

# B.6

## Request for Comments

### B.6.1 CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

#### CSA Notice and Request for Comment

#### Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers

September 27, 2022

#### Introduction

The Canadian Securities Administrators (**CSA** or **we**) are proposing an alternative to delivering financial statements, which include interim financial reports, and interim and annual management reports of fund performance (**MRFPs**, and with financial statements, **designated documents**) for investment fund reporting issuers. The access-based model proposed by the CSA is seeking to modernize the current delivery of continuous disclosure document requirements and reduce the regulatory burden on investment fund reporting issuers.

We are publishing for a 90-day comment period

- proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**),
- proposed changes to Companion Policy 81-106CP *Continuous Disclosure Obligations* (**81-106CP**), and
- proposed consequential amendments to
  - National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), and
  - National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**),

(collectively, the **Proposed Amendments**).

For the reasons outlined in this notice, we are not proposing to extend an access-based model for investment funds disclosure documents other than the designated documents. We are interested, however, in understanding whether there are any other changes that we should consider in order to help facilitate alternatives to delivery in paper format, such as electronic delivery for these other documents.

We are seeking specific feedback on a number of consultation questions, but we welcome comments on all aspects of the Proposed Amendments.

The text of the Proposed Amendments is contained in Annexes A, B, C, and D of this notice and will also be available on the websites of the following CSA jurisdictions:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)  
[www.asc.ca](http://www.asc.ca)  
[www.bcsc.bc.ca](http://www.bcsc.bc.ca)  
[nssc.novascotia.ca](http://nssc.novascotia.ca)  
[www.fcnb.ca](http://www.fcnb.ca)  
[www.osc.gov.on.ca](http://www.osc.gov.on.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.msc.gov.mb.ca](http://www.msc.gov.mb.ca)

### **Substance and Purpose**

The purpose of the Proposed Amendments is to modernize the way designated documents are made available to investors and to reduce printing and mailing costs associated with the current regime. The Proposed Amendments would enable a more cost-efficient, timely and environmentally friendly manner of making these documents available to investors, which could assist in reducing the regulatory burden on investment funds without compromising investor protection.

The Proposed Amendments would replace the current delivery requirements, for designated documents of an investment fund that is a reporting issuer, with a designated website posting requirement, a requirement to issue, file, and post a news release announcing the availability of the documents, and requirements to send documents to a registered holder or a beneficial owner of securities of the investment fund (a **Securityholder**) on request or in accordance with standing instructions.

The Proposed Amendments are being proposed on the basis that the current delivery requirements impose a significant cost on investment funds without a corresponding benefit to Securityholders. Securityholders would benefit from the Proposed Amendments because the information would be more readily available to them.

We recognize that information technology is an important and useful tool in facilitating communication with investors. The Proposed Amendments are consistent with the general evolution of the investment fund industry, particularly the increased availability and accessibility of information online. The Proposed Amendments also recognize increased investor capacity and preference for accessing and consuming information electronically.

The Proposed Amendments would not remove an investor's ability to request designated documents in paper or electronic form. Investors would also have the ability to provide standing instructions to receive paper or electronic copies of designated documents.

### **Background**

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (CP 51-404)* to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. Commenters responding to CP 51-404 were generally supportive of developments which would further facilitate electronic delivery of documents. Investment fund stakeholders specifically commented that it is overly onerous and expensive to comply with the condition that they send an annual reminder, or send annual notices, in order to rely on the exemption from sending designated documents and advocated for its removal.

In January 2020, the CSA published CSA Consultation Paper 51-405 *Consideration of Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (CP 51-405)*. While CP 51-405 focused on non-investment fund reporting issuers, some commenters nevertheless raised concerns about the costs to investment funds of complying with the delivery requirements in Part 5 of NI 81-106. These commenters supported an access-based model for investment funds.

The Proposed Amendments are informed by the comment letters received in response to CP 51-404 and CP 51-405.

On April 7, 2022, the CSA published CSA Notice and Request for Comment *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the **Non-Investment Fund Proposal**) which proposed to implement an access-based model for non-investment fund reporting issuers in respect of prospectuses, annual financial statements, interim financial reports and related management's discussion & analysis. The Proposed Amendments are also informed by the Non-Investment Fund Proposal, but are targeted specifically to the investment funds context, and consequently are different in some key areas.

### **Existing requirements**

Under subsection 5.1(2) of NI 81-106, an investment fund must send financial statements and, if applicable, copies of MRFPs, to a Securityholder.

Section 5.2 of NI 81-106 permits the investment fund to request standing instructions (**Standing Instructions**) from a Securityholder with respect to the documents they wish to receive. When soliciting Standing Instructions from Securityholders, an investment fund can deem no response from a Securityholder to be an election not to receive designated documents. Subsection 5.2(5) of NI 81-106 provides that, even if the investment fund obtains Standing Instructions, it must send an annual letter (**Annual Notices**) reminding those Securityholders of, among other things, their right to receive designated documents. Alternatively, under section 5.3 of NI 81-106, an investment fund may solicit annual delivery instructions (**Annual Instructions**) from Securityholders.

Under subsection 5.4(1) of NI 81-106, an investment fund must send designated documents to a Securityholder who requests them. An investment fund must file these documents on SEDAR and, under section 5.5 of NI 81-106, an investment fund that is a reporting issuer must post these documents on its designated website.

### **Summary of the Proposed Amendments**

Under the Proposed Amendments, the requirements for an investment fund that is a reporting issuer to send designated documents, to solicit Standing Instructions and send Annual Notices, and solicit Annual Instructions would be repealed and replaced with requirements to:

- post designated documents in a prominent manner on the investment fund's designated website;
- issue, file on SEDAR, and post on the investment fund's designated website, a news release announcing the availability of the designated documents;
- send a designated document to a Securityholder who requests a copy; and
- send a designated document that is filed by the investment fund to a Securityholder who provides the investment fund with standing instructions to receive copies of all documents commencing with the next document filed after the Securityholder has provided those standing instructions and continuing until the Securityholder changes those standing instructions.

The Proposed Amendments do not amend the requirement to file designated documents on SEDAR.

In applicable jurisdictions, a mutual fund that is not a reporting issuer continues to be subject to requirements substantially identical to the existing requirements under Part 5 of NI 81-106.

Under the transition provisions of the Proposed Amendments, a Securityholder is considered to have provided standing instructions to receive paper copies of the designated documents if they have previously provided Standing Instructions to the investment fund to deliver financial statements or MRFP but has not previously consented to electronic delivery. If a Securityholder previously consented to electronic delivery, the Securityholder is deemed to have provided standing instructions to receive electronic copies of the designated documents.

### **Content of Annexes**

This notice contains the following annexes:

- Annex A - Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*
- Annex B - Proposed Changes to Companion Policy 81-106 *Investment Fund Continuous Disclosure*
- Annex C - Proposed Consequential Amendments to National Instrument 41-101 *General Prospectus Requirements*
- Annex D - Proposed Consequential Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*
- Annex E - Local Matters

### **Specific Questions**

In addition to your comments on all aspects of the Proposed Amendments, the CSA also seeks specific feedback on the following questions:

1. Standing instructions to receive paper copies

Under subsection 5.3(2) of the proposed amendments to NI 81-106, a Securityholder can provide standing instructions in order to receive a paper copy of a designated document that is filed by the investment fund. These instructions will apply to the next designated document filed and continue to apply until the standing instructions are changed by the Securityholder. While the costs of complying with this requirement may be greater than the costs for the delivery of electronic copies, we are of the view that these costs are outweighed by the benefits to Securityholders being able to provide standing instructions to receive paper copies. Do you agree? Please explain.

2. Standing instructions to receive electronic copies

Under subsection 5.3(4) of the proposed amendments to NI 81-106, a Securityholder can provide standing instructions in order to receive an electronic copy of a designated document that is filed by the investment fund. These instructions will apply to the next designated document filed by the investment fund and continue to apply until the standing instructions are changed by the Securityholder. We are of the view that the cost of complying with this requirement is *de minimis* while the benefits to

---

**B.6: Request for Comments**

---

Securityholders of being able to provide standing instructions to receive electronic copies is significant. Do you agree? Please explain.

3. Notification methods

Under subsection 5.4(1) of the proposed amendments to NI 81-106, an investment fund would be required to file a news release and to post that news release on its designated website, indicating that the designated document is available electronically and that a paper or electronic copy can be obtained upon request.

- a. Would this be an effective way to notify Securityholders that designated documents are available? If not, please explain why.
- b. Should the news release or the designated website include any information other than the information required in subsection 5.4(2) of the proposed amendments to NI 81-106?
- c. Are there any alternative ways of notifying Securityholders we should consider that would be effective and practical? Please provide specific details on how to implement your proposal, along with an outline of the costs and benefits of your suggested approach. Are there any obstacles to using your suggested approach? For example, if you propose notification by email, how would an investment fund obtain a Securityholder's email address? What should be the outcome if the Securityholder does not keep their email address updated or does not provide consent to receiving these communications by email?

4. Designated websites

The effectiveness of the Proposed Amendments depends in part on whether investors will be able to easily find and retrieve the designated documents that they are interested in on a fund's designated website. Subsection 11.1(5) of 81-106CP provides that a designated website should be designed in a manner that allows an individual investor with a reasonable level of technological skill and knowledge to easily access, read and search the information and the documents posted on the website, and download and print the documents.

- a. Is this guidance sufficient? Are there additional best practices beyond the guidance in Part 11 of 81-106CP that should be highlighted?
- b. Alternatively, should the CSA establish specific requirements for the posting and maintenance of any regulatory document on a designated website in order to create more consistency and comparability in terms of investor experience in accessing these documents? In responding, please specify the additional guidance or specific presentation requirements that we should consider and outline the reason for your preferred approach. Where possible, please also outline if there are any significant cost or benefit differences between these two approaches.

5. No further broadening of access-based model

Both CP 51-404 and CP 51-405 were limited in scope to non-investment fund reporting issuers. In response to these publications, commenters said that the reasons underlying an alternative delivery model for non-investment fund reporting issuers are equally applicable to investment fund reporting issuers. While the underlying principles may be similar, there are fundamental differences between non-investment funds and investment funds that justify the application of different delivery models between these types of issuers.

We have reviewed the delivery requirements applicable to investment funds and are of the view that extending the Proposed Amendments beyond financial statements and MRFPs is not appropriate at this time. Specifically, we have considered the delivery requirements for the following documents:

- **Fund Facts document and ETF Facts document:** The Fund Facts and the ETF Facts are plain language documents that concisely highlight key information about a mutual fund that our research has identified as important to investors. The Fund Facts is required to be delivered prior to the purchase of a mutual fund, and so it does not lend itself to being part of an access-based model. For consistency, we think an access-based model should not apply to ETFs and that ETF investors should also continue to receive the ETF Facts. These documents are an important way to assist mutual fund and ETF investors in their decision-making process and in discussions with their financial advisors.
- **Prospectuses for mutual funds and ETFs:** The prospectus delivery requirement does not apply to a dealer selling a mutual fund or an ETF. Instead, for a mutual fund that is not an ETF, a dealer is required to deliver a Fund Facts prior to purchase. For ETFs, a dealer is required to deliver an ETF Facts document instead.

- **Prospectuses for scholarship plans:** In our view, an access-based model for this type of document is not appropriate. Like mutual funds and ETFs, we consider the delivery of key informational documents as important to assist scholarship plan investors in their decision-making process. We think the key informational document for a scholarship plan is its prospectus.
- **Prospectuses for non-redeemable investment funds (that are not ETFs):** We think investment fund investors should have a consistent means of obtaining the information they need to make a purchase decision. As discussed above, we are not proposing an access-based model for Fund Facts or ETF Facts documents or scholarship plan prospectuses. For consistency, we also think it is appropriate to retain the current prospectus delivery requirements for non-redeemable investment funds.
- **Proxy materials:** In 2021, the CSA adopted a notice-and-access system for the solicitation of proxies for investment funds that is substantially similar to the regime for non-investment fund issuers. Notice-and-access differs from an access-based model in that it permits delivery of proxy-related materials by sending a notice providing Securityholders with summary information about the proxy-related materials and instructions on how to access them. In our view, an access-based model for this type of document, with no notice, is not appropriate. As discussed in the Non-Investment Fund Proposal, stakeholder comments in response to CP 51-404 and CP 51-405 cautioned the CSA against introducing an access-based model to documents that require a time sensitive response from investors.

The CSA has published for comment an access-based model for prospectuses of non-investment fund reporting issuers under the Non-Investment Fund Proposal. We think the typical investor in non-investment fund reporting issuers has different informational needs than the typical investor in investment fund reporting issuers. We are not proposing an access-based model for offering documents (Fund Facts, ETF Facts, or prospectus as applicable) of investment fund reporting issuers because we think there are significant benefits to the typical investor in investment fund reporting issuers in receiving the relevant offering documents rather than only having access to them.

We have the following additional questions:

- a. Do you agree with our views about the delivery requirements for each type of document described above? Please justify your response with reference to the costs and benefits of an access-based model for each type of document.
- b. If you think the CSA should adopt an access-based model for a specific type of document, please describe the model and explain how that approach would be beneficial to funds, dealers and investors.
- c. Are there alternative ways, other than adopting an access-based model, to improve or modernize the current delivery requirements for investment fund documents other than designated documents? For example, does securities legislation impose any impediments to greater adoption of electronic delivery? Could the methods of electronic delivery be modernized? If so, please describe any methods, provide the reasons why those methods are an improvement and explain what regulatory changes would be required to use any proposed method.

### How to Provide Your Comments

Please provide your comments in writing by **December 26, 2022**.

We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at [www.asc.ca](http://www.asc.ca), the Ontario Securities Commission at [www.osc.ca](http://www.osc.ca) and the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca). Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Thank you in advance for your comments.

## B.6: Request for Comments

---

Please address your submission to all of the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission, New Brunswick  
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Service NL  
Northwest Territories Office of the Superintendent of Securities  
Office of the Yukon Superintendent of Securities  
Superintendent of Securities, Nunavut

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22nd Floor, Box 55  
Toronto, Ontario  
M5H 3S8  
Fax: 416-593-2318  
Email: [comment@osc.gov.on.ca](mailto:comment@osc.gov.on.ca)

Me Philippe Lebel  
Corporate Secretary and Executive Director, Legal Affairs  
Autorité des marchés financiers  
Place de la Cité, tour Cominar  
2640, boulevard Laurier, bureau 400  
Québec (Québec) G1V 5C1  
Fax: (514) 864-8381  
Email: [consultation-en-cours@lautorite.qc.ca](mailto:consultation-en-cours@lautorite.qc.ca)

### Questions

Please refer your questions to any of the following:

*British Columbia Securities Commission*  
Noreen Bent  
Chief, Corporate Finance Legal Services  
Tel: 604 899-6741  
Email: [nbent@bcsc.bc.ca](mailto:nbent@bcsc.bc.ca)

James Leong  
Senior Legal Counsel, Corporate Finance  
Tel: 604 899-6681  
Email: [jleong@bcsc.bc.ca](mailto:jleong@bcsc.bc.ca)

*Alberta Securities Commission*  
Chad Conrad  
Senior Legal Counsel, Corporate Finance  
Tel: (403) 297-4295  
Email: [chad.conrad@asc.ca](mailto:chad.conrad@asc.ca)

*Financial and Consumer Affairs Authority of Saskatchewan*  
Heather Kuchuran  
Director, Corporate Finance  
Securities Division  
Tel: 306-787-1009  
Email: [heather.kuchuran@gov.sk.ca](mailto:heather.kuchuran@gov.sk.ca)

*Manitoba Securities Commission*  
Patrick Weeks  
Senior Corporate Finance Analyst  
Tel: 204-945-3326  
Email: [Patrick.weeks@gov.mb.ca](mailto:Patrick.weeks@gov.mb.ca)

*Ontario Securities Commission*  
Stephen Paglia  
Manager, Investment Funds and Structured  
Products Branch  
Tel: 416-593-2393  
Email: [spaglia@osc.gov.on.ca](mailto:spaglia@osc.gov.on.ca)

Michael Tang  
Senior Legal Counsel, Investment Funds and Structured  
Products Branch  
Tel: 416-593-2330  
Email: [mtang@osc.gov.on.ca](mailto:mtang@osc.gov.on.ca)

## B.6: Request for Comments

---

### *Autorité des marchés financiers*

Marie-Aude Gosselin  
Analyst, Investment Funds Oversight  
Tel: 514-395-0337 ext. 4456  
Email: [Marie-Aude.Gosselin@lautorite.qc.ca](mailto:Marie-Aude.Gosselin@lautorite.qc.ca)

Olivier Girardeau  
Senior Analyst, Investment Funds Oversight  
Tel: 514-395-0337 ext. 4334  
Email: [Olivier.Girardeau@lautorite.qc.ca](mailto:Olivier.Girardeau@lautorite.qc.ca)

### *Financial and Consumer Services Commission of New Brunswick*

Ella-Jane Loomis  
Senior Legal Counsel  
Tel: 506-453-6591  
Email: [ella-jane.loomis@fcnb.ca](mailto:ella-jane.loomis@fcnb.ca)

### *Nova Scotia Securities Commission*

Abel Lazarus  
Director, Corporate Finance  
Tel: 902-424-6859  
Email: [Abel.Lazarus@novascotia.ca](mailto:Abel.Lazarus@novascotia.ca)

ANNEX A

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

1. ***National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.***
2. ***In paragraph 2.11(b), “Part 5” is replaced with “Part 5A”.***
3. ***Part 5 is replaced with the following:***

**Part 5 – Access to and Delivery of Financial Statements and Management Reports of Fund Performance – Reporting Issuers**

- 5.1 Interpretation and Application – (1) In this Part, “designated document” means any of the following documents an investment fund is required to file on SEDAR:
  - (a) financial statements;
  - (b) annual management reports of fund performance; and
  - (c) interim management reports of fund performance.
- (2) This Part does not apply to an investment fund that is not a reporting issuer.
- 5.2 Posting on Designated Website – (1) An investment fund must post a designated document on its designated website no later than the date that the designated document is filed.
  - (2) An investment fund referred to in subsection (1) must include, on its designated website, a statement that
    - (a) explains the choices a registered holder or beneficial owner of securities issued by the investment fund has to receive designated documents;
    - (b) describes how the registered holder or beneficial owner may provide the investment fund with standing instructions to receive either electronic or paper copies of all of the investment fund’s designated documents commencing with the next designated document filed after the registered holder or beneficial owner provides the instructions; and
    - (c) explains that the investment fund will continue to follow the instructions provided by the registered holder or beneficial owner until they are changed by the registered holder or beneficial owner.
  - (3) An investment fund must display a designated document posted under subsection (1) and the statement included under subsection (2) in a manner that would be considered prominent to a reasonable person.
- 5.3 Sending Paper and Electronic Copies of Designated Documents – (1) An investment fund must send a paper copy of a designated document to a registered holder or beneficial owner of securities issued by the investment fund if the registered holder or beneficial owner requests a paper copy of the designated document.
  - (2) If a registered holder or beneficial owner of securities issued by an investment fund provides the investment fund with standing instructions to receive paper copies of a designated document, the investment fund must send paper copies of the designated document to the registered holder or beneficial owner, commencing with the next designated document filed after the registered holder or beneficial owner provides the investment fund with those standing instructions.
  - (3) An investment fund must send an electronic copy of a designated document to a registered holder or beneficial owner of securities issued by an investment fund if the registered holder or beneficial owner requests an electronic copy of the designated document.
  - (4) If a registered holder or beneficial owner of securities issued by an investment fund provides the investment fund with standing instructions to receive electronic copies of a designated document, the investment fund must send electronic copies of the designated document to the registered holder or beneficial owner, commencing with the next designated document filed after the registered holder or beneficial owner provides the investment fund with those standing instructions.



- (5) If a registered holder or beneficial owner of securities issued by the investment fund makes a request under subsection (1) or provides standing instructions under subsection (2), the investment fund must send a copy of the designated document by the later of
    - (a) the filing deadline for the designated document; and
    - (b) 10 calendar days after the investment fund receives the request or instructions.
  - (6) If a registered holder or beneficial owner of securities issued by the investment fund makes a request under subsection (3) or provides standing instructions under subsection (4), the investment fund must send a copy of the designated document by the later of
    - (a) the filing deadline for the designated document; and
    - (b) five calendar days after the investment fund receives the request or instructions.
  - (7) An investment fund must not charge a fee for sending a designated document under this section.
- 5.4 News Release – (1) On the date that a designated document is filed, an investment fund must
- (a) issue a news release stating that the investment fund has filed the designated document;
  - (b) file the news release on SEDAR; and
  - (c) post the news release on the investment fund's designated website.
- (2) A news release under subsection (1), must
- (a) state in the title that the designated document is available,
  - (b) state that the designated document is available at [www.sedar.com](http://www.sedar.com) and on the investment fund's designated website,
  - (c) provide the investment fund's designated website address,
  - (d) state the following:
    - (i) "A paper copy of the *[insert name of the designated document]* may be obtained by a registered holder or beneficial owner of securities issued *[insert name of the investment fund]*, without charge, from *[insert name of the manager of the investment fund]*."
    - (ii) "If a registered holder or beneficial owner of securities issued by *[insert name of the investment fund]* wants to receive paper copies of any of *[insert list designated documents the investment fund is required to file]* filed by *[insert name of investment fund]* in the future, please provide standing instructions to *[insert name of the manager of the investment fund]*. The standing instructions will continue to be followed by *[insert name of investment fund]* until they are changed by the registered holder or beneficial owner."
    - (iii) "An electronic copy of the *[insert name of the designated document]* may be obtained by a registered holder or beneficial owner of securities issued by *[insert name of the investment fund]*, without charge, from *[insert name of the manager of the investment fund]*."
    - (iv) "If a registered holder or beneficial owner of securities issued by *[insert name of the investment fund]* wants to receive electronic copies of any of *[insert list designated documents the investment fund is required to file]* filed by *[insert name of investment fund]* in the future, please provide standing instructions to *[insert name of the manager of the investment fund]*. The standing instructions will continue to be followed by *[insert name of investment fund]* until they are changed by the registered holder or beneficial owner.", and
    - (v) the name, address, toll-free telephone number, e-mail address, and website of the manager of the investment fund.

**4. The following Part 5A is added after Part 5:**

**Part 5A – Delivery of Financial Statements – Non-Reporting Mutual Funds**

- 5A.1 Application – This Part does not apply to a mutual fund that is a reporting issuer.
- 5A.2 Delivery of Financial Statements – Subject to sections 5A.3 and 5A.4, a mutual fund must send financial statements to a registered holder or beneficial owner of securities issued by the mutual fund by the filing deadline for the financial statements.
- 5A.3 Sending According to Standing Instructions – (1) Section 5A.2 does not apply to a mutual fund that requests standing instructions from a registered holder or beneficial owner of securities issued by the mutual fund in accordance with this section and sends financial statements according to those instructions.
- (2) A mutual fund relying on subsection (1) must send, to each registered holder or beneficial owner of securities issued by the mutual fund, a document that
- (a) explains the choices a registered holder or beneficial owner of securities issued by the mutual fund has to receive financial statements;
  - (b) requests instructions from the registered holder or beneficial owner of securities issued by the mutual fund about delivery of financial statements; and
  - (c) explains that the mutual fund will continue to follow the instructions provided by the registered holder or beneficial owner of securities issued by the mutual fund until they are changed by the registered holder or beneficial owner.
- (3) If a person or company becomes a registered holder or beneficial owner of securities issued by a mutual fund, the mutual fund must request instructions in accordance with subsection (2) from the registered holder or beneficial owner as soon as reasonably practicable after the mutual fund accepts a purchase order from the registered holder or beneficial owner.
- (4) A mutual fund must rely on instructions given under this section until a registered holder or beneficial owner of securities issued by the mutual fund changes them.
- (5) At least once a year, a mutual fund must send each registered holder or beneficial owner of securities issued by the mutual fund a reminder that
- (a) the registered holder or beneficial owner is entitled to receive financial statements;
  - (b) the mutual fund is relying on delivery instructions provided by the registered holder or beneficial owner;
  - (c) explains how a registered holder or beneficial owner of securities issued by the mutual fund can change the instructions it has given; and
  - (d) the registered holder or beneficial owner can obtain the financial statements by contacting the mutual fund, or, if applicable, on [www.sedar.com](http://www.sedar.com) or on the mutual fund's website.
- 5A.4 Sending According to Annual Instructions – (1) Section 5A.2 does not apply to a mutual fund that requests annual instructions from a registered holder or beneficial owner of securities issued by the mutual fund in accordance with this section and sends financial statements according to those instructions.
- (2) Subsection (1) does not apply to a mutual fund that has previously requested standing instructions in accordance with section 5A.3.
- (3) A mutual fund relying on subsection (1) must send annually to each registered holder or beneficial owner of securities issued by the mutual fund a request form the registered holder or beneficial owner may use to instruct the mutual fund as to which financial statements the registered holder or beneficial owner wishes to receive.
- (4) The request form referred to in subsection (3) must be accompanied by a notice explaining that
- (a) the registered holder or beneficial owner is providing delivery instructions for the current year only; and
  - (b) the registered holder or beneficial owner can obtain financial statements by contacting the mutual fund, or, if applicable, on [www.sedar.com](http://www.sedar.com) or on the mutual fund's website.

- 5A.5 General – (1) If a registered holder or beneficial owner of securities issued by a mutual fund requests financial statements, the mutual fund must send a copy of the requested financial statements by the later of
- (a) the filing deadline for the requested financial statements; and
  - (b) 10 calendar days after the mutual fund receives the request.
- (2) A mutual fund must not charge a fee for sending the financial statements referred to in this Part and must ensure that registered holders or beneficial owners of securities issued by the mutual fund can respond without cost to the requests for instructions required by this Part.
- (3) For the purposes of this section, mutual funds under common management may send one request form to serve as a standing instruction or an annual instruction, as applicable, from a registered holder or beneficial owner of securities issued by the mutual funds that will apply to all of the mutual funds under common management held by that registered holder or beneficial owner.

**Transition**

5. For the purposes of subsection 5.3(2), a registered holder or beneficial owner of securities issued by an investment fund is considered to have provided standing instructions to receive paper copies of designated documents immediately after this Instrument comes into force if:
- (a) the investment fund is a reporting issuer;
  - (b) immediately before this Instrument comes into force, the investment fund has standing or annual instructions from the registered holder or beneficial owner to deliver annual financial statements, interim financial reports, or annual or interim management reports of fund performance to the registered holder or beneficial owner; and
  - (c) immediately before this Instrument comes into force, the investment fund does not have the consent of the registered holder or beneficial owner to electronic delivery of the annual financial statements, the interim financial reports, or the annual or interim management reports of fund performance.
6. For the purposes of subsection 5.3(4), a registered holder or beneficial owner of securities issued by an investment fund is considered to have provided standing instructions to receive electronic copies of designated documents immediately after this Instrument comes into force if:
- (a) the investment fund is a reporting issuer;
  - (b) immediately before this Instrument comes into force, the investment fund has standing or annual instructions from the registered holder or beneficial owner to deliver annual financial statements, interim financial reports, or annual or interim management reports of fund performance to the registered holder or beneficial owner; and
  - (c) immediately before this Instrument comes into force, the investment fund has the consent of the registered holder or beneficial owner to electronic delivery of the annual financial statements, the interim financial reports, or the annual or interim management reports of fund performance.
7. A mutual fund may rely on subsection 5A.3(1) in connection with standing instructions from a registered holder or beneficial owner of securities issued by the mutual fund if:
- (a) immediately before this Instrument comes into force, the mutual fund had requested standing instructions from the registered holder or beneficial owner under subsection 5.2(1) of National Instrument 81-106 *Investment Fund Continuous Disclosure* as it read on **[DATE IMMEDIATELY BEFORE EFFECTIVE DATE OF THIS INSTRUMENT]**;
  - (b) the mutual fund sends annual financial statements or interim financial reports according to those instructions; and
  - (c) the mutual fund otherwise complies with section 5A.3.
8. A mutual fund may rely on subsection 5A.4(1) in connection with annual instructions from a registered holder or beneficial owner of securities issued by the mutual fund if:
- (a) immediately before this Instrument comes into force, the mutual fund had requested annual instructions from the registered holder or beneficial owner under subsection 5.3(1) of National Instrument 81-106 *Investment Fund Continuous Disclosure* as it read on **[DATE IMMEDIATELY BEFORE EFFECTIVE DATE OF THIS INSTRUMENT]**; and

## B.6: Request for Comments

---

- (b) the mutual fund sends annual financial statements or interim financial reports according to those instructions; and
- (c) the mutual fund otherwise complies with section 5A.4.

### Effective Date

9. (1) This Instrument comes into force on **[DATE]**.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after **[DATE]**, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.”

ANNEX B

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

1. ***Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure is changed by this Document.***

2. ***Part 4 is replaced with the following:***

**Part 4 – Access to and Delivery of Financial Statements and Management Reports of Fund Performance – Reporting Issuers**

4.1 Sending Designated Documents – Subsections 5.3(1) and (2) of the Instrument require an investment fund that is a reporting issuer to send a paper or an electronic copy, as applicable, of a designated document to a registered holder or beneficial owner of securities of the investment fund if requested. A registered holder or beneficial owner making such a request would likely do so by using the contact information disclosed under paragraph 5.4(2)(d) of the Instrument, as applicable. However, the investment fund should comply with any reasonable request even if it is not made by using the contact information required to be disclosed under those paragraphs.

Section 5.4 of the Instrument requires an investment fund that is a reporting issuer to issue and file on SEDAR, and post on its designated website, a news release announcing it has filed a designated document. This section also requires that the news release provide information about how a registered holder or beneficial owner of securities of the investment fund can contact the investment fund to obtain a paper or electronic copy of a designated document. So that a registered holder or beneficial owner clearly understands how they should contact the investment fund to obtain a designated document, we think registered holders or beneficial owners would find it helpful if an investment fund used the same contact information in its news releases, its designated website and in its Fund Facts, ETF Facts, or scholarship plan prospectus, as applicable.

4.2 Electronic Delivery – A designated document required to be sent electronically under Part 5 of the Instrument should follow the guidance in National Policy 11-201 *Delivery of Documents by Electronic Means*.

3. ***The following Part 4A is added after Part 4:***

**Part 4A – Delivery of Financial Statements – Non-Reporting Mutual Funds**

4A.1 Delivery Instructions – (1) The Instrument gives mutual funds that are not reporting issuers the following choices for the delivery of financial statements:

- (a) send these documents to all registered holders or beneficial owners of securities of the mutual fund;
- (b) obtain standing instructions from registered holders or beneficial owners with respect to the documents they wish to receive; or
- (c) obtain annual instructions from registered holders or beneficial owners by sending them an annual request form they can use to indicate which documents they wish to receive.

The choices are intended to provide some flexibility concerning the delivery of financial statements to registered holders or beneficial owners of securities of a mutual fund. The mutual fund can use any combination of the delivery options for registered holders or beneficial owners. However, the Instrument specifies that if the mutual fund chooses option (b) for a registered holder or beneficial owner, it cannot switch back to option (c) for that registered holder or beneficial owner at a later date. The purpose of this requirement is to encourage mutual funds that are not reporting issuers to obtain standing instructions and to ensure that if a registered holder or beneficial owner provides standing instructions, the mutual fund will abide by those instructions unless the registered holder or beneficial owner specifically changes them.

(2) When requesting delivery instructions from a registered holder or beneficial owner of securities of a mutual fund that is not a reporting issuer, the mutual fund may treat no response from the registered holder or beneficial owner to be a request by the registered holder or beneficial owner to receive all, some or none of the financial statements. When requesting delivery instructions, the mutual fund should make clear what the consequence of no response will be to registered holders or beneficial owners.

- (3) A mutual fund that is not a reporting issuer should request delivery instructions sufficiently ahead of time so that registered holders or beneficial owners of securities of the mutual fund can receive the requested financial statements within the time required by the Instrument. Registered holders or beneficial owners should also be given a reasonable amount of time to respond to a request for instructions. The mutual fund should provide registered holders or beneficial owners with complete contact information for the mutual fund, including a toll-free telephone number or a number for collect calls.
  - (4) Mutual funds that are not reporting issuers and that are under common management can request one set of delivery instructions from a registered owner or beneficial owner of securities of the mutual funds that will apply to all of the mutual funds that are not reporting issuers in the same fund family that the registered holder or beneficial owner owns. If a registered holder or beneficial owner has given a mutual fund that is not a reporting issuer standing delivery instructions and then later acquires the securities of another mutual fund that is not a reporting issuer managed by the same manager, the newly acquired mutual fund can rely on those standing instructions.
  - 4A.2 Communication with Beneficial Owners – A mutual fund that is not a reporting issuer and that is relying on Part 5A of the Instrument must have the necessary information to communicate with a beneficial owner of its securities. If the mutual fund does not have this information, the mutual fund cannot rely on the filing exemption in section 2.11 of the Instrument.
  - 4A.3 Electronic Delivery – Any documents required to be sent under Part 5A of the Instrument may be sent by electronic delivery. Such electronic delivery should be made following the guidance in National Policy 11-201 *Delivery of Documents by Electronic Means*. In particular, the annual reminder required by section 5A.3(5) and the request form required by section 5A.4(3) of the Instrument may be given in electronic form and may be combined with other notices. Request forms and notices may alternatively be sent with account statements or other materials sent to registered holders or beneficial owners of securities of a mutual fund that is not a reporting issuer by the mutual fund.
4. These changes become effective on [DATE].

ANNEX C

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS

1. **National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.**
  2. **Form 41-101F3 is amended by replacing subsections (1) and (2) of Item 12 of Part A with the following:**
    - (1) Under the sub-heading “For more information”, state the following using substantially similar wording:

“The Detailed Plan Disclosure delivered with this Plan Summary contains further details about this plan, and we recommend that you read it. You may also contact [insert name of the manager of the scholarship plan] or your sales representative for more information about this plan. You can obtain a copy of the plan’s financial statements and management reports of fund performance by contacting [insert name of manager of the scholarship plan]. Please contact [insert contact information of manager of the scholarship plan] or visit [insert address of designated website of the scholarship plan] for instructions on how to provide standing instructions to receive filed financial statements and management reports of fund performance in the future.”
    - (2) State the name, address, toll-free telephone number, e-mail address and website of the investment fund manager of the plan.
  3. **Form 41-101F4 is amended by replacing subsections (1) and (2) of Item 3 of Part II with the following:**
    - (1) Under the heading “For more information”, state the following using substantially similar wording:

“Contact [insert name of the manager of the ETF] or your representative or visit [insert address of designated website of the ETF] for a copy of the ETF’s prospectus and other disclosure documents. You can obtain a copy of the ETF’s financial statements and management reports of fund performance by contacting [insert name of the manager of the ETF]. These documents and the ETF Facts make up the ETF’s legal documents. Please contact [insert contact information of the manager of the ETF] or visit [insert address of designated website of the ETF] for instructions on how to provide standing instructions to receive filed financial statements and management reports of fund performance in the future.”
    - (2) State the name, address, toll-free telephone number, e-mail address and website of the manager of the ETF.
- Effective Date**
4.
    - (1) This Instrument comes into force on [DATE].
    - (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [DATE], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX D

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*

1. ***National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.***
2. ***Form 81-101F3 is amended by replacing subsection (1) Item 3 of Part II with the following:***

(1) Under the heading "For more information", state the following using substantially similar wording:

"Contact [insert name of the manager of the mutual fund] or your representative or visit [insert address of designated website of the mutual fund] for a copy of the fund's simplified prospectus and other disclosure documents. These documents and the Fund Facts make up the fund's legal documents. You can obtain a copy of the fund's financial statements and management reports of fund performance by contacting [insert name of the manager of the mutual fund]. Please contact [insert contact information of the manager of the mutual fund] or visit [insert address of designated website of the mutual fund] for instructions on how to provide standing instructions to receive filed financial statements and management reports of fund performance in the future."

3. ***Form 81-101F3 is amended by replacing subsection (2) Item 3 of Part II of with the following:***

(2) State the name, address, toll-free telephone number, e-mail address and website of the manager of the mutual fund.

**Effective Date**

4. (1) This Instrument comes into force on [DATE].
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after [DATE], this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.



## ANNEX E

### LOCAL MATTERS

#### ONTARIO SECURITIES COMMISSION

##### 1. Introduction

The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice and Request for Comment (the **CSA Notice**) and to set out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**).

The CSA are publishing for comment proposed amendments and proposed changes to existing rules and policies (the **CSA Proposed Amendments**) as part of a staged approach to the implementation of an access-based model for investment fund reporting issuers (**IFRI**).

Please refer to the main body of the CSA Notice.

##### 2. Local Amendments

In connection with the CSA Proposed Amendments, the Commission is also publishing for comment proposed amendments (**Local Proposed Amendments**, and together with the CSA Proposed Amendments, the **Proposed Amendments**) to Ontario Securities Commission Rule 81-801 *Implementing National Instrument 81-106 Investment Fund Continuous Disclosure* (attached as Schedule 1 to this Annex).

The Local Proposed Amendments are consequential to the proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) and clarify that the requirement under section 79 of the Act to deliver financial statements (as defined in NI 81-106) does not apply to an IFRI that complies with Part 5 of NI 81-106. The Local Proposed Amendments also clarify that the requirement under section 79 of the Act to deliver financial statements does not apply to a mutual fund that is not a reporting issuer that complies with Part 5A of NI 81-106.

##### 3. Rationale for Intervention

We recognize that information technology is an important and useful tool in improving communication with investors and are committed to facilitating electronic access to documents where appropriate. Our objective is to enhance the accessibility of information for investors while reducing regulatory burden on issuers. As an access-based model, the Proposed Amendments are consistent with the general evolution of our capital markets, including changes in technology and, in particular, the increased availability and accessibility of information.

##### 4. Proposed Intervention

Under the Proposed Amendments, providing public electronic access to financial statements and management reports of fund performance (**designated documents**) and alerting investors that the designated document is available constitutes delivery under securities legislation. Specifically, delivery is effected once

- the designated document is filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**),
- the designated document is posted on the issuer's designated website (as defined in NI 81-106), and
- a news release is issued, filed on SEDAR, and posted on the issuer's designated website indicating that the designated document is available electronically and that a paper or an electronic copy can be obtained upon request.

The purpose of the Proposed Amendments is to modernize the way documents are made available to investors and reduce costs associated with the printing and mailing of documents, which are currently borne directly by IFRI, and indirectly by registered holders and beneficial owners of their securities (**Securityholders**). The Proposed Amendments provide a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than the existing requirements under Part 5 of NI 81-106. In our view, the Proposed Amendments reduce regulatory burden on issuers without compromising investor protection. The Proposed Amendments are consistent with the recommendation in the Capital Markets Modernization Taskforce Final Report dated January 2021 that an access equals delivery model should replace the defaulted delivery of disclosure documents of all issuers, including the designated documents of IFRI.

##### 5. Affected Stakeholders

###### a. IFRI

The access-based model under the Proposed Amendments will only be available to IFRI. As of December 31, 2020, there were approximately 3600 IFRI in good standing in Ontario.

Currently, under subsection 5.1(2) of NI 81-106, an IFRI must send applicable designated documents to its Securityholders. Section 5.2 of NI 81-106 permits the IFRI to solicit standing instructions (**Standing Instructions**) from its Securityholders who elect not to receive designated documents. Subsection 5.2(5) of NI 81-106 provides that, even if the IFRI obtains Standing Instructions, it must send an annual letter (**Annual Notices**) reminding those Securityholders of, among other things, their right to receive designated documents. Alternatively, under section 5.3 of NI 81-106, an IFRI may solicit annual delivery instructions (**Annual Instructions**) from its Securityholders. Under subsection 5.4(1) of NI 81-106, an IFRI must send designated documents to a Securityholder who requests them. An IFRI must file these documents on SEDAR and, under section 5.5 of NI 81-106, an IFRI must post these documents on its designated website.

Under the Proposed Amendments, the requirements for an IFRI to send designated documents, to solicit Standing Instructions and send Annual Notices, and solicit Annual Instructions would be repealed and replaced with requirements to: (i) post designated documents on the IFRI's designated website; (ii) issue, file, and post on the IFRI's designated website and on SEDAR, a news release announcing the availability of the designated documents; (iii) send a designated document to a Securityholder who requests a copy; and (iv) send a designated document that is filed by the IFRI commencing with the next document filed after the Securityholder provides the IFRI with standing instructions to receive copies of all documents until the standing instructions are changed by the Securityholder. We are of the view that the access-based model under the Proposed Amendments will reduce the financial burden on IFRI, primarily by eliminating the costs of soliciting Standing Instructions and sending Annual Notices or soliciting Annual Instructions.

b. IFRI Securityholders

According to the Investment Funds Institute of Canada (**IFIC**), 4.9 million,<sup>1</sup> or 35% of the approximately 14.1 million households in Canada,<sup>2</sup> invest in mutual funds. Approximately 47% of Canadians who have savings or investments own investment funds and investment funds account for half of Canadians' retirement savings.<sup>3</sup> According to the 2020 Canadian Internet Survey, the percentage of Canadians over 15 who use the internet continues to increase over time. In 2020, approximately 92.3% of Canadians used the internet for personal use, up from 91.3% in 2018.<sup>4</sup> Moreover, 74.9% of Canadians conducted online banking in 2020, up from 72.9% in 2018.<sup>5</sup> Although internet usage varies by age group and location,<sup>6</sup> the Proposed Amendments preserve the ability to request paper copies of the designated documents. Thus, we do not anticipate that investors would be disadvantaged by the Proposed Amendments.

We anticipate that the access-based model under the Proposed Amendments will have little impact on IFRI Securityholders. We estimate that between 0.5% and 4% of current IFRI Securityholders make requests under the current requirements to receive copies of designated documents.<sup>7</sup> We do not anticipate that these percentages will materially change under the Proposed Amendments.

Current IFRI Securityholders will continue to receive copies of designated documents under the Proposed Amendments. New and current IFRI Securityholders who have not requested to receive copies of designated documents may request copies and provide Standing Instructions; however, they will not be solicited to provide Standing Instructions and sent Annual Notices, nor will they be solicited through Annual Instructions, as a reminder of their right to receive designated documents. We are of the view that the access-based model under the Proposed Amendments is comparable to soliciting Standing Instructions and sending Annual Notices, or soliciting Annual Instructions, as a reminder to IFRI Securityholders of their right to receive designated documents.

c. Mutual funds that are not reporting issuers (**MFNRI**) and MFNRI Securityholders

The Proposed Amendments will not materially revise the existing delivery requirements under Part 5 of NI 81-106 for MFNRI. These delivery requirements will be moved to proposed Part 5A of NI 81-106. We note that MFNRI are only subject to these delivery requirements if they are relying on the filing exemption under section 2.11 of NI 81-106. We are of the view that the access-based model under the Proposed Amendments will not impact MFNRI and MFNRI Securityholders.

d. Third-party service providers

If the Proposed Amendments are adopted and IFRI rely on an access-based model for designated documents, IFRI will not be required under securities law to solicit Standing Instructions and send Annual Notices, or to solicit Annual Instructions. Third-party service providers who help IFRI solicit Standing Instructions and send Annual Notices, or solicit Annual Instructions, will be

---

<sup>1</sup> See [The evolution of mutual funds - Investor Centre \(ific.ca\)](https://www.ific.ca/en/articles/who-we-are-our-industry/)

<sup>2</sup> Statistics Canada Census of Population, 2016 (<https://www150.statcan.gc.ca/n1/daily-quotidien/170913/t001a-eng.htm>)

<sup>3</sup> See <https://www.ific.ca/en/articles/who-we-are-our-industry/>

<sup>4</sup> Statistics Canada. (2022). *Table 22-10-0135-01 Personal internet use from any location by province and age group.*

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2210013501>

<sup>5</sup> Statistics Canada. (2020). *Table 22-10-0137-01 Selected online activities by gender, age group and highest certificate, diploma or degree completed.*

<https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=2210013701>

<sup>6</sup> For example, 76.4% of Canadians aged 65 and over used the internet in 2020. By comparison, 98.2% of Canadians aged between 25 and 44 used the internet over the same period.

<sup>7</sup> Based on stakeholder comments received in response to CSA Consultation Paper 51-405 *Consideration of Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*.

impacted. However, IFRI may still seek help from third-party service providers to maintain and manage sending designated documents to IFRI Securityholders who have provided Standing Instructions under the Proposed Amendments.

**6. Anticipated Costs and Benefits of the Proposed Amendments**

The following section analyzes the anticipated costs and benefits to the affected stakeholders described above. We understand that IFRI communicate directly with IFRI Securityholders, generally with the assistance of a third-party service provider. We think that the primary benefit of the Proposed Amendments will be the reduction in the cost to IFRI of sending Annual Notices or Annual Instructions to IFRI Securityholders. As a corollary, we think the primary cost of the Proposed Amendments will be the value of the notification to IFRI Securityholders provided by Annual Notices or Annual Instructions.

**a. IFRI**

The benefit of the Proposed Amendments to IFRI is that they will not be required to send Annual Notices or Annual Instructions. Based on stakeholder input, we estimate the annual costs of complying with one of these options to be approximately \$1 per IFRI Securityholder. We are not aware of reliable estimates of the total number of IFRI Securityholders and thus cannot estimate the total reduction in costs resulting from the Proposed Amendments.

Under the Proposed Amendments, IFRI must post designated documents on their designated websites. We understand most IFRI already do so but even if they do not, we think the incremental costs of this new requirement under the Proposed Amendments will be *de minimis*.

Under the Proposed Amendments, IFRI must issue, file and post a news release announcing the availability of its designated documents. To the extent that an IFRI is not already doing so, the preparation, filing and issuance of a news release would be an incremental cost of the Proposed Amendments. OSC staff undertook a review of the issuance of news releases by a sample of 30 IFRI announcing the release of designated documents. The review found that none of the reviewed IFRI currently issue press releases relating to the publication of designated documents. The requirements to issue a press release apply at the fund level. There were approximately 3600 IFRI as of December 31, 2020. Assuming costs of approximately \$1500 per press release,<sup>8</sup> and two press releases per year, the Proposed Amendments would result in approximately \$10.8 million in incremental costs.

Under the Proposed Amendments, IFRI Securityholders retain the ability to request copies of designated documents on a one-off basis or by providing Standing Instructions to the IFRI. Thus, an IFRI will still be required to manage and maintain a list of its Securityholders who have provided, or will provide, standing instructions to receive copies of designated documents. In our view, these costs are not an incremental cost of the Proposed Amendments because they are being incurred by an IFRI under the current requirements.

There will also be an initial one-time cost associated with learning and meeting the specific requirements of the Proposed Amendments. We anticipate that the time spent understanding the Proposed Amendments will be minimal. We estimate that in-house senior counsel for IFRI would spend approximately 4 hours to understand the Proposed Amendments and to update existing policies and procedures as necessary<sup>9</sup>. The costs associated with preparing the news release announcing the availability of designated documents will be the most significant component of the IFRI's compliance costs.

**b. IFRI Securityholders**

The elimination of the requirement to send Annual Notices or Annual Instructions to IFRI Securityholders represents the primary cost of the Proposed Amendments. It is difficult to quantify the cost of the loss of the notification benefits of these mailings to IFRI Securityholders. However, we understand that less than 4% of IFRI Securityholders request copies of designated documents in any given year under the current requirements. Accordingly, we think that the cost of the loss of the notification benefit is limited to a small number of IFRI Securityholders.

The loss of the notification benefit is also mitigated by two new requirements under the Proposed Amendments. First, we think the requirement to issue, file and post a news release announcing the availability of designated documents will have notification benefits comparable to the notification benefits of the current requirements. Second, the transition provisions under which any IFRI Securityholder who has provided Standing Instructions under the current requirements will continue to be sent designated documents, which should offset the loss of the notification benefits of the current requirements entirely for existing IFRI Securityholders.

While the reduction in costs to IFRI from the elimination of the requirement to send Annual Notices or Annual Instructions does not directly benefit IFRI Securityholders, we expect a portion of these reduced costs may be passed on to them through a reduction in fees.

---

<sup>8</sup> Estimates are based on the Cision PR Newswire 2021 Pricing Guide [https://cdn.ymaws.com/sites/www.ibpa-online.org/resource/resmgr/docs/PRNewswire\\_pricing\\_guide\\_20.pdf](https://cdn.ymaws.com/sites/www.ibpa-online.org/resource/resmgr/docs/PRNewswire_pricing_guide_20.pdf)

<sup>9</sup> This translates to approximately \$360 per IFRI, assuming an hourly rate of \$90 for senior in-house counsel. The hourly rate is based on the Counsel Network's *In-House Counsel Compensation and Career Report 2020* <https://inhousecounsel.com/In-House-Counsel-Compensation-&-Career-Report-2020.pdf>.

c. MFNRI and MFNRI Securityholders

There should be no material costs or benefits for an MFNRI and MFNRI Securityholders as the Proposed Amendments will not materially revise the existing delivery requirements for MFNRI.

d. Third-party service providers

If the Proposed Amendments are adopted and IFRI rely on an access-based model for designated documents, IFRI will not be required under securities law to solicit Standing Instructions and send Annual Notices, or to solicit Annual Instructions. Third-party service providers who help IFRI solicit Standing Instructions and send Annual Notices, or solicit Annual Instructions, could be negatively impacted by a reduction in revenue. The impact on these third-party providers will depend on their individual agreements with IFRI and is therefore difficult to estimate but could be greater than the estimated cost of soliciting Standing Instructions and sending Annual Notices, or soliciting Annual Instructions, which we have estimated to be approximately \$1 per IFRI Securityholder. However, IFRI may still seek help from third-party service providers to maintain and manage sending designated documents to Securityholders who have provided Standing Instructions or who request single copies of designated documents.

**7. Rule-making Authority**

In Ontario, the following provisions of the Act provide the Commission with authority to make the Proposed Amendments:

- paragraph 39(ii) and paragraph 39(iii) of subsection 143(1) of the Act authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by the Act, the regulations or the rules, all applications to the Commission under the *Business Corporations Act* and all documents determined by the regulations or the rules to be ancillary to the documents, including preliminary prospectuses and prospectuses;
- paragraph 45 of subsection 143(1) of the Act authorizes the Commission to make rules establishing requirements for and procedures in respect of the use of an electronic or computer-based system for the filing, delivery or deposit of documents or information; and
- paragraph 49 of subsection 143(1) of the Act authorizes the Commission to make rules permitting or requiring, or varying the Act to permit or require, methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by Ontario securities law.

**8. Alternatives Considered**

a. *Status quo*

An alternative considered was to maintain the *status quo*, which would mean that paper delivery would continue to be the current default unless investors “opt in” to receive documents electronically.

b. Altering the current default of paper delivery to electronic delivery

Another alternative considered was to alter the current default of paper delivery to electronic delivery. Under this option, investors would receive documents by email unless they “opt in” to receiving paper documents as opposed to the status quo where investors must “opt in” to receive documents electronically.

There are challenges associated with altering the current default to electronic delivery, including legal uncertainties to satisfying electronic delivery of documents under other legislation such as corporate law and electronic commerce legislation that may require consent to electronic delivery. Altering the default to electronic delivery may require legislative change and would also require clarifying the current requirements regarding investor consent in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, as well as modernizing the current guidance in National Policy 11-201 *Electronic Delivery of Documents*. An additional challenge associated with altering the current default is that the issuer may need to consult its investors and obtain an affirmative response from each respective investor (i.e. e-mail address) in order to avail itself of electronic delivery.

**9. Reliance on Unpublished Studies**

The Commission is not relying on any unpublished study, report or other written material in proposing the Proposed Amendments.

ANNEX E

Schedule 1

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

1. ***Ontario Securities Commission Rule 81-801 Implementing National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.***

2. ***Section 3.5 is replaced by the following:***

**3.5 Access to Financial Statements – reporting investment funds**– Section 79 of the Act does not apply to an investment fund that is a reporting issuer that complies with Part 5 of NI 81-106 in the case of

- (a) annual financial statements for financial years ending on or after [DATE]; and
- (b) interim financial reports for interim periods ending after the period determined in subsection (a).

3. ***The following is added after section 3.5:***

**3.5.1 Delivery of Financial Statements – non-reporting mutual funds** – Section 79 of the Act does not apply to a mutual fund that is not a reporting issuer that complies with Part 5A of NI 81-106 in the case of

- (a) annual financial statements for financial years ending on or after [DATE]; and
- (b) interim financial reports for interim periods ending after the period determined in subsection (a).

**Effective date**

4. This Instrument comes into force on [DATE].