

The Ontario Securities Commission

Investment Fund Continuous Disclosure

Supplement to the OSC Bulletin

March 11, 2005

Volume 28, Issue 10 (Supp-1)

(2005), 28 OSCB

The Ontario Securities Commission Administers the Securities Act of Ontario (R.S.O. 1990, c.S.5) and the Commodity Futures Act of Ontario (R.S.O. 1990, c.C.20)

The Ontario Securities Commission

Cadillac Fairview Tower
Suite 1903, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Published under the authority of the Commission by:

Carswell
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

Contact Centre - Inquiries, Complaints:

Fax: 416-593-8122

Capital Markets Branch:

Fax: 416-593-3651

- Registration:

Fax: 416-593-8283

Corporate Finance Branch:

- Team 1:

Fax: 416-593-8244

- Team 2:

Fax: 416-593-3683

- Team 3:

Fax: 416-593-8252

- Insider Reporting

Fax: 416-593-3666

- Take-Over Bids:

Fax: 416-593-8177

Enforcement Branch:

Fax: 416-593-8321

Executive Offices:

Fax: 416-593-8241

General Counsel's Office:

Fax: 416-593-3681

Office of the Secretary:

Fax: 416-593-2318



The OSC Bulletin is published weekly by Carswell, under the authority of the Ontario Securities Commission.

Subscriptions are available from Carswell at the price of \$549 per year.

Subscription prices include first class postage to Canadian addresses. Outside Canada, these airmail postage charges apply on a current subscription:

U.S.	\$175
Outside North America	\$400

Single issues of the printed Bulletin are available at \$20 per copy as long as supplies are available.

Carswell also offers every issue of the Bulletin, from 1994 onwards, fully searchable on *SecuritiesSource*[™], Canada's pre-eminent web-based securities resource. *SecuritiesSource*[™] also features comprehensive securities legislation, expert analysis, precedents and a weekly Newsletter. For more information on *SecuritiesSource*[™], as well as ordering information, please go to:

<http://www.westlawecarswell.com/SecuritiesSource/News/default.htm>

or call Carswell Customer Relations at 1-800-387-5164
(416-609-3800 Toronto & Outside of Canada)

Claims from bona fide subscribers for missing issues will be honoured by Carswell up to one month from publication date. Space is available in the Ontario Securities Commission Bulletin for advertisements. The publisher will accept advertising aimed at the securities industry or financial community in Canada. Advertisements are limited to tombstone announcements and professional business card announcements by members of, and suppliers to, the financial services industry.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior written permission of the publisher.

The publisher is not engaged in rendering legal, accounting or other professional advice. If legal advice or other expert assistance is required, the services of a competent professional should be sought.

© Copyright 2005 Ontario Securities Commission
ISSN 0226-9325
Except Chapter 7 ©CDS INC.



One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
World wide Web: <http://www.carswell.com>
Email: carswell.orders@thomson.com

National Instrument 81-106 Investment Fund Continuous Disclosure

TABLE OF CONTENTS

Notice of National Instrument 81-106 Investment Fund Continuous Disclosure	1
Appendix A – Summary of Changes to the Instrument.....	5
Appendix B – Summary of Comments and CSA Responses	9
Appendix C – Amendments to National Instrument 81-101.....	42
Appendix D – Amendments to National Instrument 81-102.....	46
Appendix E – Amendments to National Instrument 13-101.....	49
Appendix F – Amendments to National Instrument 81-104.....	50
Appendix G – Amendments to National Instrument 51-102.....	52
Appendix H – Amendments to National Instrument 52-107.....	53
Appendix I – Amendments to National Instrument 71-102.....	54
Appendix J – Related Amendments to OSC Rule and Regulation	55
 National Instrument 81-106 Investment Fund Continuous Disclosure	 56
 Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance	 81
 Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure	 93
 Implementing Rule.....	 107
Notice of OSC Rule 81-801	107
OSC Rule 81-801	109
Companion Policy 81-801CP	111

This page intentionally left blank

Notice of National Instrument 81-106 Investment Fund Continuous Disclosure

CSA Notice of Rule

National Instrument 81-106 *Investment Fund Continuous Disclosure*, Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance*, and Companion Policy 81-106CP *Investment Fund Continuous Disclosure* and Related Amendments

Introduction

We, the Canadian Securities Administrators (CSA), have developed a nationally harmonized set of continuous disclosure (CD) requirements for investment funds. These requirements are set out in National Instrument 81-106 *Investment Fund Continuous Disclosure* (the Rule), Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (the Form) and Companion Policy 81-106CP *Investment Fund Continuous Disclosure* (the CP). The Rule and the Form are together referred to as the Instrument.

We have also made consequential amendments to the following Instruments:

- National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, Form 81-101F1 *Contents of Simplified Prospectus*, Form 81-101F2 *Contents of Annual Information Form*, and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure*;
- National Instrument 81-102 *Mutual Funds* and Companion Policy 81-102CP *Mutual Funds*;
- National Instrument 13-101 *System For Electronic Document Analysis and Retrieval (SEDAR)*;
- National Instrument 81-104 *Commodity Pools*;
- National Instrument 51-102 *Continuous Disclosure Obligations*;
- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;
- revocation of National Instrument 54-102 *Interim Financial Statement & Report Exemption*;
- rescission of National Policy 27 *Canadian Generally Accepted Accounting Principles*, National Policy 31 *Change of Auditor of a Reporting Issuer*, National Policy 50 *Reservations in an Auditor's Report*, and National Policy 51 *Changes in the Ending Date of a Financial Year and in Reporting Status*; and
- in some jurisdictions, certain local amendments.

The Instrument has been made or is expected to be made by each member of the CSA, and will be implemented as a rule in each of British Columbia, Alberta, Manitoba, Ontario, Nova Scotia and New Brunswick, as a commission regulation in Saskatchewan, as a regulation in Québec, and as a policy in all other jurisdictions. We also expect all jurisdictions to adopt the CP.

If the required government approval is obtained in British Columbia, the British Columbia Securities Commission intends to make the Instrument and adopt the CP. The BCSC will publish the Instrument and CP at that time.

In Ontario, the Instrument, consequential amendments and other required materials were delivered to the Chair of Management Board of Cabinet on March 11, 2005. The Minister may approve or reject the Instrument or return it for further consideration. If the Minister approves the Instrument or does not take any further action, the Instrument and consequential amendments will come into force on June 1, 2005.

In Quebec, the Instrument is a regulation made under section 331.1 of *The Securities Act* (Québec) and must be approved, with or without amendment, by the Minister of Finance. The Instrument will come into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation. It must also be published in the Bulletin.

Provided all necessary approvals are obtained, we expect to implement the Instrument and consequential amendments on June 1, 2005. The CP will also come into effect at that time.

Application

The requirements in the Instrument concerning

- annual financial statements, annual management reports of fund performance, and annual information forms will apply for financial years ending on or after June 30, 2005;
- interim financial statements and interim management reports of fund performance will apply for financial periods ending after the investment fund's first year end following June 30, 2005;
- quarterly portfolio disclosure will apply for periods that end on or after June 1, 2005;
- proxy voting records will apply for the annual period beginning July 1, 2005; and
- proxy solicitation and information circulars will apply as of July 1, 2005.

All other requirements will apply as of June 1, 2005.

In some jurisdictions, including Ontario and Québec, the Instrument addresses certain non-reporting investment fund obligations such as financial statement requirements. Non-reporting investment funds do not have these requirements in other jurisdictions such as British Columbia, Alberta and Manitoba. The Instrument also does not address CD obligations for reporting issuers that are not investment funds. These reporting issuers are regulated by National Instrument 51-102 *Continuous Disclosure Obligations* which came into force on March 30, 2004.

Substance and Purpose

The Instrument harmonizes CD requirements for investment funds among Canadian jurisdictions and replaces most existing local CD requirements. It sets out the obligations of investment funds with respect to financial statements, management reports of fund performance (MRFPs), delivery obligations, proxy voting disclosure, annual information forms (AIFs) for investment funds that do not have a current prospectus, material change reporting, information circulars, proxies and proxy solicitation, and certain other CD-related matters.

The Instrument prescribes the Form which sets out the contents of the MRFPs. The purpose of the CP is to assist users in understanding and applying the Instrument and to state our views on the interpretation of certain provisions.

Background

We first published the Instrument and CP for comment on September 20, 2002. After considering the comments, we revised the Instrument and CP and published them for comment a second time on May 28, 2004 (the 2004 Proposal). The comment period expired in August 2004. For additional background and the summary of comments received during the first publication period, please refer to the notice we published on May 28, 2004.

Summary of Written Comments Received by the CSA

During the comment period, we received 36 submissions on the 2004 Proposal. We have considered these comments and thank all the commenters. A list of the 36 commenters and a summary of the comments, together with our responses, are contained in Appendix B to this notice.

After considering the comments received, we revised the Instrument and CP. However, as these changes are not material, we are not republishing the Instrument or CP for a further comment period.

Summary of Changes to the Proposed Instrument and Companion Policy

See Appendix A for a description of the noteworthy changes made to the 2004 Proposal.

Consequential Amendments

National Amendments

Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), including amendments to Form 81-101F1 and Form 81-101F2, are set out in Appendix C to this Notice.

Amendments to National Instrument 81-102 *Mutual Funds* (NI 81-102) are set out in Appendix D to this Notice.

Amendments to National Instrument 13-101 *System For Electronic Document Analysis and Retrieval (SEDAR)* (NI 13-101) are set out in Appendix E to this Notice.

Amendments to National Instrument 81-104 *Commodity Pools* (NI 81-104) are set out in Appendix F to this Notice.

Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) are set out in Appendix G to this Notice.

Amendments to National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* (NI 52-107) are set out in Appendix H to this Notice.

Amendments to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (NI 71-102) are set out in Appendix I to this Notice.

National Instrument 54-102 *Interim Financial Statement & Report Exemption* (NI 54-102) will be revoked when the Instrument comes into force.

National Policy 27 *Canadian Generally Accepted Accounting Principles* (NP 27), National Policy 31 *Change of Auditor of a Reporting Issuer* (NP 31), National Policy 50 *Reservations in an Auditor's Report* (NP 50), and National Policy 51 *Changes in the Ending Date of a Financial Year and in Reporting Status* (NP 51) will be rescinded when the Instrument comes into force.

Local Amendments

We are amending or repealing elements of local securities legislation and securities directions, in conjunction with the implementation of the Instrument. The provincial and territorial securities regulatory authorities may publish, or may have published, these local changes or proposed changes separately in their local jurisdictions. Any consequential amendments to rules or regulations in a particular jurisdiction may be published in Appendix J to this Notice.

Some jurisdictions will implement the Instrument using a local implementing rule. These jurisdictions will separately publish the implementing rule.

Questions

Please refer your questions to any of:

Raymond Chan
Accountant, Investment Funds
Ontario Securities Commission
Tel: (416) 593-8128
rchan@osc.gov.on.ca

Vera Nunes
Legal Counsel, Investment Funds
Ontario Securities Commission
Tel: (416) 593-2311
vnunes@osc.gov.on.ca

Irene Tsatsos
Senior Accountant, Investment Funds
Ontario Securities Commission
Tel: (416) 593-8223
itsatsos@osc.gov.on.ca

Noreen Bent
Manager and Senior Legal Counsel
British Columbia Securities Commission
Tel: (604) 899-6741
or 1-800-373-6393 (in B.C. and Alberta)
nbent@bcsc.bc.ca

Christopher Birchall
Senior Securities Analyst
British Columbia Securities Commission
Tel: (604) 899-6722
or 1-800-373-6393 (in B.C. and Alberta)
cbirchall@bcsc.bc.ca

Melinda Ando
Legal Counsel
Alberta Securities Commission
Tel: (403) 297-2079
melinda.ando@seccom.ab.ca

Bob Bouchard
Director, Corporate Finance and Chief Administrative Officer
Manitoba Securities Commission
Tel: (204) 945-2555
bbouchard@gov.mb.ca

Wayne Bridgeman
Senior Analyst, Corporate Finance
Manitoba Securities Commission
Tel: (204) 945-4905
wbridgeman@gov.mb.ca

Sylvie Anctil-Bavas
Responsable de l'expertise comptable
Direction des marchés des capitaux
Autorité des marchés financiers
Tel: (514) 395-0558, poste 4373
sylvie.anctil-bavas@lautorite.qc.ca

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

March 11, 2005

APPENDIX A

SUMMARY OF CHANGES TO THE INSTRUMENT

The Rule*Part 1 Definitions and Applications*

- We revised the definition of “current value” to refer more generally to the value calculated in accordance with Canadian GAAP, rather than specific references to market value and fair value.
- We changed the term “group scholarship plan” to “scholarship plan” and have modified the definition to make it consistent with other defined terms. The substance of the definition has not changed.
- We modified the definition of “independent valuation” to allow it to be a valuation of either the net asset value or the venture investments of a labour sponsored or venture capital fund.
- We added the definition of “management expense ratio” from NI 81-102.
- We clarified the definition of “management fees” to indicate that these do not include operating expenses of the investment fund.
- We removed the definition of “manager” as this term is already defined in NI 81-102.
- The Rule contains only one definition of “non-redeemable investment fund” applicable in every jurisdiction. This definition is consistent with the definition currently used in Ontario.
- We removed the definition of “related party”. We decided the definition was unnecessary as “related party” and “related party transactions” are explained in the Handbook.

Part 2 Financial Statements

- The filing deadline for interim financial statements was changed from 45 to 60 days. This filing deadline also applies to the interim MRFPs. We removed the additional ten days for mailing so that securityholders will not receive CD documents later than they currently do.
- We specified that financial statements must be prepared in accordance with Canadian GAAP as applicable to public enterprises so as to be consistent with NI 52-107.
- The Rule now states that the change in year end provisions only apply to investment funds that are reporting issuers. We also clarified the comparative periods for each type of financial statement in the transition year.

Part 3 Financial Disclosure Requirements

- We specified that investment funds must present certain line items in the financial statements per class or series if applicable.
- We deleted the separate requirements for commodity pools in subsection 3.2(2) as these items are already captured in the statement of operations.
- The requirement to disclose short term debt instruments by currency was modified to require separate disclosure by currency only if the amount represents more than 5% of the total short term debt.
- We removed the requirements to disclose details of related party transactions and to disclose a breakdown of management fees in the notes to the financial statements. This disclosure should be provided in the notes when required by Canadian GAAP. The MRFP will contain a discussion of related party transactions and a breakdown of management fees.
- We removed the requirement to disclose details of amounts waived or paid by the manager in the notes to the financial statements. This disclosure is already required in the statement of operations.

- We clarified the requirement to disclose soft dollars by indicating that this disclosure is to be provided if the amount is ascertainable and by indicating that the soft-dollar portion is the amount paid to dealers for goods and services other than order execution.
- We moved the requirement to disclose the total cost of distribution of the investment fund's securities from the CP to the Rule. This disclosure must be provided in the notes to the financial statements.
- We moved the requirements with respect to incentive arrangements into the statement of net assets and statement of operations, as applicable. Consequently, we deleted section 3.11.
- We changed the specific requirements for scholarship plans to indicate that they must provide the disclosure by year of eligibility, rather than year of maturity. We also exempted scholarship plans from disclosing certain "per security" line items.

Part 5 Delivery of Financial Statements and Management Reports of Fund Performance

- To improve readability, we defined the term "securityholder" for the purposes of Part 5 to mean registered holder and beneficial owner.
- We added a prohibition against using annual instructions after standing instructions have been obtained. This prohibition was previously contained in the CP.
- We clarified that investment funds must apply the procedures in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* for the purposes of Part 5 of the Rule, but are exempted from these procedures if they have the necessary beneficial owner information.
- We removed the time limits for obtaining either standing or annual instructions. Investment funds can seek these instructions at a convenient time, remembering that the Rule requires delivery of financial statements and MRFPs to all securityholders unless the investment fund has solicited specific delivery instructions.
- The Rule now permits investment funds under common management to solicit one set of delivery instructions from a securityholder that owns more than one fund in the same fund family.
- The Rule now permits more than one MRFP to be bound together for the purposes of delivery to a securityholder that owns each of the investment funds to which the MRFPs relate.
- We changed the delivery deadline to be the later of the filing deadline or ten days following a securityholder request. This change is consistent with the delivery deadline for reporting issuers other than investment funds.

Part 6 Quarterly Portfolio Disclosure

- We extended the deadline for providing quarterly portfolio disclosure from 45 days to 60 days to address the comments received and to coincide with the interim filing deadline.

Part 7 Financial Disclosure – General [Now Part 7 Binding and Presentation]

- We removed the requirement to send financial statements and MRFPs to people who request them other than securityholders. There is no corresponding requirement in NI 51-102 and we are of the view that it is not necessary to prescribe how investment funds communicate with individuals who are not securityholders.
- We modified section 7.5 [now 7.2] to require multi-class funds (where all classes are referable to the same portfolio of assets) to prepare one set of financial statements. This change was made in response to comments that raised concerns with allowing a separate set of financial statements per class, which is not supported by accounting literature and may not be consistent with Canadian GAAP.

Part 8 Independent Valuations for Labour Sponsored or Venture Capital Funds

- We added a requirement to disclose the qualifications of the independent valuator in the statement of investment portfolio or in the notes to the annual financial statements.

- We deleted the requirement to disclose the compensation paid to the independent valuator as this disclosure would likely not assist with evaluating independence.

Part 9 Annual Information Form

- Every investment fund that does not have a current prospectus must prepare and file an AIF. The Rule previously exempted investment funds that hold an annual meeting from filing an AIF. However, we determined that the information required in an AIF and in an information circular was not substantially similar, so it is preferable that all investment funds without a current prospectus continue to file an AIF.

Part 10 Proxy Voting Disclosure for Securities Held

- We added a requirement for investment funds that have a website to post their proxy voting record.

Part 15 Calculation of Management Expense Ratio (MER)

- We deleted the requirement (in former subsection 15.1(3)) to disclose an estimate of the non-optional fees paid directly by investors as these fees are no longer included in MER. It may also be difficult for investment funds to estimate these fees as they are negotiated between the investor and their dealer.

Part 16 Additional Filing Requirements

- We modified section 16.2 to require investment funds to file any additional disclosure documents they may send to their securityholders.

Part 18 Effective Date and Transitional

- We specified when the AIF, proxy voting disclosure and proxy solicitation and information circular requirements apply.
- We removed the transition provision applicable to interim financial statements and interim MRFPs as the filing deadline for these is being maintained at 60 days.
- We modified section 18.6. Investment funds that have previously obtained an exemption from continuous disclosure obligations are exempted from any substantially similar provision of the Instrument. This section is now consistent with NI 51-102.

The Form

Part B Content Requirements for Annual Management Report of Fund Performance

Item 2 – Management Discussion of Fund Performance

- We clarified that there is no requirement to provide forward-looking information in the MRFP.
- We added instructions setting out certain requirements applicable to the disclosure of related party transactions.

Item 3 – Financial Highlights

- We added “management expense ratio before waivers or absorptions” as a line in the Ratios and Supplemental Data table, rather than having this disclosure in a note to the table.
- We added a new “trading expense ratio” which represents total commissions and other portfolio transaction costs expressed as an annualized percentage of daily average net assets.
- We removed the requirement to disclose the number of investments held by the investment fund.
- Labour sponsored or venture capital funds must also disclose the “pricing NAV” if different than the net asset value for accounting purposes.
- We added a new section 3.3 requiring disclosure of the basis for calculating management fees and a breakdown of the services received in consideration of the management fees. This requirement was previously contained in the Rule (see the changes to Part 3 of the Rule noted above).

Item 4 – Past Performance

- We removed the requirement for exchange-traded investment funds not to assume that all distributions they made during the relevant period were reinvested in securities of the fund in order to make the performance of these funds more comparable to the performance of investment funds that are not exchange-traded.
- We removed the requirement to disclose the best and worst total return for any six month period as we are not of the view that this disclosure would be meaningful.

Item 5 – Summary of Investment Portfolio

- In response to the comments received, we amended the summary of investment portfolio so that investment funds must only disclose their top 25 positions in total, either long or short, instead of their top 25 long positions and their top 25 short positions.

Part C – Content Requirements for Interim Management Report of Fund Performance

- We changed the Form requirements for interim MRFPs to correspond with the changes made for annual MRFPs.

The Companion Policy

- We amended the CP to reflect the changes to the Rule described above. For example,
 - we added guidance on the soft dollar disclosure required in the notes to the financial statements.
 - we removed section 3.4 dealing with auditor's reports for multi-class funds as investment funds are not permitted to prepare separate financial statements per class.
 - we clarified the choices an investment fund has with respect to delivering CD documents to its securityholders and to soliciting delivery instructions from securityholders.
 - we specified that a labour sponsored or venture capital fund can obtain an independent valuation of either its net asset value or of the value of its venture investments.
- We expanded the discussion in the Application section to elaborate more fully on what types of issuers are considered to be investment funds.
- We removed section 3.2 "Canadian Auditors", but added a reminder that investment funds should refer to National Instrument 52-108 *Auditor Oversight*.
- We updated the references to Handbook Section 7500 *Auditor's Association with Annual Reports, Interim Reports and Other Public Documents*.
- We expanded our discussion of auditor involvement with interim financial statements to make it more consistent with NI 51-102.

Consequential Amendments*Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure*

- We revised the amendments to NI 81-101 to require top ten holdings, past performance and financial highlights to remain in a mutual fund's simplified prospectus until the mutual fund has filed its first annual management report of fund performance.

APPENDIX B

SUMMARY OF COMMENTS AND CSA RESPONSES

Part I Background

On May 28, 2004 the CSA published for comment revised versions of the Rule and other consequential amendments. The comment period for the Rule expired on July 27, 2004, while the comment period for certain consequential amendments expired August 26, 2004. The CSA received 36 submissions from the commenters identified in Schedule 1.

The CSA have considered the comments received and thank all the commenters for providing their comments.

The section references in this summary are the same as the sections in the Rule as published on May 28, 2004. The section numbers in square parentheses are the corresponding section references in the current version of the Rule.

Part II Comments received on the RulePart 1 - Definitions and Applications1.1 Definitions

One commenter suggested that the definition of “current value” is problematic for funds of funds where the underlying fund is exchange-traded given that it requires the top fund to value the underlying fund at its market price rather than its net asset value.

Response: The definition of current value has been changed to indicate that it is the value as determined in accordance with Canadian GAAP.

One commenter suggested deleting the definition of “management fees” as this is a commonly used and easily understood term. Three commenters believe the definition of “management fees” is too restrictive as the list of excluded expenses is not complete.

Response: We have defined this term in order to ensure that it is a comparable amount between funds. However, we have changed the definition as follows: “management fees” means the total fees paid or payable by an investment fund to its manager or one or more portfolio advisers or sub-advisers, including incentive fees or performance fees, but excluding operating expenses of the investment fund.

One commenter suggested deleting the definition of “manager” as this term is already defined in NI 81-102. Another commenter wondered why the definition of “manager” is slightly different than the definition in NI 81-102.

Response: We deleted the definition of “manager” as this term is defined in NI 81-102.

One commenter asked why “material change” is defined (notwithstanding the explanation provided in the CP).

Response: We consider it useful to have a definition of “material change”, applicable to all investment funds, in the Rule.

Five commenters noted that the definition of “net asset value” is problematic to the extent that it requires the fair valuation of liabilities, which might conflict with Canadian GAAP in certain circumstances.

Response: We modified the definition of “current value” as indicated above so that it applies more appropriately to liabilities within the definition of “net asset value”.

Four commenters pointed out the differences between the two definitions of “non-redeemable investment fund”. The commenters submitted that the Ontario definition of “non-redeemable investment fund” is preferable because it excludes issuers which exercise (or seek to exercise) effective control or which become actively involved in the management of other issuers. The commenters suggested that the definition should clearly apply to investment vehicles whose intentions are passive.

Response: The Ontario version of the definition of “non-redeemable investment fund” has been adopted by all jurisdictions for the purpose of this Rule (and other related rules such as NI 51-102). The discussion in the CP about the application of the Rule has also been expanded.

One commenter suggested defining the terms “investment portfolio”, “long portfolio” and “short portfolio”.

Response: We are of the view that these terms will be readily understood in the context in which they are used.

1.2 Application

One commenter noted that the Rule should apply equally to certain other products (for example, pooled funds and wrap accounts) that are sold competitively to mutual funds. Another commenter encouraged the CSA to continue its efforts in the area of harmonized regulation for mutual funds and segregated funds so that mutual funds are not subject to a greater regulatory burden than segregated funds.

Response: The CSA acknowledges the comments concerning harmonized regulation for similar products, but the regulation of segregated funds is not within our jurisdiction. The goal of harmonization is being pursued in the context of other initiatives (for example, the Joint Forum of Financial Market Regulators' initiatives to harmonize the regulation of segregated funds and mutual funds).

One commenter stated that the Rule should not have jurisdictional carve-outs for mutual funds that are non-reporting issuers as this leads to an uneven playing field. Another commenter asked the CSA to reconsider whether the Rule should apply to pooled funds, given that the requirements do not apply in all jurisdictions.

Response: The Rule generally maintains the current requirements applicable to pooled funds in each jurisdiction. In jurisdictions where pooled funds currently have filing requirements, the Rule provides an exemption from filing, subject to certain conditions, similar to exemptive relief which has already been granted in the past.

One commenter requested that limited partnerships established to provide the financing for deferred sales commissions of mutual funds be explicitly included in the Rule.

Response: Every issuer must consider whether or not they are an "investment fund" as defined in the Rule. The CP contains a detailed discussion of the application of the Rule.

Part 2 - Financial Statements

2.1 Annual Financial Statements and Auditor's Report

One commenter noted that the Rule requires a statement of changes in net assets only if a statement of cashflows is not required by GAAP. A statement of cashflows is only not required under GAAP when most of the assets are very liquid. In the commenter's opinion, for investment funds, the statement of changes in net assets is more relevant than the statement of cashflows.

Response: Every investment fund must file a statement of changes in net assets. A statement of cashflows must be filed unless an exemption exists under Canadian GAAP.

2.2 Filing Deadline for Annual Financial Statements and 2.4 Filing Deadline for Interim Financial Statements

Nine commenters are of the view that the new filing deadlines will place a significant strain on fund complexes and raise practical problems given the various stages of preparation (printing, auditing, translation, approvals) of both the financial statements and the MRFPs. These commenters are concerned about the potential increase in errors, the overall quality of the reports and the increased costs which will be passed on to securityholders.

Four commenters stated that the 45-day interim filing deadline will be difficult to meet given the additional requirements regarding the interim MRFP, auditor involvement and board approval.

Two commenters submitted that it would be appropriate for the filing deadlines for investment funds to be different than those for other reporting issuers because of the number of funds and attendant documents to be completed by fund managers. One commenter suggested that investment funds be treated like "venture issuers" under NI 51-102.

Three commenters support the move to a 90-day filing deadline for annual statements. Eight commenters recommend maintaining the 60-day interim deadline and amending the deadline to 120 days for annual filings.

Response: Given the additional requirements related to interim financial statements, we have decided to leave the interim filing deadline at 60 days. However, we continue to believe that 90 days is an appropriate annual filing deadline to ensure the timely disclosure of useful financial information.

2.3 Interim Financial Statements

One commenter asked for clarification of whether the interim financial statements must contain a full set of notes or whether the principles of paragraph 14 of Section 1751 of the CICA Handbook should be followed.

Response: We have clarified in the CP that the principles of paragraph 14 of Section 1751 of the CICA Handbook can be applied to the requirements regarding the notes to interim financial statements.

2.5 Approval of Financial Statements

One commenter noted that a fund which is organized as a trust can have its financial statements approved by the manager, but a fund that is a corporation cannot. The commenter suggested that there is no reason to make this distinction between corporate and trust funds.

Response: Corporate law requires the board of directors of a corporation to approve the financial statements. For investment funds organized as trusts, the financial statements must be approved by the trustee or another person authorized to do so by the constating documents of the trust.

2.6 Acceptable Accounting Principles

One commenter requested clarification that other than the specific additional requirements set out in the Rule, the financial statements required by the Rule are to be prepared in accordance with GAAP and application of the CICA Handbook.

Response: Section 2.6(1) [2.6] of the Rule requires the financial statements to be prepared in accordance with Canadian GAAP. We are of the view that the specific additional requirements set out in the Rule are not inconsistent with Canadian GAAP.

One commenter suggested that the requirement to prepare financial statements in accordance with the same accounting principles for all periods presented be clarified. This commenter also noted that the reference to “accounting principles” should be changed to “significant accounting policies”. Another commenter suggested removing subsection 2.6(2) as GAAP provides for how to deal with changes in accounting policies.

Response: We have removed subsections 2.6(2) and (3) from the Rule as we agree that GAAP addresses these issues.

2.9 Change in Year End

One commenter suggested that the change in year end provisions should be completely contained in the Rule as the cross-reference to NI 51-102 is less user-friendly.

Response: We are of the view that referring to NI 51-102 for these requirements is appropriate, given that the requirements are substantially the same.

One commenter suggested that the change in year end requirements should not apply to investment funds that are non-reporting issuers.

Response: We have changed section 2.9 to indicate that it only applies to investment funds that are reporting issuers.

Three commenters noted that section 2.9 requires that for a transition year, the comparative periods in the financial statements be the corresponding months from the prior year, which could result in having to redo financial statements for the prior year.

Response: The requirements will not result in having to redo financial statements for the prior year. In some cases, the requirements will result in having to prepare financial statements for an interim period that were not previously prepared. Please see the discussion in the CP as well as Appendix A to the CP.

One commenter proposed separating the requirements for a comparative interim statement of net assets from those for the other financial statements in order to ensure compliance with Section 1751 of the CICA Handbook.

Response: We have made this change to subsection 2.9(3) [2.9(4)] of the Rule.

2.10 Change in Legal Structure

One commenter recommended deleting subsection 5.8(2) of NI 81-102 and adding any investment fund termination provisions to the Rule. This commenter also recommends that with respect to fund mergers, the drafting be conformed to the language used in Part 5 of NI 81-102.

Response: The Rule sets out requirements applicable to all investment funds. We have retained, in NI 81-102, the specific requirements applicable only to mutual funds.

One commenter asked for confirmation that the requirement to file a notice does not infer that regulatory approval of the change is necessary.

Response: The requirement to file a notice does not infer that regulatory approval is necessary.

One commenter asked for clarification as to when the notice required by section 2.10 would have to be filed in cases where the investment fund terminates or ceases to be a reporting issuer. This commenter also noted that the drafting should be clarified as some of the items listed in (e) to (j) might not apply in all circumstances. This commenter also requested clarification as to whether the notice must be filed on SEDAR.

Response: In cases where the investment fund terminates, the notice must be filed as soon as practicable. We confirm that the notice must be filed on SEDAR. We have added the words “if applicable” to paragraphs 2.10(i) and (j), as (e), (f) and (g) will always be applicable.

2.11 Exemption and Requirements for Mutual Funds that are Non-Reporting Issuers

Three commenters suggested that this section be clarified to indicate that pooled funds must prepare and deliver financial statements within the same annual and interim deadlines applicable to other investment funds.

Response: We have clarified this.

One commenter suggested that a pooled fund be permitted to provide a one-time notice to the regulators that it is relying on the exemption in section 2.11.

Response: We have clarified in the CP that a pooled fund may provide a one-time notice.

One commenter is concerned about the requirement for investment funds that are non-reporting issuers to deliver a statement of investment portfolio to their securityholders, as proprietary investment strategies and trading patterns will be revealed, and disclosing short positions could be particularly damaging if those short positions are still in place.

Response: The Rule only applies to mutual funds, not non-redeemable investment funds, that are non-reporting issuers. Mutual funds (regardless of whether or not they are reporting issuers) are currently required to provide this disclosure pursuant to securities legislation in some jurisdictions.

2.12 Disclosure of Auditor Review of Interim Financial Statements

One commenter is of the view that while having both the interim and annual financial statements approved is a good control measure, providing a notice that interim financial statements have not been reviewed by the auditors is redundant if the interim statements are marked as “unaudited”.

Response: Interim financial statements, although not audited, could be reviewed by an auditor. The purpose of the notice is to advise that this review has not been performed.

One commenter noted that although auditor involvement in the preparation of interim financial statements is not required, the practical impact of the requirement to provide this notice will trend toward full auditor involvement in order to avoid the perception that funds that do not involve their auditors are producing “less reliable” interim financial statements. Another commenter suggested that smaller funds are less likely to have the financial resources to engage an auditor to review interim financial statements and will be put at a competitive disadvantage as unfair inferences may be drawn from the fact that the statements were not reviewed.

Response: We encourage auditor involvement in the preparation of interim financial statements and every investment fund will have to make a business decision as to the level of this involvement.

Three commenters requested clarification of the disclosure requirements if the review of the interim statements was not carried out prior to the filing of those statements, but was carried out at a different time (for example, in order to obtain a comfort letter for the purposes of filing the prospectus).

Response: The notice must be provided if the auditor review has not taken place by the time the interim financial statements are filed.

Three commenters wanted the CSA to provide the format for the notice to be included with interim financial statements that have not been reviewed.

Response: We have not provided a form of notice, but we have added guidance to the CP.

Part 3 - Financial Disclosure Requirements

3.1 Statement of Net Assets

One commenter requested guidance as to how the requirement to present the statement of net assets at current value should be applied to liabilities. Alternatively, the commenter suggested that the requirement to present current values be limited to only assets or investments.

Response: We have amended the definition of “current value” as indicated above.

Two commenters asked for confirmation that the requirement is to disclose net asset value per security, not total net assets by series/class for multiple class funds.

Response: In our view, both total net assets and net asset value per security should be shown by series/class for multiple class funds. We added specific line items to the statement of net assets to require this disclosure.

One commenter thinks that the terms “securities”, “investments” and “portfolio assets” are used in confusing ways and suggested that “portfolio asset” be used when referring to the investments of the fund (consistent with NI 81-102) and “securities” be used to signify the securities issued by the fund.

Response: Generally, the term “securities” is used to refer to the securities issued by the fund and the term “portfolio asset” is used to refer to the investments of the fund. However, in some cases, the word “securities” has been retained if it is common terminology (for example, in parts of the Rule dealing with securities lending or proxy voting).

3.2 Statement of Operations

One commenter noted that the statement of operations does not contain any concept of materiality so that even trivial amounts would have to be disclosed. Another commenter noted that while specific line items should be disclosed on the statement of net assets, the disclosure requirements for the other statements are too prescriptive. Three commenters suggested that the 5% threshold currently found in securities legislation be maintained and applied to all of the separate line item disclosures.

Response: We purposely set out the minimum line items to be disclosed on each of the statements. Additional line items should be included if they are material. Please see the discussion in subsection 2.1(2) of the CP.

One commenter agrees with the requirement to include income from derivatives as one line item (instead of disclosing income per type of derivative).

Response: None required.

Two commenters recommended changing “securityholder information costs” (item 11) to “securityholder reporting costs” in order to avoid confusion with expenses for information systems or technology.

Response: We have made this change.

One commenter noted that item 12 should read “dividends paid on securities sold short” (not “dividends received on securities sold short”).

Response: We agree, but have removed this line item. The disclosure will have to be provided by investment funds for which this item is material.

One commenter noted that the statement of operations should not require the inclusion of amounts that were waived or paid by the manager as these amounts are not part of the fund’s results, and the requirement is inconsistent with the requirement to calculate both the actual MER and the MER as if the expenses had not been waived. (This commenter does not object to disclosing this information in a note.)

Response: We are of the view that the amounts waived or paid by the manager should be shown separately on the statement of operations because this reduction in expenses is at the discretion of the manager and investors should be able to see if the manager is waiving or paying these amounts.

Three commenters are of the view that filing fees paid to securities regulators should be a separate, mandated line item.

Response: Investment funds should add any other line items they believe are necessary in order to comply with GAAP.

One commenter is of the view that distribution expenses should appear as a separate line item on the statement of operations.

Response: The Rule requires a breakdown of management fees in the MRFP which should include disclosure of distribution expenses.

Two commenters suggested that the disclosure of net earnings per security should be specifically required, given that this is now required by GAAP.

Response: The line item “increase or decrease in net assets from operations per security” has been added to the statement of operations.

One commenter noted that disclosing the increase or decrease in net assets from operations per security will not agree with “increase or decrease in net assets per security by class” that is required to be reflected in the statement of operations in accordance with GAAP.

Response: For investment funds with more than one series/class of securities, the Rule requires financial statements to present any “per security” amounts as “per series/class” amounts.

One commenter asked why subsection 3.2(2) only applies to commodity pools.

Response: These requirements were adopted from section 8.3 of NI 81-104. However, we have deleted them as these items are already captured in the statement of operations.

3.3 Statement of Changes in Net Assets

Two commenters asked for clarification of whether there was any requirement to disclose proceeds from the issuance of securities of the investment fund (item 3), aggregate amounts paid on redemption of securities (item 4) and distributions (item 6) by series/class or just in total for the fund.

Response: Multi-class investment funds must present all of the items in the statement of changes in net assets on a per series/class basis.

Three commenters noted that the terms used in paragraph 6 of this section should be made consistent with the tax nature of distributions/dividends as the difference between GAAP and tax rules are such that a taxable capital gain could occur and be distributed, but no gain is realized for GAAP purposes. Two commenters suggested that the paragraph read: “distributions, showing separately the amount out of taxable income, taxable capital gains and return of capital” (instead of the current “distributions, showing separately the amount out of net investment income, out of realized gains on portfolio securities sold, and return of capital”).

Response: We are of the view that the more general terms are readily understood and can be applied to both investment funds that are tax neutral and those that are not.

One commenter noted that a breakdown of distributions between net investment income, realized gains and return of capital cannot be provided on interim statements as these amounts are not finalized until the fund’s tax year-end. This disclosure can only be provided in annual financial statements for a December 31 year-end.

Response: We are of the view that the allocation of distributions can be estimated at the interim period and is within the scope of Section 1508 Measurement Uncertainty of the Handbook.

3.5 Statement of Investment Portfolio

Three commenters asked if short term debt instruments are aggregated with cash as a line item on the statement of net assets, and not listed on the statement of investment portfolio, whether there is any requirement to separately report the short term debt instruments by currency. If so, the commenters suggested that the requirement should only be to distinguish between domestic or reporting currency and foreign currencies, as it would be onerous to report short term debt by each currency.

Response: We have addressed this by deleting the requirement to break down the disclosure by currency of issue and requiring separate disclosure of the aggregate short term debt instruments by currency of issue, if these exceed 5% of the total short term debt instruments.

One commenter pointed out that the terms “derivatives” (defined in securities regulation in some provinces) and “specified derivatives” (defined in NI 81-102) seem to be used interchangeably and recommended the use of the NI 81-102 term.

Response: We have used the term “derivative” throughout the Rule, except for Part 14 where the requirement to calculate net asset value more frequently is based on the use of “specified derivatives” as defined in NI 81-102.

Two commenters suggested deleting the words “per option” from the phrase “quantity of the underlying interest per option” in subsection 3.5(6) as the quantity per underlying option is not standardized.

Response: We have made this change.

One commenter agrees with the change made to not require disclosure of the credit rating of the counterparty.

Response: None required.

One commenter suggested that holdings which may represent a conflict (for example, a fund’s investment in its manager’s parent company) should be highlighted on the statement of investment portfolio.

Response: These conflicts are being considered in the context of proposed NI 81-107, which may result in amendments to the Rule at a later date.

3.6 Notes to Financial Statements

Two commenters suggested that labour sponsored investment funds (LSIFs) should be exempt from the requirement to provide details of portfolio transactions with related parties of the investment fund (that are venture investments) given that LSIF shareholders know that LSIFs are active investors that frequently serve on the boards of their portfolio companies. Another commenter requested confirmation that disclosure of transactions with related parties only has to be provided if the related party is acting as principal, not agent (similar to the exception in subsection 4.2(2) of NI 81-102).

Response: We have removed the requirement to provide details of related party transactions in the notes to the financial statements. Related party disclosure will have to be provided in the notes to the financial statements when required by GAAP.

The notes to the financial statements of an investment fund must contain: details of the total commission paid to dealers for portfolio transactions, including dollar amounts of commissions paid and soft dollar transactions; and the basis for calculating the management fees paid and a breakdown of the services received in consideration of the management fees. Four commenters noted that the effort required to audit these disclosures could be considerable, and if the auditor of the fund is not also the auditor of the manager, the auditor may not have the ability to audit the information being disclosed. The commenters suggested that this disclosure be provided outside of the body of the audited financial statements.

Response: We have moved the requirement to disclose the breakdown of management fees from the notes to the financial statements to the MRFP. However, we are of the view that it is appropriate to disclose the commission paid to dealers, including soft dollar disclosure, in the notes to the financial statements.

Three commenters requested clarification of what soft dollar disclosure must be provided and note that the term “soft dollars” is not defined or explained in the CP.

Response: We have specified in the Rule that soft dollars refers to the amount other than order execution costs and must be disclosed if ascertainable. We have clarified in the CP that soft dollars include the goods and services received from either the dealer directly or a third party.

Two commenters are of the view that disclosing soft dollars in addition to total commission paid is redundant.

Response: We believe that separate disclosure of soft dollar amounts is important to investors.

Four commenters are of the view that the soft dollar disclosure will require arbitrary allocation of transactions to a specific fund. Calculating soft dollar transactions per fund by subtracting the usual market rate for commissions from the total amount paid to a broker does not contemplate any “preferential pricing” of trades based on volume that does not otherwise involve soft dollar services provided by the broker to the manager.

Response: As part of ensuring that each fund is getting best execution, we are of the view that it is the responsibility of the manager to allocate soft dollars equitably to each fund.

One commenter noted that as the OSC is presently conducting a study of soft dollar arrangements, changes to the disclosure requirements are premature until the study is completed.

Response: Some soft dollar disclosure is already required (for example, mutual funds using a simplified prospectus must disclose whether any statistical, research or other investment decision-making services were received). Given our understanding of the prevalence of soft dollar arrangements, we are of the view that this disclosure should be provided.

Three commenters asked for clarification of the purpose of the disclosure required by paragraph 5 of subsection 3.6(1) [Form 81-106F1, Part B, Item 3.3] (breakdown of management fees).

Response: The purpose of this disclosure is to inform investors of what services they receive in exchange for the management fees paid by the fund. Investors should understand what is included in the management fee and what is not.

One commenter requested clarification on whether the breakdown of the services received in consideration of the management fees must be calculated on a series by series basis or on a fund by fund basis. The commenter is concerned that absent specific guidance on how to separate and account for the various fees, investors will not have comparable information to make a comparison between funds.

Response: In order to provide meaningful disclosure, the basis for calculating the management fees and the breakdown of the services received as a percentage of management fees should be provided for each series/class, as the management fee differs for each series/class.

Two commenters asked for guidance as to how detailed the breakdown of the management fees needs to be. One commenter asked whether profit would be imbedded into each type of service provided, or whether it would be a separate component. Another commenter suggested including an example of the required disclosure in the CP.

Response: We expect the disclosure to list the major services paid for out of the management fees (for example, portfolio adviser compensation, trailer fees, sales commissions) depending on each fund's arrangement with the manager. We have added an instruction to the Form that includes these examples.

One commenter suggested that an alternative place and format for this disclosure might be more appropriate (for example, like the disclosure in the simplified prospectus of the percentage of management fees paid to dealers).

Response: We have amended the Rule to require this disclosure in the MRFP, instead of the notes to the financial statements. We are of the view that this disclosure should be provided in a document that investors can request on a regular basis.

Two commenters are of the view that the requirement to disclose amounts that would have been payable by the fund but were paid by the manager instead is too broad and request clarification of what information is to be disclosed. Two commenters are of the view that there will be significant inconsistencies among fund companies as to what is disclosed.

Response: As amounts that were waived or paid by the manager will be disclosed in the statement of operations, we have removed this requirement from the notes to the financial statements.

Two commenters requested that the requirement to disclose borrowing details in the notes and in the MRFP not apply to investment funds that already have similar disclosure elsewhere in their financial statements.

Response: We have clarified that note disclosure with respect to borrowing only has to be provided if it is not already provided elsewhere in the financial statements. We have also eliminated certain disclosure from the notes, as a full discussion of borrowing activities is required in the MRFP.

One commenter suggested that given the restriction on borrowing in NI 81-102, disclosure in the financial statements and MRFP be limited to borrowing outside of the normal course of business (as otherwise permitted by NI 81-102).

Response: The requirement may not be applicable to the majority of mutual funds as they do not engage in borrowing. However, as the Rule applies to all investment funds, the disclosure must be provided for all borrowing activity, including borrowing in the normal course of business.

One commenter requested clarification that borrowings include margin.

Response: Yes, borrowing includes margin.

One commenter is of the view that the notes to the annual financial statements should include the dollar amount and percentage of total brokerage commissions paid to related parties for the current and prior year.

Response: Details of related party transactions must be disclosed in the MRFP.

3.7 Inapplicable Line Items

Section 3.7 permits an investment fund to omit any line item for which it has nothing to disclose. One commenter suggested that omissions should be permitted if the fund has nothing *material* to disclose, while two commenters recommended a materiality threshold of 5% of total revenue or expense, as applicable.

Response: We purposely set out the minimum line items to be disclosed on each of the statements. Additional line items are to be included if they are material. Please see the discussion in subsection 2.1(2) of the CP.

3.11 Incentive Arrangements

The statement of net assets must disclose the current value of incentive arrangements. One commenter noted that GAAP requires an accrual to be made when the definition of liability is met and requests clarification as to whether the intention is to have incentive arrangements recorded on the statement of net assets regardless of whether the definition of liability is met.

Response: We have deleted section 3.11 from the Rule as sufficient guidance is provided in Canadian GAAP. We have added a line item to the statement of net assets for incentive arrangements and compensation.

Two commenters requested clarification that the requirement is to disclose the expense from incentive arrangements separately and suggested that subsection 3.11(2) read “The statement of operations of an investment fund must disclose changes in the amount referred to in subsection (1) *together with amounts paid under the incentive arrangements during the period as a separate line item.*”

Response: We agree and have made a corresponding change to the line items in the statement of net assets and statement of operations.

One commenter was unclear as to why section 3.11 is necessary and suggests adding these items to the appropriate statements. This commenter also wondered whether the phrase “current value of an incentive arrangement or compensation” will be properly understood and whether it means something other than “fees that are determined by the performance of the mutual fund” as set out in NI 81-102.

Response: We deleted section 3.11.

3.12 Group Scholarship Plans [3.11]

One commenter suggested deleting the definitions of “education savings plan”, “group scholarship plan” and “scholarship award” as these terms are commonly understood.

Response: These definitions have been included in order to provide consistent terminology, as the scholarship plan industry has not consistently used these terms in the past.

One commenter requested that the definition of “group scholarship plan” be modified to include the self-determined plan option.

Response: The definition of “group scholarship plan” includes individual (self-determined), family and group plans, but does not include self-directed registered education savings plans. For greater clarity, we have changed the references to “group scholarship plan” to “scholarship plan”.

One commenter noted that the terms “scholarship agreements” and “scholarship plan” are used without being defined and wondered whether they mean something different than “education savings plan” and “group scholarship plan” which are defined terms.

Response: We have made these references consistent.

One commenter requested that the “net asset value per security” line item not apply to scholarship plans, as the concept that scholarship plans not be unitized has been accepted.

Response: We have included an exemption for scholarship plans from the requirement to provide net asset value per security and increase or decrease in net assets from operations per security.

One commenter asked whether the statement of scholarship awards paid to beneficiaries is a cumulative statement or a statement for the applicable year only.

Response: This statement is for the applicable year only.

One commenter suggested that the summary of scholarship agreements and units outstanding should be provided by year of eligibility (not year of maturity).

Response: We have made this change.

One commenter submitted that only ending units should be reported by year of eligibility. This commenter suggested the disclosure be changed to opening units, units purchased, units cancelled, units transferred to another plan administered by the same organization, units where the beneficiary has received all available scholarship awards, matured units no longer eligible for further scholarship awards, other miscellaneous activities and ending units, all based on total units for all combined years of eligibility.

Response: Each item must be disclosed by year of eligibility in order to provide investors with meaningful information, as investors will only receive benefits based on their particular year of eligibility.

One commenter asked what the purpose of subsection 3.12(b) is and what further information must be provided if the group scholarship plan must already reconcile scholarship awards paid to beneficiaries with its statement of operations.

Response: We have deleted this requirement.

Part 4 - Management Reports of Fund Performance and Form 81-106F1

4.1 Application

One commenter asked whether a mutual fund that is not a reporting issuer must file MRFPs.

Response: Section 4.1 states that Part 4 (the requirement to prepare and file a management report of fund performance) only applies to an investment fund that is a reporting issuer.

4.2 Filing of Management Reports of Fund Performance

One commenter is of the view that the MRFP is a “step in the right direction” toward disclosure directly related to a specific fund, rather than general commentary about the economy.

Response: None required.

Three commenters agree with the elimination of quarterly MRFPs, but continue to have concerns with respect to the cost and resources needed to produce semi-annual MRFPs.

Response: We are of the view that it is important for investors to have current information.

4.4 Contents of Management Reports of Fund Performance

One commenter recommended that the discussion of risks and trends be combined for more than one fund in one MRFP where this discussion pertains equally to the funds and noted that the financial highlights and performance could be provided separately in the same MRFP. Fund managers could tailor their comments with respect to specific funds within the same commentary. Permitting this flexibility would achieve the goal of facilitating comparisons between funds while reducing the associated time, cost and overall size of MRFPs.

Response: The purpose of the MRFP is to provide fund-specific information, not a general discussion of risks and trends.

Three commenters requested that the CSA consider fund of fund arrangements where a top fund has fixed allocation among a number of mutual funds. One commenter suggested that the top fund’s MRFP will be identical to that of the underlying fund. Another commenter believes that this type of disclosure would not be meaningful to the investor and may defeat the actual purpose of the MRFP. The commenters seek clarification as to whether the MRFP should be prepared for top funds and/or each of the underlying funds.

Response: An MRFP must be prepared for every investment fund. The disclosure for top funds with more than one underlying fund will be specific to the top fund. Even in fund of fund arrangements with only one underlying fund, the performance of the top fund will differ from the underlying fund (because of different fees, expenses, etc.) and the management discussion should address the specific investment strategy employed by the top fund.

Form 81-106F1 – Contents of Annual and Interim Management Report of Fund PerformancePart A Instructions and Interpretation

One commenter is of the view that prescribing the contents of the MRFP may not be very useful and that the market and the manager should have the right to determine the amount and type of information to be included in the MRFP. This commenter also indicated that they already provide much of the information required by the Form.

Response: The Form identifies information which, in our view, should be provided, at a minimum, in order to give meaningful disclosure. The Form also allows managers to give additional information which reflects their investment style and ensures that they meet their responsibility of providing all material disclosure.

One commenter encouraged the CSA to more narrowly focus the disclosure requirements so that the MRFP only includes the compound performance table, performance bar chart, MER and summary of fund holdings by category, with any necessary commentary to explain these items.

Response: We are of the view that the requirements in the Form are focused on the elements necessary to provide valuable, consistent and meaningful disclosure.

Three commenters noted that the CSA expects the average annual MRFP to be four pages in length, but as the MRFP must include the financial highlights tables, a past performance bar chart, and an annual compound returns table for each series of the fund, and given that commercial printing can only be done in multiples of four pages, the average MRFP is likely to be eight pages (allowing for a reasonably sized font), which will be more expensive to produce.

Response: We acknowledge that the MRFP will be longer for funds with more than one series/class of securities.

Two commenters noted that additional information may be included in the MRFP, as long as this does not excessively lengthen the document. In the commenters' view, this is too restrictive as it may be useful to allow funds to deliver a fund's MRFP and financial statements together as a package and permit the MRFP to cross-reference certain items of disclosure in the financial statements. This could shorten the length of the MRFP.

Response: The MRFP was designed as a stand-alone document which investors can review and understand without having to receive the financial statements.

Part B Content Requirements for Annual Management Report of Fund Performance2.1 Investment Objectives and Strategies

Four commenters noted that the Form requires the inclusion of the investment objectives and a risk profile discussion. In the commenters' view, this information is redundant to investors, as it is already outlined in the prospectus and is unlikely to change. Some of these commenters also noted that the investment objectives are not to be "copied" directly from the prospectus and are unclear as to the rationale behind this restriction since the prospectus language has been reviewed and approved by securities regulators. The commenters are concerned that by requiring the investment objectives to be rewritten, investors could interpret the rewritten objectives differently which could result in increased liability for fund companies.

Response: The Form requires a brief summary of the fundamental investment objectives and strategies of the fund. There is no requirement to "rewrite" the investment objectives, but the entire investment objectives and strategies sections should not be copied from the prospectus. Also, the fund may have altered its investment strategy (which does not necessarily involve securityholder approval), so updated disclosure should be provided. The disclosure is included in the MRFP in order to provide context for the required management discussion.

The Form also requires a discussion of how changes to the fund have affected the overall risk associated with an investment in the fund, which will not replicate the disclosure previously provided in the prospectus.

2.2 Risk

Two commenters are of the view that in the absence of an industry convention and given no consensus as to appropriate benchmarks, it would not be meaningful (and could cause confusion) to require a discussion of risk/volatility in the MRFP. One commenter requested guidance on how to gauge changes in risk.

Response: The requirement is to discuss any changes to the risk factors or investment suitability associated with the fund (the instructions cross reference items 9 and 10 of Part B of Form 81-101F1). There is no requirement to quantify how these changes might affect the price of the fund's securities.

One commenter asked for clarification of whether any risk disclosure is necessary if the fund has not experienced a material or significant change. The commenter also asks why the term “significant change” is used as it will be deleted from NI 81-102.

Response: We have removed the reference to “material or significant” change from this disclosure requirement. As indicated in Part A of the Form, only material information needs to be disclosed.

One commenter suggested that there is a contradiction between the risk disclosure requirements in the Form and the definition of material or significant change. The commenter stated that if changes to a fund’s risk are material or significant and could affect the suitability or risk tolerance stated in the prospectus, an investor should be informed of such a change when it occurs, as informing the investor through the MRFP would not be appropriate. Additionally, the commenter states that any major change in the risk of the fund is likely to have an impact on the fund’s objective, which cannot be changed without investor approval.

Response: The requirement to provide certain disclosure in the MRFP does not replace a fund’s obligation to report material changes at the time they occur or to seek securityholder approval if necessary in order to implement a particular change.

2.3 Results of Operations

One commenter suggested that the discussion of transactions involving related parties required by Part B, Item 2.3(f) [Part B, Item 2.5] of the Form be limited to transactions involving the portfolio assets of the fund, not ownership of fund securities by a related party. The commenter noted that the definition of “related party” in the Rule refers to section 4.2 of NI 81-102 which clearly only refers to portfolio assets of the fund.

Response: We have removed the definition of “related party” from the Rule, but have added an instruction to the Form indicating that “related party” has the meaning given to it in the Handbook and have also listed some entities that we consider to be related parties for investment funds. The Form requires disclosure of all related party transactions, including, but not limited to, portfolio transactions.

2.4 Recent Developments

One commenter noted that the Form requires a discussion of “unusual or infrequent” events or market conditions that affected performance. In the commenter’s view, the discussion of unusual market conditions should be consolidated into the “results of operations” section of the MRFP, while the remaining items in Part B, Item 2.4 should be discussed separately. The commenter is also of the view that “unusual events” should only be included if they would constitute a “material change” for the fund, and it should be made clear that disclosure of these events in the MRFP is in lieu of other notice requirements (such as change of manager under section 5.8 of NI 81-102).

Response: The requirements have been rearranged to distinguish between “results of operations” and “recent developments”. Disclosure in the MRFP does not replace any other obligations an investment fund may have upon the occurrence of either a material change or another specific event (for example, when notice to securityholders is expressly required by NI 81-102).

2.5 Other Information

Five commenters requested clarification as to whether forward-looking information is optional or mandatory disclosure. The instructions in the Form appear to indicate such disclosure is mandatory, but the CSA’s response to comments in Appendix B to the Notice and Request for Comments indicated that the provision of forward-looking information is optional.

Response: The provision of forward-looking information is optional. The instructions in the Form have been clarified.

3.1 Financial Highlights

Two commenters noted that the split of total revenue and total expenses per unit is excessive information. In their view, total net income per unit, MER, distributions and actual returns are sufficient.

Response: We are of the view that the disclosure required in the financial highlights tables is relevant and useful to investors.

One commenter is of the view that the requirement to distinguish between realized and unrealized gains or losses from securities versus gains or losses from foreign exchange should be deleted.

Response: We have removed this requirement.

Three commenters asked the CSA to reconsider the table “The Fund’s Net Asset Value per [Unit/Share]” as a reconciliation of opening to closing NAV per unit. Given the denominator being used in the calculation, this table cannot be created without a “plug” in order for the opening and closing NAV per unit/share to tie into the financial statements.

Response: This table is not intended to be a reconciliation of opening to closing NAV per security. We have added a footnote to the table explaining which figures are based on the actual number of securities outstanding and which are based on the weighted average number of securities outstanding over the financial period.

One commenter recommended that the “Fund’s Net Asset Value per Unit/Share” table be amended to require 3 separate sections: (i) the opening NAV, the closing NAV (current day’s closing), (ii) Net Investment Income Per Unit, Net Realized Gains or Losses per Unit and (iii) Distributions per Unit.

Response: We have added a sub-heading to the table to better distinguish the items relating to the increase/decrease from operations. We have also added a footnote explaining how the per unit/share amounts are calculated.

Three commenters questioned the value of disclosing the number of investments held in the “Ratios and Supplemental Data” table.

Response: We have replaced this requirement with the requirement to disclose the total percentage of portfolio assets represented by the top 25 holdings of the investment fund.

Two commenters suggested that passively managed fund of fund structures should be exempted from the requirement to provide a portfolio turnover rate (similar to the exemption currently given to money market funds).

Response: We are of the view that the portfolio turnover rate should be provided for top funds. This requirement currently exists in NI 81-101.

One commenter asked whether in the Ratios and Supplemental Data table, it would be more consistent with the disclosure in the financial statements to also disclose MER without waivers or absorption.

Response: We have added this item.

One commenter suggested that disclosure of brokerage commissions as a percentage of fund assets should be disclosed.

Response: We have added this item to the Ratios and Supplemental Data table as a “trading expense ratio”.

3.2 Group Scholarship Plans

One commenter suggested that the financial highlights should refer to the “total number of units in plans” rather than the “total number of agreements in plans” (for group plans, not self-determined plans).

Response: The table has been modified to allow for either total number of units or total number of agreements, as applicable to the particular scholarship plan.

Item 4 Past Performance

One commenter suggested that funds should have the option of including the bar chart or compound return table, or both.

Response: We are of the view that both the bar chart and the annual compound returns table provide useful information.

One commenter noted that if exchange-traded funds do not assume that distributions are reinvested in additional securities of the fund, investors will be unable to compare the performance of an exchange-traded fund to the performance of a fund that is not exchange-traded in a meaningful way.

Response: We have removed this requirement.

4.2 Year-by-Year Returns

Five commenters have concerns with the requirement to disclose the best and worst six-month period. The commenters are of the view that this is not a meaningful statistic and unduly emphasizes short-term performance. One commenter noted that this disclosure will be problematic for new funds (one six-month period will be both the best and worst) and is of questionable relevance for funds with long track records (more than 10 years).

Response: We have removed this requirement.

4.4 Group Scholarship Plans

One commenter questioned the usefulness of having scholarship plans provide past performance, particularly the best and worst return for a six month period.

Response: We have removed the requirement to disclose the best and worst return for a six month period. Otherwise, we are of the view that it is appropriate for scholarship plans to disclose performance information, given that they are providing an investment management service.

Item 5 Summary of Investment Portfolio

Two commenters expressed concern with the requirement to disclose the top 25 long and short positions in the summary of investment portfolio because if the fund maintains a concentrated portfolio, the result is to disclose the fund's entire investment portfolio and strategy. Another commenter suggested that disclosing the top 15 positions would be more in line with the goal of presenting a summary.

Response: The investment fund's full portfolio is disclosed in the statement of investment portfolio which must be prepared and filed on a semi-annual basis. Providing a summary in the MRFP does not result in any additional disclosure, although the requirement has been modified to disclose the top 25 positions, either long or short (instead of long and short).

One commenter is of the view that the majority of securityholders would be happy to receive just the break down of their fund's portfolio by appropriate sub-group and the percentage of net assets constituted by each sub-group. This commenter is also of the view that if the top 25 is required, the securities should be listed in alphabetical order and only the total percentage of net assets represented by the top 25 should be disclosed (not the percentage of each security).

Response: In our view, the percentage of fund assets invested in each position should be provided. This disclosure is already given by mutual funds using a simplified prospectus in the top ten holdings. We have also added a requirement to disclose the total percentage represented by the top 25 (in lieu of the requirement to disclose the number of investments held).

Two commenters noted that the portfolio subgroups must be shown in a table, but can also be shown in a pie chart. The commenters are of the view that the Form should be more flexible about presentation format and suggest that just the pie chart should be acceptable.

Response: The Form has been modified to indicate that either a table or a pie chart can be provided.

The instructions indicate that if a fund holds a long position in a derivative or holds an index participation unit (IPU), the fund should consider that it holds directly the underlying interest of the derivative or its proportionate share of the securities held by the issuer of the IPU. Two commenters noted that this is consistent with subsection 2.1(3) of NI 81-102, except that NI 81-102 provides an exemption if the underlying issuer comprises less than 10% of the derivative or IPU. The commenters suggested that the same exception should apply for the purposes of disclosing the summary of investment portfolio.

Response: The exception in NI 81-102 is for the purposes of concentration restrictions. The requirement in the Form is consistent with the current disclosure required by NI 81-101.

One commenter reminded the CSA of the difficulties associated with fund of fund portfolio disclosure, as the top fund must wait for the quarterly filings of third party funds before the top fund can complete its summary of investment portfolio. The commenter asked whether the most recent underlying fund data could be used, provided there is sufficient disclosure of the period of the underlying fund's data.

Response: The instructions indicate that the top fund must list the holdings of the underlying fund as disclosed by the underlying fund as at the most recent quarter end.

Part C Content Requirements for Interim Management Report of Fund Performance

Two commenters asked for clarification that the financial highlights and past performance provided in the previous annual MRFP are to be repeated in the interim MRFP, with an additional column showing the interim results. In one commenter's view, this will be unnecessarily duplicative, while in the other commenter's view, this will be inconsistent with the interim financial statements, where the requirement is to disclose 5 years of interim comparative data.

Response: Yes, the interim MRFP will contain the previous annual data, with the additional interim results. The purpose of the interim MRFP is to update the annual disclosure, so we are of the view that it is useful to provide the previous annual results. There is no requirement to provide five years of comparative data in the interim financial statements.

One commenter noted that the financial highlights in an interim MRFP require per unit distribution information, but this information is not available until the year-end characterization of the income is determined.

Response: We have provided an exemption from disclosing distributions by type in the interim MRFP.

One commenter asked for clarification that in the interim MRFP, only a bar chart is required, not an annual compound returns table.

Response: Yes, only the bar chart must be provided in the interim MRFP.

Part 5 - Delivery of Financial Statements and Management Reports of Fund Performance

5.1 Delivery of Certain Continuous Disclosure Documents

One commenter noted that the CSA indicated that combining mailings to clients in the same residence is not permitted. The commenter suggested that the CSA permit mailings on a household basis since there is no confidential client information in the MRFP and it would reduce postage costs and the number of mailings received.

Response: One of the purposes of the Rule is to ensure that securityholders only receive the continuous disclosure documents that they have requested and that pertain to the specific investment funds held by them. If there is more than one securityholder in a particular household, there is no prohibition against placing the requested documents into one envelope, as long as this purpose is achieved.

Four commenters suggested deleting the requirement for the delivery of annual and interim financial statements and only requiring the delivery of the annual and interim MRFP on request.

Response: Investment funds are currently required to deliver annual financial statements to all of their securityholders (NI 54-102 provides an exemption from delivering interim financial statements). We believe it is inappropriate to delete this obligation altogether, and that sending the financial statements only on request strikes a fair balance between the needs of securityholders and the obligations of issuers.

One commenter agreed with the requirement to allow investors to elect to receive any or all of the financial statements and MRFPs produced by a fund.

Response: None required.

One commenter believes that users of the Rule would benefit from a clear explanation in the CP as to the rationale in establishing three different procedures under Part 5.

Response: We have expanded our discussion in the CP.

One commenter is concerned with the requirement to contact beneficial owners. The commenter noted that some funds may have only incomplete beneficial owner information, while other funds may not have any access to beneficial owner information. The commenter suggested that a method be provided for funds to obtain the required information.

Response: Continuous disclosure documents must be sent to beneficial owners using the procedures set out in National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer (NI 54-101). However, the Rule gives an exemption from using NI 54-101 to those investment funds that do have complete beneficial owner information and are able to obtain delivery instructions from beneficial owners directly.

Two commenters suggested that the prohibition from going back to an annual solicitation after moving to a standing order is too restrictive, as a situation may arise where it is either impossible or not in the best interests of investors to continue with standing orders.

Response: The Rule recognizes that some investment funds may be using annual instructions pursuant to the requirements of exemptive relief orders and allows funds to continue with this method. However, we are of the view that it is preferable, for both investors and issuers, to obtain standing instructions. If there is a change in the operational systems employed by an investment fund, the Rule does not prohibit it from obtaining new or updated standing instructions.

Five commenters suggested that investors should elect to receive materials at the fund company level. In their experience, investors do not have different reporting needs for funds held with the same fund manager. Two commenters noted that this would also help to manage costs.

Response: We have changed the Rule to indicate that instructions can be solicited for all funds managed by the same manager.

5.2 Sending According to Standing Instructions

Ten commenters suggested that the requirement to solicit standing instructions within three months after the Rule comes into force is too prescriptive. The commenters suggested that funds have discretion to determine the timing of first solicitation of standing instructions so they can combine it with other mailings.

Response: We have removed the requirement to solicit standing instructions within three months of the Rule coming into force. Investment funds that choose to deliver the continuous disclosure documents pursuant to standing instructions can solicit those instructions at a time that is appropriate for the fund. In the meantime, these funds will either have to deliver to all investors or deliver pursuant to annual instructions.

One commenter asked how an investment fund is expected to comply with the requirement to obtain standing instructions at the time that the investment fund first accepts a purchase order from a registered holder or beneficial owner. If the dealer does not provide the investment fund with the identity of the beneficial owner, the investment fund will be unable to comply with this provision.

Response: We have modified the provisions to clarify that the procedures in NI 54-101 should be used in order to communicate with beneficial owners, but investment funds that do have beneficial owner information are given an exemption from NI 54-101 in the Rule.

Two commenters suggested that the process outlined for soliciting instructions at the time of purchase is administratively incompatible with Fundserv. One commenter suggested that the investment fund would incur significant costs if forced to solicit request information at the time a purchase order is accepted and suggested that the solicitation be done as soon as reasonably practicable after a purchase order has been accepted.

Response: We have made this change.

Five commenters asked whether instructions received from clients through annual requests under previously issued exemptive relief orders can be relied upon in the same way as instructions previously received under NI 54-101.

Response: Previous annual instructions cannot be relied upon as standing instructions as this was not explained to investors at the time they provided these instructions. In soliciting standing instructions, investment funds must clearly explain to their holders that these instructions will stand until the investor changes them.

Two commenters asked for clarification that funds can use the annual instructions in one year and subsequently move to standing instructions.

Response: Yes, investment funds can continue to use annual instructions until they move to standing instructions.

One commenter suggested that mandatory delivery of annual financial statements is a fundamental obligation of investment funds and that no response should automatically require a mailing.

Response: As financial statements are publicly available through other sources (for example, the SEDAR or fund website), investors may not wish to have a paper copy delivered to them. We think it is acceptable for investment funds to deem no response to mean the securityholder does not want to receive the documents.

One commenter suggested that a document outlining the effect of a negative response be required to set an appropriate reasonable deadline for responses.

Response: We have stated in the CP that a reasonable deadline for responses should be set.

One commenter noted that in several places the phrase “deemed to have been received” is used in the context of standing instructions. The commenter asked whether it is intended to incorporate the deemed instructions from investors when no response is received.

Response: Yes, the phrase “deemed to have been received” referred to instructions given by non-response, but we have removed this phrase from Part 5 of the Rule.

Eleven commenters submitted that the requirement to send an annual reminder if documents are sent to securityholders pursuant to standing instructions will be onerous as the reminder will have to be programmed separately for each client.

Response: We have clarified this requirement to indicate that it does not have to be client-specific, but if standing instructions are used, holders must be reminded annually of the documents they are entitled to receive and of how they can change their instructions.

One commenter stated that the requirement to remind clients each year that they can change their election is reasonable.

Response: None required.

5.3 Sending According to Annual Instructions

One commenter noted that the provisions relating to annual instructions do not specifically state that no response to the request form can be interpreted to mean that the securityholder does not wish to receive any documents, while the provisions relating to standing instructions explicitly say this.

Response: We have explained in the CP the implications of no response for investment funds using either annual or standing instructions.

Four commenters suggested that dates for sending annual request forms to investors should not be prescribed in the Rule as each investment fund should send these according to its own mailing schedule.

Response: We have removed this requirement.

Two commenters asked what should be done for investors who become clients after the annual request form is mailed, but before the financial reports are mailed. The commenters asked whether the requirements of subsection 5.2(4) [5.2(3)] would apply.

Response: Investment funds are exempt from the requirement to deliver only if they have obtained either standing or annual instructions from securityholders who were holders as of the date of the relevant financial statements and MRFPs. Subsection 5.2(4) [5.2(3)] is in the "Sending According to Standing Instructions" section of the Rule, which only applies to investment funds using standing instructions, not annual instructions.

5.4 General

One commenter believes that delivery by no later than the filing deadline plus 10 days is reasonable.

Response: We have removed the additional ten days for mailing given that the interim filing deadline has been maintained at 60 days. The requirement to mail by the filing deadline is also consistent with NI 51-102 which is applicable to all reporting issuers other than investment funds.

Part 6 - Quarterly Portfolio Disclosure

One commenter supports the quarterly disclosure of portfolio holdings and believes that it is important to investors.

Response: None required.

One commenter urged the CSA to maintain the requirement to make available on request, and without charge, a summary of portfolio transactions.

Response: We are of the view that this statement did not provide useful information for most investors so that the cost of producing it outweighed its benefits. The information this statement did provide can be obtained through other sources.

Three commenters asked why there was a requirement to provide quarterly portfolio disclosure. One commenter believes that the quarterly portfolio disclosure is not useful given that: (i) it does not form part of the fund's disclosure record, it is not incorporated by reference into the prospectus, and it is not filed on SEDAR; (ii) a complete statement of investment portfolio must be provided in the financial statements; (iii) a risk exists that sophisticated investors will use more frequent summaries of investment portfolio to "shadow" the actions of a portfolio manager; and (iv) it is not clear whether investors will know that this disclosure exists.

Response: In the first publication of the Rule, quarterly reporting was proposed, but after consideration of the comments received, the requirement to provide a quarterly MRFP was removed. However, limited quarterly disclosure has been added to balance the obligations of investment funds with the requests of investors to receive more frequent information. The MRFP must

state on its front cover that this disclosure is available. We are of the view that the requirement to post this on the fund's website is an appropriate way to provide both actual and prospective investors with access to this information.

We also note that exchange-traded investment funds are currently required to do quarterly reporting, and that mutual funds using a simplified prospectus indicate that investors can receive an updated portfolio summary upon request.

One commenter asked why investment funds are required to determine their net asset value at the end of the applicable quarter given that there is no disclosure requirement provided for in the Rule.

Response: We have clarified that the total net asset value is to be disclosed as part of the quarterly portfolio disclosure.

Two commenters reiterated the industry's concerns over predatory trading and suggested that the 60 day timeline for disclosure of portfolio holdings should be maintained.

Response: We have changed the deadline to 60 days to be consistent with the interim filing deadline.

Four commenters suggested that for some investment funds with concentrated portfolios disclosing the top 25 long positions and top 25 short positions held would lead to disclosing the fund's entire investment portfolio and strategy.

Response: The investment fund's full portfolio is already disclosed on a semi-annual basis. The requirement has been modified to disclose the top 25 positions, either long or short (instead of long and short).

Five commenters recommended that investment funds have the ability to remove references to securities where the fund is in the midst of or about to begin a buying or selling program in order to avoid front running.

Response: We believe this concern is significantly reduced by extending the deadline for the provision of this disclosure to 60 days.

Two commenters noted that Part 5 does not extend to quarterly portfolio disclosure but that the disclosure is mentioned in paragraph 7.2(1)(d). The commenters asked whether the standing/annual instructions requirements apply to quarterly portfolio disclosure or whether clients have to specifically request the information. The commenters also asked why the CSA considers it necessary to include quarterly portfolio disclosure in the MRFP.

Response: The delivery instructions provided by securityholders do not apply to the quarterly portfolio disclosure. The front page of the MRFP indicates that this disclosure is available. Securityholders will be able to access the quarterly portfolio disclosure on the fund's website, but may also request a copy be sent to them. We have deleted section 7.2 of the Rule.

Part 7 - Financial Disclosure – General

7.2 Documents Available on Request

Two commenters pointed out that subsection 7.2(2) and subsection 5.4(1) appear to have different deadlines for the delivery of documents to investors.

Response: We have deleted section 7.2.

7.3 Toll-Free Telephone Number or Collect Telephone Calls

One commenter suggested a fund manager be permitted to comply with the intent of this section by disclosing an e-mail address where investors can send requests for additional information.

Response: We have deleted section 7.3. This requirement is already contained in NI 81-101 for mutual funds.

7.4 Binding of Financial Statements and Management Reports of Fund Performance

Two commenters requested that if the CSA wishes the industry to move to securityholder-specific mailings of only the funds that the securityholder holds at the period end, this should be explicitly stated.

Response: We have not specifically prohibited the mailing of financial statements or MRFPs to people who are not securityholders of the fund because, in certain circumstances, this mailing may be appropriate (for example, if a prospective purchaser requests information about the fund). However, the Rule has been designed so that securityholders only receive the continuous disclosure documents that they have requested and that relate to the particular funds that they actually own.

Seven commenters disagree with the CSA's position that presenting information in parallel columns makes it hard to extract useful information from the financial statements and suggest that funds continue to prepare financial statements in columnar fashion.

Response: We continue to be of the view that investors can better understand the disclosure for their particular fund if the financial statements present all of the information for that fund together. We note that several investment funds already use this format.

Fifteen commenters said that they do not agree with the prohibition against binding one MRFP with another investment fund's MRFP. Some commenters suggested that this will increase costs and that investors will be unable to make comparisons within and between fund families. Some commenters suggested that the binding restrictions do not provide any benefits to investors and that fund managers should have the flexibility to determine what documents are bound together.

Response: The purpose of the MRFP is to inform investors of the activities of the investment funds that they own. The focus is on the actual operation and performance of the investment fund, not the fund family as a whole. We are of the view that the MRFPs will be more "user friendly" if they are relevant to a securityholder's actual investment, and that inundating investors with information about funds which they do not own will not further this goal. We also note that fund managers may send marketing materials as appropriate to securityholders.

Five commenters suggested that disclosure materials relating to a specific fund category (eg. money market funds, balanced funds, income funds, RSP clone funds) should be bound together. One commenter suggested that binding be limited to 10 funds in order to avoid large documents.

Response: We are of the view that is preferable to present the disclosure for each investment fund separately.

One commenter suggested that the proposed format for binding is not practical for funds sold as part of a mutual fund wrap or sold on a discretionary basis as part of a client's overall investment portfolio.

Response: When a securityholder holds more than one fund, we have amended the Rule to allow the MRFPs relating to the funds held by the securityholder to be bound together for the purposes of delivery of the MRFPs to the securityholder.

One commenter suggested that an approach similar to public company disclosure be adopted where public companies currently attach the information presented in the MD&A with the financial statements so that the MD&A is read in conjunction with the financial statements.

Response: We have clarified in the CP that the MRFP for an investment fund may be attached to the financial statements for that investment fund.

Four commenters suggested that binding of MRFPs is useful for distributors who wish to see multiple funds in one comprehensive document (rather than trying to go through numerous pages of unbound documents).

Response: The Rule only deals with binding for the purposes of delivery to securityholders.

One commenter suggested that the inability to bind the MRFPs together will result in significant difficulties when these documents are filed on SEDAR. The commenter suggested that it is very difficult to keep track of each fund's individual MRFP and also file it on SEDAR for each fund individually.

Response: We encourage the filing of only the relevant MRFP under the fund's list of documents on SEDAR.

7.5 Multiple Class Investment Funds

Two commenters suggested that it is inappropriate to separate the financial statements for each series of the same fund. Since many funds contain multiple series of securities which invest in the same portfolio, the commenters questioned why this would be allowed since a shortfall in one series may have to be assumed by the other. The commenters suggested that allowing the preparation of separate financial statements per series may be misleading and lacks authoritative accounting support.

Response: We agree that if a fund has more than one series of securities referable to the same portfolio of assets, the financial statements should be prepared for the fund as a whole. We have amended the Rule accordingly.

Two commenters suggested that funds should be permitted to present information for some or all classes of the fund in one MRFP. The commenters note that the same fund may be sold through different distribution channels, and that some classes may be common to one channel where it makes sense to consolidate classes, but other classes of the same fund may be restricted to other channels.

Response: The MRFP must be prepared for the fund as a whole, and include all series or classes of the fund. We have amended the Rule accordingly.

One commenter indicated that from a programming standpoint it will likely be difficult to segregate different classes into separate MRFPs for each client.

Response: MRFPs cannot be segregated by class.

Two commenters suggested that if the CSA wishes to require the provision of information on the varying results by class, the commenter submits that this is already achieved by the requirement to disclose in the notes the material differences between classes, to calculate separate MERs and through the discussion of performance by class and financial highlights by class in the management report.

Response: Given that there is already a requirement to distinguish differences between classes, we have amended the Rule to indicate that both the financial statements and the MRFP must be prepared for the fund as a whole.

Part 8 – Independent Valuations for Labour Sponsored or Venture Capital Funds

8.2 Exemption from Requirement to Disclose Individual Current Values for certain Portfolio Assets

Two commenters are of the view that the apparent choice under Part 8 is not a choice in reality as it places LSIFs in a conflict. LSIFs must choose between obtaining more costly valuation reports or disclosing confidential information about the carrying values of individual investee companies.

Response: The choice represents an alternative given to the LSIF industry to provide accurate and useful information for retail investors regarding an LSIF's investment holdings. If LSIFs cannot provide current value for individual holdings, then independent valuation is a reasonable alternative to ensure that the aggregate portfolio is valued accurately.

Two commenters are concerned that mandating segmented disclosure by stage and industry class may not be suitable for all LSIFs since some focus mainly on one industry class while others focus mainly on companies at one particular stage. These commenters point out that if a fund has only one investment in a company in one particular stage and industry class, then the investment's carrying value is effectively disclosed.

Response: Section 8.2 provides an exemption from disclosing the individual value of each venture investment. Therefore, there is no requirement to reveal individual values in the table required by subsection 8.2(b). By requiring venture investments to be shown by stage of development and industry classification, we are of the view that there is sufficient flexibility so as to avoid the disclosure of the value of one investment.

Two commenters suggested that sector-specific LSIFs should only be required to provide segmented disclosure by stage. Requiring such funds to split their portfolios into sub-sectors will probably not be useful to investors or comparable as between LSIFs.

Response: The requirement is to organize the portfolio by industry classification. There is no requirement to further divide the portfolio into sub-sectors.

Two commenters suggested that the reference in subsection 8.2(b) to "a table" be changed to "two tables", one of which would show segmentation by sector and one of which would show segmentation by stage.

Response: We have made this change.

Two commenters are of the view that the valuation report requirement should be deferred as there will likely be significant developments in measuring fair value under GAAP in the near future. These commenters stated that deferring this requirement would be consistent with the CSA's indication that the study of investment valuation is the second phase of this policy initiative and propose that the CSA work with the industry, valuation professionals, and the government to define a standardized valuation framework for LSIFs. One commenter suggested that the current standard for "fair value" will not produce a relatively narrow range of results when applied to the same set of facts for development stage and private companies.

Response: We note that a valuation report is already required by Ontario LSIF legislation and understand that it is industry practice in most other jurisdictions. We are of the view that independent valuation is necessary to ensure that LSIFs are valued accurately for retail investors.

One commenter pointed out that LSIFs are currently required under LSIF legislation in Ontario to have the value of the fund's shares determined on an annual basis by means of a "valuation" carried out by an independent qualified person. The

commenter submits that the current annual reviews conducted pursuant to LSIF legislation should be accepted in satisfaction of the valuation requirement under the Rule. If the CSA does not accept these annual reviews, then the Rule will be imposing a higher standard which conflicts with the premise on which Regulation 240 under the *Securities Act* (Ontario) is based, and will also increase operating costs of the funds.

Response: We are of the view that the valuation required by the Rule is consistent with the Ontario legislative requirement.

Two commenters suggested that the costs of the new requirement for annual independent valuations will be significant for LSIFs.

Response: We have provided guidance on the scope of the independent valuation and are of the view that the costs will be justified in order to provide assurance that the valuation is accurate.

One commenter suggested that the requirement for LSIFs to provide independent valuations of the investment portfolio as a whole is inconsistent with the practices of the private equity investment industry and would mean that the expenses applicable to investments in LSIFs will be unnecessarily higher.

Response: The practices of the private equity investment industry have been designed for “accredited investors”. LSIFs are sold to retail investors and provincial legislation already requires an annual valuation.

One commenter suggested that some audit firms may be unable or unwilling to act as independent valuers due to issues of independence and liability. Private companies which LSIFs invest in may be detrimentally affected by the time and effort required to assist with the valuations.

Response: We have provided guidance on the scope of the independent valuation in order to address some of these concerns.

8.3 Disclosure Concerning Valuator

One commenter suggested that the requirement to include the compensation paid to the valuator in the financial statements is not meaningful.

Response: We have removed this requirement.

8.4 Subject Matter of Independent Valuation

One commenter pointed out that the Rule does not contain any guidelines as to the scope of the valuator's work or as to the wording of the report to be provided by the valuator.

Response: We have indicated in the CP that the independent valuator should look to the Canadian Institute of Chartered Business Valuators for guidance on reporting standards.

8.5 Filing of Valuation Report

One commenter stated that it is not clear whether there will be a requirement to obtain independent valuations annually or periodically or whether this part only deals with those circumstances where a valuation is obtained voluntarily by an LSIF.

Response: An annual independent valuation is required when an LSIF does not wish to disclose the current value for individual venture investments in the financial statements.

Other LSIF Specific Comments

One commenter is of the view that where a series of securities shares a large, common venture portfolio and core investment mandate with other series of securities and the only difference among the series is in the much smaller non-venture investment portfolio, treating each series as a separate fund is not appropriate.

Response: Generally, a fund is defined by the portfolio of assets to which the fund's securities are referable. We recognize that in some cases, it may be necessary for certain investment funds to seek clarification or exemptive relief if this general assumption does not accurately describe their structure.

One commenter stated that the requirement for funds to establish proxy voting policies and procedures should not apply to LSIFs, as an LSIF's private investments are governed by shareholder agreements that refer to shareholders many decisions of a type that a public company would take at the board level. Given the extensive nature of these items, any stated policies would have to be general in nature thereby providing limited value to LSIF investors.

Response: We are of the view that LSIFs should establish proxy voting policies and procedures so that investors can understand how certain decisions are made.

One commenter requested that the Rule acknowledge that pricing NAV (which includes the unamortized balance of sales commissions) is used by many LSIFs and that the Form expressly provide for the use of “Pricing NAV per Shares” in applicable jurisdictions.

Response: We have made this change. The Form requires disclosure of both the pricing NAV and the NAV for accounting purposes.

One commenter suggested that the Rule and Form should contain an express provision permitting LSIFs to continue providing segmented disclosure of certain MER components, particularly changes to incentive fee accruals.

Response: The Rule does not prohibit disclosure of additional cost information.

One commenter said that section 240 of the Regulation to the *Securities Act* (Ontario) should not be changed without the similar extensive debate, consultation and discussions that were carried out in the early 1990’s to form the basis of section 240 of the Regulation. The commenter does not believe that the OSC should seek to broaden its mandate for regulating LSIFs unless it also wishes to assume from the Finance Ministry the obligation to assess the public policy ramifications of its decisions in these new areas. Another commenter is not clear on the authority of the OSC to revoke paragraph 240(2)(9) and amend paragraph 240(2)(8) of the Regulation.

Response: The Securities Act (Ontario) gives the Commission the authority to make rules regulating LSIFs, including rules prescribing disclosure requirements, and to revoke or amend any provision of a regulation if necessary to effectively implement a rule. As the Rule requires investment funds to comply with Canadian GAAP, the Regulation has been modified in order to implement this requirement. We are not of the view that the Commission has broadened its existing mandate concerning the regulation of LSIFs.

Part 9 - Annual Information Form (AIF)

One commenter asked for clarification as to why investment funds that are required by corporate law to hold annual meetings are exempt from the requirement to file an AIF under the Rule.

Response: Upon further review, we concluded that the information circular prepared for an annual general meeting does not contain information that is similar to the AIF. Accordingly, we have removed this exemption. All investment funds must prepare and file an AIF if they do not have a current prospectus.

One commenter noted that the AIF requires information that goes beyond the nature and extent of information that would be meaningful for scholarship plans. This commenter also noted that an AIF is typically prepared for investment funds sold under a simplified prospectus and that scholarship plans use a long form prospectus.

Response: Investment funds that have a current prospectus are not required to prepare and file an AIF in accordance with the Rule. Accordingly, investment funds that use either a simplified prospectus (which includes an AIF prepared in accordance with NI 81-101) or a long form prospectus, and renew their prospectus annually, are not required to prepare an AIF in accordance with the Rule. If an investment fund ceases to have a current prospectus (because it has completed its offering of securities pursuant to that prospectus or it allows its prospectus to lapse), then the investment fund must prepare and file an AIF in accordance with the Rule for as long as the investment fund remains a reporting issuer.

One commenter noted that the filing deadline for an AIF is the same as for annual financial statements which could be problematic if the AIF requires information which is derived from the financial statements.

Response: The AIF filing deadline in the Rule is consistent with the AIF filing deadline for reporting issuers that are not investment funds. The AIF does not contain financial information that is derived from the financial statements.

One commenter submitted that the deadline for filing an AIF should be after a reasonable period of time following the expiry of an investment fund’s current prospectus. (For example, if the prospectus expires April 30/04 and the fund has a December 31 financial year end, the current drafting requires the AIF to be filed by March 31/04, which is not realistic.)

Response: The provision has been modified to require an AIF if the investment fund does not have a current prospectus as at its financial year end.

One commenter noted that the Rule does not appear to allow an AIF that pertains to more than one investment fund, even though the CSA’s response to an earlier comment was that this restriction had been removed.

Response: The previous version of the Rule contained an express prohibition against combining the AIF for one investment fund with the AIF for another investment fund which has been removed. We have revised the references to Form 81-101F2 to clarify that multiple AIFs are permitted, if a multiple prospectus was also used.

One commenter is of the view that the requirement to prepare an AIF only using portions of Form 81-101F2 will result in an uninformative document. This commenter suggested that the AIF will be more meaningful if it also includes some of the disclosure required by Form 81-101F1.

Response: Certain of the information currently required by Form 81-101F1 will be updated more frequently in the MRFP prepared in accordance with Form 81-106F1. We are of the view that the AIF required by the Rule will update appropriate material information on an annual basis.

Part 10 – Proxy Voting Disclosure For Securities Held

Four commenters commended the CSA on the requirements for mandatory disclosure of proxy voting policies and records, and congratulated the CSA for promoting transparency in proxy voting by Canadian investment funds. Two commenters are of the view that compiling and providing a proxy voting record to investors is necessary and part of a fund manager's fiduciary duty. Two other commenters have already adopted a proxy voting policy and do not object to providing interested securityholders with a copy of the policy and procedures or the actual proxy voting record upon request.

Response: None required.

One commenter believes that funds and their advisers take the responsibility to vote proxies very seriously and that it is universally recognized that advisers, as part of their fiduciary responsibilities, must exercise proxy voting solely in the best interests of the funds and their securityholders. Another commenter agrees with the AIMR assertion (in its *Standards of Practice Handbook*) that not exercising proxy voting rights "ignores a valuable ownership right that could be managed for the benefit of the portfolio and, in certain accounts, may constitute a dereliction of legal and fiduciary responsibilities to clients."

Response: None required.

Two commenters believe that the investing public lacks a general awareness and understanding as to the fact that proxy voting occurs, its significance and that the results of proxy voting could be made available to them. The commenters are of the view that investors need to be better educated about the fact that exercising proxies is one of the responsibilities delegated to fund managers and about the types of decisions that are covered by proxy votes. Another commenter stated that investors are becoming more aware that their proxy votes can have a major impact on the long-term performance of companies.

Response: None required.

Three commenters believe that the cost and effort required to compile the proxy voting record in order to make it available to a small minority of interested investors is not justified. However, another commenter stated that cost is not a barrier to proxy voting disclosure, as some of the funds that already provide this disclosure have less than average MERs.

Response: We note that we received several comments from investor advocates in favour of the proposals requiring proxy voting disclosure. We are also of the view that the cost of this disclosure is reasonable.

Four commenters are of the view that people invest in funds in order to delegate the complex process of investment management (proxy voting is a subset of that process). Two of these commenters question why detailed disclosure is required about decisions made by portfolio managers on this one aspect of investment management, but not on other important aspects such as valuation, liquidity and strength of management.

Response: The delegation of decision-making to an investment manager does not preclude the manager from providing disclosure of its activities to investors.

One commenter is of the view that requiring disclosure of proxy votes could put a manager in an awkward situation if the manager votes against a management proposal it believes is not in the best interests of fund investors, but continues to need the cooperation of management of the corporation in order to carry out its due diligence on the corporation as part of its portfolio management function.

Response: In many cases, the issuer will know how its shareholders voted at the time of the meeting. We also note that the proxy voting record must only be disclosed once per year, which will be many months after the actual vote took place.

10.2 Requirement to Establish Policies and Procedures

Five commenters support the requirement of written policies and procedures designed to ensure that proxies are voted in the best interests of fund securityholders and support the disclosure of these policies.

Response: None required.

Four commenters asked that the CSA clarify (perhaps in the CP) that section 10.2 permits policies to be established by the manager for funds it manages, and not separate policies for each fund. One commenter requested confirmation that it is unnecessary for securityholders to approve the policy applicable to their fund.

Response: Each investment fund is required to have proxy voting policies and procedures, but we acknowledge that these may be the same for a group of funds under common management (and, for example, to the extent that mutual funds use a common AIF, the summary disclosure may be provided for the fund family). We confirm that it is unnecessary for securityholders to approve the policy applicable to their fund.

One commenter noted that paragraph 10.2(2)(d) reads: “the establishment of procedures to ensure that securities held by the investment fund are voted in accordance with the instructions of the investment fund” [emphasis added] and suggested that it should read “proxies” held by the fund instead of “securities”.

Response: We have not made this change as we are of the view that the wording is correct.

Four commenters asked the CSA to clarify the requirement of paragraph 10.2(2)(e) to establish procedures to advise clients of any changes to the policies and procedures. One commenter asked whether a fund must send a notice to all securityholders whenever it makes a material change to its proxy voting policy.

Response: We have deleted this requirement. Changes to these policies should be dealt with in the same way as changes to any other policies of the fund.

One commenter suggested that regulators maintain the right to disapprove proxy voting policies.

Response: The Rule sets out what the policy must contain at a minimum, but does not dictate best practice standards. As regulators, we may review the disclosure of these policies and procedures to ensure that the disclosure is complete and in compliance with the requirements.

10.3 Proxy Voting Record

One commenter suggested that the requirement to make proxy voting records available to securityholders should not apply to private company investments.

Response: We have amended the Rule to require that the proxy voting record be maintained with respect to meetings of reporting issuers only.

Three commenters urged the CSA not to make the compiling of a proxy voting record (and the provision of this record to securityholders upon request) mandatory, so as to acknowledge that in the experience of many fund managers, investors are not demanding this type of information. This approach would also allow fund managers who currently provide proxy voting information to continue to do so, in the manner that they have determined to be the most efficient.

Response: We are of the view that this disclosure should be available to every securityholder.

One commenter supports the requirement to maintain some form of proxy voting record, but takes issue with the requirement to disclose each and every proxy vote cast, given the extensive administration involved, the cost of which will be substantial and ultimately borne by securityholders. Another commenter would prefer to deal with individual requests for proxy voting information rather than producing an unwieldy record that investors may ultimately not want access to.

Response: The Rule ensures that a certain minimum amount of information is available to securityholders who request it.

Five commenters are strongly opposed to the requirement to compile, maintain and deliver a proxy voting record, and suggest that at the very least, the requirement should be narrowed to votes where the fund opposed management’s recommendations or deviated from its voting policy.

Response: We are of the view that full disclosure of the proxy voting record is appropriate.

One commenter suggested that if the CSA maintains this requirement in order to promote accountability, funds should only be required to disclose the record to the CSA.

Response: The purpose of the requirement is to provide securityholders, not regulators, with disclosure of how their fund voted.

One commenter is concerned with the requirement to prepare the proxy voting record on a fund-by-fund basis as this will be expensive to produce. The commenter currently maintains its proxy voting records on an issuer-by-issuer basis because it generally exercises all of its funds' proxies for one issuer in the same manner. The commenter supports separate disclosure on a fund-by-fund basis in the rare circumstances when the best interests of one fund's securityholders would require an advisor to vote the fund's proxies differently.

Response: In order for securityholders to determine how their fund voted, we are of the view that proxy voting records should be prepared on a per fund basis. However, we recognize that in some cases an alternative method of presenting this disclosure may be suitable (for example, because of the way proxy voting decisions are made within a fund family) to meet the goal of providing securityholders with information that is relevant to them. We will consider these alternatives on a case by case basis.

Two commenters note that compiling this information into a consolidated record could be difficult where there are external portfolio managers who vote independently of the manager (especially on routine matters when they follow the fund's proxy voting policy). This task will be more daunting where a fund employs a "multi-manager" approach pursuant to which each portfolio manager is responsible for a different segment of the fund's portfolio.

Response: The proxy voting record must be prepared on a per fund basis, but there is no prohibition against distinguishing between different portfolio managers within the record.

One commenter supports the CSA's recognition that filtering proxy information between routine and non-routine matters is not necessarily beneficial due to the time and cost involved in setting up this type of system (which would have to be a manual system because proxy voting services do not have this type of filter). However, two commenters suggested that if a proxy voting record is required, it should be limited to votes involving "non-routine" matters, or only to special meetings.

Response: We agree with the first commenter. When originally proposed, the Rule required disclosure of only "non-routine" matters, but this was changed to disclosure of all votes because of the difficulties in separating "routine" from "non-routine" matters.

One commenter disagrees with the requirement to file the proxy voting record.

Response: There is no requirement to file the proxy voting record.

One commenter noted that proxy voting can be complicated and onerous in other countries and recommends that the CSA provide a "safe harbour" due diligence defense for the voting of proxies in countries where barriers exist.

Response: An investment fund's proxy voting policies should establish appropriate procedures to address these concerns. The Rule does not obligate an investment fund to vote in every instance.

10.4 Preparation and Availability of Proxy Voting Record

One commenter suggested that the timing of the proposed disclosure coincides with the interim reporting period for funds with a calendar year end which is an additional burden for funds that are already working under an extremely tight timeline to produce other documents during the same time period. The commenter suggests that this timing be either flexible or sometime within the fund's third quarter.

Response: Because the majority of shareholder meetings are held between April and June, June 30 was chosen as the date at which the proxy voting record must be prepared. Given that the information should be compiled during the course of the year, and that investment funds are given 60 days to provide this disclosure, we are of the view that the timing is appropriate.

One commenter submitted that the proxy voting disclosure should be provided on the fund's website no more than 30 days after the vote.

Response: We are of the view that annual disclosure of the proxy voting record appropriately balances the rights of securityholders to access this information with the concerns that the disclosure will be difficult and costly to produce.

One commenter noted that an investment fund must promptly send a copy of its proxy voting policies and procedures and proxy voting record to an investor upon a request made more than 60 days after the end of the period to which the proxy voting record pertains [emphasis added]. The commenter asked for clarification that if an investor makes a request more than 60 days after

the end of the period to which the proxy voting record pertains, the fund must deliver the current year's proxy voting record, but if the investor makes a request less than 60 days after the end of the period to which the proxy voting record pertains, the fund would deliver the previous year's proxy voting record.

Response: We have amended the Rule to clarify this point.

Four commenters suggested that the proxy voting record should be posted on the fund's website. One commenter discloses their actual proxy voting activity on their website and encouraged the CSA to adopt this method of disclosure as, in their experience, it satisfies securityholders' needs in a cost effective manner.

Response: We have amended the Rule to require the proxy voting record to be posted on an investment fund's website.

One commenter recommended that investment fund managers disclose how they intend to vote in advance of the actual vote taking place.

Response: Investment funds are free to disclose how they intend to vote in advance of a meeting, but we are not of the view that it would be appropriate to require this in every case.

Part 11 – Material Change Reports

Two commenters noted that in the case where a material change report is filed on a confidential basis, section 7.1 [7.2] of the CP provides that the fund must notify all insiders of the prohibition against trading until the material change report is made public. The commenters question whether this is appropriate for funds other than exchange-traded funds, given that the NAV per unit is based on the market value of fund holdings.

Response: Securities legislation prohibits trading by an insider of a reporting issuer with knowledge of a material change that has not been generally disclosed. This section of the CP reminds investment funds that if they file a confidential material change report, they should ensure that no inappropriate trading in the securities of the investment fund is taking place. The terms "insider" and "insider of a mutual fund" are defined in securities legislation.

One commenter suggested that material change reports should be filed within 5 days rather than 10 days.

Response: The requirement is consistent with that for reporting issuers other than investment funds.

One commenter is of the view that the Rule should state the requirements applicable to investment funds, rather than refer readers to another national instrument.

Response: We are of the view that referring to NI 51-102 for these requirements is appropriate, given that the requirements are substantially the same.

Part 12 - Proxy Solicitation and Information Circulars

Two commenters noted that "securityholder" is used in this part of the Rule and suggested that this term should mean the securityholder registered as a holder of securities on the records of the fund.

Response: We have changed the references to "securityholder" to "registered holder".

One commenter stated that the Rule requires investment funds to send proxy-related materials to "securityholders" entitled to notice of the meeting, which includes both registered and beneficial owners. The commenter noted that section 8.1 of the CP indicates that NI 54-101 should be used to send proxy-related materials to securityholders, but NI 54-101 only applies to sending these materials to beneficial owners.

Response: We have clarified this in the CP.

Two commenters noted that Part 12 contemplates that investment funds can use NI 54-101 to contact their beneficial owners in sending meeting materials, and asks how this relates to the delivery of financial statements and MRFPs.

Response: Part 12 of the Rule only relates to the delivery of proxy-related materials. The provisions in Part 5 of the Rule with respect to the delivery of financial statements and MRFPs to securityholders are intended to exempt investment funds from the procedures in NI 54-101 if they are otherwise able to obtain delivery instructions from beneficial owners of their securities with respect to these documents.

One commenter noted that Item 6.5 of Form 51-102F5 should not apply to a multi-class fund if votes are tabulated at the fund level, not the class level.

Response: We are not of the view that this disclosure should be provided differently for investment funds than is required for other reporting issuers. We also note that this requirement is consistent with the disclosure already required in the AIF of mutual funds (Form 81-101F2, Item 11).

Part 13 - Change in Auditor Disclosure

Three commenters suggested that the CSA is now proposing to apply the requirements of section 4.11 of NI 51-102 to investment funds without removing the requirement for investor approval for a change in auditor in subsection 5.1(d) of NI 81-102. The commenters disagree with the CSA position that the investor approval issue is outside the scope of the Rule and note that the CSA has made conforming changes to NI 81-102 and NI 81-101 to accommodate the Rule.

Response: The requirements in the Rule with respect to change in auditor disclosure already exist in National Policy Statement 31 Change of Auditor of a Reporting Issuer, which will be rescinded when the Rule comes into force. These disclosure requirements are different and independent of the approval right given to securityholders in NI 81-102.

One commenter suggested that the Rule should be a complete rule-book for all continuous disclosure obligations and that it should restate the requirements for change in auditor rather than refer to NI 51-102.

Response: Staff is of the view that referring to NI 51-102 for these requirements is appropriate, given that the requirements are the same for all reporting issuers.

Part 14 – Calculation of Net Asset Value

Three commenters noted that the net asset value per unit (“NAVPU”) must be calculated in U.S. or Canadian dollars or both and are concerned that this restriction would prevent the launch of a fund whose NAVPU is calculated in another currency.

Response: This requirement currently exists in Part 13 of NI 81-102 which the CSA is not proposing to change at this time.

One commenter questioned why the CSA has moved from “specified derivatives” to all derivatives in requiring daily net asset value calculations and suggested that the Rule be amended to follow the current requirements of NI 81-102.

Response: We have made this change.

Part 15 - Calculation of Management Expense Ratio

One commenter asked for confirmation that MER will only be presented in the MRFP and not in the financial statements.

Response: Part 17 of NI 81-102 (which required disclosure of the MER in the financial statements) will be repealed when the Rule comes into force. The Rule only requires disclosure of the MER in the MRFP.

15.1 Calculation of Management Expense Ratio

One commenter suggested that closed-end funds have prescribed rules under OSC Policy 5.4 for determining fees charged that are calculated based on average total assets that are valued at the lower of cost or market. The commenter suggested that section 15.1 does not consider this as it requires that MER be calculated based on market value. This will lead to substantial year to year changes to MER given that MER and maximum fund expenses will be calculated differently.

Response: We are of the view that there is no inconsistency between OSC Policy 5.4 and the MER calculation in the Rule as the Policy addresses maximum fees, while the Rule deals with disclosure of those fees.

One commenter suggested that the inclusion in paragraph 15.1(1)(a)(i)(B) of “any other fee, charge or expense of the investment fund that has the effect of reducing the investment fund’s net asset value” indicates that fees that would be included in calculating the return of the fund (i.e., fees for forward contracts used by RSP clone funds) should be included in the calculation of MER.

Response: If these fees are not otherwise included in the total expenses of the fund, and they have the effect of reducing net asset value, we are of the view that they should be added for the purposes of the MER calculation. We are of the view that this requirement will not capture portfolio transaction costs included in the trading expense ratio (disclosed in the MRFP).

One commenter suggested that if the MER includes performance fees, it will shed an unnecessarily negative light on strong, performing funds and believes that investors may be misled into thinking that a high MER will apply in a year in which the fund loses money. The commenter questioned whether investors reviewing the listing of MERs in a newspaper would understand the distinction.

Response: The purpose of the MER is to capture all of the actual expenses incurred by the fund during the period for which the MER is calculated. Investment funds may provide additional disclosure regarding the components of MER.

Two commenters disagree with the semi-annual calculation of MER because it may require the manager to commit to waivers or accept relatively higher MERs based only on information available at the interim date.

Response: Both interim and annual MER are based on actual expenses incurred by the investment fund as set out in the financial statements. Therefore, it is our view that disclosure of MER at the interim date is useful and not misleading.

Two commenters agree with the exclusion of non-optional fees from the calculation of MER, but questioned the value of providing separate disclosure of these fees.

Response: We have removed this requirement.

Two commenters noted that the MER must be “grossed up” for fees paid by unitholders outside of the fund and suggested that the allocation of fees would be arbitrary as they are paid at the account level for the entire investment portfolio.

Response: There is no requirement to “gross up” MER for fees paid outside of the fund.

One commenter noted that service providers must be able to accept from fund companies some indication that management fees have been waived or paid directly by investors and suggested that this section incorporate expenses absorbed, and not just management fees waived, as both expenses and management fees make up the MER.

Response: We have made this change.

One commenter stated that Part 15 imposes a new method of MER calculation for pooled funds that is inconsistent with industry practice and suggested that pooled funds be exempt from providing MER.

Response: Pooled funds are not required to disclose MER as they are exempted from preparing MRFPs.

15.2 Fund of Funds Calculation

One commenter is of the view that the MER should be calculated using the expenses of the top fund only, as the expenses of the underlying fund are already reflected in that fund’s performance and, ultimately, in the top fund’s performance. The commenter suggested that the top fund has no decision-making power over the expenses incurred by the bottom fund(s).

Response: In our view, the MER of the top fund should reflect the top fund’s proportionate share of the expenses of the bottom fund. This MER calculation was recently reviewed in the context of the “fund of fund” amendments made to NI 81-102 by the CSA. We do not propose to change these requirements in the Rule.

Part 16 - Additional Filing Requirements

Three commenters noted an inconsistency between subsection 16.2(2) which states that a fund must file any document required by the Rule on the same date as or as soon as practicable after the date the fund sends the documents to security holders and section 5.4 which states that a fund must send documents to security holders within 10 days of filing.

Response: We have modified this provision to clarify that it pertains to disclosure documents, other than those required under the Rule, which investment funds may send to their securityholders.

One commenter asked whether they would be required to file solicitation of instructions, annual reminders and request forms sent under Part 5 in order to comply with the requirement to file any document sent to security holders.

Response: As indicated above, the requirement has been modified to apply only to disclosure documents not required by the Rule.

One commenter asked whether the voting results report must be sent to securityholders and whether there is an obligation to send a notice to securityholders of the outcome of the meeting.

Response: There is no requirement to deliver the voting results report to securityholders. If the matter voted upon materially affects the investment fund, it will have to be discussed in the MRFP.

Part 18 – Effective Date and Transitional

Twelve commenters indicated that implementing the Rule will involve significant operational changes, time and resources, so that the application of the Rule to financial years ending on or after December 31, 2004 is tight and will cause considerable hardship for the industry. The commenters suggested effective dates ranging from financial years ending after December 31, 2004 to financial years beginning October 1, 2005.

Response: The Rule will apply to financial periods ending on or after June 30, 2005.

One commenter asked for clarification of when certain other requirements take effect.

Response: Section 18.2 has been amended to set out certain additional transition provisions.

One commenter suggested that a second transitional year be added since the volume of work required and deadlines proposed by the Rule will require investment funds, and suppliers of services to investment funds, to potentially re-engineer their processes to meet all the reporting requirements.

Response: The CSA initially published its proposal to introduce MRFPs for investment funds, and to shorten filing deadlines for financial statements, in September 2002. We are of the view that a one year transition period for annual filings is appropriate, given that the interim filing deadline will not change from the current deadline of 60 days.

18.5 Initial Delivery of Annual Management Report of Fund Performance

Two commenters suggested that the requirement to deliver to all investors the first annual MRFP is an expensive way to educate investors on the new report that is available to them. As an alternative, the commenters recommended that the industry prepare a series of mock-ups which could be used in the first standing order/annual instruction solicitation. The example format could be highlighted with educational descriptions and explanations to help the investors understand the meaning of the report.

Response: We are of the view that sending the first MRFP to all investors is an appropriate compromise given that any future delivery (of either MRFPs or financial statements) will only be required upon securityholder request. Investors should base their decision on whether to continue receiving MRFPs after reviewing the content and format of the actual disclosure, instead of an “example” with “educational descriptions” that does not provide information directly related to the performance and activity of the fund.

One commenter asked when the first MRFP should be sent.

Response: We have clarified that the first MRFP must be sent no later than the filing deadline for the transition year (120 days after the fund’s financial year end).

One commenter questioned the authority to revoke individual orders exempting the recipient of that order from provisions in securities regulation. The commenter also questioned the purpose of section 18.6 as the Rule imposes new rules that must be complied with regardless of any previously granted exemption.

Response: We have changed this section so that it allows reliance on previously granted exemptions from provisions that are substantially similar to provisions in the Rule.

Companion Policy

Part 2 – Financial Statements

Two commenters noted that the CP states that if an investment fund sends documents to its securityholders pursuant to standing instructions, it cannot later switch to annual instructions. The commenters do not see anything in the Rule concerning this prohibition.

Response: We have added this prohibition to the Rule.

Part 4 – Other Provisions

One commenter believes that the CSA views expressed in section 4.3 of the CP contravene the “spirit and the letter” of the Handbook, including Section 1100. Another commenter pointed out that the Emerging Issues Committee of the CICA is studying this topic and is expected to issue a pronouncement.

Response: We removed section 4.3 of the CP, and added a requirement in the Rule to disclose the costs of distribution of the investment fund’s securities in the notes to the financial statements.

Part 6 – Proxy Voting Disclosure for Securities Held

One commenter noted that earning revenue from securities lending may outweigh the exercise of voting rights in some cases. In securities lending, the proxy voting right accrues to the borrower. The commenter suggested that it may be appropriate to recognize securities lending in the CP and to distinguish between securities held by the fund and securities for which proxies are received. Another commenter suggested that the Rule should ensure that investment funds engaging in securities lending retain the right to vote proxies.

Response: This issue was previously considered by the CSA with respect to mutual funds in the context of the securities lending amendments made to National Instrument 81-102. We have revised the CP to include the view expressed in subsection 3.7(15) of NI 81-102CP. An investment fund’s proxy voting policies and procedures should deal with securities lending as appropriate.

Part 10 – Calculation of Management Expense Ratio

One commenter asked for clarification of the types of charges that are contemplated in subsection 10.1(3) of the CP and asked whether a load charged to a top fund’s investment in a mutual fund would be included.

Response: We are of the view that amounts charged to retained earnings should be reflected in the MER. The example in the CP has been clarified to mean sales commissions paid by the fund in connection with the sale of the fund’s securities. Expenses incurred by an investment fund to acquire portfolio securities are part of the cost of purchasing those securities and will be included in the trading expense ratio.

Three commenters suggested that subsection 10.1(4) of the CP should refer to brokerage *and other portfolio transaction* charges.

Response: We have made this change.

Consequential Amendments

One commenter recommended that the CSA revoke or rescind remaining regulation of investment funds, at least to the extent that this regulation concerns continuous disclosure matters. The commenter recommended that National Policy Statement No. 29 (Mortgage Mutual Funds), National Policy 15 (Scholarship Plans) and OSC Policy Statements 5.3 (Real Estate Funds) and 5.4 (Closed-end funds) be revoked when NI 81-106 comes into force.

Response: We are not making these changes at this time. We will consider these comments in the context of the completion of our reformulation initiative.

Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure

One commenter noted that the proposed amendments to Form 81-101F1 do not require mutual funds to state that quarterly portfolio disclosure will be available.

Response: Form 81-101F1 has been amended to indicate that the MRFPs are incorporated by reference into the simplified prospectus. The availability of quarterly portfolio and proxy voting disclosure will be disclosed on the front cover of the MRFP.

One commenter disagrees with the removal of top ten holdings, past performance and financial highlights from the simplified prospectus. In the commenter’s view, the simplified prospectus plays a different role for mutual fund investors than does the continuous disclosure regime and the proposed changes will result in investors making investment decisions based on less information.

Response: The amendments to Form 81-101F1 were proposed in the first publication of the Rule (September 2002) and several commenters expressed their agreement with these amendments. The amendments to Form 81-101F1 recognize that mutual funds will now have the obligation to report their primary holdings, past performance and financial highlights in the MRFP, which must be updated on a semi-annual basis, and which is incorporated by reference into the simplified prospectus. We are of the

view that the more current information in the MRFP will be more useful to prospective investors than the staler information that is currently in the simplified prospectus.

Amendments to National Instrument 81-102 Mutual Funds

One commenter suggested that the definition of “management expense ratio” be deleted from NI 81-102 as this term will no longer be used in that Instrument.

Response: The term is still used in NI 81-102 (for example, in section 5.4).

One commenter asked why subsection 10.1(4) of NI 81-102 is being deleted and asks whether the CSA intends for all mutual funds to send the notice required by subsection 10.1(3) as a separate annual notice.

Response: Rather than repeal subsection 10.1(4) of NI 81-102, we will amend it to state that the annual notice required by 10.1(3) does not have to be separately provided if it is contained in a document which is sent to all securityholders.

One commenter noted that the CSA proposes to delete the valuation rules provided in section 13.5 Valuation of Specified Derivatives of NI 81-102 without replacing them at this time. The commenter suggested keeping section 13.5 in force until the CSA completes the work on valuation it has indicated it is going to do.

Response: We are of the view that section 13.5 does not provide any additional guidance beyond established industry practice as supported by Canadian GAAP.

One commenter suggested that as the Rule will contain all the substantive regulation with respect to material changes, section 7.4 of 81-102CP should be moved to the CP for proposed NI 81-106.

Response: We have moved the discussion from section 7.4 of 81-102CP into 81-106CP, with appropriate modifications.

Amendments to National Instrument 81-104 Commodity Pools

One commenter recommended that the CSA explain in the CP that commodity pools do not have to prepare quarterly financial statements as they are being treated like other investment funds.

Response: We think that it is clear that for some types of investment funds, the Rule replaces the obligation to file quarterly statements with the obligation to file semi-annual statements.

Schedule 1**List of Commenters**

ADP Investor Communications
Sue Britton

AGF Management Limited
Judy G. Goldring

AIC Group of Funds
Jennifer I. McDougall

AIMA Canada
David Jarvis

The Association of Canadian Pension Management
Michael Beswick

Association of Labour Sponsored Investment Funds
Dale Patterson

BMO Harris Investment Management Inc.
R. Ian Niven

BMO Mutual Funds
Edgar Legzdins

BMO Nesbitt Burns Inc.
Connie Stefankiewicz

Barclays Global Investors Canada Limited
Gerry Rocchi

Borden Ladner Gervais
Investment Management Practice Group

Desjardins Trust
Louis Chartrain

Ernst and Young LLP
Ross Pearman

The Ethical Funds Company
Robert Walker

Fasken Martineau
Garth J. Foster

Fidelity Investments Canada Limited
Peter S. Bowen

Gowlings
Paul A. Dempsey

Guardian Group of Funds
Steven P. Rostowsky

The Investment Funds Institute of Canada
John W. Murray, Anne Ramsay, Aamir Mirza

Investors Group Inc.
W. Terrence Wright

Irwin, White & Jennings
Jill W. McFarlane

KAIROS – Canadian Ecumenical Justice Initiatives
Rory O'Brien

KPMG LLP
Alan G. Van Weelden

Leith Wheeler Investment Counsel Ltd.
Cecilia Wong

Mackenzie Financial Corporation
W. Sian B. Brown, Ann Savege, Venkat Kannan

PFSL Investments Canada Ltd.
Joe Yassi

Phillips, Hager & North Investment Management Ltd.
Don S. Panchuk

RBC Financial Group
Reena S. Lalji, Frank Lippa

RESP Dealers Association of Canada
Ray Riley

Simon Romano

Shareholder Association for Research and Education
Gil Yaron

Small Investor Protection Association
Ken Kivenko, Stan I. Buell

Social Investment Organization
Eugene Ellmen

TD Asset Management Inc.
Steve Geist

Tradex Management Inc.
Robert C. White

Westcap Mgt. Ltd.
Trevor S. Giles

APPENDIX C

**NATIONAL INSTRUMENT 81-101
MUTUAL FUND PROSPECTUS DISCLOSURE,
FORM 81-101F1 CONTENTS OF SIMPLIFIED PROSPECTUS AND
FORM 81-101F2 CONTENTS OF ANNUAL INFORMATION FORM
AMENDMENT INSTRUMENT**

1. National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is amended by this Instrument.
2. Section 3.1 is amended by adding the following after paragraph 3:
 - “4. The most recently filed annual management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus.
 5. The most recently filed interim management report of fund performance of the mutual fund that was filed before or after the date of the simplified prospectus and that pertains to a period after the period to which the annual management report of fund performance then incorporated by reference in the simplified prospectus pertains.”.
3. Part 7 is amended by adding the following after section 7.3:

“7.4 Introduction of Management Reports of Fund Performance – Items 8, 11 and 13.1 of Part B of Form 81-101F1 do not apply to a mutual fund that has filed an annual management report of fund performance as required by National Instrument 81-106 *Investment Fund Continuous Disclosure*.”
4. Form 81-101F1 *Contents of Simplified Prospectus* is amended
 - (a) by repealing the third bullet point in Item 3.1 of Part A and substituting the following:
 - “• Additional information about the Fund is available in the following documents:
 - the Annual Information Form;
 - the most recently filed annual financial statements;
 - any interim financial statements filed after those annual financial statements;
 - the most recently filed annual management report of fund performance;
 - any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this Simplified Prospectus, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.”.
 - (b) by repealing the third bullet point in Item 3.2 of Part A and substituting the following:
 - “• Additional information about each Fund is available in the following documents:
 - the Annual Information Form;
 - the most recently filed annual financial statements;
 - any interim financial statements filed after those annual financial statements;
 - the most recently filed annual management report of fund performance;
 - any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this document, which means that they legally form part of this document just as if they were printed as a part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer.”.
 - (c) by repealing Item 14(2) of Part A and substituting the following:

- “(2) State, in substantially the following words:
- Additional information about the Fund[s] is available in the Fund[’s/s’] Annual Information Form, management reports of fund performance and financial statements. These documents are incorporated by reference into this Simplified Prospectus, which means that they legally form part of this document just as if they were printed as a part of this document.
 - You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer or by e-mail at [insert e-mail address].
 - These documents and other information about the Fund[s], such as information circulars and material contracts, are also available [on the [insert name of mutual fund manager] internet site at [insert website address] or] at www.sedar.com.”

(d) by repealing Items 8, 11 and 13.1 of Part B.

(e) in Item 13.2 of Part B by:

(i) repealing subsection 13.2(1) and substituting the following:

“(1) Under the heading “Fund Expenses Indirectly Borne by Investors”, provide an example of the share of the expenses of the mutual fund indirectly borne by investors, containing the information and based on the assumptions described in (2).”; and

(ii) repealing subsection 13.2(4) and substituting the following:

“(4) The management expense ratio used in calculating the disclosure provided under this Item must be the management expense ratio calculated in accordance with Part 15 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.”.

5. Form 81-101F2 *Contents of Annual Information Form* is amended

(a) in Item 12 by adding the following after subsection (6):

“(7) Unless the mutual fund invests exclusively in non-voting securities, describe the policies and procedures that the mutual fund follows when voting proxies relating to portfolio securities including

- (a) the procedures followed when a vote presents a conflict between the interests of securityholders and those of the mutual fund’s manager, portfolio adviser, or any affiliate or associate of the mutual fund, its manager or its portfolio adviser;
- (b) any policies and procedures of the mutual fund’s portfolio adviser, or any other third party, that the mutual fund follows, or that are followed on the mutual fund’s behalf, to determine how to vote proxies relating to portfolio securities.

State that the policies and procedures that the mutual fund follows when voting proxies relating to portfolio securities are available on request, at no cost, by calling [toll-free/collect call telephone number] or by writing to [address].

(8) State that the mutual fund’s proxy voting record for the most recent period ended June 30 of each year is available free of charge to any securityholder of the mutual fund upon request at any time after August 31 of that year. If the proxy voting record is available on the mutual fund’s website, provide the website address.

INSTRUCTION:

The mutual fund’s proxy voting policies and procedures must address the requirements of section 10.2 of National Instrument 81-106 Investment Fund Continuous Disclosure.”.

- (b) by adding the following Instruction at the end of Item 15:

“INSTRUCTION:

The disclosure required under Item 15(1) regarding executive compensation for management functions carried out by employees of a mutual fund must be made in accordance with the disclosure requirements of Form 51-102F6 Statement of Executive Compensation.”

- (c) by repealing Item 24(2) and substituting the following:

“(2) State, in substantially the following words:

- Additional information about the Fund[s] is available in the Fund[‘s/s’] management reports of fund performance and financial statements.
- You can get a copy of these documents at no cost by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted, as required by section 3.4 of the Instrument], or from your dealer or by e-mail at [insert e-mail address].
- These documents and other information about the Fund[s], such as information circulars and material contracts, are also available [on the [insert name of mutual fund manager] internet site at [insert website address] or] at www.sedar.com.”

6. (1) Sections 2, 3, and 5 and paragraphs 4(a), (b), (c) and (e) of this Instrument come into force on June 1, 2005.
- (2) Paragraph 4(d) of this Instrument comes into force on October 27, 2006.
- (3) Section 7.4 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* is repealed on October 27, 2006.

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

1. Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* is amended by this Instrument.
2. Section 2.2 is amended by deleting subsection 2.2(2) and substituting the following:

“(2) The approach of the Instrument is to give investors a choice of the amount of information that they wish to consider before making a decision about investing in the mutual fund. Investors will have the option of purchasing the mutual fund’s securities after reviewing the information in the simplified prospectus only or after requesting and reviewing the annual information form, financial statements or management reports of fund performance incorporated by reference into the simplified prospectus.”
3. Section 2.4 is deleted and substituted by the following:

“2.4 Financial Statements and Management Reports of Fund Performance – The Instrument contemplates that the mutual fund’s most recently audited financial statements, and any interim statements filed after those audited statements, as well as the mutual fund’s most recently filed annual management report of fund performance, and any interim management report of fund performance filed after that annual management report, will be provided upon request to any person or company requesting them. Like the annual information form, these financial statements and management reports of fund performance are incorporated by reference into the simplified prospectus. The result is that future filings will be incorporated by reference into the simplified prospectus, while superseding the financial statements and management reports of fund performance previously filed.”
4. Section 7.5 is deleted.
5. Section 8.2 is deleted and substituted by the following:

“8.2 Portfolio Advisers – The AIF Form requires disclosure concerning the extent to which investment decisions are made by particular individuals employed by a portfolio adviser, or by committee, and requires in section 10.3(3)(b) of the AIF Form that certain specified information be given about those individuals principally responsible for the investment portfolio of the mutual fund. Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* requires a simplified prospectus to be amended if a material change occurs in the affairs of the mutual fund. Reference is made to section 7.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* for a discussion of when a departure of a high-profile individual from a portfolio adviser of a mutual fund may constitute a material change for the mutual fund. Mutual funds should consider these provisions if and when they encounter the departure of such a person from a portfolio adviser. If such a departure is not a material change for the mutual fund, then there is no requirement for an amendment to a simplified prospectus, subject to the general requirement that a simplified prospectus contain full, true and plain disclosure about the mutual fund.”
6. This Instrument comes into force on June 1, 2005.

APPENDIX D

NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS
AMENDMENT INSTRUMENT

1. National Instrument 81-102 *Mutual Funds* is amended by this Instrument.
2. Section 1.1 is amended
 - (a) by repealing the definition of "management expense ratio" and substituting the following:

“management expense ratio” means the ratio, expressed as a percentage, of the expenses of a mutual fund to its average net asset value, calculated in accordance with Part 15 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;
 - (b) by adding the following after the definition of “manager”:

“material change” has the meaning ascribed to that term in National Instrument 81-106 *Investment Fund Continuous Disclosure*;
 - (c) by repealing the definition of "report to securityholders" and substituting the following:

“report to securityholders” means a report that includes annual or interim financial statements, or an annual or interim management report of fund performance, and that is delivered to securityholders of a mutual fund;
 - (d) by adding the following as Item 6 to paragraph (b) of the definition of “sales communication”:

“6. Annual or interim management report of fund performance;”;
 - (e) by repealing the definition of “significant change”; and
 - (f) by repealing the definition of “timely disclosure requirements”.
3. Subparagraph 5.1(g)(iii) is repealed and the following is substituted:

“(iii) the transaction would be a material change to the mutual fund.”.
4. Paragraph 5.6(1)(g) is repealed and the following is substituted:

“(g) the mutual fund has complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the making of the decision to proceed with the transaction by the board of directors of the manager of the mutual fund or of the mutual fund;”.
5. Paragraph 5.7(1)(d) is repealed and the following is substituted:

“(d) if the application relates to a matter that would constitute a material change for the mutual fund, a draft of an amendment to the simplified prospectus of the mutual fund reflecting the change; and”.
6. Section 5.10 is repealed.
7. Subsection 10.1(4) is repealed and the following is substituted:

“(4) The statement referred to in subsection (3) is not required to be separately provided, in any year, if the requirements are described in any document that is sent to all securityholders in that year.”
8. Part 13 is repealed.
9. Subsection 15.9(2) is amended by striking out “significant change” and substituting “material change” in each instance.
10. Part 16 is repealed.

11. Part 17 is repealed.
12. This Instrument comes into force on June 1, 2005.

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

1. Companion Policy 81-102CP *Mutual Funds* is amended by this Instrument.
2. Subsection 3.2(3) is amended by deleting the last sentence of the subsection and substituting the sentence “In addition, this decision would also constitute a material change for the mutual fund, thereby requiring an amendment to the simplified prospectus of the mutual fund and the issuing of a press release under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.”.
3. Subsection 7.3(2) is amended by deleting the last sentence of the subsection and substituting the sentence “The Canadian securities regulatory authorities believe that this type of transaction generally would constitute a material change for the smaller continuing mutual fund, thereby triggering the requirements of paragraph 5.1(g) of the Instrument and Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.”.
4. Section 7.4 is deleted.
5. Part 12 is deleted.
6. Part 14 is deleted.
7. This Instrument comes into force on June 1, 2005.

APPENDIX E

**NATIONAL INSTRUMENT 13-101
SYSTEM FOR ELECTRONIC DOCUMENT ANALYSIS AND RETRIEVAL (SEDAR)
AMENDMENT INSTRUMENT**

1. National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* is amended by this Instrument.
2. Appendix A is amended
 - (a) by repealing item 6 of Part I B and substituting the following:

“6 News Release”;
 - (b) by repealing item 8 of Part I B and substituting the following:

“8.1. Annual Management Report of Fund Performance
8.2. Interim Management Report of Fund Performance”;
 - (c) by repealing item 13 of Part I B and substituting the following:

“13. Labour Sponsored Investment Fund Valuation Reports”;
 - (d) by adding the following after Item 13 of Part I B:

“14. Report of Management Company – Transactions with related persons or companies (Form 81-903F – British Columbia, Form 38 – Alberta and Ontario, Form 36 – Saskatchewan, Form 39 – Nova Scotia, and Form 37 – Newfoundland) BC, Alta, Sask, Ont, NS and Nfld

15. Annual Information Form

16. Change in Legal Structure Filings

17. Material Contracts”;
 - (e) by repealing item 1 of Part II B(a) and substituting the following:

“1. News Release”;
 - (f) by striking out “BC, Alta, Sask, Ont, NS & Nfld” from item 2 of Part II B(a);
 - (g) by striking out “BC, Ont & Que” from item 6 of Part II B(a);
 - (h) by repealing item 8 of Part II B(a) and substituting the following:

“8.1. Annual Management Report of Fund Performance
8.2. Interim Management Report of Fund Performance”; and
 - (i) by adding the following after Item 16 of Part II B(a):

“17. Change in Corporate/Legal Structure Filings

18. Material Documents/Contracts”.
3. This Instrument comes into force on June 1, 2005.

APPENDIX F

NATIONAL INSTRUMENT 81-104
COMMODITY POOLS
AMENDMENT INSTRUMENT

1. National Instrument 81-104 *Commodity Pools* is amended by this Instrument.
2. Part 7 is repealed.
3. Sections 8.1, 8.2, 8.3 and 8.4 are repealed.
4. Section 9.2 is amended
 - (a) by repealing paragraph 9.2(g) and substituting the following:

“(g) provide the disclosure concerning the past performance of the commodity pool that is required to be provided by an investment fund under Item 4 of Part B of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance*, except that

 - (i) the past performance of the commodity pool, in the bar chart prepared in accordance with Item 4.2 of Part B of Form 81-106F1, must show quarterly, non-annualized returns of the commodity pool over the period provided for in Item 4.2, rather than annual returns, and
 - (ii) the commodity pool may, at its option, in the disclosure required by Item 4.3 of Part B of Form 81-106F1, compare its performance to an index if it describes any differences between the commodity pool and the index that affect the comparability of the performance data of the commodity pool and the index;” and
 - (b) in paragraph 9.2(n) by striking out “as required by section 7.3”.
5. Sections 9.3 and 9.4 are repealed.
6. This Instrument comes into force on June 1, 2005.

**COMPANION POLICY 81-104CP
COMMODITY POOLS
AMENDMENT INSTRUMENT**

1. Companion Policy 81-104CP *Commodity Pools* is amended by this Instrument.
2. Subsection 3.1(3) is amended by striking out “Item 11.3 of Part B of Form 81-101F1” in the third sentence and substituting “Item 4.3 of Part B of Form 81-106F1”.
3. This Instrument comes into force on June 1, 2005.

APPENDIX G

NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS
AMENDMENT INSTRUMENT

1. National Instrument 51-102 *Continuous Disclosure Obligations* is amended by this Instrument.
2. Section 1.1 is amended
 - (a) by repealing the definition of “investment fund” and substituting the following:

““investment fund” means a mutual fund or a non-redeemable investment fund, and, for greater certainty in British Columbia, includes an EVCC and a VCC as those terms are defined in National Instrument 81-106 *Investment Fund Continuous Disclosure*,”; and
 - (b) by repealing the definition of “non-redeemable investment fund” and substituting the following:

““non-redeemable investment fund” means an issuer,

 - (a) whose primary purpose is to invest money provided by its securityholders,
 - (b) that does not invest,
 - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or
 - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and
 - (c) that is not a mutual fund;”.
3. This Instrument comes into force on June 1, 2005.

APPENDIX H**NATIONAL INSTRUMENT 52-107
ACCEPTABLE ACCOUNTING PRINCIPLES, AUDITING STANDARDS AND REPORTING CURRENCY
AMENDMENT INSTRUMENT**

1. National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* is amended by this Instrument.
2. Section 1.1 is amended
 - (a) by repealing the definition of “investment fund” and substituting the following:
““investment fund” has the meaning ascribed to it in National Instrument 51-102;” and
 - (b) by repealing the definition of “non-redeemable investment fund”.
3. This Instrument comes into force on June 1, 2005.

APPENDIX I**NATIONAL INSTRUMENT 71-102
CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS
AMENDMENT INSTRUMENT**

1. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* is amended by this Instrument.
2. Section 1.1 is amended
 - (a) by repealing the definition of “investment fund” and substituting the following:

“investment fund” has the meaning ascribed to it in National Instrument 51-102 *Continuous Disclosure Obligations*,” and
 - (b) by repealing the definition of “non-redeemable investment fund”.
3. This Instrument comes into force on June 1, 2005.

APPENDIX J

RELATED AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE
AND ONTARIO SECURITIES REGULATION**Amendment to Ontario Securities Commission Rule 41-502 – Prospectus Requirements for Mutual Funds**

1. Rule 41-502 *Prospectus Requirements for Mutual Funds* is amended by this Amendment.
2. Subparagraph 5.2(3)(a)(ii) is amended by striking out "140" and substituting "90".
3. Section 5.3 is amended by striking out "Part IV of the Regulation" and substituting "National Instrument 81-106 *Investment Fund Continuous Disclosure*".
4. Part 10 is revoked.
5. This Amendment comes into force on June 1, 2005.

Regulation Amending Regulation 1015 of R.R.O. 1990

Concurrently with making National Instrument 81-106 *Investment Fund Continuous Disclosure* and Ontario Securities Commission Rule 81-801 *Implementing National Instrument 81-106 Investment Fund Continuous Disclosure*, the Commission has made a regulation that amends or revokes some provisions of Regulation 1015 of R.R.O. 1990 (the Regulation). This regulation is necessary or advisable to effectively implement the Instrument and OSC Rule 81-801. The regulation is subject to the approval of the Chair of Management Board of Cabinet.

This regulation makes the following amendments and revocations to the Regulation:

1. revokes subsections 2(2), 2(5), 2(6), 2(7);
2. amends sections 3 and 4 by replacing the remaining references to Form 27 with references to Form 51-102F3;
3. revokes section 6, sections 83 to 94, Part IX and paragraph 240(2)9;
4. amends paragraph 240(2)8 by deleting the word "pricing" so that the paragraph reads "The sale or redemption of securities of mutual funds."; and
5. revokes Forms 27 and 30.

If approved by the Minister, the regulation will come into force on the day that National Instrument 81-106 comes into force.

National Instrument 81-106

Investment Fund Continuous Disclosure

PART 1 DEFINITIONS AND APPLICATIONS

- 1.1 Definitions
- 1.2 Application
- 1.3 Interpretation
- 1.4 Language of documents

PART 2 FINANCIAL STATEMENTS

- 2.1 Comparative Annual Financial Statements and Auditor's Report
- 2.2 Filing Deadline for Annual Financial Statements
- 2.3 Interim Financial Statements
- 2.4 Filing Deadline for Interim Financial Statements
- 2.5 Approval of Financial Statements
- 2.6 Acceptable Accounting Principles
- 2.7 Acceptable Auditing Standards
- 2.8 Acceptable Auditors
- 2.9 Change in Year End
- 2.10 Change in Legal Structure
- 2.11 Filing Exemption for Mutual Funds that are Non-Reporting Issuers
- 2.12 Disclosure of Auditor Review of Interim Financial Statements

PART 3 FINANCIAL DISCLOSURE REQUIREMENTS

- 3.1 Statement of Net Assets
- 3.2 Statement of Operations
- 3.3 Statement of Changes in Net Assets
- 3.4 Statement of Cashflows
- 3.5 Statement of Investment Portfolio
- 3.6 Notes to Financial Statements
- 3.7 Inapplicable Line Items
- 3.8 Disclosure of Securities Lending Transactions
- 3.9 Disclosure of Repurchase Transactions
- 3.10 Disclosure of Reverse Repurchase Transactions
- 3.11 Scholarship Plans

PART 4 MANAGEMENT REPORTS OF FUND PERFORMANCE

- 4.1 Application
- 4.2 Filing of Management Reports of Fund Performance
- 4.3 Filing of Annual Management Report of Fund Performance for an Investment Fund that is a Scholarship Plan
- 4.4 Contents of Management Reports of Fund Performance
- 4.5 Approval of Management Reports of Fund Performance

PART 5 DELIVERY OF FINANCIAL STATEMENTS AND MANAGEMENT REPORTS OF FUND PERFORMANCE

- 5.1 Delivery of Certain Continuous Disclosure Documents
- 5.2 Sending According to Standing Instructions
- 5.3 Sending According to Annual Instructions
- 5.4 General
- 5.5 Websites

PART 6 QUARTERLY PORTFOLIO DISCLOSURE

- 6.1 Application.
- 6.2 Preparation and Dissemination

PART 7 BINDING AND PRESENTATION

- 7.1 Binding of Financial Statements and Management Reports of Fund Performance

7.2 Multiple Class Investment Funds

PART 8 INDEPENDENT VALUATIONS FOR LABOUR SPONSORED OR VENTURE CAPITAL FUNDS

- 8.1 Application
- 8.2 Exemption from Requirement to Disclose Individual Current Values for Venture Investments
- 8.3 Disclosure Concerning Independent Valuator
- 8.4 Content of Independent Valuation
- 8.5 Independent Valuator's Consent

PART 9 ANNUAL INFORMATION FORM

- 9.1 Application
- 9.2 Requirement to File Annual Information Form
- 9.3 Filing Deadline for Annual Information Form
- 9.4 Preparation and Content of Annual Information Form

PART 10 PROXY VOTING DISCLOSURE FOR PORTFOLIO SECURITIES HELD

- 10.1 Application
- 10.2 Requirement to Establish Policies and Procedures
- 10.3 Proxy Voting Record
- 10.4 Preparation and Availability of Proxy Voting Record

PART 11 MATERIAL CHANGE REPORTS

- 11.1 Application
- 11.2 Publication of Material Change

PART 12 PROXY SOLICITATION AND INFORMATION CIRCULARS

- 12.1 Application
- 12.2 Sending of Proxies and Information Circulars
- 12.3 Exemption
- 12.4 Compliance with National Instrument 51-102

PART 13 CHANGE OF AUDITOR DISCLOSURE

- 13.1 Application
- 13.2 Change of Auditor

PART 14 CALCULATION OF NET ASSET VALUE

- 14.1 Application
- 14.2 Calculation, Frequency and Currency
- 14.3 Portfolio Transactions
- 14.4 Capital Transactions

PART 15 CALCULATION OF MANAGEMENT EXPENSE RATIO

- 15.1 Calculation of Management Expense Ratio
- 15.2 Fund of Funds Calculation

PART 16 ADDITIONAL FILING REQUIREMENTS

- 16.1 Application
- 16.2 Additional Filing Requirements
- 16.3 Voting Results
- 16.4 Filing of Material Contracts

PART 17 EXEMPTIONS

- 17.1 Exemption

PART 18 EFFECTIVE DATE AND TRANSITION

- 18.1 Effective Date
- 18.2 Transition
- 18.3 Filing of Financial Statements and Management Reports of Fund Performance
- 18.4 Filing of Annual Information Form
- 18.5 Initial Delivery of Annual Management Report of Fund Performance
- 18.6 Existing Exemptions

NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE

PART 1 DEFINITIONS AND APPLICATIONS

1.1 Definitions - In this Instrument

“annual management report of fund performance” means a document prepared in accordance with Part B of Form 81-106F1;

“current value” means, for an asset held by, or a liability of, an investment fund, the value calculated in accordance with Canadian GAAP;

“education savings plan” means an agreement between one or more persons and another person or organization, in which the other person or organization agrees to pay or cause to be paid, to or for one or more beneficiaries designated in connection with the agreement, scholarship awards;

“EVCC” means an employee venture capital corporation that does not have a restricted constitution, and is registered under Part 2 of the *Employee Investment Act* (British Columbia), R.S.B.C. 1996 c. 112, and whose business objective is making multiple investments;

“independent valuation” means a valuation of the assets and liabilities, or of the venture investments, of a labour sponsored or venture capital fund that contains the opinion of an independent valuator as to the current value of the assets and liabilities, or of the venture investments, and that is prepared in accordance with Part 8;

“independent valuator” means a valuator that is independent of the labour sponsored or venture capital fund and that has appropriate qualifications;

“interim management report of fund performance” means a document prepared in accordance with Part C of Form 81-106F1;

“interim period” means, in relation to an investment fund,

- (a) a period of at least three months that ends six months before the end of a financial year of the investment fund, or
- (b) in the case of a transition year of the investment fund, a period commencing on the first day of the transition year and ending six months after the end of its old financial year;

“investment fund” means a mutual fund or a non-redeemable investment fund, and, for greater certainty in British Columbia, includes an EVCC and a VCC;

“labour sponsored or venture capital fund” means an investment fund that is

- (a) a labour sponsored investment fund corporation or a labour sponsored venture capital corporation under provincial legislation,
- (b) a registered or prescribed labour sponsored venture capital corporation as defined in the ITA,
- (c) an EVCC, or
- (d) a VCC;

“management expense ratio” means the ratio, expressed as a percentage, of the expenses of an investment fund to its average net asset value, calculated in accordance with Part 15;

“management fees” means the total fees paid or payable by an investment fund to its manager or one or more portfolio advisers or sub-advisers, including incentive or performance fees, but excluding operating expenses of the investment fund;

“management report of fund performance” means an annual management report of fund performance or an interim management report of fund performance;

“material change” means, in relation to an investment fund,

- (a) a change in the business, operations or affairs of the investment fund that would be considered important by a reasonable investor in determining whether to purchase or continue to hold securities of the investment fund, or
- (b) a decision to implement a change referred to in paragraph (a) made
 - (i) by the board of directors of the investment fund or the board of directors of the manager of the investment fund or other persons acting in a similar capacity,
 - (ii) by senior management of the investment fund who believe that confirmation of the decision by the board of directors or such other persons acting in a similar capacity is probable, or
 - (iii) by senior management of the manager of the investment fund who believe that confirmation of the decision by the board of directors of the manager or such other persons acting in a similar capacity is probable;

“material contract” means, for an investment fund, a document that the investment fund would be required to list in an annual information form under Item 16 of Form 81-101F2 if the investment fund filed a simplified prospectus under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“mutual fund in the jurisdiction” means an incorporated or unincorporated mutual fund that is a reporting issuer in, or that is organized under the laws of, the local jurisdiction, but does not include a private mutual fund;

“National Instrument 51-102” means National Instrument 51-102 *Continuous Disclosure Obligations*;

“net asset value” means the current value of the total assets of the investment fund less the current value of the total liabilities of the investment fund, as at a specific date;

“non-redeemable investment fund” means an issuer,

- (a) whose primary purpose is to invest money provided by its securityholders,
- (b) that does not invest,
 - (i) for the purpose of exercising or seeking to exercise control of an issuer, other than an issuer that is a mutual fund or a non-redeemable investment fund, or
 - (ii) for the purpose of being actively involved in the management of any issuer in which it invests, other than an issuer that is a mutual fund or a non-redeemable investment fund, and
- (c) that is not a mutual fund;

“quarterly portfolio disclosure” means the disclosure prepared in accordance with Part 6;

“scholarship award” means any amount, other than a refund of contributions, that is paid or payable directly or indirectly to further the education of a beneficiary designated under an education savings plan;

“scholarship plan” means an arrangement under which contributions to education savings plans are pooled to provide scholarship awards to designated beneficiaries;

“transition year” means the financial year of an investment fund in which a change of year end occurs;

“VCC” means a venture capital corporation registered under Part 1 of the *Small Business Venture Capital Act* (British Columbia), R.S.B.C. 1996 c. 429 whose business objective is making multiple investments; and

“venture investment” means an investment in a private company or an investment made in accordance with the requirements of provincial labour sponsored or venture capital fund legislation or the ITA.

1.2 Application

- (1) Except as otherwise provided in this Instrument, this Instrument applies to
 - (a) an investment fund that is a reporting issuer; and
 - (b) subject to subsection (2), a mutual fund in the jurisdiction.
- (2) Despite paragraph (1)(b), in Alberta, British Columbia, Manitoba and Newfoundland and Labrador, this Instrument does not apply to a mutual fund that is not a reporting issuer.
- (3) In Saskatchewan, this Instrument does not apply to a Type B corporation within the meaning of *The Labour-sponsored Venture Capital Corporations Act* (Saskatchewan).
- (4) In Québec, this Instrument does not apply to a reporting issuer organized under
 - (a) an Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) R.S.Q., chapter F-3.2.1;
 - (b) an Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi (R.S.Q., chapter F-3.1.2); or
 - (c) an Act constituting Capital régional et coopératif Desjardins, Loi constituant Capital régional et coopératif Desjardins (R.S.Q., chapter C-6.1).

1.3 Interpretation

- (1) Each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund for the purposes of this Instrument.
- (2) Terms defined in National Instrument 81-102 *Mutual Funds*, Multilateral Instrument 81-104 *Commodity Pools* and National Instrument 81-105 *Mutual Fund Sales Practices* and used in this Instrument have the respective meanings ascribed to them in those Instruments except that references in those definitions to “mutual fund” must be read as references to “investment fund”.

1.4 Language of Documents

- (1) A document that is required to be filed under this Instrument must be prepared in French or English.
- (2) If an investment fund files a document in French or in English, and a translation of the document into the other language is sent to a securityholder, the investment fund must file the translated document not later than when it is sent to the securityholder.
- (3) In Québec, the linguistic obligations and rights prescribed by Québec law must be complied with.

PART 2 FINANCIAL STATEMENTS

2.1 Comparative Annual Financial Statements and Auditor's Report

- (1) An investment fund must file annual financial statements for the investment fund's most recently completed financial year that include
 - (a) a statement of net assets as at the end of that financial year and a statement of net assets as at the end of the immediately preceding financial year;
 - (b) a statement of operations for that financial year and a statement of operations for the immediately preceding financial year;
 - (c) statement of changes in net assets for that financial year and a statement of changes in net assets for the immediately preceding financial year;
 - (d) a statement of cashflows for that financial year and a statement of cashflows for the immediately preceding financial year, unless it is not required by Canadian GAAP;

- (e) a statement of investment portfolio as at the end of that financial year; and
 - (f) notes to the annual financial statements.
 - (2) Annual financial statements filed under subsection (1) must be accompanied by an auditor's report.
- 2.2 Filing Deadline for Annual Financial Statements** - The annual financial statements and auditor's report required to be filed under section 2.1 must be filed on or before the 90th day after the investment fund's most recently completed financial year.
- 2.3 Interim Financial Statements** - An investment fund must file interim financial statements for the investment fund's most recently completed interim period that include
- (a) a statement of net assets as at the end of that interim period and a statement of net assets as at the end of the immediately preceding financial year;
 - (b) a statement of operations for that interim period and a statement of operations for the corresponding period in the immediately preceding financial year;
 - (c) a statement of changes in net assets for that interim period and a statement of changes in net assets for the corresponding period in the immediately preceding financial year;
 - (d) a statement of cashflows for and as at the end of that interim period and a statement of cashflows for the corresponding period in the immediately preceding financial year, unless it is not required by Canadian GAAP;
 - (e) a statement of investment portfolio as at the end of that interim period; and
 - (f) notes to the interim financial statements.
- 2.4 Filing Deadline for Interim Financial Statements** - The interim financial statements required to be filed under section 2.3 must be filed on or before the 60th day after the end of the most recent interim period of the investment fund.
- 2.5 Approval of Financial Statements**
- (1) The board of directors of an investment fund that is a corporation must approve the financial statements of the investment fund before those financial statements are filed or made available to securityholders or potential purchasers of securities of the investment fund.
 - (2) The trustee or trustees of an investment fund that is a trust, or another person or company authorized to do so by the constating documents of the investment fund, must approve the financial statements of the investment fund, before those financial statements are filed or made available to securityholders or potential purchasers of securities of the investment fund.
- 2.6 Acceptable Accounting Principles** - The financial statements of an investment fund must be prepared in accordance with Canadian GAAP as applicable to public enterprises.
- 2.7 Acceptable Auditing Standards**
- (1) Financial statements that are required to be audited must be audited in accordance with Canadian GAAS.
 - (2) Audited financial statements must be accompanied by an auditor's report prepared in accordance with Canadian GAAS and the following requirements:
 - 1. The auditor's report must not contain a reservation.
 - 2. The auditor's report must identify all financial periods presented for which the auditor has issued an auditor's report.
 - 3. If the investment fund has changed its auditor and a comparative period presented in the financial statements was audited by a different auditor, the auditor's report must refer to the former auditor's report on the comparative period.

4. The auditor's report must identify the auditing standards used to conduct the audit and the accounting principles used to prepare the financial statements.

2.8 Acceptable Auditors - An auditor's report must be prepared and signed by a person or company that is authorized to sign an auditor's report by the laws of a jurisdiction of Canada, and that meets the professional standards of that jurisdiction.

2.9 Change in Year End

- (1) This section applies to an investment fund that is a reporting issuer.
- (2) Section 4.8 of National Instrument 51-102 applies to an investment fund that changes its financial year end, except that
 - (a) a reference to "interim period" must be read as "interim period" as defined in this Instrument;
 - (b) a requirement under National Instrument 51-102 to include specified financial statements must be read as a requirement to include the financial statements required under this Part; and
 - (c) a reference to "filing deadline" in subsection 4.8(2) of National Instrument 51-102 must be read as a reference to the filing deadlines provided for under section 2.2 and 2.4 of this Instrument.
- (3) Despite section 2.4, an investment fund is not required to file interim financial statements for any period in a transition year if the transition year is less than nine months in length.
- (4) Despite subsections 4.8(7) and (8) of National Instrument 51-102,
 - (a) for interim financial statements for an interim period in the transition year, the investment fund must include as comparative information
 - (i) a statement of net assets and a statement of investment portfolio as at the end of its old financial year; and
 - (ii) a statement of operations, a statement of changes in net assets, and, if applicable, a statement of cashflows, for the interim period of the old financial year;
 - (b) for interim financial statements for an interim period in a new financial year, the investment fund must include as comparative information
 - (i) a statement of net assets and a statement of investment portfolio as at the end of the transition year; and
 - (ii) a statement of operations, a statement of changes in net assets, and, if applicable, a statement of cashflows, for the period that is one year earlier than the interim period in the new financial year.

2.10 Change in Legal Structure - If an investment fund that is a reporting issuer is party to an amalgamation, arrangement, merger, winding-up, reorganization or other transaction that will result in

- (a) the investment fund ceasing to be a reporting issuer,
- (b) another entity becoming an investment fund,
- (c) a change in the investment fund's financial year end, or
- (d) a change in the name of the investment fund,

the investment fund must, as soon as practicable, and in any event not later than the deadline for the first filing required by this Instrument following the transaction, file a notice stating:

- (e) the names of the parties to the transaction;
- (f) a description of the transaction;

- (g) the effective date of the transaction;
- (h) if applicable, the names of each party that ceased to be a reporting issuer following the transaction and of each continuing entity;
- (i) if applicable, the date of the investment fund's first financial year end following the transaction; and
- (j) if applicable, the periods, including the comparative periods, if any, of the interim and annual financial statements required to be filed for the investment fund's first financial year following the transaction.

2.11 Filing Exemption for Mutual Funds that are Non-Reporting Issuers - A mutual fund that is not a reporting issuer is exempt from the filing requirements of section 2.1 for a financial year or section 2.3 for an interim period if

- (a) the mutual fund prepares the applicable financial statements in accordance with this Instrument;
- (b) the mutual fund delivers the financial statements to its securityholders in accordance with Part 5 within the same time periods as if the financial statements were required to be filed;
- (c) the mutual fund has advised the regulator or securities regulatory authority that it is relying on this exemption not to file its financial statements; and
- (d) the mutual fund has included in a note to the financial statements that it is relying on this exemption not to file its financial statements.

2.12 Disclosure of Auditor Review of Interim Financial Statements

- (1) This section applies to an investment fund that is a reporting issuer.
- (2) If an auditor has not performed a review of the interim financial statements required to be filed, the interim financial statements must be accompanied by a notice indicating that the interim financial statements have not been reviewed by an auditor.
- (3) If an investment fund engaged an auditor to perform a review of the interim financial statements required to be filed and the auditor was unable to complete the review, the interim financial statements must be accompanied by a notice indicating that the auditor was unable to complete a review of the interim financial statements and the reasons why.
- (4) If an auditor has performed a review of the interim financial statements required to be filed and the auditor has expressed a reservation in the auditor's interim review report, the interim financial statements must be accompanied by a written review report from the auditor.

PART 3 FINANCIAL DISCLOSURE REQUIREMENTS

3.1 Statement of Net Assets - The statement of net assets of an investment fund must disclose the following as separate line items, each shown at current value:

- 1. cash, term deposits and, if not included in the statement of investment portfolio, short term debt instruments.
- 2. investments.
- 3. accounts receivable relating to securities issued.
- 4. accounts receivable relating to portfolio assets sold.
- 5. accounts receivable relating to margin paid or deposited on futures or forward contracts.
- 6. amounts receivable or payable in respect of derivatives transactions, including premiums or discounts received or paid.
- 7. deposits with brokers for portfolio securities sold short.
- 8. accrued expenses.

9. accrued incentive arrangements or performance compensation.
10. portfolio securities sold short.
11. liabilities for securities redeemed.
12. liabilities for portfolio assets purchased.
13. income tax payable.
14. total net assets and securityholders' equity and, if applicable, for each class or series.
15. net asset value per security, or if applicable, per security of each class or series.

3.2 Statement of Operations - The statement of operations of an investment fund must disclose the following information as separate line items:

1. dividend revenue.
2. interest revenue.
3. income from derivatives.
4. revenue from securities lending.
5. management fees, excluding incentive or performance fees.
6. incentive or performance fees.
7. audit fees.
8. directors' or trustees' fees.
9. custodial fees.
10. legal fees.
11. securityholder reporting costs.
12. capital tax.
13. amounts that would otherwise have been payable by the investment fund that were waived or paid by the manager or a portfolio adviser of the investment fund.
14. provision for income tax.
15. net investment income or loss for the period.
16. realized gains or losses.
17. unrealized gains or losses.
18. increase or decrease in net assets from operations and, if applicable, for each class or series.
19. increase or decrease in net assets from operations per security or, if applicable, per security of each class or series.

3.3 Statement of Changes in Net Assets - The statement of changes in net assets of an investment fund must disclose, for each class or series, the following as separate line items:

1. net assets at the beginning of the period to which the statement applies.
2. increase or decrease in net assets from operations.

3. proceeds from the issuance of securities of the investment fund.
4. aggregate amounts paid on redemption of securities of the investment fund.
5. securities issued on reinvestment of distributions.
6. distributions, showing separately the amount distributed out of net investment income and out of realized gains on portfolio assets sold, and return of capital.
7. net assets at the end of the period reported upon.

3.4 Statement of Cashflows - The statement of cashflows of an investment fund must disclose the following as separate line items:

1. net investment income or loss.
2. proceeds of disposition of portfolio assets.
3. purchase of portfolio assets.
4. proceeds from the issuance of securities of the investment fund.
5. aggregate amounts paid on redemption of securities of the investment fund.
6. compensation paid in respect of the sale of securities of the investment fund.

3.5 Statement of Investment Portfolio

- (1) The statement of investment portfolio of an investment fund must disclose the following for each portfolio asset held or sold short:
 1. the name of the issuer of the portfolio asset.
 2. a description of the portfolio asset, including
 - (a) for an equity security, the name of the class of the security.
 - (b) for a debt instrument not included in paragraph (c), all characteristics commonly used commercially to identify the instrument, including the name of the instrument, the interest rate of the instrument, the maturity date of the instrument, whether the instrument is convertible or exchangeable and, if used to identify the instrument, the priority of the instrument.
 - (c) for a debt instrument referred to in the definition of "money market fund" in National Instrument 81-102 *Mutual Funds*, the name, interest rate and maturity date of the instrument.
 - (d) for a portfolio asset not referred to in paragraph (a), (b) or (c), the name of the portfolio asset and the material terms and conditions of the portfolio asset commonly used commercially in describing the portfolio asset.
 3. the number or aggregate face value of the portfolio asset.
 4. the cost of the portfolio asset.
 5. the current value of the portfolio asset.
- (2) For the purposes of subsection (1), disclosure for a long portfolio must be segregated from the disclosure for a short portfolio.
- (3) For the purposes of subsection (1) and subject to subsection (2), disclosure must be aggregated for portfolio assets having the same description and issuer.

- (4) Despite subsection (1) and (3) and subject to subsection (2), the information referred to in subsection (1) may be provided in the aggregate for those short term debt instruments that
- (a) are issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada) or a loan corporation or trust corporation registered under the laws of a jurisdiction, or
 - (b) have achieved an investment rating within the highest or next highest categories of ratings of each approved credit rating organization.
- (5) If an investment fund discloses short term debt instruments as permitted by subsection (4), the investment fund must disclose separately the aggregate short term debt instruments denominated in any currency if the aggregate exceeds 5% of the total short term debt.
- (6) If an investment fund holds positions in derivatives, the investment fund must disclose in the statement of investment portfolio or the notes to that statement,
- (a) for long and short positions in options,
 - (i) the quantity of the underlying interest, the number of options, the underlying interest, the strike price, the expiration month and year, the cost and the current value, and
 - (ii) if the underlying interest is a future, information about the future in accordance with subparagraph (i);
 - (b) for positions in futures and forwards, the number of futures and forwards, the underlying interest, the price at which the contract was entered into, the delivery month and year and the current value;
 - (c) for positions in swaps, the number of swap contracts, the underlying interest, the principal or notional amount, the payment dates, and the current value; and
 - (d) if a rating of a counterparty has fallen below the approved credit rating level.
- (7) If applicable, the statement of investment portfolio included in the financial statements of the investment fund, or the notes to the statement of investment portfolio, must identify the underlying interest that is being hedged by each position taken by the investment fund in a derivative.
- (8) An investment fund may omit the information required by subsection (1) about mortgages from a statement of investment portfolio if the statement of investment portfolio discloses
- (a) the total number of mortgages held;
 - (b) the aggregate current value of mortgages held;
 - (c) a breakdown of mortgages, by reference to number and current value among mortgages insured under the *National Housing Act* (Canada), insured conventional mortgages and uninsured conventional mortgages
 - (d) a breakdown of mortgages, by reference to number and current value, among mortgages that are pre-payable and those that are not pre-payable; and
 - (e) a breakdown of mortgages, by reference to number, current value, amortized cost and outstanding principal value, among groups of mortgages having contractual interest rates varying by no more than one quarter of one percent.
- (9) An investment fund must maintain records of all portfolio transactions undertaken by the investment fund.

3.6 Notes to Financial Statements

- (1) The notes to the financial statements of an investment fund must disclose the following:
- 1. the basis for determining current value and cost of portfolio assets and, if a method of determining cost other than by reference to the average cost of the portfolio assets is used, the method used.

2. if the investment fund has outstanding more than one class or series of securities ranking equally against its net assets, but differing in other respects,
 - (a) the number of authorized securities of each class or series;
 - (b) the number of securities of each class or series that have been issued and are outstanding;
 - (c) the differences between the classes or series, including differences in sales charges, and management fees;
 - (d) the method used to allocate income and expenses, and realized and unrealized capital gains and losses, to each class;
 - (e) the fee arrangements for any class-level expenses paid to affiliates; and
 - (f) transactions involving the issue or redemption of securities of the investment fund undertaken in the period for each class of securities to which the financial statements pertain.
 3.
 - (a) total commissions and other transaction costs paid or payable to dealers by the investment fund for its portfolio transactions during the period reported upon; and
 - (b) to the extent the amount is ascertainable, separate disclosure of the soft dollar portion of these payments, where the soft dollar portion is the amount paid or payable for goods and services other than order execution.
 4. the total cost of distribution of the investment fund's securities recorded in the statement of changes in net assets.
- (2) If not disclosed elsewhere in the financial statements, an investment fund that borrows money must, in a note to the financial statements, disclose the minimum and maximum amount borrowed during the period to which the financial statements or management report of fund performance pertain.

3.7 Inapplicable Line Items - Despite the requirements of this Part, an investment fund may omit a line item from the financial statements for any matter that does not apply to the investment fund or for which the investment fund has nothing to disclose.

3.8 Disclosure of Securities Lending Transactions

- (1) An investment fund must disclose, in the statement of investment portfolio included in the financial statements of the investment fund, or in the notes to the financial statements,
 - (a) the aggregate dollar value of portfolio securities that were lent in the securities lending transactions of the investment fund that are outstanding as at the date of the financial statements; and
 - (b) the type and aggregate amount of collateral received by the investment fund under securities lending transactions of the investment fund that are outstanding as at the date of the financial statements.
- (2) The statement of net assets of an investment fund that has received cash collateral from a securities lending transaction that is outstanding as of the date of the financial statements must disclose separately
 - (a) the cash collateral received by the investment fund; and
 - (b) the obligation to repay the cash collateral.
- (3) The statement of operations of an investment fund must disclose income from a securities lending transaction as revenue.

3.9 Disclosure of Repurchase Transactions

- (1) An investment fund, in the statement of investment portfolio included in the financial statements of the investment fund, or in the notes to that statement, must, for a repurchase transaction of the investment fund that is outstanding as at the date of the statement, disclose
 - (a) the date of the transaction;
 - (b) the expiration date of the transaction;
 - (c) the nature and current value of the portfolio securities sold by the investment fund;
 - (d) the amount of cash received and the repurchase price to be paid by the investment fund; and
 - (e) the current value of the sold portfolio securities as at the date of the statement.
- (2) The statement of net assets of an investment fund that has entered into a repurchase transaction that is outstanding as of the date of the statement of net assets must disclose separately the obligation of the investment fund to repay the collateral.
- (3) The statement of operations of an investment fund must disclose income from the use of the cash received on a repurchase transaction as revenue.
- (4) The information required by this section may be presented on an aggregate basis.

3.10 Disclosure of Reverse Repurchase Transactions

- (1) An investment fund, in the statement of investment portfolio or in the notes to that statement, must, for a reverse repurchase transaction of the investment fund that is outstanding as at the date of the statement, disclose
 - (a) the date of the transaction;
 - (b) the expiration date of the transaction;
 - (c) the total dollar amount paid by the investment fund;
 - (d) the nature and current value or principal amount of the portfolio securities received by the investment fund; and
 - (e) the current value of the purchased portfolio securities as at the date of the statement.
- (2) The statement of net assets of an investment fund that has entered into a reverse repurchase transaction that is outstanding as of the date of the financial statements must disclose separately the reverse repurchase agreement relating to the transaction at current value.
- (3) The statement of operations of an investment fund must disclose income from a reverse repurchase transaction as revenue.
- (4) The information required by this section may be presented on an aggregate basis.

3.11 Scholarship Plans

- (1) In addition to the requirements of this Part, an investment fund that is a scholarship plan must disclose, as of the end of its most recently completed financial year, a separate statement or schedule to the financial statements that provides
 - (a) a summary of education savings plans and units outstanding by year of eligibility, including
 - (i) disclosure of the number of units by year of eligibility for the opening units, units purchased, units forfeited and the ending units,

- (ii) disclosure of the principal amounts and the accumulated income per year of eligibility, and their total balances, and
 - (ii) a reconciliation of the total balances of the principal amounts and the accumulated income in the statement or schedule to the statement of net assets of the scholarship plan;
 - (b) the total number of units outstanding; and
 - (c) a statement of scholarship awards paid to beneficiaries, and a reconciliation of the amount of scholarship awards paid with the statement of operations.
- (2) Despite the requirements of sections 3.1 and 3.2, an investment fund that is a scholarship plan may omit the “net asset value per security” and “increase or decrease in net assets from operations per security” line items from its financial statements.

PART 4 MANAGEMENT REPORTS OF FUND PERFORMANCE

4.1 Application - This Part applies to an investment fund that is a reporting issuer.

4.2 Filing of Management Reports of Fund Performance - An investment fund, other than an investment fund that is a scholarship plan, must file an annual management report of fund performance for each financial year and an interim management report of fund performance for each interim period at the same time that it files its annual financial statements or its interim financial statements for that financial period.

4.3 Filing of Annual Management Report of Fund Performance for an Investment Fund that is a Scholarship Plan - An investment fund that is a scholarship plan must file an annual management report of fund performance for each financial year at the same time that it files its annual financial statements.

4.4 Contents of Management Reports of Fund Performance - A management report of fund performance required by this Part must

- (a) be prepared in accordance with Form 81-106F1; and
- (b) not incorporate by reference information from any other document that is required to be included in a management report of fund performance.

4.5 Approval of Management Reports of Fund Performance

- (1) The board of directors of an investment fund that is a corporation must approve the management report of fund performance of the investment fund before the report is filed or made available to a holder or potential purchaser of securities of the investment fund.
- (2) The trustee or trustees of an investment fund that is a trust, or another person or company authorized to do so by the constating documents of the investment fund, must approve the management report of fund performance of the investment fund before the report is filed or made available to a holder or potential purchaser of securities of the investment fund.

PART 5 DELIVERY OF FINANCIAL STATEMENTS AND MANAGEMENT REPORTS OF FUND PERFORMANCE

5.1 Delivery of Certain Continuous Disclosure Documents

- (1) In this Part, “securityholder” means a registered holder or beneficial owner of securities issued by an investment fund.
- (2) Subject to section 5.2 or section 5.3, an investment fund must send to a securityholder, by the filing deadline for the document, the following:
 - (a) annual financial statements;
 - (b) interim financial statements;
 - (c) if required to be prepared by the investment fund, the annual management report of fund performance;

- (d) if required to be prepared by the investment fund, the interim management report of fund performance.
- (3) An investment fund must apply the procedures set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* when complying with this Part.
- (4) Despite subsection (3), National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* does not apply to an investment fund with respect to a requirement under this Part if the investment fund has the necessary information to communicate directly with a beneficial owner of its securities.

5.2 Sending According to Standing Instructions

- (1) Subsection 5.1(2) does not apply to an investment fund that requests standing instructions from a securityholder in accordance with this section and sends the documents listed in subsection 5.1(2) according to those instructions.
- (2) An investment fund relying on subsection 5.2(1) must send, to each securityholder, a document that
 - (a) explains the choices a securityholder has to receive the documents listed in subsection 5.1(2);
 - (b) solicits instructions from the securityholder about delivery of those documents; and
 - (c) explains that the instructions provided by the securityholder will continue to be followed by the investment fund until they are changed by the securityholder.
- (3) If a person or company becomes a securityholder of an investment fund, the investment fund must solicit instructions in accordance with subsection (2) from the securityholder as soon as reasonably practicable after the investment fund accepts a purchase order from the securityholder.
- (4) An investment fund must rely on instructions given under this section until a securityholder changes them.
- (5) At least once a year, an investment fund must send each securityholder a reminder that
 - (a) the securityholder is entitled to receive the documents listed in subsection 5.1(2);
 - (b) the investment fund is relying on delivery instructions provided by the securityholder;
 - (c) explains how a securityholder can change the instructions it has given; and
 - (d) the securityholder can obtain the documents on the SEDAR website and on the investment fund's website, if applicable, and by contacting the investment fund.

5.3 Sending According to Annual Instructions

- (1) Subsection 5.1(2) does not apply to an investment fund that requests annual instructions from a securityholder in accordance with this section and sends the documents listed in subsection 5.1(2) according to those instructions.
- (2) Subsection (1) does not apply to an investment fund that has previously relied on subsection 5.2(1).
- (3) An investment fund relying on subsection 5.3(1) must send annually to each securityholder a request form the securityholder may use to instruct the investment fund as to which of the documents listed in subsection 5.1(2) the securityholder wishes to receive.
- (4) The request form described in subsection (3) must be accompanied by a notice explaining that
 - (a) the securityholder is providing delivery instructions for the current year only; and
 - (b) the documents are available on the SEDAR website and on the investment fund's website, if applicable, and by contacting the investment fund.

5.4 General

- (1) If a securityholder requests any of the documents listed in subsection 5.1(2), an investment fund must send a copy of the requested documents by the later of
 - (a) the filing deadline for the requested document; and
 - (b) ten calendar days after the investment fund receives the request.
- (2) An investment fund must not charge a fee for sending the documents referred to in this Part and must ensure that securityholders can respond without cost to the solicitations of instructions required by this Part.
- (3) Investment funds under common management may solicit one set of delivery instructions from a securityholder that will apply to all of the investment funds under common management held by that securityholder.
- (4) Despite subsection 7.1(3), for the purposes of delivery to a securityholder, an investment fund may bind its management report of fund performance with the management report of fund performance for one or more other investment funds if the securityholder holds each investment fund.

5.5 Websites - An investment fund that is a reporting issuer and that has a website must post to the website any documents listed in subsection 5.1(2) no later than the date that those documents are filed.

PART 6 QUARTERLY PORTFOLIO DISCLOSURE

6.1 Application - This Part applies to an investment fund that is a reporting issuer, other than a scholarship plan or a labour sponsored or venture capital fund.

6.2 Preparation and Dissemination

- (1) An investment fund must prepare quarterly portfolio disclosure that includes
 - (a) a summary of investment portfolio prepared in accordance with Item 5 of Part B of Form 81-106F1 as at the end of
 - (i) each period of at least three months that ends three or nine months before the end of a financial year of the investment fund; or
 - (ii) in the case of a transition year of the investment fund, each period commencing on the first day of the transition year and ending either three, nine or twelve months, if applicable, after the end of its old financial year; and
 - (b) the total net asset value of the investment fund as at the end of the periods specified in (a)(i) or (ii).
- (2) An investment fund that has a website must post to the website the quarterly portfolio disclosure within 60 days of the end of the period for which the quarterly portfolio disclosure was prepared.
- (3) An investment fund must promptly send the most recent quarterly portfolio disclosure, without charge, to any securityholder of the investment fund, upon a request made by the securityholder 60 days after the end of the period to which the quarterly portfolio disclosure pertains.

PART 7 BINDING AND PRESENTATION**7.1 Binding of Financial Statements and Management Reports of Fund Performance**

- (1) An investment fund must not bind its financial statements with the financial statements of another investment fund in a document unless all information relating to the investment fund is presented together and not intermingled with information relating to the other investment fund.
- (2) Despite subsection (1), if a document contains the financial statements of more than one investment fund, the notes to the financial statements may be combined and presented in a separate part of the document.

- (3) An investment fund must not bind its management report of fund performance with the management report of fund performance for another investment fund.

7.2 Multiple Class Investment Funds

- (1) An investment fund that has more than one class or series of securities outstanding that are referable to a single portfolio must prepare financial statements and management reports of fund performance that contain information concerning all of the classes or series.
- (2) If an investment fund has more than one class or series of securities outstanding, the distinctions between the classes or series must be disclosed in the financial statements and management reports of fund performance.

PART 8 INDEPENDENT VALUATIONS FOR LABOUR SPONSORED OR VENTURE CAPITAL FUNDS

8.1 Application - This Part applies to a labour sponsored or venture capital fund that is a reporting issuer.

8.2 Exemption from Requirement to Disclose Individual Current Values for Venture Investments - Despite item 5 of subsection 3.5(1), a labour sponsored or venture capital fund is exempt from the requirement to present separately in a statement of investment portfolio the current value of each venture investment that does not have a market value if

- (a) the labour sponsored or venture capital fund discloses in the statement of investment portfolio
 - (i) the cost amounts for each venture investment,
 - (ii) the total cost of the venture investments,
 - (iii) the total adjustment from cost to current value of the venture investments, and
 - (iv) the total current value of the venture investments;
- (b) the labour sponsored or venture capital fund discloses in the statement of investment portfolio tables showing the distribution of venture investments by stage of development and by industry classification including
 - (i) the number of venture investments in each stage of development and industry class,
 - (ii) the total cost and aggregate current value of the venture investments for each stage of development and industry class, and
 - (iii) the total cost and aggregate current value of venture investments for each stage of development and industry class as a percentage of total venture investments;
- (c) for a statement of investment portfolio contained in annual financial statements, the labour sponsored or venture capital fund has obtained an independent valuation relating to the value of the venture investments or to the net asset value of the fund and has filed the independent valuation concurrently with the filing of the annual financial statements;
- (d) for a statement of investment portfolio contained in interim financial statements, the labour sponsored or venture capital fund obtained and filed the independent valuation referred to in paragraph (c) in connection with the preparation of the most recent annual financial statements of the labour sponsored or venture capital fund; and
- (e) the labour sponsored or venture capital fund has disclosed in the applicable financial statements that an independent valuation has been obtained as of the end of the applicable financial year.

8.3 Disclosure Concerning Independent Valuator - A labour sponsored or venture capital fund that obtains an independent valuation must include, in the statement of investment portfolio contained in its annual financial statements, or in the notes to the annual financial statements,

- (a) a description of the independent valuator's qualifications, and
- (b) a description of any past, present or anticipated relationship between the independent valuator and the labour sponsored or venture capital fund, its manager or portfolio adviser.

8.4 Content of Independent Valuation - An independent valuation must provide the aggregate current value of the venture investments or the net asset value of the labour sponsored or venture capital fund as at the fund's financial year end.

8.5 Independent Valuator's Consent - A labour sponsored or venture capital fund obtaining an independent valuation must

- (a) obtain the independent valuator's consent to its filing; and
- (b) include a statement in the valuation report, signed by the independent valuator, in substantially the following form:

"We refer to the independent valuation of the [net assets/venture investments] of [name of labour sponsored or venture capital fund] as of [date of financial year end] dated •. We consent to the filing of the independent valuation with the securities regulatory authorities."

PART 9 ANNUAL INFORMATION FORM

9.1 Application - This Part applies to an investment fund that is a reporting issuer.

9.2 Requirement to File Annual Information Form - An investment fund must file an annual information form if the investment fund does not have a current prospectus as at its financial year end.

9.3 Filing Deadline for Annual Information Form - An investment fund required under section 9.2 to file an annual information form must file the annual information form no later than 90 days after the end of its most recently completed financial year.

9.4 Preparation and Content of Annual Information Form

- (1) An annual information form required to be filed under section 9.2 must be prepared as of the end of the most recently completed financial year of the investment fund to which it pertains.
- (2) An annual information form required to be filed must be prepared in accordance with Form 81-101F2, except that
 - (a) a reference to "mutual fund" must be read as a reference to "investment fund";
 - (b) General Instructions (3), (10) and (14) of Form 81-101F2 do not apply;
 - (c) subsections (3), (4) and (6) of Item 1.1 of Form 81-101F2 do not apply;
 - (d) subsections (3), (4) and (6) of Item 1.2 of Form 81-101F2 do not apply;
 - (e) Item 5 of Form 81-101F2 must be completed in connection with all of the securities of the investment fund;
 - (f) Item 15 of Form 81-101F2 does not apply to an investment fund that is a corporation; and
 - (g) Items 19, 20, 21 and 22 of Form 81-101F2 do not apply.
- (3) An investment fund required to file an annual information form must at the same time file copies of all material incorporated by reference in the annual information form that it has not previously filed.

PART 10 PROXY VOTING DISCLOSURE FOR PORTFOLIO SECURITIES HELD

10.1 Application - This Part applies to an investment fund that is a reporting issuer.

10.2 Requirement to Establish Policies and Procedures

- (1) An investment fund must establish policies and procedures that it will follow to determine whether, and how, to vote on any matter for which the investment fund receives, in its capacity as securityholder, proxy materials for a meeting of securityholders of an issuer.

- (2) The policies and procedures referred to in subsection (1) must include
 - (a) a standing policy for dealing with routine matters on which the investment fund may vote;
 - (b) the circumstances under which the investment fund will deviate from the standing policy for routine matters;
 - (c) the policies under which, and the procedures by which, the investment fund will determine how to vote or refrain from voting on non-routine matters; and
 - (d) procedures to ensure that portfolio securities held by the investment fund are voted in accordance with the instructions of the investment fund.
- (3) An investment fund that has not prepared an annual information form in accordance with Part 9 or in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* must include a summary of the policies and procedures required by this section in its prospectus.

10.3 Proxy Voting Record - An investment fund must maintain a proxy voting record that includes, for each time that the investment fund receives, in its capacity as securityholder, materials relating to a meeting of securityholders of a reporting issuer,

- (a) the name of the issuer;
- (b) the exchange ticker symbol of the portfolio securities, unless not readily available to the investment fund;
- (c) the CUSIP number for the portfolio securities;
- (d) the meeting date;
- (e) a brief identification of the matter or matters to be voted on at the meeting;
- (f) whether the matter or matters voted on were proposed by the issuer, its management or another person or company;
- (g) whether the investment fund voted on the matter or matters;
- (h) if applicable, how the investment fund voted on the matter or matters; and
- (i) whether votes cast by the investment fund were for or against the recommendations of management of the issuer.

10.4 Preparation and Availability of Proxy Voting Record

- (1) An investment fund must prepare a proxy voting record on an annual basis for the period ending on June 30 of each year.
- (2) An investment fund that has a website must post the proxy voting record to the website no later than August 31 of each year.
- (3) An investment fund must promptly send the most recent copy of the investment fund's proxy voting policies and procedures and proxy voting record, without charge, to any securityholder upon a request made by the securityholder after August 31.

PART 11 MATERIAL CHANGE REPORTS

11.1 Application - This Part applies to an investment fund that is a reporting issuer.

11.2 Publication of Material Change

- (1) If a material change occurs in the affairs of an investment fund, the investment fund must

- (a) promptly issue and file a news release that is authorized by an executive officer of the manager of the investment fund and that discloses the nature and substance of the material change;
 - (b) post all disclosure made under paragraph (a) on the website of the investment fund or the investment fund manager;
 - (c) as soon as practicable, but in any event no later than 10 days after the date on which the change occurs, file a report containing the information required by Form 51-102F3, except that a reference in Form 51-102F3 to
 - (i) the term “material change” must be read as “material change” under this Instrument;
 - (ii) “section 7.1 of National Instrument 51-102” in Item 3 of Part 2 must be read as a reference to “section 11.2 of National Instrument 81-106”;
 - (iii) “subsection 7.1(2) or (3) of National Instrument 51-102” in Item 6 of Part 2 must be read as a reference to “subsection 11.2(2) or (3) of National Instrument 81-106”;
 - (iv) “subsection 7.1(5) of National Instrument 51-102” in Items 6 and 7 of Part 2 must be read as a reference to “subsection 11.2(4) of National Instrument 81-106”; and
 - (v) “executive officer of your company” in Item 8 of Part 2 must be read as a reference to “officer of the investment fund or of the manager of the investment fund”; and
 - (d) file an amendment to its prospectus or simplified prospectus that discloses the material change in accordance with the requirements of securities legislation.
- (2) If
- (a) in the opinion of the board of directors or trustee of an investment fund or the manager, and if that opinion is arrived at in a reasonable manner, the disclosure required by subsection (1) would be unduly detrimental to the investment fund’s interest; or
 - (b) the material change
 - (i) consists of a decision to implement a change made by senior management of the investment fund or senior management of the manager of the investment fund who believe that confirmation of the decision by the board of directors or persons acting in a similar capacity is probable; and
 - (ii) senior management of the investment fund or senior management of the manager of the investment fund has no reason to believe that persons with knowledge of the material change have made use of that knowledge in purchasing or selling securities of the investment fund,the investment fund may, instead of complying with subsection (1), immediately file the report required under paragraph (1)(c) marked to indicate that it is confidential, together with written reasons for non-disclosure.
- (3) Subsection (1) does not apply to an investment fund in Québec if
- (a) senior management of the investment fund has reasonable grounds to believe that disclosure as required by subsection (1) would be seriously prejudicial to the interests of the investment fund and that no transaction in securities of the investment fund has been or will be carried out on the basis of the information not generally known;
 - (b) the investment fund immediately files the report required under paragraph (1)(c) marked so as to indicate that it is confidential, together with written reasons for non-disclosure; and
 - (c) the investment fund complies with subsection (1) when the circumstances that justify non-disclosure cease to exist.
- (4) If a report has been filed under subsection (2), the investment fund must advise the regulator or securities regulatory authority in writing within ten days of the initial filing of the report if it believes the report should

continue to remain confidential and every 10 days thereafter until the material change is generally disclosed in the manner referred to in subsection (1) or, if the material change consists of a decision of the type referred to in paragraph (2)(b), until that decision has been rejected by the board of directors of the investment fund or the board of directors of the manager of the investment fund.

- (5) Despite filing a report under subsection (2), an investment fund must promptly and generally disclose the material change in the manner referred to in subsection (1) upon the investment fund becoming aware, or having reasonable grounds to believe, that a person or company is purchasing or selling securities of the investment fund with knowledge of the material change that has not been generally disclosed.

PART 12 PROXY SOLICITATION AND INFORMATION CIRCULARS

12.1 Application - This Part applies to an investment fund that is a reporting issuer.

12.2 Sending of Proxies and Information Circulars

- (1) If management of an investment fund or the manager of an investment fund gives or intends to give notice of a meeting to registered holders of the investment fund, management or the manager must, at the same time as or before giving that notice, send to each registered holder who is entitled to notice of the meeting a form of proxy for use at the meeting.
- (2) A person or company that solicits proxies from registered holders of an investment fund must
 - (a) in the case of a solicitation by or on behalf of management of the investment fund, send with the notice of meeting to each registered holder whose proxy is solicited a completed Form 51-102F5; or
 - (b) in the case of a solicitation by or on behalf of any person or company other than management of the investment fund, at the same time as or before the solicitation, send a completed Form 51-102F5 and a form of proxy to each registered holder whose proxy is solicited.
- (3) In Québec, subsections (1) and (2) apply, adapted as required, to a meeting of holders of debt securities of an investment fund that is a reporting issuer in Québec, whether called by management of the investment fund or by the trustee of the debt securities.

12.3 Exemption

- (1) Subsection 12.2(2) does not apply to a solicitation by a person or company in respect of securities of which the person or company is the beneficial owner.
- (2) Paragraph 12.2(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15.
- (3) For the purposes of subsection (2), two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.

12.4 Compliance with National Instrument 51-102 - A person or company that solicits proxies under section 12.2 must comply with sections 9.3 and 9.4 of National Instrument 51-102 as if those sections applied to the person or company.

PART 13 CHANGE OF AUDITOR DISCLOSURE

13.1 Application - This Part applies to an investment fund that is a reporting issuer.

13.2 Change of Auditor - Section 4.11 of National Instrument 51-102 applies to an investment fund that changes its auditor, except that references in that section to the "board of directors" are to be read as references to,

- (a) if the investment fund is a corporation, the "board of directors of the investment fund", or
- (b) if the investment fund is a trust, the "trustee or trustees or another person or company authorized by the constating documents of the investment fund".

PART 14 CALCULATION OF NET ASSET VALUE

14.1 Application - This Part applies to an investment fund that is a reporting issuer.

14.2 Calculation, Frequency and Currency

- (1) The net asset value of an investment fund must be calculated in accordance with Canadian GAAP.
- (2) Despite subsection (1), for the purposes of calculating net asset value for purchases and redemptions of its securities as required by Parts 9 and 10 of National Instrument 81-102 *Mutual Funds*, a labour sponsored or venture capital fund that has included a deferred charge for sales commissions in the calculation may continue to do so, provided that
 - (a) the calculation reflects the amortization of this deferred charge over the remaining amortization period, and
 - (b) the labour sponsored or venture capital fund ceased adding to this deferred charge by December 31, 2003.
- (3) The net asset value of an investment fund must be calculated,
 - (a) if the investment fund does not use specified derivatives, at least once in each week; or
 - (b) if the investment fund uses specified derivatives, at least once every business day.
- (4) A mutual fund that holds securities of other mutual funds must have dates for the calculation of net asset value that are compatible with those of the other mutual funds.
- (5) Despite subsection (3), an investment fund that, at the date that this Instrument comes into force, calculates net asset value no less frequently than once a month may continue to calculate net asset value at least as frequently as it does at that date.
- (6) The net asset value of an investment fund must be calculated in the currency of Canada or in the currency of the United States of America or both.
- (7) An investment fund that arranges for the publication of its net asset value in the financial press must ensure that its current net asset value is provided on a timely basis to the financial press.

14.3 Portfolio Transactions - The net asset value of an investment fund must include each purchase or sale of a portfolio asset no later than in the next calculation of the net asset value after the date the purchase or sale becomes binding.

14.4 Capital Transactions - The investment fund must include each issue or redemption of a security of the investment fund in the next calculation of net asset value the investment fund makes after the calculation of net asset value used to establish the issue or redemption price.

PART 15 CALCULATION OF MANAGEMENT EXPENSE RATIO**15.1 Calculation of Management Expense Ratio**

- (1) An investment fund may disclose its management expense ratio only if the management expense ratio is calculated for the financial year or interim period of the investment fund and if it is calculated by
 - (a) dividing
 - (i) the aggregate of
 - (A) total expenses of the investment fund, before income taxes, for the financial year or interim period, as shown on its statement of operations; and
 - (B) any other fee, charge or expense of the investment fund that has the effect of reducing the investment fund's net asset value;
- by

- (ii) the average net asset value of the investment fund for the financial year or interim period, obtained by
 - (A) adding together the net asset values of the investment fund as at the close of business of the investment fund on each day during the financial year or interim period on which the net asset value of the investment fund has been calculated, and
 - (B) dividing the amount obtained under clause (A) by the number of days during the financial year or interim period on which the net asset value of the investment fund has been calculated; and
 - (b) multiplying the result obtained under paragraph (a) by 100.
- (2) If any fees and expenses otherwise payable by an investment fund in a financial year or interim period were waived or otherwise absorbed by a member of the organization of the investment fund, the investment fund must disclose, in a note to the disclosure of its management expense ratio, details of
 - (a) what the management expense ratio would have been without any waivers or absorptions;
 - (b) the length of time that the waiver or absorption is expected to continue;
 - (c) whether the waiver or absorption can be terminated at any time by the member of the organization of the investment fund; and
 - (d) any other arrangements concerning the waiver or absorption.
- (3) Investment fund expenses rebated by a manager or an investment fund to a securityholder must not be deducted from total expenses of the investment fund in determining the management expense ratio of the investment fund.
- (4) An investment fund that has separate classes or series of securities must calculate a management expense ratio for each class or series, in the manner required by this section, modified as appropriate.
- (5) The management expense ratio of an investment fund for a financial period of less than or greater than twelve months must be annualized.
- (6) If an investment fund provides its management expense ratio to a service provider that will arrange for public dissemination of the management expense ratio,
 - (a) the investment fund must provide the management expense ratio calculated in accordance with this Part; and
 - (b) the requirement to provide note disclosure contained in subsection (2) does not apply if the investment fund indicates, as applicable, that fees have been waived, expenses have been absorbed, or that fees or expenses were paid directly by investors during the period for which the management expense ratio was calculated.

15.2 Fund of Funds Calculation

- (1) For the purposes of subparagraph 15.1(1)(a)(i), the total expenses for a financial year or interim period of an investment fund that invests in securities of other investment funds is equal to the sum of
 - (a) the total expenses incurred by the investment fund that are for the period for which the calculation of the management expense ratio is made and that are attributable to its investment in each underlying investment fund, as calculated by
 - (i) multiplying the total expenses of each underlying investment fund before income taxes for the financial year or interim period, by
 - (ii) the average proportion of securities of the underlying investment fund held by the investment fund during the financial year or interim period, calculated by

- (A) adding together the proportion of securities of the underlying investment fund held by the investment fund on each day in the period, and
 - (B) dividing the amount obtained under clause (A) by the number of days in the period; and
- (b) the total expenses of the investment fund, before income taxes, for the period.
- (2) An investment fund that has exposure to one or more other investment funds through the use of derivatives in a financial year or interim period must calculate its management expense ratio for the financial year or interim period in the manner described in subsection (1), treating each investment fund to which it has exposure as an “underlying investment fund” under subsection (1).
 - (3) Subsection (2) does not apply if the derivatives do not expose the investment fund to expenses that would be incurred by a direct investment in the relevant investment funds.
 - (4) Management fees rebated by an underlying fund to an investment fund that invests in the underlying fund must be deducted from total expenses of the underlying fund if the rebate is made for the purpose of avoiding duplication of fees between the two investment funds.

PART 16 ADDITIONAL FILING REQUIREMENTS

- 16.1 Application** - This Part applies to an investment fund that is a reporting issuer.
- 16.2 Additional Filing Requirements** - If an investment fund sends to its securityholders any disclosure document other than those required by this Instrument, the investment fund must file a copy of the document on the same date as, or as soon as practicable after, the date on which the document is sent to its securityholders.
- 16.3 Voting Result** - An investment fund must, promptly following a meeting of securityholders at which a matter was submitted to a vote, file a report that discloses, for each matter voted upon
- (a) a brief description of the matter voted upon and the outcome of the vote; and
 - (b) if the vote was conducted by ballot, the number and percentage of votes cast, which includes votes cast in person and by proxy, for, against, or withheld from, each vote.
- 16.4 Filing of Material Contracts** - An investment fund that is not subject to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, or securities legislation that imposes a similar requirement, must file a copy of any material contract of the investment fund not previously filed, or any amendment to any material contract of the investment fund not previously filed
- (a) with the final prospectus of the investment fund; or
 - (b) upon the execution of the material contract or amendment.

PART 17 EXEMPTIONS

- 17.1 Exemption**
- (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
 - (2) Despite subsection (1), in Ontario only the regulator may grant an exemption from any part of this Instrument.

PART 18 EFFECTIVE DATE AND TRANSITION

- 18.1 Effective Date** - This Instrument comes into force on June 1, 2005.
- 18.2 Transition** - Despite section 18.1, this Instrument applies to
- (a) annual financial statements and annual management reports of fund performance for financial years that end on or after June 30, 2005;

- (b) for investment funds in existence on June 1, 2005, interim financial statements and interim management reports of fund performance for interim periods that end after the financial years determined in paragraph (a);
- (c) quarterly portfolio disclosure for periods that end on or after June 1, 2005;
- (d) annual information forms for financial years ending on or after June 30, 2005;
- (e) proxy voting records for the annual period beginning July 1, 2005; and
- (f) proxy solicitation and information circulars from and after July 1, 2005.

18.3 Filing of Financial Statements and Management Reports of Fund Performance - Despite section 2.2 and section 4.2, the first annual financial statements and the first annual management report of fund performance that are required to be prepared in accordance with this Instrument must be filed on or before the 120th day after the end of the financial year of the investment fund to which they pertain.

18.4 Filing of Annual Information Form - Despite section 9.3, the first annual information form to be prepared under this Instrument must be filed on or before the 120th day after the end of the financial year of the investment fund to which it pertains.

18.5 Initial Delivery of Annual Management Report of Fund Performance - Despite Part 5, an investment fund must send to each securityholder, by the filing deadline, its first annual management report of fund performance with an explanation of the new continuous disclosure requirements, including the availability of quarterly portfolio disclosure and proxy voting disclosure.

18.6 Existing Exemptions

- (1) An investment fund that has obtained an exemption or waiver from, or approval under, securities legislation, National Policy 39, National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, National Instrument 81-102 *Mutual Funds*, National Instrument 81-104 *Commodity Pools* or National Instrument 81-105 *Mutual Fund Sales Practices* relating to its continuous disclosure obligations is exempt from any substantially similar provision of this Instrument to the same extent and on the same conditions, if any, as contained in the exemption, waiver or approval, unless the regulator or securities regulatory authority has revoked that exemption, waiver or approval under authority provided to it in securities legislation.
- (2) An investment fund must, at the time that it first intends to rely on subsection (1) in connection with a filing requirement under this Instrument, inform the securities regulatory authority in writing of
 - (a) the general nature of the prior exemption, waiver or approval and the date on which it was granted; and
 - (b) the provision in respect of which the prior exemption, waiver or approval applied and the substantially similar provision of this Instrument.

Form 81-106F1

Contents of Annual and Interim Management Report of Fund Performance

PART A

INSTRUCTIONS AND INTERPRETATION

- Item 1 General
- Item 2 Management Discussion Of Fund Performance

PART B

CONTENT REQUIREMENTS FOR ANNUAL MANAGEMENT REPORT OF FUND PERFORMANCE

- Item 1 First Page Disclosure
- Item 2 Management Discussion of Fund Performance
- Item 3 Financial Highlights
- Item 4 Past Performance
- Item 5 Summary of Investment Portfolio
- Item 6 Other Material Information

PART C

CONTENT REQUIREMENTS FOR INTERIM MANAGEMENT REPORT OF FUND PERFORMANCE

- Item 1 First Page Disclosure
- Item 2 Management Discussion of Fund Performance
- Item 3 Financial Highlights
- Item 4 Past Performance
- Item 5 Summary of Investment Portfolio
- Item 6 Other Material Information

**NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE
FORM 81-106F1**

CONTENTS OF ANNUAL AND INTERIM MANAGEMENT REPORT OF FUND PERFORMANCE

PART A INSTRUCTIONS AND INTERPRETATION

Item 1 General

(a) The Form

The Form describes the disclosure required in an annual or interim management report of fund performance (MRFP) of an investment fund. Each item of the Form outlines disclosure or format requirements. Instructions to help you comply with these requirements are printed in *italic type*.

(b) Plain Language

An MRFP must state the required information concisely and in plain language (as defined in National Instrument 81-101 *Mutual Fund Prospectus Disclosure*). Refer to Part 1 of Companion Policy 81-106CP for a discussion concerning plain language and presentation.

When preparing an MRFP, respond as simply and directly as is reasonably possible and include only as much information as is necessary for readers to understand the matters for which you are providing disclosure.

(c) Format

Present the MRFP in a format that assists readability and comprehension. The Form generally does not mandate the use of a specific format to achieve these goals, except in the case of disclosure of financial highlights and past performance as required by Items 3 and 4 of each of Parts B and C of the Form; that disclosure must be presented in the format specified in the Form.

An MRFP must use the headings and sub-headings shown in the Form. Within this framework, investment funds are encouraged to use, as appropriate, tables, captions, bullet points or other organizational techniques that assist in presenting the required disclosure clearly and concisely. Disclosure provided in response to any item does not need to be repeated elsewhere. The interim MRFP must use the same headings as used in the annual MRFP.

The Form does not prohibit including information beyond what the Form requires. An investment fund may include artwork and educational material (as defined in National Instrument 81-101 *Mutual Fund Prospectus Disclosure*) in its annual and interim MRFP. However, an investment fund must take reasonable care to ensure that including such material does not obscure the required information and does not lengthen the MRFP excessively.

(d) Focus on Material Information

You do not need to disclose information that is not material. You do not need to respond to any item in this Form that is inapplicable and you may omit negative answers.

(e) What is Material?

Would a reasonable investor's decision to buy, sell or hold securities of an investment fund likely be influenced or changed if the information in question was omitted or misstated? If so, the information is material. This concept of materiality is consistent with the financial reporting notion of materiality contained in the Handbook. In determining whether information is material, take into account both quantitative and qualitative factors.

Item 2 Management Discussion of Fund Performance

The management discussion of fund performance is an analysis and explanation that is designed to complement and supplement an investment fund's financial statements. The discussion is the equivalent to the corporate management discussion and analysis (MD&A) with specific modifications for investment funds. It provides the manager of an investment fund with the opportunity to discuss the investment fund's position and financial results for the relevant period. The discussion is intended to give a reader the ability to look at the investment fund through the eyes of management by providing both a historical and prospective analysis of the investment activities and operations of the investment fund. Coupled with the financial highlights, this information should enable readers to better assess the investment fund's performance and future prospects.

Focus the management discussion on material information about the performance of the investment fund, with particular emphasis on known material trends, commitments, events, risks or uncertainties that the manager reasonably expects to have a material effect on the investment fund's future performance or investment activities.

The description of the disclosure requirements is intentionally general. This Form contains a minimum number of specific instructions in order to allow, as well as encourage, investment funds to discuss their activities in the most appropriate manner and to tailor their comments to their individual circumstances.

PART B CONTENT REQUIREMENTS FOR ANNUAL MANAGEMENT REPORT OF FUND PERFORMANCE

Item 1 First Page Disclosure

The first page of an annual MRFP must contain disclosure in substantially the following words:

"This annual management report of fund performance contains financial highlights but does not contain the complete annual financial statements of the investment fund. You can get a copy of the annual financial statements at your request, and at no cost, by calling [toll-free/collect call telephone number], by writing to us at [insert address] or by visiting our website at [insert address] or SEDAR at www.sedar.com.

Securityholders may also contact us using one of these methods to request a copy of the investment fund's proxy voting policies and procedures, proxy voting disclosure record, or quarterly portfolio disclosure."

INSTRUCTION:

If the MRFP is bound with the financial statements of the investment fund, modify the first page wording appropriately.

Item 2 Management Discussion of Fund Performance

2.1 Investment Objective and Strategies

Disclose under the heading "Investment Objective and Strategies" a brief summary of the fundamental investment objective and strategies of the investment fund.

INSTRUCTION:

Disclosing the fundamental investment objective provides investors with a reference point for assessing the information contained in the MRFP. It must be a concise summary of the fundamental investment objective and strategies of the investment fund, and not merely copied from the prospectus.

2.2 Risk

Disclose under the heading "Risk" a discussion of how changes to the investment fund over the financial year affected the overall level of risk associated with an investment in the investment fund.

INSTRUCTION:

Ensure that the discussion is not merely a repeat of information contained in the prospectus of the investment fund, but rather a discussion that reflects any changes in risk level of the investment fund over the financial year.

Consider how the changes in the risks associated with an investment in the investment fund affect the suitability or investor risk tolerance stated in the prospectus or offering document. All investment funds should refer to Items 9 and 10 of Part B of Form 81-101F1 as if those sections applied to them.

2.3 Results of Operations

- (1) Under the heading "Results of Operations" provide a summary of the results of operations of the investment fund for the financial year to which the MDFP pertains, including a discussion of
 - (a) any material changes in investments in specific portfolio assets and overall asset mix from the previous period;

- (b) how the composition and changes to the composition of the investment portfolio relate to the investment fund's fundamental investment objective and strategies or to changes in the economy, markets or unusual events;
 - (c) unusual trends in redemptions or sales and the effect of these on the investment fund;
 - (d) significant components and changes to the components of revenue and expenses;
 - (e) risks, events, trends and commitments that had a material effect on past performance; and
 - (f) unusual or infrequent events or transactions, economic changes and market conditions that affected performance.
- (2) An investment fund that borrows money, other than immaterial operating overdrafts, must disclose,
- (a) the minimum and maximum amount borrowed during the period;
 - (b) the percentage of net assets of the investment fund that the borrowing represented as of the end of the period;
 - (c) how the borrowed money was used; and
 - (d) the terms of the borrowing arrangements.

INSTRUCTION:

Explain the nature of and reasons for changes in your investment fund's performance. Do not simply disclose the amount of change in a financial statement item from period to period. Avoid the use of boilerplate language. Your discussion should assist the reader to understand the significant factors that have affected the performance of the investment fund.

2.4 Recent Developments

Under the heading "Recent Developments" discuss the developments affecting the investment fund, including

- (a) known changes to the strategic position of the investment fund;
- (b) known material trends, commitments, events or uncertainties that might reasonably be expected to affect the investment fund;
- (c) changes to the manager or portfolio adviser, or change of control of the manager, of the investment fund;
- (d) the effects of any actual or planned reorganizations, mergers or similar transactions; and
- (e) the estimated effects of changes in accounting policies adopted subsequent to year end.

INSTRUCTION:

- (1) *Preparing the management discussion necessarily involves some degree of prediction or projection. The discussion must describe anticipated events, decisions, circumstances, opportunities and risks that management considers reasonably likely to materially impact performance. It must also describe management's vision, strategy and targets.*
- (2) *There is no requirement to provide forward-looking information. If any forward-looking information is provided, it must contain a statement that the information is forward-looking, a description of the factors that may cause actual results to differ materially from the forward-looking information, your material assumptions and appropriate risk disclosure and cautionary language. You must also discuss any forward-looking information disclosed for a prior period which, in light of intervening events and absent further explanations, may be misleading.*

2.5 Related Party Transactions

Under the heading “Related Party Transactions” discuss any transactions involving related parties to the investment fund.

INSTRUCTIONS:

- (1) *In determining who is a related party, investment funds should look to the Handbook. In addition, related parties include the manager and portfolio adviser (or their affiliates) and a broker or dealer related to any of the investment fund, its manager or portfolio adviser.*
- (2) *When discussing related party transactions, include the identity of the related party, the relationship to the investment fund, the purpose of the transaction, the measurement basis used to determine the recorded amount and any ongoing commitments to the related party.*
- (3) *Related party transactions include portfolio transactions with related parties of the investment fund. When discussing these transactions, include the dollar amount of commission, spread or any other fee that the investment fund paid to any related party in connection with a portfolio transaction.*

Item 3 Financial Highlights

3.1 Financial Highlights

- (1) Provide selected financial highlights for the investment fund under the heading “Financial Highlights” in the form of the following tables, appropriately completed, and introduced using the following words:

“The following tables show selected key financial information about the Fund and are intended to help you understand the Fund’s financial performance for the past [insert number] years. This information is derived from the Fund’s audited annual financial statements.

The Fund’s Net Asset Value (NAV) per [Unit/Share]

	[insert year]				
Net Asset Value, beginning of year	\$	\$	\$	\$	\$
Increase (decrease) from operations:					
total revenue	\$	\$	\$	\$	\$
total expenses	\$	\$	\$	\$	\$
realized gains (losses) for the period	\$	\$	\$	\$	\$
unrealized gains (losses) for the period	\$	\$	\$	\$	\$
Total increase (decrease) from operations ⁽¹⁾	\$	\$	\$	\$	\$
Distributions:					
From income (excluding dividends)	\$	\$	\$	\$	\$
From dividends	\$	\$	\$	\$	\$
From capital gains	\$	\$	\$	\$	\$
Return of capital	\$	\$	\$	\$	\$
Total Annual Distributions ⁽²⁾	\$	\$	\$	\$	\$
Net asset value at [insert last day of financial year] of year shown	\$	\$	\$	\$	\$

- (1) *Net asset value and distributions are based on the actual number of [units/shares] outstanding at the relevant time. The increase/decrease from operations is based on the weighted average number of [units/shares] outstanding over the financial period.*
- (2) *Distributions were [paid in cash/reinvested in additional [units/shares] of the Fund], or both.*

Ratios and Supplemental Data

	[insert year]				
Net assets (000's) ⁽¹⁾	\$	\$	\$	\$	\$
Number of [units/shares] outstanding ⁽¹⁾					
Management expense ratio ⁽²⁾	%	%	%	%	%
Management expense ratio before waivers or absorptions	%	%	%	%	%
Portfolio turnover rate ⁽³⁾	%	%	%	%	%
Trading expense ratio ⁽⁴⁾	%	%	%	%	%
Closing market price or pricing NAV, [if applicable]	\$	\$	\$	\$	\$

- (1) This information is provided as at [insert date of end of financial year] of the year shown.
- (2) Management expense ratio is based on total expenses for the stated period and is expressed as an annualized percentage of daily average net assets during the period.
- (3) The Fund's portfolio turnover rate indicates how actively the Fund's portfolio adviser manages its portfolio investments. A portfolio turnover rate of 100% is equivalent to the Fund buying and selling all of the securities in its portfolio once in the course of the year. The higher a fund's portfolio turnover rate in a year, the greater the trading costs payable by the fund in the year, and the greater the chance of an investor receiving taxable capital gains in the year. There is not necessarily a relationship between a high turnover rate and the performance of a fund.
- (4) The trading expense ratio represents total commissions and other portfolio transaction costs expressed as an annualized percentage of daily average net assets during the period.
 - (2) Derive the selected financial information from the audited annual financial statements of the investment fund.
 - (3) Modify the table appropriately for corporate investment funds.
 - (4) Show the financial highlights individually for each class or series, if a multi-class fund.
 - (5) Provide per unit or per share amounts to the nearest cent, and provide percentage amounts to two decimal places.
 - (6) Except for net asset value and distributions, calculate per unit/share values on the basis of the weighted average number of unit/shares outstanding over the financial period.
 - (7) Provide the selected financial information required by this Item in chronological order for each of the five most recently completed financial years of the investment fund for which audited financial statements have been filed, with the information for the most recent financial year in the first column on the left of the table.
 - (8) If the investment fund has merged with another investment fund, include in the table only the financial information of the continuing investment fund.
 - (9) Calculate the management expense ratio of the investment fund as required by Part 15 of the Instrument. Include a brief description of the method of calculating the management expense ratio in a note to the table.
 - (10) If the investment fund,
 - (a) changed, or proposes to change, the basis of the calculation of the management fees or of the other fees, charges or expenses that are charged to the investment fund; or
 - (b) introduces or proposes to introduce a new fee,

and if the change would have had an effect on the management expense ratio for the last completed financial year of the investment fund if the change had been in effect throughout that financial year, disclose the effect of the change on the management expense ratio in a note to the "Ratios and Supplemental Data" table.
 - (11) Do not include disclosure concerning portfolio turnover rate for a money market fund

- (12) Calculate the trading expense ratio by dividing
- (i) the total commissions and other portfolio transaction costs disclosed in the notes to the financial statements; by
 - (ii) the same denominator used to calculate the management expense ratio.
- (13) Provide the closing market price only if the investment fund is traded on an exchange. If the investment fund is a labour sponsored or venture capital fund provide the pricing NAV per security if different than the NAV for accounting purposes.

INSTRUCTIONS:

- (1) Calculate the investment fund's portfolio turnover rate by dividing the lesser of the amounts of the cost of purchases and proceeds of sales of portfolio securities for the financial year by the average of the value of the portfolio securities owned by the investment fund in the financial year. Calculate the monthly average by totalling the values of portfolio securities as at the beginning and end of the first month of the financial year and as at the end of each of the succeeding 11 months and dividing the sum by 13. Exclude from both numerator and denominator amounts relating to all portfolio securities having a remaining term to maturity on the date of acquisition by the investment fund of one year or less.
- (2) Further to instruction (1), include:
- (a) proceeds from a short sale in the value of the portfolio securities sold during the period;
 - (b) the cost of covering a short sale in the value of portfolio securities purchased during the period;
 - (c) premiums paid to purchase options in the value of portfolio securities purchased during the period; and
 - (d) premiums received from the sale of options in the value of the portfolio securities sold during the period.
- (3) If the investment fund acquired the assets of another investment fund in exchange for its own shares during the financial year in a purchase-of-assets transaction, exclude from the calculation of portfolio turnover rate the value of securities acquired and sold to realign the fund's portfolio. Adjust the denominator of the portfolio turnover computation to reflect these excluded purchases and sales and disclose them in a footnote.

3.2 Scholarship Plans

An investment fund that is a scholarship plan must comply with Item 3.1, except that the following table must replace "The Fund's Net Asset Value per [Unit/Share]" table and the "Ratios and Supplemental Data" table.

Financial & Operating Highlights (with comparative figures)

	[insert year]				
Balance Sheet					
Total Assets	\$	\$	\$	\$	\$
Net Assets	\$	\$	\$	\$	\$
% change of Net Assets	%	%	%	%	%
Statement of Operations					
Scholarship Awards	\$	\$	\$	\$	\$
Canadian Education Savings Grant	\$	\$	\$	\$	\$
Net investment income	\$	\$	\$	\$	\$
Other					
Total number of [agreements/units] in plans					
% change in the total number of agreements	%	%	%	%	%

3.3 Management Fees

Disclose the basis for calculating the management fees paid by the investment fund and a breakdown of the services received in consideration of the management fees, as a percentage of management fees.

INSTRUCTION:

The disclosure must list the major services paid for out of the management fees, including portfolio adviser compensation, trailing commissions and sales commissions, if applicable.

Item 4 Past Performance

4.1 General

- (1) In responding to the requirements of this Item, an investment fund must comply with sections 15.2, 15.3, 15.9, 15.10, 15.11 and 15.14 of National Instrument 81-102 Mutual Funds as if those sections applied to the annual MRFP.
- (2) Despite the specific requirements of this Item, do not provide performance data for any period if the investment fund was not a reporting issuer at all times during the period.
- (3) Set out in footnotes to the chart or table required by this Item the assumptions relevant to the calculation of the performance information, and include a statement of the significance of the assumption that distributions are reinvested for taxable investments.
- (4) In a general introduction to the "Past Performance" section, indicate, as applicable, that
 - (a) the performance information shown assumes that all distributions made by the investment fund in the periods shown were reinvested in additional securities of the investment fund;
 - (b) the performance information does not take into account sales, redemption, distribution or other optional charges that would have reduced returns or performance; and
 - (c) how the investment fund has performed in the past does not necessarily indicate how it will perform in the future.
- (5) Use a linear scale for each axis of the bar chart required by this Item.
- (6) The x-axis must intersect the y-axis at 0 for the "Year-by-Year Returns" bar chart.

4.2 Year-by-Year Returns

- (1) Provide a bar chart, under the heading "Past Performance" and under the sub-heading "Year-by-Year Returns", that shows, in chronological order with the most recent year on the right of the bar chart, the annual total return of the investment fund for the lesser of
 - (a) each of the ten most recently completed financial years; and
 - (b) each of the completed financial years in which the investment fund has been in existence and which the investment fund was a reporting issuer.
- (2) Provide an introduction to the bar chart that
 - (a) indicates that the bar chart shows the investment fund's annual performance for each of the years shown, and illustrates how the investment fund's performance has changed from year to year; and
 - (b) indicates that the bar chart shows, in percentage terms, how much an investment made on the first day of each financial year would have grown or decreased by the last day of each financial year.
- (3) If the investment fund holds short portfolio positions, show separately the annual total return for both the long portfolio positions and the short portfolio positions in addition to the overall total return.

4.3 Annual Compound Returns

- (1) If the investment fund is not a money market fund, disclose, in the form of a table, under the sub-heading "Annual Compound Returns"
 - (a) the investment fund's past performance for the ten, five, three and one year periods ended on the last day of the investment fund's financial year; or
 - (b) if the investment fund was a reporting issuer for more than one and less than ten years, the investment fund's past performance since the inception of the investment fund.
- (2) Include in the table, for the same periods for which the annual compound returns of the investment fund are provided, the historical annual compound total returns or changes of
 - (a) one or more appropriate broad-based securities market indices; and
 - (b) at the option of the investment fund, one or more non-securities indices or narrowly-based market indices that reflect the market sectors in which the investment fund invests.
- (3) Include a brief description of the broad-based securities market index (or indices) and provide a discussion of the relative performance of the investment fund as compared to that index.
- (4) If the investment fund includes in the table an index that is different from the one included in the most recently filed MRFP, explain the reasons for the change and include the disclosure required by this Item for both the new and former indices.
- (5) Calculate the annual compound return in accordance with the requirements of Part 15 of National Instrument 81-102.
- (6) If the investment fund holds short portfolio positions, show separately the annual compound returns for both the long and the short portfolio positions in addition to the overall annual compound returns.

INSTRUCTIONS:

- (1) An "appropriate broad-based securities market index" is one that
 - (a) is administered by an organization that is not affiliated with any of the mutual fund, its manager, portfolio adviser or principal distributor, unless the index is widely recognized and used; and
 - (b) has been adjusted by its administrator to reflect the reinvestment of dividends on securities in the index or interest on debt.
- (2) It may be appropriate for an investment fund that invests in more than one type of security to compare its performance to more than one relevant index. For example, a balanced fund may wish to compare its performance to both a bond index and an equity index.
- (3) In addition to the appropriate broad-based securities market index, the investment fund may compare its performance to other financial or narrowly-based securities indices (or a blend of indices) that reflect the market sectors in which the investment fund invests or that provide useful comparatives to the performance of the investment fund. For example, an investment fund could compare its performance to an index that measured the performance of certain sectors of the stock market (e.g. communications companies, financial sector companies, etc.) or to a non-securities index, such as the Consumer Price Index, so long as the comparison is not misleading.

4.4 Scholarship Plans

An investment fund that is a scholarship plan must comply with this Item, except that year-by-year returns and annual compound returns must be calculated based on the scholarship plan's total portfolio adjusted for cash flows.

Item 5 Summary of Investment Portfolio

- (1) Include, under the heading "Summary of Investment Portfolio", a summary of the investment fund's portfolio as at the end of the financial year of the investment fund to which the annual MRFP pertains.
- (2) The summary of investment portfolio
 - (a) must break down the entire portfolio of the investment fund into appropriate subgroups, and must show the percentage of the aggregate net asset value of the investment fund constituted by each subgroup;
 - (b) must disclose the top 25 positions held by the investment fund, each expressed as a percentage of net assets of the investment fund;
 - (c) must disclose long positions separately from short positions; and
 - (d) must disclose separately the total percentage of net assets represented by the long positions and by the short positions.
- (3) Indicate that the summary of investment portfolio may change due to ongoing portfolio transactions of the investment fund and a quarterly update is available.

INSTRUCTIONS:

- (1) *The summary of investment portfolio is designed to give the reader an easily accessible snapshot of the portfolio of the investment fund as at the end of the financial year for which the annual MRFP pertains. As with the other components of the annual MRFP, care should be taken to ensure that the information in the summary of investment portfolio is presented in an easily accessible and understandable way.*
- (2) *The Canadian securities regulatory authorities have not prescribed the names of the categories into which the portfolio should be broken down. An investment fund should use the most appropriate categories given the nature of the fund. If appropriate, an investment fund may use more than one breakdown, for instance showing the portfolio of the investment fund broken down according to security type, industry, geographical locations, etc.*
- (3) *Instead of a table, the disclosure required by (2)(a) of this Item may be presented in the form of a pie chart.*
- (4) *If the investment fund owns more than one class of securities of an issuer, those classes should be aggregated for the purposes of this Item, however, debt and equity securities of an issuer must not be aggregated.*
- (5) *Portfolio assets other than securities should be aggregated if they have substantially similar investment risks and profiles. For instance, gold certificates should be aggregated, even if they are issued by different financial institutions.*
- (6) *Treat cash and cash equivalents as one separate discrete category.*
- (7) *In determining its holdings for purposes of the disclosure required by this Item, an investment fund should, for each long position in a derivative that is held by the investment fund for purposes other than hedging and for each index participation unit held by the investment fund, consider that it holds directly the underlying interest of that derivative or its proportionate share of the securities held by the issuer of the index participation unit.*
- (8) *If an investment fund invests substantially all of its assets directly or indirectly (through the use of derivatives) in securities of another fund, list only the 25 largest holdings of the other investment fund by percentage of net assets of the other investment fund, as disclosed by the other investment fund as at the most recent quarter end.*
- (9) *If the investment fund invests in other investment funds, include a statement to the effect that the prospectus and other information about the underlying investment funds are available on the internet at www.sedar.com.*

Item 6 Other Material Information

Provide any other material information relating to the investment fund not otherwise required to be disclosed by this Part, including information required to be disclosed pursuant to an order or exemption received by the investment fund.

PART C CONTENT REQUIREMENTS FOR INTERIM MANAGEMENT REPORT OF FUND PERFORMANCE**Item 1 First Page Disclosure**

The first page of an interim MRFP must contain disclosure in substantially the following words:

“This interim management report of fund performance contains financial highlights, but does not contain either interim or annual financial statements of the investment fund. You can get a copy of the interim or annual financial statements at your request, and at no cost, by calling [toll-free/collect call telephone number], by writing to us at [insert address] or by visiting our website at [insert address] or SEDAR at www.sedar.com.

Securityholders may also contact us using one of these methods to request a copy of the investment fund’s proxy voting policies and procedures, proxy voting disclosure record, or quarterly portfolio disclosure.”

INSTRUCTION:

If the MRFP is bound with the financial statements of the investment fund, modify the first page wording appropriately.

Item 2 Management Discussion of Fund Performance**2.1 Results of Operations**

Update the analysis of the investment fund’s results of operations provided in the most recent annual MRFP. Discuss any material changes to any of the components listed in Item 2.3 of Part B.

2.2 Recent Developments

If there have been any significant developments affecting the investment fund since the most recent annual MRFP, discuss those developments and their impact on the investment fund, in accordance with the requirements of Item 2.4 of Part B.

2.3 Related Party Transactions

Provide the disclosure required by Item 2.5 of Part B.

INSTRUCTIONS:

- (1) *If the first MRFP you file in this Form is not an annual MRFP, you must provide all the disclosure required by Part B, except for Items 3 and 4, in the first MRFP.*
- (2) *The discussion in an interim MRFP is intended to update the reader on material developments since the date of the most recent annual MRFP. You may assume the reader has access to your annual MRFP, so it is not necessary to restate all of the information contained in the most recent annual discussion.*
- (3) *The discussion in an interim MRFP should deal with the financial period to which the interim MRFP pertains.*

Item 3 Financial Highlights

- (1) Provide the disclosure required by Item 3.1 of Part B, with an additional column on the left of the table representing the interim period.
- (2) Provide the disclosure required by Item 3.3 of Part B of the form.

INSTRUCTION:

If the distributions cannot be allocated by type at the end of the interim period, provide only total distributions by unit/share.

Item 4 Past Performance

Provide a bar chart prepared in accordance with Item 4.2 of Part B, and include the total return calculated for the interim period.

Item 5 Summary of Investment Portfolio

- (1) Include a summary of investment portfolio as at the end of the financial period to which the interim MRFP pertains.
- (2) The summary of investment portfolio must be prepared in accordance with Item 5 of Part B.

Item 6 Other Material Information

Provide any other material information relating to the investment fund not otherwise required to be disclosed by this Part including information required to be disclosed pursuant to an order or exemption received by the investment fund.

Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure

PART 1 PURPOSE AND APPLICATION OF THE COMPANION POLICY

- 1.1 Purpose
- 1.2 Application
- 1.3 Definitions
- 1.4 Plain Language Principles
- 1.5 Signature and Certificates
- 1.6 Filings on SEDAR
- 1.7 Corporate Law Requirements

PART 2 FINANCIAL STATEMENTS

- 2.1 Interrelationship of Financial Statements with Canadian GAAP
- 2.2 Filing Deadline for Annual Financial Statements and Auditor's Report
- 2.3 Timing and Content of Interim Financial Statements
- 2.4 Length of Financial Year
- 2.5 Contents of Statement of Operations
- 2.6 Disclosure of Soft Dollars
- 2.7 Accounting for Securities Lending Transactions
- 2.8 Change in Year End
- 2.9 Change in Legal Structure
- 2.10 Mutual Funds that are Non-Reporting Issuers

PART 3 AUDITORS AND THEIR REPORTS

- 3.1 Acceptable Auditor
- 3.2 Reservations in an Auditor's Report
- 3.3 Auditor's Involvement with Management Reports of Fund Performance
- 3.4 Auditor Involvement with Interim Financial Statements

PART 4 DELIVERY OF FINANCIAL STATEMENTS AND MANAGEMENT REPORTS OF FUND PERFORMANCE

- 4.1 Delivery Instructions
- 4.2 Communication with Beneficial Owners
- 4.3 Binding
- 4.4 Electronic Delivery

PART 5 INDEPENDENT VALUATIONS

- 5.1 Independent Valuations
- 5.2 Independent Valuers

PART 6 PROXY VOTING DISCLOSURE FOR PORTFOLIO SECURITIES HELD

- 6.1 Proxy Voting Disclosure
- 6.2 Proxy Voting Policies and Procedures

PART 7 MATERIAL CHANGE

- 7.1 Material Changes
- 7.2 Confidential Material Change Report

PART 8 INFORMATION CIRCULARS

- 8.1 Sending of Proxies and Information Circulars

PART 9 PUBLICATION OF NET ASSET VALUE PER SECURITY

- 9.1 Publication of Net Asset Value Per Security

PART 10 CALCULATION OF MANAGEMENT EXPENSE RATIO

- 10.1 Calculation of Management Expense Ratio

APPENDIX A EXAMPLES OF FILING REQUIREMENTS FOR CHANGES IN YEAR END
APPENDIX B CONTACT ADDRESSES FOR FILING OF NOTICES

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

PART 1 PURPOSE AND APPLICATION OF THE COMPANION POLICY

1.1 Purpose - The purpose of this Companion Policy (the Policy) is to help you understand how the Canadian securities regulatory authorities (CSA or we) interpret or apply certain provisions of National Instrument 81-106 *Investment Fund Continuous Disclosure* (the Instrument).

1.2 Application

- (1) The Instrument applies to investment funds. The general nature of an investment fund is that the money invested in it is professionally managed on the basis of a stated investment policy, usually expressed in terms of investment objectives and strategies, and is invested in a portfolio of securities. The fund has the discretion to buy and sell investments within the constraints of its investment policy. Investment decisions are made by a manager or portfolio adviser acting on behalf of the fund. An investment fund provides a means whereby investors can have their money professionally managed rather than making their own decisions about investing in individual securities.
- (2) An investment fund generally does not seek to obtain control of or become involved in the management of companies in which it invests. Exceptions to this include labour sponsored or venture capital funds, where some degree of involvement in the management of the investees is an integral part of the investment strategy.

Investment funds can be distinguished from holding companies, which generally exert a significant degree of control over the companies in which they invest. They can also be distinguished from the issuers known as "Income Trusts" which generally issue securities that entitle the holder to net cash flows generated by (i) an underlying business owned by the trust or other entity, or (ii) the income-producing property owned by the trust or other entity. Examples of entities that are not investment funds are business income trusts, real estate investment trusts and royalty trusts.

- (3) Investment funds that meet the definition of "mutual fund" in securities legislation – generally because their securities are redeemable on demand or within a specified period after demand at net asset value per security – are referred to as mutual funds. Other investment funds are generally referred to as non-redeemable investment funds. The definition of "non-redeemable investment fund" included in this instrument summarises the concepts discussed above. Because of their similarity to mutual funds, they are subject to similar reporting requirements. Examples include closed-end funds, funds traded on exchanges with limited redeemability, certain limited partnerships investing in portfolios of securities such as flow-through shares, and scholarship plans (other than self-directed RESPs as defined in OSC Rule 46-501 *Self-Directed Registered Education Savings Plans*).
- (4) Labour sponsored and venture capital funds may or may not be considered to be mutual funds depending on the requirements of the provincial legislation under which they are established (for example, shares of Ontario labour sponsored funds are generally redeemable on demand, while shares of British Columbia employee venture capital corporations are not). Nevertheless, these issuers are investment funds and must comply with the general disclosure rules for investment funds as well as specific requirements for labour sponsored and venture capital funds included in Part 8 of this Instrument.

1.3 Definitions

- (1) A term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in that statute unless (a) the definition in that statute is restricted to a specific portion of the statute that does not govern continuous disclosure, or (b) the context otherwise requires.
- (2) For instance, the term "material change" is defined in local securities legislation of most jurisdictions. The CSA consider the meaning given to this term in securities legislation to be substantially similar to the definition set out in the Instrument.

1.4 Plain Language Principles - The CSA believe that plain language will help investors understand an investment fund's disclosure documents so that they can make informed investment decisions. You can achieve this by

- using short sentences
- using definite, everyday language

- using the active voice
- avoiding unnecessary words
- organizing the document into clear, concise sections, paragraphs and sentences
- avoiding jargon
- using personal pronouns to speak directly to the reader
- avoiding reliance on glossaries and defined terms unless it helps to understand the disclosure
- using technical terms only where necessary and explaining those terms clearly
- avoiding boilerplate wording
- using concrete terms and examples
- using charts and tables where it makes the disclosure easier to understand.

1.5 Signature and Certificates - The directors, trustee or manager of an investment fund are not required to file signed or certified continuous disclosure documents. They are responsible for the information in the investment fund's disclosure documents whether or not a document is signed or certified, and it is an offence under securities legislation to make a false or misleading statement in any required document.

1.6 Filings on SEDAR - All documents required to be filed under the Instrument must be filed in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

1.7 Corporate Law Requirements - Some investment funds may be subject to requirements of corporate law that address matters similar to those addressed by the Instrument, and which may impose additional or more onerous requirements. For example, applicable corporate law may require investment funds to deliver annual financial statements to securityholders. This Instrument cannot provide exemptions from these requirements.

PART 2 FINANCIAL STATEMENTS

2.1 Interrelationship of Financial Statements with Canadian GAAP

- (1) The Instrument requires investment funds to prepare their financial statements and management reports of fund performance and to calculate their net asset value in accordance with both Canadian GAAP and the Instrument.
- (2) Canadian GAAP provides some general requirements for the preparation of financial statements that apply to investment fund financial statements. Canadian GAAP does not contain detailed requirements for the contents of investment fund financial statements. The CSA believe that an investment fund's financial statements must include certain information, at a minimum, in order to provide full disclosure. The Instrument sets out these minimum requirements. When preparing these documents, include any additional information necessary to ensure that all material information concerning the financial position and results of the investment fund is disclosed.
- (3) Handbook Section 1100 *Generally Accepted Accounting Principles* has changed the definition of what was considered to be Canadian GAAP. Prior to the introduction of Section 1100, the investment funds industry relied on paragraph 1000.60(a), which permitted accounting policies that "are generally accepted by virtue of their use in similar circumstances by a significant number of entities in Canada." This is no longer the case as Section 1100 requires the application of all relevant primary sources of Canadian GAAP. Accounting Guideline 18 *Investment Companies* provides specific guidance on certain topics. When no relevant primary source of Canadian GAAP is available, professional judgement and the concepts described in Section 1000 should be used to set accounting policies consistent with Canadian GAAP.

2.2 Filing Deadline for Annual Financial Statements and Auditor's Report - Section 2.2 of the Instrument sets out the filing deadline for annual financial statements. While section 2.2 of the Instrument does not address the auditor's report date, investment funds are encouraged to file their annual financial statements as soon as possible after the date of the auditor's report.

- 2.3 Timing and Content of Interim Financial Statements** - Handbook Section 1751 *Interim Financial Statements* requires that interim financial statements include each of the headings and subtotals included in the most recent annual financial statements. In addition, the principles of paragraph 14 of Section 1751 should be applied to the requirements in section 3.6 of the Instrument regarding the notes to the financial statements.
- 2.4 Length of Financial Year** - For the purposes of the Instrument, unless otherwise expressly provided, references to a financial year apply regardless of the length of that year. The first financial year of an investment fund commences on the date of its incorporation or organization and ends at the close of that year.
- 2.5 Contents of Statement of Operations** - The amount of fund expenses waived or paid by the manager or portfolio adviser of the investment fund disclosed in the statement of operations excludes amounts waived or paid due to an expense cap that would require securityholder approval to change.
- 2.6 Disclosure of Soft Dollars** - The notes to the financial statements of an investment fund must contain disclosure of soft dollar amounts when such amounts are ascertainable. When calculating these amounts, investment funds should include the quantifiable value of goods and services, beyond the amount attributed to order execution, received directly from the dealer executing the fund's portfolio transactions, or from a third party.
- 2.7 Accounting for Securities Lending Transactions**
- (1) Section 3.8 of the Instrument imposes certain reporting requirements on investment funds in connection with any securities lending transactions entered into by the investment fund. These requirements were included to ensure that all securities lending transactions are accounted for on the same basis.
- The general accounting principle concerning whether a given transaction is a recordable transaction is based on determining whether risk and rewards have transferred in the transaction. The substance of a securities lending transaction is that the manager treats the original securities as if they had not been lent. The investment fund must be able to call the original securities back at any time, and the securities returned must be the same or substantially the same as the original securities. These conditions reduce the risk of the investment fund not being able to transact the original securities. The original securities remain on the books of the investment fund.
- (2) The accounting treatment of the collateral in a securities lending transaction depends on the ability of the lender to control what happens with the collateral. If non-cash collateral is received by the investment fund, the collateral is not reflected on the statement of net assets of the investment fund if the non-cash collateral cannot be sold or repledged. If the investment fund lender receives cash collateral, the investment fund has the ability to either hold or reinvest the cash. The lender has effective control over the cash, even though it uses an agent to effect the reinvestment on its behalf. The cash collateral, subsequent reinvestment, and obligation to repay the collateral are recorded on the books of the investment fund.
- 2.8 Change in Year End**
- (1) The change in year end reporting requirements are adopted from National Instrument 51-102, with appropriate modifications to reflect that investment funds report on a six month interim period.
- (2) The definition of "interim period" in the Instrument differs from the definition of this term in National Instrument 51-102. An investment fund cannot have more than one interim period in a transition year.
- (3) Interim financial statements for the new financial year will have comparatives from the corresponding months in the preceding year, whether or not they are from the transition year or from the old financial year, they were previously prepared or not, or they straddle a year-end.
- (4) If an investment fund voluntarily reports on a quarterly basis, it should follow the requirements set out in National Instrument 51-102 for a change in year end, with appropriate modifications.
- (5) Appendix A to this Policy outlines the financial statement filing requirements under section 2.9 of the Instrument for an investment fund that changes its year end.
- 2.9 Change in Legal Structure** - Section 2.10 of the Instrument requires a reporting issuer to file a notice if it has been involved in certain restructuring transactions. This notice should be filed with the securities regulatory authority or regulator in the applicable jurisdictions at the addresses set out in Appendix B to this Policy.

- 2.10 Mutual Funds that are Non-Reporting Issuers** - The requirement in subsection 2.11(c) to advise the applicable regulator or securities regulatory authority of a mutual fund's reliance on the financial statement filing exemption provided in section 2.11 of the Instrument can be satisfied by a one-time notice.

PART 3 AUDITORS AND THEIR REPORTS

- 3.1 Acceptable Auditor** - Securities legislation in most jurisdictions prohibits a regulator or securities regulatory authority from issuing a receipt for a prospectus if it appears that a person or company who has prepared any part of the prospectus, or is named as having prepared or certified a report used in connection with a prospectus, is not acceptable.

Investment funds that are reporting issuers, and their auditors, should refer to National Instrument 52-108 *Auditor Oversight* for requirements relating to auditor oversight by the Canadian Public Accountability Board.

3.2 Reservations in an Auditor's Report

- (1) The Instrument generally prohibits an auditor's report from containing a reservation, qualification of opinion, or other similar communication that would constitute a reservation under Canadian GAAS.
- (2) Part 17 of the Instrument permits the regulator or securities regulatory authority to grant exemptive relief from the Instrument, including the requirement that an auditor's report not contain a reservation, qualification of opinion or other similar communication that would constitute a reservation under Canadian GAAS. However, we believe that such exemptive relief should not be granted if the reservation, qualification of opinion or other similar communication is
 - (a) due to a departure from accounting principles permitted by the Instrument, or
 - (b) due to a limitation in the scope of the auditor's examination that
 - (i) results in the auditor being unable to form an opinion on the financial statements as a whole,
 - (ii) is imposed or could reasonably be eliminated by management, or
 - (iii) could reasonably be expected to be recurring.

- 3.3 Auditor's Involvement with Management Reports of Fund Performance** - Investment funds' auditors are expected to comply with Handbook Section 7500 *Auditor Association with Annual Reports, Interim Reports and Other Public Documents*, when preparing the annual and interim management reports of fund performance required by the Instrument.

3.4 Auditor Involvement with Interim Financial Statements

- (1) The board of directors of an investment fund that is a corporation or the trustees of an investment fund that is a trust, in discharging their responsibilities for ensuring reliable interim financial statements, should consider engaging an external auditor to carry out a review of the interim financial statements.
- (2) Section 2.12 of the Instrument requires an investment fund to disclose if an auditor has not performed a review of the interim financial statements, to disclose if an auditor was unable to complete a review and why, and to file a written report from the auditor if the auditor performed a review and expressed a reservation in the auditor's interim review report. No positive statement is required when an auditor performed a review and provided an unqualified communication. If an auditor was engaged to perform a review on interim financial statements applying review standards set out in the Handbook, and the auditor was unable to complete the review, the investment fund's disclosure of the reasons why the auditor was unable to complete the review should normally include a discussion of
 - (a) inadequate internal control,
 - (b) a limitation on the scope of the auditor's work, or
 - (c) a failure of management to provide the auditor with written representations the auditor believes are necessary.

- (3) The terms “review” and “written review report” used in section 2.12 of the Instrument refer to the auditor’s review of and report on interim financial statements using standards for a review of interim financial statements by the auditor as set out in Handbook Section 7050 *Auditor Review of Interim Financial Statements*.
- (4) The Instrument does not specify the form of notice that should accompany interim financial statements that have not been reviewed by the auditor. The notice accompanies, but does not form part of, the interim financial statements. We expect that the notice will normally be provided on a separate page appearing immediately before the interim financial statements, in a manner similar to an audit report that accompanies annual financial statements.

PART 4 DELIVERY OF FINANCIAL STATEMENTS AND MANAGEMENT REPORTS OF FUND PERFORMANCE

4.1 Delivery Instructions

- (1) The Instrument gives investment funds the following choices for the delivery of financial statements and management reports of fund performance:
 - (a) send these documents to all securityholders;
 - (b) obtain standing instructions from securityholders with respect to the documents they wish to receive; or
 - (c) obtain annual instructions from securityholders 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 continuous disclosure documents to securityholders. However, the Instrument specifies that once an investment fund chooses option (b), it cannot switch back to option (c) at a later date. The purpose of this requirement is to encourage investment funds to obtain standing instructions and to ensure that if a securityholder provides standing instructions, the investment fund will abide by those instructions unless the securityholder specifically changes them.

- (2) When soliciting delivery instructions from a securityholder, an investment fund can deem no response from the securityholder to be a request by the securityholder to receive all, some or none of the documents listed in subsection 5.1(2) of the Instrument. When soliciting delivery instructions, an investment fund should make clear what the consequence of no response will be to its securityholders.
- (3) Investment funds should solicit delivery instructions sufficiently ahead of time so that securityholders can receive the requested documents by the relevant filing deadline. Securityholders should also be given a reasonable amount of time to respond to a request for instructions. Investment funds should provide securityholders with complete contact information for the investment fund, including a toll-free telephone number or a number for collect calls.
- (4) Investment funds under common management can solicit one set of delivery instructions from a securityholder that will apply to all of the funds in the same fund family that the securityholder owns. If a securityholder has given an investment fund standing delivery instructions and then later acquires the securities of another investment fund managed by the same manager, the newly acquired fund can rely on those standing instructions.
- (5) The Instrument requires investment funds to deliver the quarterly portfolio disclosure and the proxy voting record to securityholders upon request, but does not require investment funds to solicit delivery instructions from securityholders with respect to this disclosure. Investment funds are obligated to state on the first page of their management reports of fund performance that this disclosure is available.

4.2 Communication with Beneficial Owners – Generally, investment funds must apply the procedures set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* for the purposes of Part 5 of the Instrument, but an exemption from National Instrument 54-101 is available to investment funds that have beneficial owner information.

We recognize that different types of investment funds have different access to beneficial owner information (for example, mutual funds are more likely to have beneficial owner information than exchange-traded funds) and that the procedures in National Instrument 54-101 may not be efficient for every investment fund. Therefore, we intend the

provisions in Part 5 of the Instrument to provide investment funds with flexibility to communicate directly with the beneficial owners of their securities.

- 4.3 Binding** – For the purposes of delivery to a securityholder, the Instrument permits more than one management report of fund performance to be bound together if the securityholder owns all of the funds to which the management reports relate. There is no prohibition in the Instrument against binding the management report of fund performance with the financial statements for one investment fund for the purposes of delivering these documents to a securityholder who has requested them.
- 4.4 Electronic Delivery** - Any documents required to be sent under the Instrument may be sent by electronic delivery, as long as such delivery is made in compliance with National Policy 11-201 *Delivery of Documents by Electronic Means* and, in Quebec, Quebec Staff Notice *The Delivery of Documents by Electronic Means*. In particular, the annual reminder required by section 5.2 and the request form required by section 5.3 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 securityholders by an investment fund.

PART 5 INDEPENDENT VALUATIONS

5.1 Independent Valuations

- (1) Part 8 of the Instrument is designed to address the concerns raised by labour sponsored or venture capital funds that disclosing a fair value for their venture investments may disadvantage the private companies in which they invest. Section 8.2 permits alternative disclosure by a labour sponsored or venture capital fund of its statement of investment portfolio. Labour sponsored or venture capital funds must disclose the individual securities in which they invest, but may aggregate all changes from costs of the venture investments, thereby only showing an aggregate adjustment from cost to fair value for these securities. This alternative disclosure is only permitted if the labour sponsored or venture capital fund has obtained an independent valuation in accordance with Part 8 of the Instrument.

- (2) The CSA expect the independent valuator's report to provide either a number or a range of values which the independent valuator considers to be a fair and reasonable expression of the value of the venture investments or of the net asset value of the labour sponsored or venture capital fund. The independent valuation should include a critical review of the valuation methodology and an assessment of whether it was properly applied. A report on compliance with stated valuation policies and practices cannot take the place of an independent valuation.

The valuation report should disclose the scope of the review, including any limitations on the scope, and the implications of these limitations on the independent valuator's conclusion.

- (3) The independent valuator should refer to the reporting standards of the Canadian Institute of Chartered Business Valuators for guidance.
- (4) A labour sponsored or venture capital fund obtaining an independent valuation should furnish the independent valuator with access to its manager, advisers and all material information in its possession relevant to the independent valuation.

5.2 Independent Valuers

- (1) It is a question of fact as to whether a valuator is independent of the labour sponsored or venture capital fund. In determining the independence of the valuator, a number of factors may be relevant, including whether
- (a) the valuator or an affiliated entity has a material financial interest in future business in respect of which an agreement, commitment or understanding exists involving the fund or a person or company listed in paragraph (2)(a); or
 - (b) the valuator or its affiliated entity is a lender of a material amount of indebtedness to any of the issuers of the fund's illiquid investments.
- (2) The CSA would generally consider a valuator not to be independent of a labour sponsored or venture capital fund where
- (a) the valuator or an affiliated entity of the valuator is

- (i) the manager of the fund,
 - (ii) a portfolio adviser of the fund,
 - (iii) an insider of the fund,
 - (iv) an associate of the fund,
 - (v) an affiliated entity of the fund, or
 - (vi) an affiliated entity of any of the persons or companies named in this paragraph (a);
- (b) the compensation of the valuator or an affiliated entity of the valuator depends in whole or in part upon an agreement, arrangement or understanding that gives the valuator, or its affiliated entity, a financial incentive in respect of the conclusions reached in the valuation; or
- (c) the valuator or an affiliated entity of the valuator has a material investment in the labour sponsored or venture capital fund or in a portfolio asset of the fund.

PART 6 PROXY VOTING DISCLOSURE FOR PORTFOLIO SECURITIES HELD

6.1 Proxy Voting Disclosure

- (1) An investment fund's manager, acting on the investment fund's behalf, has the right and obligation to vote proxies relating to the investment fund's portfolio securities. As a practical matter, the manager may delegate this function to the investment fund's portfolio adviser as part of the adviser's general management of investment fund assets. In either case, the manager or portfolio adviser voting proxies on behalf of an investment fund must do so in a manner consistent with the best interests of the fund and its securityholders.
- (2) Because of the substantial institutional voting power held by investment funds, the increasing importance of the exercise of that power to securityholders, and the potential for conflicts of interest with respect to the exercise of proxy voting, we believe that investment funds should disclose their proxy voting policies and procedures, and should make their actual proxy voting records available to securityholders.
- (3) The Instrument requires that the investment fund establish policies and procedures for determining whether, and how, to vote on any matter for which the investment fund receives proxy materials for a meeting of securityholders of an issuer. The CSA consider an investment fund to "receive" a document when it is delivered to any service provider or to the investment fund in respect of securities held beneficially by the investment fund. Proxy materials may be delivered to a manager, a portfolio adviser or sub-adviser, or a custodian. All of these deliveries are considered delivered "to" the investment fund.
- (4) The Instrument requires an investment fund to maintain an annual proxy voting record as of June 30 and to post this to the fund's website if it has one. However, investment funds may choose to disclose their proxy votes throughout the course of the year, and may also choose to disclose how they intend to vote prior to the shareholder meeting.

6.2 Proxy Voting Policies and Procedures

- (1) Section 10.2 of the Instrument sets out, in general terms, what the securities regulatory authorities consider to be minimum policies and procedures for the proxy voting process. Investment funds are responsible for adopting any additional policies relevant to their particular situation. For example, investment funds should consider whether they require any specific policies dealing with shareholder meetings of issuers resident in other countries.
- (2) An investment fund sometimes needs to vote securities held by it in order to protect its interests in connection with corporate transactions or developments relating to the issuers of its portfolio securities. The manager and portfolio adviser, or the agent of the investment fund administering a securities lending program on behalf of the investment fund, should monitor corporate developments relating to portfolio securities that are loaned by the investment fund in securities lending transactions, and take all necessary steps to ensure that the investment fund can exercise a right to vote the securities when necessary.

PART 7 MATERIAL CHANGE

7.1 Material Changes - Determining whether a change is a material change will depend on the specific facts and circumstances surrounding the change. However, the CSA is of the view that

- (a) the change of portfolio adviser of an investment fund will generally constitute a material change for the investment fund, and
- (b) the departure of a high-profile individual from the employ of a portfolio adviser of an investment fund may constitute a material change for the investment fund, depending on how prominently the investment fund featured that individual in its marketing. An investment fund that emphasized the ability of a particular individual to encourage investors to purchase the fund could not later take the position that the departure of that individual was immaterial to investors and therefore not a material change.

7.2 Confidential Material Change Report - The CSA are of the view that in order for an investment fund to file a confidential material change report under Section 11.2 of the Instrument, the investment fund or its manager should advise insiders of the prohibition against trading during the filing period of a confidential material change report and must also take steps to monitor trading activity.

PART 8 INFORMATION CIRCULARS

8.1 Sending of Proxies and Information Circulars - Investment funds are reminded that National Instrument 54-101 prescribes certain procedures relating to the delivery of proxy-related materials sent to beneficial owners of securities.

PART 9 PUBLICATION OF NET ASSET VALUE PER SECURITY

9.1 Publication of Net Asset Value Per Security – An investment fund that arranges for the publication of its net asset value per security should calculate its net asset value per security and make the results of that calculation available to the financial press as quickly as is commercially practicable. An investment fund should attempt to meet the deadlines of the financial press for publication in order to ensure that its net asset values per security are publicly available as quickly as possible.

PART 10 CALCULATION OF MANAGEMENT EXPENSE RATIO**10.1 Calculation of Management Expense Ratio**

- (1) Part 15 of the Instrument sets out the method to be used by an investment fund to calculate its management expense ratio (MER). The requirements apply in all circumstances in which an investment fund calculates and discloses an MER. This includes disclosure in a sales communication, a prospectus, an annual information form, financial statements, a management report of fund performance or a report to securityholders.
- (2) Paragraph 15.1(1)(a) requires the investment fund to use its "total expenses" before income taxes for the relevant period as the basis for the calculation of MER. Total expenses, before income taxes, include interest charges and taxes of all types, including sales taxes, GST and capital taxes payable by the investment fund. Canadian GAAP currently permits an investment fund to deduct withholding taxes from the income to which they apply. Accordingly, withholding taxes are not recorded as "total expenses" on the investment fund's income statement and need not be included in its MER calculation.

Non-optional fees paid directly by investors in connection with the holding of an investment fund's securities do not have to be included in the MER calculation, which differs from the previous requirement in NI 81-102.

- (3) The CSA recognize that an investment fund may incur fees and charges that are not included in total expenses, but that reduce the net asset value and the amount of investable assets of the investment fund. Sales commissions paid by an investment fund in connection with the sale of the investment fund's securities are an example of such fees and charges. We believe that these fees and charges should be reflected in the MER of the investment fund.
- (4) Brokerage charges and other portfolio transaction costs are not considered to be part of total expenses as they are included in the cost of purchasing, or netted out of the proceeds from selling, portfolio assets.

- (5) In its management report of fund performance, an investment fund must disclose historical MERs for five years calculated in accordance with Part 15. If the investment fund has not calculated the historical MERs in the manner required by the Instrument, we are of the view that the change in the method of calculating the MER should be treated in a manner similar to a change in accounting policy under Handbook Section 1506 *Accounting Changes*. Under Canadian GAAP, a change in accounting policy requires a retroactive restatement of the financial information for all periods shown. However, the Handbook acknowledges that there may be circumstances where the data needed to restate the financial information is not reasonably determinable.

If an investment fund retroactively restates its MER for any of the five years it is required to show, the investment fund should describe this restatement in the first document released and in the first management report of fund performance in which the restated MERs are reported.

If an investment fund does not restate its MER for prior periods because, based on specific facts and circumstances, the information required to do so is not reasonably determinable, the MER for all financial periods ending after the effective date of the Instrument must be calculated in accordance with Part 15. In this case, the investment fund must also disclose

- (i) that the method of calculating MER has changed, specifying for which periods the MER has been calculated in accordance with the change;
- (ii) that the investment fund has not restated the MER for specified prior periods;
- (iii) the impact that the change would have had if the investment fund had restated the MER for the specified prior periods (for example, would the MER have increased or decreased and an estimate of the increase or decrease); and
- (iv) a description of the main differences between an MER calculated in accordance with the Instrument and the previous calculations.

The disclosure outlined above should be provided for all periods presented until such time as all MERs presented are calculated in accordance with the Instrument.

APPENDIX A
EXAMPLES OF FILING REQUIREMENTS FOR CHANGES IN YEAR END

The following examples assume the old financial year ended on December 31, 20X0.

Transition Year	Comparative Annual Financial Statements to Transition Year	New Financial Year	Comparative Annual Financial Statements to New Financial Year	Interim Periods for Transition Year	Comparative Interim Periods to Transition Year	Interim Periods for New Financial Year	Comparative Interim Periods to New Financial Year
Up to 3 months							
3 months ended 3/31/X1	12 months ended 12/31/X0	3/31/X2	3 months ended 3/31/X1 and 12 months ended 12/31/X0	Not applicable	Not applicable	6 months ended 9/30/X1	6 months ended 9/30/X0
4 to 6 months							
6 months ended 6/30/X1	12 months ended 12/31/X0	6/30/X2	6 months ended 6/30/X1 and 12 months ended 12/31/X0	Not applicable	Not applicable	6 months ended 12/31/X1	6 months ended 12/31/X0
7 or 8 months							
8 months ended 8/31/X1	12 months ended 12/31/X0	8/31/X2	8 months ended 8/31/X1 and 12 months ended 12/31/X0	Not applicable	Not applicable	6 months ended 2/28/X2	6 months ended 2/28/X1
9 to 11 months							
11 months ended 11/30/X1	12 months ended 12/31/X0	11/30/X2	11 months ended 11/30/X1	6 months ended 6/30/X1	6 months ended 6/30/X0	6 months ended 5/31/X2	6 months ended 5/31/X1
11 to 15 months							
15 months ended 3/31/X2	12 months ended 12/31/X0	3/31/X3	15 months ended 3/31/X2	6 months ended 6/30/X1	6 months ended 6/30/X0	6 months ended 9/30/X2	6 months ended 9/30/X1

**APPENDIX B
CONTACT ADDRESSES FOR FILING OF NOTICES**

Alberta Securities Commission

4th Floor
300 – 5th Avenue S.W.
Calgary, Alberta
T2P 3C4
Attention: Director, Capital Markets

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia
V7Y 1L2
Attention: Financial Reporting

Manitoba Securities Commission

1130 – 405 Broadway
Winnipeg, Manitoba
R3C 3L6
Attention: Corporate Finance

New Brunswick Securities Commission

606 - 133 Prince William Street
Saint John, NB
E2L 2B5
Attention: Corporate Finance

Securities Commission of Newfoundland and Labrador

P.O. Box 8700
2nd Floor, West Block
Confederation Building
75 O'Leary Avenue
St. John's, NFLD
A1B 4J6
Attention: Director of Securities

Department of Justice, Northwest Territories

Legal Registries
P.O. Box 1320
1st Floor, 5009-49th Street
Yellowknife, NWT X1A 2L9
Attention: Director, Legal Registries

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street
Halifax, Nova Scotia B3J 3J9
Attention: Corporate Finance

Department of Justice, Nunavut

Legal Registries Division
P.O. Box 1000 – Station 570
1st Floor, Brown Building
Iqaluit, NT X0A 0H0
Attention: Director, Legal Registries Division

Ontario Securities Commission

Suite 1903, Box 55
20 Queen Street West
Toronto, ON M5H 3S8
Attention: Continuous Disclosure, Investment Funds

Registrar of Securities, Prince Edward Island

P.O. Box 2000
95 Rochford Street, 5th Floor,
Charlottetown, PEI
C1A 7N8
Attention: Registrar of Securities

Autorité des marchés financiers

800 Square Victoria, 22nd Floor
P.O. Box 246, Tour de la Bourse
Montréal, Québec
H4Z 1G3
Attention: Direction des marchés des capitaux

Saskatchewan Financial Services Commission – Securities Division

6th Floor,
1919 Saskatchewan Drive
Regina, SK S4P 3V7
Attention: Deputy Director, Corporate Finance

Registrar of Securities, Government of Yukon

Corporate Affairs J-9
P.O. Box 2703
Whitehorse, Yukon
Y1A 5H3
Attention: Registrar of Securities

Implementing Rule

**NOTICE OF
RULE 81-801 IMPLEMENTING NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE AND
COMPANION POLICY 81-801CP IMPLEMENTING NATIONAL INSTRUMENT 81-106
INVESTMENT FUND CONTINUOUS DISCLOSURE**

Introduction

The Commission has, under section 143 of the *Securities Act* (Ontario) (the Act), made Rule 81-801 *Implementing National Instrument 81-106 Investment Fund Continuous Disclosure* (the Implementing Rule) and adopted Companion Policy 81-801CP. The Implementing Rule was delivered to the Chair of Management Board of Cabinet on March 11, 2005. If the Minister approves the Implementing Rule, or does not reject it or return it for further consideration, it will come into force on June 1, 2005. Companion Policy 81-801CP will become effective at the same time as the Implementing Rule.

Substance and Purpose

The Implementing Rule is a local Ontario rule implementing National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106) in Ontario. Companion Policy 81-801CP provides information relating to the manner in which the Commission interprets or applies certain provisions of the Implementing Rule and NI 81-106.

The Implementing Rule provides that:

- the financial statement content requirements of NI 81-106 apply to financial statements filed under the Act,
- the financial statement filing requirements of the Act do not apply to investment funds that comply with NI 81-106,
- the financial statement delivery requirements in the Act do not apply if an investment fund complies with the delivery requirements of Part 5 of NI 81-106,
- the material change reporting obligations of the Act do not apply to reporting issuers that comply with NI 81-106.

The Implementing Rule also contains provisions regarding the solicitation of proxies, the preparation of information circulars and the filing of annual information forms.

NI 81-106 includes certain requirements that are also dealt with in the Act. This is the result of the Commission's goal to produce one harmonized rule for continuous disclosure obligations applicable to all investment funds. The Act cannot be amended at this time to remove provisions which essentially duplicate those found in NI 81-106. Accordingly, Companion Policy 81-801CP clarifies that investment funds need only refer to NI 81-106 for their Ontario securities law requirements regarding continuous disclosure and do not have to refer to Parts XVIII and Part XIX of the Act, except for sections 76 and 87 of the Act.

Background and Comments

On May 28, 2004, we published for comment the second version of NI 81-106 and the first version of the proposed Implementing Rule. The comment period expired in August 2004 and we did not receive any comments on the proposed Implementing Rule. No material changes have been made to the proposed Implementing Rule, although it has been modified to make it consistent with the final version of NI 81-106.

On the same date as the publication of this Notice, the Canadian Securities Administrators (CSA) are publishing a Notice of the making of NI 81-106. For a summary of the changes made to NI 81-106, please refer to that CSA Notice.

Questions may be referred to any of:

Vera Nunes
Legal Counsel, Investment Funds
Ontario Securities Commission
Tel: (416) 593-2311
Fax: (416) 593-3699
e-mail: vnunes@osc.gov.on.ca

Irene Tsatsos
Senior Accountant, Investment Funds
Ontario Securities Commission
Tel: (416) 593-8223
Fax: (416) 593-3699
e-mail: itsatsos@osc.gov.on.ca

Text of Rule

The text of the Implementing Rule and Companion Policy 81-801CP follows.

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

PART 1 – DEFINITIONS

1.1 Definitions

- (1) In this Rule, "NI 81-106" means "National Instrument 81-106 *Investment Fund Continuous Disclosure*".
- (2) Each term used in this Rule that is defined or interpreted in Part 1 of NI 81-106 has the meaning ascribed to it in that Part.

PART 2 – APPLICATION

2.1 Application – Except as specifically provided otherwise in this Rule, this Rule applies to

- (a) an investment fund that is a reporting issuer; and
- (b) a mutual fund in Ontario.

PART 3 – INTERRELATIONSHIP WITH LEGISLATION

3.1 Annual Financial Statements – Content

- (1) The financial statements required under section 78 of the Act must include the statements and notes described in subsection 2.1(1) of NI 81-106.
- (2) Sections 2.2, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.11 of NI 81-106 apply to financial statements and auditor's reports required under section 78 of the Act as if any reference to financial statements or auditor's reports in those sections is a reference to section 78 of the Act.
- (3) This section applies for financial years ending on or after June 30, 2005.

3.2 Interim Financial Statements – Content

- (1) The financial statements required under section 77 of the Act must include the statements and notes described in section 2.3 of NI 81-106.
- (2) Sections 2.4, 2.5, 2.6, 2.9, 2.11 and 2.12 of NI 81-106 apply to financial statements required under section 77 of the Act as if any reference to financial statements in those sections is a reference to section 77 of the Act.
- (3) This section applies for interim periods ending after the period determined in subsection 3.1(3).

3.3 Filing Annual Financial Statements – Exemption – Section 78 of the Act does not apply to an investment fund that is a reporting issuer, or to a mutual fund in Ontario, that complies with sections 2.1, 2.2, 2.5, 2.6, 2.7, 2.8, 2.9 and 2.11 of NI 81-106 for financial years ending on or after June 30, 2005.

3.4 Filing Interim Financial Statements – Exemption – Section 77 of the Act does not apply to an investment fund that is a reporting issuer, or to a mutual fund in Ontario, that complies with sections 2.3, 2.4, 2.5, 2.6, 2.9, 2.11 and 2.12 of NI 81-106 for interim periods ending after the period determined in section 3.3.

3.5 Delivering Financial Statements – Exemption – Section 79 of the Act does not apply to an investment fund that is a reporting issuer, or to a mutual fund in Ontario, that complies with Part 5 of NI 81-106 in the case of

- (a) annual financial statements for financial years ending on or after June 30, 2005; and
- (b) interim financial statements for interim periods ending after the period determined in subsection (a).

3.6 Material Change Reports – Form – Every report required under subsection 75(2) of the Act must be a completed Form 51-102F3, as modified by s. 11.2(1)(c) of NI 81-106, except that the reference in Part 2, Item 3 of Form 51-102F3 to section 11.2 of NI 81-106 shall be read as referring to subsection 75(1) of the Act and references in Part 2, Items 6 and 7 of Form 51-102F3 to subsections 11.2(2), 11.2(4) or 11.2(5) of NI 81-106 shall be read as referring to subsections 75(3), 75(4) or 75(5), respectively, of the Act.

- 3.7 Issuance of Material Change News Release – Exemption** – Subsection 75(1) of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 11.2(1)(a) of NI 81-106.
- 3.8 Filing Material Change Report – Exemption** – Subsection 75(2) of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 11.2(1)(c) of NI 81-106.
- 3.9 Annual Filing – Exemption** – Investment funds that are reporting issuers are exempt from subsection 81(2) of the Act.
- 3.10 Information Circulars – Form** – An information circular referred to in clause (a) or (b) of subsection 86(1) of the Act must be a completed Form 51-102F5 from and after July 1, 2005.
- 3.11 Filing Information Circular – Exemption** – Subsection 81(1) of the Act does not apply to an investment fund that is a reporting issuer that complies with section 12.4 of NI 81-106, from and after July 1, 2005.
- 3.12 Solicitation of Proxies – Exemption** – Section 85 of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 12.2(1) of NI 81-106, from and after July 1, 2005.
- 3.13 Sending Information Circular – Exemption** – Section 86 of the Act does not apply to an investment fund that is a reporting issuer that complies with subsection 12.2(2) of NI 81-106, from and after July 1, 2005.

PART 4 – EFFECTIVE DATE

- 4.1 Effective Date** – This Rule comes into force on June 1, 2005.

**COMPANION POLICY 81-801CP - TO ONTARIO SECURITIES COMMISSION RULE 81-801
IMPLEMENTING NATIONAL INSTRUMENT 81-106 INVESTMENT FUND CONTINUOUS DISCLOSURE**

- 1.1 Introduction** – The purpose of this Companion Policy is to provide information relating to the manner in which the Ontario Securities Commission interprets or applies certain provisions of OSC Rule 81-801 *Implementing National Instrument 81-106 Investment Fund Continuous Disclosure* (the Implementing Rule) and National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106).
- 1.2 Interrelationship between NI 81-106 and the *Securities Act* (Ontario) (the Act)** – NI 81-106 is intended to provide a single source of harmonized continuous disclosure obligations for investment funds. As a result, NI 81-106 sometimes repeats (without any substantive change) certain requirements that are also dealt with in the Act under Part XVIII *Continuous Disclosure* and Part XIX *Proxies and Proxy Solicitation*. In addition, NI 81-106, through the Implementing Rule, varies or adds to some of the requirements contained in Parts XVIII and XIX of the Act. The cumulative effect of NI 81-106 and the Implementing Rule is that NI 81-106 supersedes the requirements found in Parts XVIII and XIX of the Act (other than sections 76 and 87, the subject matter of which are not dealt with in NI 81-106). Investment funds that are reporting issuers and mutual funds in Ontario can and should therefore refer to NI 81-106 in place of the continuous disclosure and proxy solicitation requirements contained in Parts XVIII and XIX of the Act (other than sections 76 and 87).

This page left intentionally left blank