

NOTICE AND REQUEST FOR COMMENT IMPLEMENTATION OF POINT OF SALE DISCLOSURE FOR MUTUAL FUNDS

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*, FORMS 81-101F1 AND 81-101F2 AND COMPANION POLICY 81-101CP *MUTUAL FUND PROSPECTUS DISCLOSURE* AND RELATED AMENDMENTS

Introduction

We, the members of the Canadian Securities Administrators (the CSA), are publishing for a comment period of 120 days proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the Proposed Rule), Forms 81-101F1 *Contents of Simplified Prospectus* and 81-101F2 *Contents of Annual Information Form* (the Forms), and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* (the Companion Policy). New Form 81-101F3 *Contents of Fund Facts Document* is part of the Proposed Rule. We refer to the Proposed Rule, the Forms and Companion Policy as the Instrument.

The Instrument, together with related amendments, sets out the first phase of the CSA's proposed approach to implement the shared vision of securities and insurance regulators to provide investors with more meaningful and effective prospectus disclosure of mutual funds and segregated funds, as described in Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds* published by the Joint Forum of Financial Market Regulators (Joint Forum)¹ on October 24, 2008.

This is a significant investor protection initiative. We think the disclosure required by the Instrument would provide investors with the opportunity to make more informed investment decisions by giving investors key information about a mutual fund, in a language they can easily understand, at a time that is relevant to their investment decision. Central to the new prospectus disclosure regime is the Fund Facts document. It is in plain language, generally fits on both sides of one page and highlights the potential benefits, risks and the costs of investing in a mutual fund.

We are requesting feedback on the Instrument and related amendments, in particular, on implementation issues. We anticipate, and are committed to, continuing to consult with investors, representatives from the mutual fund industry, dealers, sales representatives and service providers to reach appropriate solutions.

As a second phase of the CSA's implementation, we intend to review the overall disclosure regime for mutual funds to reduce unnecessary duplication.

¹ The goal of the Joint Forum is to continuously improve the financial services regulatory system through greater harmonization, simplification and co-ordination of regulatory activities.

For ease of readability, we are publishing an unofficial consolidation of the Instrument that incorporates the proposed amendments. We are also publishing a blacklined version of the Instrument that identifies the proposed changes to the Proposed Rule and Companion Policy. The proposed amendments to the Instrument are set out in Appendix C.

We are also publishing the following related, consequential amendments for a comment period of 120 days:

- proposed amendments to National Instrument 81-102 *Mutual Funds* and Companion Policy 81-102CP *Mutual Funds*;
- proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Companion Policy 81-106CP *Investment Fund Continuous Disclosure*;
- proposed amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*; and
- in some jurisdictions, certain local amendments.

We expect the Proposed Rule and related rule amendments to be adopted as rules in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia, Prince Edward Island, New Brunswick, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut, as commission regulations in Saskatchewan, and as regulations in Québec. The Companion Policy and related policy amendments are expected to be adopted as policies in each of the CSA jurisdictions.

In some jurisdictions, legislative amendments may need to be sought and enacted if delivery of the Fund Facts document is to take the place of delivery of the simplified prospectus for mutual funds subject to the Instrument.

Background

The Joint Forum released a *Comparative Study of Individual Variable Insurance Contracts (Segregated Funds) and Mutual Funds* in May 1999. Later that year, the Joint Forum published its *Recommendations for Changes in the Regulation of Mutual Funds and Individual Variable Insurance Contracts*. In that report, the Joint Forum recommended that work be done to further harmonize segregated fund and mutual fund disclosure.

On February 13, 2003, the CSA and Canadian Council of Insurance Regulators, as members of the Joint Forum, published Consultation Paper 81-403 *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds* (the Consultation Paper). The Consultation Paper identified that the current disclosure regime for mutual funds and segregated funds does not meet the objective of providing investors with the information necessary to make informed investment decisions. It set out proposals to bring key information to investors at the right time, in the right form and in a cost-effective and practical way.

On April 30, 2004, the Joint Forum published its report on the Consultation Paper, which summarized the comments received and set out the Joint Forum's responses to those comments.

It was recognized in the Consultation Paper that the concepts described by the Joint Forum for a point of sale disclosure regime for mutual funds and segregated funds could be relevant to other publicly offered investment funds. We will continue to consider the applicability of the new prospectus disclosure regime set out in the Instrument to other investment funds as follow-on work to this initiative.

On June 15, 2007, the Joint Forum published for comment Proposed Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds* (the initial Framework). The initial Framework described the elements of a proposed point of sale disclosure regime, including a new fund summary document called “Fund Facts”, delivery options, cancellation rights and the regulatory requirements for preparing, filing and delivering the Fund Facts document. Under the initial Framework, the Fund Facts was required to be delivered before the investor made the decision to buy any mutual fund.

Prior to its publication, we reviewed many research studies and academic papers from around the world to understand how investors make investment decisions and what information they want to make a decision. We determined that we needed to develop a short and simple point of sale disclosure document to help investors make an informed decision. In the fall of 2006, we tested two versions of the Fund Facts with investors and sales representatives, one for mutual funds and one for segregated funds.² The research indicated that the Fund Facts was very well received by the investors and the sales representatives who participated in the testing. After reviewing the results of the testing, some changes were made to clarify or expand the information in the Fund Facts. These changes were reflected in the initial Framework.

On October 24, 2008, the Joint Forum published a revised framework, Framework 81-406 *Point of sale disclosure for mutual funds and segregated funds* (the Framework). The changes made from the initial Framework were the result of comments received on the initial Framework and a series of follow-up consultations conducted to better understand and clarify some of the issues raised in the comment letters.

In response to comments that requiring the Fund Facts to be delivered before every purchase would impede the sales process for both investors and their advisers, the approach to delivery was modified. The Fund Facts document remained central to the Framework. However, in response to comments, some changes were made to Fund Facts content, particularly in the areas of the costs of investing in a mutual fund and dealer compensation. In response to comments, the frequency of updating and filing the Fund Facts was also modified.

For additional background information on all of these documents, please refer to the website of the Joint Forum at www.jointforum.ca and on the websites of members of the CSA.

Summary of Feedback Received on the Framework

Concurrently with the publication of the Framework, we published CSA Notice 81-318 seeking feedback from all stakeholders on issues related to implementation of the Framework and its

² You can find the *Fund Facts Document Research Report* prepared by Research Strategy Group in Appendix 5 to the initial Framework on the Joint Forum website and on the websites of members of the CSA.

principles, in advance of publishing proposed changes to existing securities legislation for first comment.

We received 46 comment letters on the Framework. Copies of the comment letters have been posted on the Ontario Securities Commission website at www.osc.gov.on.ca. Copies are also available from any CSA member. You can find the names of the commenters and a summary of the comments we received on the Framework and our responses in Appendix A to this Notice.

We have considered all comments received and have made some changes in response to the comments. In text boxes throughout the Proposed Rule (including new Form 81-101F3), we have identified the key changes and specific issues that we would like feedback on. We have also asked for feedback under Anticipated Costs and Benefits in this Notice.

Summary and Purpose

Purpose of the Instrument

The Instrument proposes to address the shortcomings of the current regime by focusing on three key principles:

- providing investors with key information about a fund;
- providing the information in a simple, accessible and comparable format; and
- providing the information before investors make their decision to buy.

We know that the current prospectus disclosure regime for mutual funds does not give investors meaningful information when they need it most. Mutual funds are required to disclose a great deal of information to investors in various documents. While these documents are intended to provide critical information to investors who are considering whether to buy a fund, research indicates that many investors do not use this information when making purchase decisions.³

Many investors have trouble finding and understanding the information they need because it is buried in the simplified prospectus for mutual funds. These documents tend to be long and complex. Investors also find it difficult to compare information about different funds. In addition, investors may not receive the documents before they make their purchase decision.

We expect that the Instrument and related amendments would enhance investor protection by providing investors with disclosure that gives them a basic understanding of the potential benefits, risks and costs of investing in a mutual fund, and allows them to meaningfully compare one fund to another. By making disclosure more effective, we are giving investors the opportunity to make more informed decisions. We are also enhancing transparency in the marketplace. We think current market conditions highlight the importance for investors to have the opportunity to understand what they are buying.

³ You can find the list of the research, studies and other sources that the Joint Forum reviewed and relied on in developing the Framework in Appendix 4 to the initial Framework on the Joint Forum website and on the websites of members of the CSA.

The Instrument and related amendments are also expected to contribute to more efficient Canadian capital markets by harmonizing the disclosure regimes for mutual funds and segregated funds. These are similar products that are often sold by a dually licensed dealer. The Instrument also keeps pace with developing global standards on point of sale delivery, which we consider essential to the continued success of the Canadian mutual fund industry.⁴ Improving the disclosure of mutual funds may also contribute to more efficient Canadian capital markets by reinforcing investor confidence in this product and the financial services marketplace.

Summary of the Instrument

Application

The Instrument and related amendments apply only to mutual funds subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

Fund Facts

The Fund Facts document set out in new Form 81-101F3 is central to the Instrument and largely follows the proposals in the Framework.

It is in plain language, generally fits on both sides of one page and highlights key information that is important to investors, including past performance, risks and the costs of investing in a mutual fund. It is designed using a question-and-answer format that makes it easy for investors to find information. It also contains a number of statements that help investors understand the risks of investing in a mutual fund.

To promote comparability and simplicity, many aspects of the Fund Facts document are prescribed, but it is also flexible enough to accommodate different kinds of mutual funds and to enable managers to describe their mutual funds accurately. To reduce the complexity of the document for investors and make it easier for investors to link the Fund Facts to a particular purchase, a separate Fund Facts document is required for each class or series of a mutual fund. To ensure ease of readability, the reading level of the Fund Facts is required to be at a grade level of 6.0 or less on the Flesch-Kincaid grade level score.

Filing Requirements

As under the Framework, the Instrument requires the Fund Facts document to be filed concurrently with the mutual fund's simplified prospectus and annual information form. The certificate for the mutual fund applies to the Fund Facts, just as it applies to all documents incorporated by reference into the simplified prospectus.

If managers want to provide more current information in the Fund Facts, they may choose to periodically update the disclosure in a Fund Facts by filing on SEDAR an updated Fund Facts. Any Fund Facts document filed after the date of the simplified prospectus is intended to supersede the Fund Facts previously filed.

The Instrument contemplates that if a material change to the mutual fund relates to a matter that requires a change to the disclosure in the Fund Facts, an amendment to the Fund Facts will be filed.

⁴ Under MiFID in Europe, the focus is on ensuring investors receive information 'in good time before' carrying on the relevant business, so that the information can inform their investment decision. Similarly, in the UK, Australia and Japan disclosure documents must generally be provided before a product is purchased.

Delivery

The delivery requirements follow the approach set out in the Framework. The obligations are designed to give investors an opportunity to review the information in the Fund Facts and ask questions before they make a purchase.

A key element of delivery of the Fund Facts is that it be at a time and in a way that allows an investor to easily link the information they receive about a mutual fund to the purchase they are considering. A distinction is made in the Instrument between investors who rely on a dealer's recommendation and those who do their own research and simply want to execute a trade.

The Instrument requires delivery of the Fund Facts document for all initial purchases before or at the point of sale that are recommended to an investor. For initial purchases of money market mutual funds recommended by the dealer or purchases that are initiated by the investor, the Instrument allows investors to choose to receive the Fund Facts document before they buy the mutual fund or with the confirmation of trade for the purchase. In these instances, the dealer is required to inform the investor of the existence and purpose of the Fund Facts and explain that the investor may choose to receive it before the purchase. Investors who make initial purchases through an order execution-only account will receive the Fund Facts document with the confirmation of trade.

The Fund Facts document is not required to be delivered for subsequent purchases of a mutual fund currently held in the investor's account. Dealers will have to give investors the option to receive annually the Fund Facts for each mutual fund in their account. The most recently filed Fund Facts document will also have to be posted to the website of the mutual fund, mutual fund family or manager.

The Instrument allows flexibility in delivery options. It can be in person, by mail, by fax, electronically or by other means (excluding oral delivery or availability to the Fund Facts alone). To make it easy for investors to review and refer to the Fund Facts document for the mutual funds that they have bought, the Instrument limits the number of Fund Facts that may be consolidated into a fund family document or other grouping when delivered.

Investor rights

Right for misrepresentation

The Instrument contemplates that the Fund Facts document will be incorporated by reference into the simplified prospectus. This means that the existing statutory rights of investors that apply for misrepresentations in a prospectus will apply to misrepresentations in the Fund Facts.

Right for failure to deliver the Fund Facts

The Instrument contemplates delivery of the Fund Facts document to satisfy delivery of the simplified prospectus under securities legislation. If delivery of the Fund Facts is to take the place of delivery of the simplified prospectus, some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or to rescind the purchase if the investor fails to receive the Fund Facts. An alternative approach may be to require the simplified prospectus to be delivered with the Fund Facts document, or for the Fund Facts document to become the simplified prospectus. We are considering these alternative approaches.

Cancellation right

As under the Framework, the Instrument contemplates replacing the current withdrawal and rescission rights under securities legislation with a single, harmonized two-day cancellation right for investors that applies to all mutual fund purchases. The purpose of the right is to give investors the reasonable opportunity to change their minds if they have been sold a mutual fund they really do not want. It is not intended to protect investors from a short-term decline in market value.

The right starts when the investor receives, or is deemed to receive, the confirmation of trade for the purchase. The content of the cancellation right generally differs from the current withdrawal and rescission rights. Under the Instrument, the investor will get back the lesser of:

- the amount of the investor's original investment in the mutual fund; and
- the value of the mutual fund on the day the investor exercises the cancellation right.

This means, that if the value of the mutual fund goes down within two business days of the investor receiving the confirmation of trade, the investor would get back less than the amount they invested. The investor would also get back any sales charges or other fees paid to buy the mutual fund, and will not pay any redemption or short-term trading fees. We think this approach is appropriate in combination with delivery of the Fund Facts document, which provides investors with awareness and clear information on how to exercise the cancellation right.

Transition

The Instrument contemplates a staged implementation, with the requirement to prepare and file a the Fund Facts document becoming effective earlier than the new delivery requirements. We currently propose a two-year transition period for delivery of the Fund Facts following the effective date of the Instrument. During this period, the Fund Facts document would be required to be prepared, filed concurrently with the mutual fund's next filed simplified prospectus and annual information form, and posted on the website of the mutual fund, mutual fund family or the manager. This would allow investors and dealers to start using the Fund Facts as soon as possible.

Subject to any legislative amendments needed to preserve investor rights for delivery of the Fund Facts, the Instrument contemplates that during this two-year transition period, delivery of the simplified prospectus may be satisfied by delivery of the Fund Facts document under the securities legislation in effect before the effective date of the Instrument.

Depending on the feedback we receive, the Instrument and related amendments may be implemented in stages. This could occur by adopting the Instrument in its entirety and varying the transition periods for various aspects of the Instrument, as currently contemplated, or by adopting the Instrument in part, to allow for a longer consultative process on implementation issues related to delivery.

Alternatives Considered

The earlier publications by the Joint Forum identified under Background in this Notice outlined the alternatives we considered, as members of the Joint Forum, in developing the disclosure regime for mutual funds set out in the Instrument. They also set out the pros and cons to each

alternative. You can find these documents on the Joint Forum website and on the websites of members of the CSA.

Anticipated Costs and Benefits

We think the disclosure regime set out in the Instrument would benefit both investors and the capital markets by helping address the “information asymmetry” that exists between participants in the mutual fund industry and investors. Unlike industry participants, investors often do not have key information about a mutual fund before they make their investment decision, and may not know where to find the information. Providing more effective disclosure would help bridge this information gap.

However, the extent to which investors and the mutual fund industry would be affected in terms of benefits and costs is difficult to quantify.

Benefits

The benefits of a more effective disclosure regime can be subtle and difficult to measure. For example, it can be a challenge to quantify the value of investors having the opportunity to make more informed investment decisions. In addition, research suggests that certain behavioral biases of investors may impact the effectiveness of policy initiatives that are designed to encourage better choices about financial products.⁵ However, research on investor preferences for mutual fund information, including our own testing of the Fund Facts, indicates investors prefer a concise summary of the information to be offered before the sale so that they can use the information to make a decision.⁶

Some anticipated benefits of a more effective disclosure regime for mutual funds include:

- less risk of investors buying inappropriate products or not fully benefitting from the advice services they pay for;
- investors being in a position to better understand and compare the one mutual fund to another, particularly the costs of investing in the mutual funds;
- greater transparency in areas such as charges or commissions, which may enhance the overall efficiency of the market; and
- comparability and ease of readability reinforcing investor confidence in mutual funds.

We seek feedback on whether you agree or disagree with our perspective on the benefits of the Instrument. We particularly seek feedback from investors.

⁵ FSA, July 2008 *Financial Capability A Behavioural Economics Perspective* – Consumer Research 69.

⁶ OSC, October 2006 *Fund Facts Document Research Report*; Investment Company Institute, August 2006 *Understanding Investor Preferences for Mutual fund Information*; SEC, April 2004 *Results of Focus Groups with Individual Investors to Test Proposed Rules 15c2-2 and 15c2-3*.

Costs

We think the costs of a new disclosure regime fall into two main categories: the one-time costs of change in moving to the new regime and the ongoing costs of maintaining the new system, in comparison with the cost of the existing disclosure regime.

We anticipate that costs to industry stakeholders will fall into the following general categories:

- preparation of the Fund Facts;
- reprogramming and updating information delivery systems;
- regulatory filings; and
- compliance costs and staff costs in overseeing and maintaining the delivery regime.

Yet, we also anticipate there will be reductions in preparation and delivery costs for industry stakeholders with the change from delivery of the simplified prospectus to delivery of the Fund Facts document. We think the potential costs could also be reduced to the extent that the new point of sale disclosure regime can be incorporated into the current delivery system. Some dealers may already disclose this type of information at point of sale even though securities legislation does not require this. As a second phase of the CSA's implementation, we intend to review the overall disclosure regime for mutual funds to reduce unnecessary duplication. This could further reduce the cost burden of the Instrument.

In response to industry concerns about the potential preparation and delivery costs of a separate Fund Facts document for each class or series of a mutual fund, the Instrument contemplates some degree of consolidation or grouping of Fund Facts for delivery. We are also seeking submissions of sample Fund Facts documents that demonstrate multiple series or class information presented in a manner consistent with the principles of the Framework to further consider ways to respond to the concerns raised about potential preparation and delivery costs.

The changes in the delivery proposals in the Framework were in response to industry concerns about the potential costs and disruptions that could be caused by an unduly rigid application of point of sale delivery. We will continue to consider other ways to respond to the implementation issues related to delivery. We have identified in Appendix B to this Notice specific aspects of the delivery requirements we are seeking specific feedback on.

Overall, we believe the potential benefits of the changes to the disclosure regime for mutual funds are proportionate to the costs of making them. We are committed to reviewing the impact of point of sale delivery, and the Instrument generally, following its implementation.

We seek feedback on whether you agree or disagree with our perspective on the cost burden of the Instrument. Specifically, we request specific data from the mutual fund industry and service providers on the anticipated costs and savings of complying with the Instrument for the mutual fund industry.

Related Amendments

National Amendments

Proposed amendments to National Instrument 81-102 *Mutual Funds* and Companion Policy 81-102CP *Mutual Funds* are set out in Appendix D;

Proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Companion Policy 81-106CP *Investment Fund Continuous Disclosure* are set out in Appendix E; and

Proposed amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* are set out in Appendix F.

Local Rule Amendments

If necessary, we propose to amend elements of local securities legislation, in conjunction with the implementation of the Instrument. The provincial and territorial securities regulatory authorities may publish these proposed local changes separately in their jurisdictions. These local changes may be to rules or to statutes. If statutory amendments are necessary in a jurisdiction, these changes will be initiated and published by the local provincial government.

Proposed consequential amendments to rules or regulations in a particular jurisdiction or publication requirements of a particular jurisdiction are in Appendix G to this Notice published in that particular jurisdiction.

Some jurisdictions may need to modify the application of the Instrument using a local implementing rule. Jurisdictions that must do so will separately publish the implementing rule.

Unpublished Materials

In developing the Instrument and related amendments, we have not relied on any significant unpublished study, report or other written materials.

Request for Comments

We would like your input on the Instrument and related amendments. We need to continue our open dialogue with all stakeholders if we are to achieve our regulatory objectives while balancing the interests of investors and market participants. To allow for sufficient review, we are providing you with 120 days to comment.

We have raised specific issues for comment in text boxes like this throughout the Proposed Rule (including new Form 81-101F3) and in this Notice. You can also find a list of these issues in Appendix B to this Notice. We also welcome your comments on other aspects of the Instrument, including our general approach and any changes we should make.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. All comments will be posted on the OSC website at www.osc.gov.on.ca.

Thank you in advance for your comments.

Deadline for Comments

Your comments must be submitted in writing by **October 17, 2009**.

If you are not sending your comments by fax, mail or hand delivery, please forward an electronic file containing the submission in Word, Windows format.

Where to Send Your Comments

Please address your comments to all CSA members, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Nunavut

Please send your comments **only** to the addresses below. Your comments will be forwarded to the remaining CSA member jurisdictions.

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The text of the Instrument and Related Amendments follows or can be found elsewhere on a CSA member website.

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