advising purchasers that they are entitled to receive and review the

fund facts document before the purchase of a security of a mutual fund. Where the purchaser consents to post-sale delivery of the fund facts document, dealers are required to provide verbal disclosure of certain information contained in the fund facts document. This would include a description of the fundamental features of the mutual fund and what it primarily invests in, as well as the investment risk level of the mutual fund. The Canadian securities regulatory authorities would not generally consider it necessary to disclose the information included in the fund facts document under "Top 10 investments" or "Investment mix". In disclosing the suitability of the mutual fund for particular investors, dealers would be required to describe the characteristics of the investor for whom the mutual fund may or may not be an appropriate investment, and the portfolios for which the mutual fund is and is not suited. In terms of providing an overview of any costs associated with buying, selling and owning the mutual fund, the information provided should, at a minimum, include a discussion of any applicable sales charges, as well as ongoing fund expenses (e.g., MER and TER), and any applicable trailing commissions. Information related to sales charges and trailing commissions is also required as part of pre-trade disclosure requirements set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Finally, dealers would also be required to provide purchasers with a summary of any applicable right to withdraw from a purchase within two days after receipt of the fund facts document and to rescind a purchase within 48 hours after receipt of the trade confirmation for the purchase. This latter requirement is intended to alert purchasers to the fact that they will have an opportunity to consider the information in the fund facts document that will be delivered or sent post-sale and, based on that information, determine whether they want to cancel their purchase of the mutual fund securities at that time.

- (4) Where a purchaser consents to receive delivery of the fund facts document after entering into the purchase of a security of a mutual fund, the consent will only be valid for the particular transaction. A dealer cannot rely on a blanket consent from a purchaser to carry out post-sale delivery of the fund facts document for other purchases of mutual fund securities.
- (5) In accordance with existing practices, dealers must establish internal policies and procedures to ensure delivery of the fund facts document occurs in accordance with Part 3. Dealers must maintain evidence of delivery of the fund facts document, as well as receipt of purchaser consents to receive delivery of the fund facts document after entering into the purchase of a security of a mutual fund. Dealers must also maintain adequate records to evidence that satisfactory disclosure about the fund facts document has been provided to purchasers in compliance with section 3.2.02. Such records should also indicate why delivery of the fund facts document was impracticable in the circumstances. The Canadian securities regulatory authorities expect that dealers will follow their current

practices to maintain evidence of required disclosures to sufficiently document delivery of the fund facts document.

- (6) The Instrument does not specify a particular manner of evidencing a purchaser's consent to allow delivery of the fund facts document after entering into the purchase of a security of a mutual fund. In particular, the Instrument does not require dealers to obtain written consent from clients. The Canadian securities regulatory authorities expect that dealers will follow their current policies and procedures for tracking and monitoring client instructions and authorizations.
- (7) The Canadian securities regulatory authorities expect that dealers will remain faithful to the overall objective of ensuring that purchasers are provided with a fund facts document prior to accepting instructions to purchase a security of a mutual fund. Although the instrument allows for post-sale delivery of the fund facts document in certain limited circumstances, the Canadian securities regulatory authorities expect that post-sale delivery of the fund facts document will be the exception rather than the norm. The Canadian securities regulatory authorities may examine practices or arrangements that raise the suspicion of being structured to permit dealers to do indirectly what they cannot do directly and that are inconsistent with the overall intent of providing key information to investors at a time that is most relevant to their purchase decision.
- (8) Section 3.2.03 sets out an exception from the requirement to deliver a fund facts document for subsequent purchases of a mutual fund made pursuant to a pre-authorized purchase plan provided certain conditions are met. One of these conditions requires investors to be provided with an initial notice indicating, among other things, that they will not receive a fund facts document unless they specifically request it. The notice must also specify how a fund facts document can be obtained. Investors must also be provided with an annual notice reminding them about how they can request a fund facts document. The Canadian securities regulatory authorities expect that both the initial notice and the annual notice will be presented in a clear, comprehensible and prominent manner so that investors can easily ascertain how they can avail themselves of the option to request a fund facts document.

7.4 Methods of Delivery

- (1) The methods of delivery of a fund facts document are consistent with methods of delivery of a prospectus under securities legislation. A fund facts document required to be delivered or sent under Part 3 of the Instrument may be delivered or sent electronically, subject to the purchaser's consent. Electronic delivery may include providing an electronic copy of a fund facts document to the purchaser in the form of an e-mail attachment or providing a hyperlink to the fund facts document.

- (2) The Canadian securities regulatory authorities will not consider the making of a fund facts document available on a mutual fund's designated website, or referring an investor to a general website address where the fund facts document can be found to constitute delivery under the Instrument, even if the investor consents to that method of delivery.
- (3) Where a hyperlink is provided to the purchaser, the link should lead the purchaser directly to the specific fund facts document for the applicable class or series of the mutual fund being purchased. Consideration should be given to ensuring that the hyperlink remains accessible to the purchaser for so long as the purchaser may reasonably need to consult it.
- (4) In the case of online transactions conducted through order execution service accounts, there may be a number of ways in which compliance with the requirement for pre-sale delivery of the fund facts document could be achieved. For example, dealers could consider the use of a "pop-up" notice informing the purchaser that a fund fact document is available for review and provide a hyperlink to the relevant fund facts document. Dealers could also consider requiring the purchaser to "click through" the fund facts document prior to accepting their purchase order.
- (5) In addition to the requirements in the Instrument and the guidance in this section, dealers may want to refer to National Policy 11-201 *Electronic Delivery of Documents* for additional guidance.

7.5 Consolidation of Fund Facts Documents

- (1) For the purposes of pre-sale delivery, subsection 5.2(2) of the Instrument allows a fund facts document to be combined with one or more fund facts documents, provided the size of the document does not make the presentation of the information inconsistent with the principles of simplicity, accessibility and comparability. For example, a fund facts document may be combined with fund facts documents of other classes or series of securities of the same mutual fund, other mutual funds from the same fund family, or other mutual funds of a similar type from different fund families. In making this determination, mutual funds, managers and participants in the mutual fund industry should consider the ability of an investor to easily find and use the information that is relevant to the particular mutual funds securities they are considering purchasing, and whether a reasonable person in the circumstances would come to the same conclusion. We think a document combining more than 10 fund facts documents may discourage an investor from finding and reading each fund facts document and obscure key information, which is inconsistent with the principles of simplicity, accessibility and comparability.
- (2) Where multiple fund facts documents are being delivered electronically in compliance with the pre-sale delivery requirement, subsection 5.2(3)

prohibits those fund facts documents from being combined into a single e-mail attachment. The use of a hyperlink that directs the investor to a single document combining all the relevant fund facts would also be prohibited under the Instrument. Instead, a dealer would be expected to provide individual attachments or hyperlinks for each fund facts document that is required to be delivered.

- (3) When delivery of the fund facts document occurs after the purchase transaction, subsections 5.2(4) to (6) of the Instrument permit a fund facts document to be combined with certain other materials or documents. With the exception of a general front cover, a table of contents or a trade confirmation, subsection 5.2(7) requires the fund facts document to be located as the first item in the package of documents or materials.

7.6 Preparation of Disclosure Documents in Other Languages

Nothing in the Instrument prevents the simplified prospectus or fund facts document from being prepared in other languages, provided that these documents are delivered or sent in addition to any disclosure document filed and required to be delivered in accordance with the Instrument. The Canadian securities regulatory authorities would consider such documents to be sales communications.

7.7 Delivery of Documents by a Mutual Fund

Section 3.3 of the Instrument requires that a mutual fund deliver or send to a person or company, upon request and free of charge, a simplified prospectus or documents incorporated by reference. The Canadian securities regulatory authorities are of the view that compliance with this specifically-mandated requirement by an unregistered entity is not a breach of the registration requirements of securities legislation.

7.8 Delivery of Separate Part A and Part B Sections

Mutual fund organizations that create physically separate Part B sections are reminded that any obligation to provide the simplified prospectus would be satisfied only by the delivery of both the Part A and Part B sections of a simplified prospectus.

7.9 Delivery of Non-Educational Material

The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with the simplified prospectus. This type of material may, therefore, be delivered with, but cannot be included within, or attached to, the simplified prospectus. The Instrument does not permit the binding of educational and non-educational material with the fund facts document. The intention of the Instrument is not to unreasonably encumber the fund facts document with additional documents.

PART 8 COMMENTARY ON INVESTMENT AND RELATED DISCLOSURE

8.1 Investment Disclosure

Form 81-101F1 requires detailed disclosure concerning a number of aspects of the investment approach taken by a mutual fund, including disclosure concerning fundamental investment objectives, investment strategies, risk and risk management. Form 81-101F3 also contains a summarized form of this disclosure. For many mutual funds, the best persons to prepare and review the disclosure would be the portfolio advisers of the mutual fund and we think mutual funds should generally involve them in preparing and reviewing this disclosure..

8.2 Portfolio Advisers

Item 4.2 of Part A of Form 81-101F1 requires disclosure concerning the individuals employed by the manager or portfolio adviser that make investment decisions. Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* requires a simplified prospectus to be amended if a material change occurs in the affairs of the mutual fund that results in a change to the disclosure in the simplified prospectus and fund facts document. Section 7.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* discusses when a departure of a high-profile individual from a portfolio adviser of a mutual fund may constitute a material change for the mutual fund. If the departure is not a material change for the mutual fund, there is no requirement to amend a simplified prospectus, as long as the simplified prospectus contains full, true and plain disclosure about the mutual fund.

PART 9 NEED FOR MULTIPLE OR SEPARATE APPLICATIONS

9.1 Need for Multiple or Separate Applications

- (1) The CSA note that a person or company that obtains an exemption from a provision of the Instrument need not apply again for the same exemption at the time of each simplified prospectus and fund facts document refiling, unless there has been some change in an important fact relating to the granting of the exemption.
- (2) The principle described in subsection (1) does not necessarily apply to applications required to be made under the Regulations to the Securities Act (Quebec) for relief from provisions of those Regulations that are substantially similar to those contained in the Instrument. In that case, an application may be required with each refiling of a simplified prospectus and fund facts document of a mutual fund.
- (3) In Quebec, it may be necessary to apply for exemptions from the equivalent sections in the Act and the Regulations.

PART 10 EXEMPTIONS

10.1 Applications Involving Novel or Substantive Issues

Section 6.2 of the Instrument allows exemptive relief from form and content requirements for a simplified prospectus or a fund facts document to be evidenced by way of issuance of a receipt. In cases where the CSA thinks that an application for exemptive relief raises novel and substantive issues, or raises a novel policy concern, the CSA may request that such applications follow the process set out in National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. This will likely be the case for applications seeking exemptive relief from the form and content requirements of the fund facts document.