



THE INVESTMENT
FUNDS INSTITUTE
OF CANADA

L'INSTITUT DES FOND
D'INVESTISSEMENT
DU CANADA

IFIC Submission

Regulatory Burden Reduction

OSC Staff Notice 11-784 Burden Reduction

March 1, 2019





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March 1, 2019

Delivered By Email: comments@osc.gov.on.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, ON

Dear Sirs and Mesdames:

RE: OSC Staff Notice 11-784 Burden Reduction

The Investment Funds Institute of Canada (**IFIC**) is pleased to respond to OSC Staff Notice 11-784 *Burden Reduction*. IFIC supports the Ontario Securities Commission's (**OSC**) establishment of the Burden Reduction Task Force (**Task Force**) to identify opportunities to enhance the competitiveness of Ontario businesses by saving time and money for issuers, registrants, investors and other market participants.

IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations, to foster a strong and stable investment sector where investors can realize their financial goals.

Reducing the regulatory burden is a desirable and commendable goal for all stakeholders. Regulation imposes costs to the regulatory agency to administer the requirements, costs to the firm to comply with requirements and costs to the economy from lost opportunities, reduced competition and reduced economic efficiency. All of these costs are ultimately borne by the investor.

In support of the Task Force's work, we offer suggestions for reducing the regulatory burden, which we group under the following headings:

1. Improvements to the rule-making process
2. Changes to current rules
3. Improvements to the OSC's operations
4. Improvements to the CSA's information technology systems

1. Improvements to the Rule-Making Process

We recommend that the OSC adopt the following practices into its rule-making process:

A Robust Cost-Benefit Analysis Process

Section 143.2(1)7 of the *Securities Act* (Ontario) (**Act**) requires the OSC to publish a “description of the anticipated costs and benefits of the proposed rule” as part of the rule notice. We believe this is a critical step in the rule-making process, despite the inherent difficulty in reliably estimating the costs and measuring the benefits. In our view, the OSC’s cost-benefit analyses often contain a perfunctory acknowledgement of significant costs to the industry with an explanation of the desired benefits to investors, but this does not appear to be supported by meaningful analysis. In contrast, we refer you to the recent robust cost-benefit analysis undertaken by the UK’s Financial Conduct Authority in their *Consultation on proposals to improve shareholder engagement*¹.

Implement a Regulatory Impact Analysis

We encourage the OSC to go beyond the cost-benefit analysis discussed above and implement a fulsome regulatory impact analysis (**RIA**) process. In their Working Paper entitled *Reforming Regulatory Analysis, Review, and Oversight: A Guide for the Perplexed*, Jerry Ellig and Richard Williams discuss the importance and role of RIAs, stating:

“The most extensive RIA requirements apply to economically significant regulations. A thorough RIA should do four things:

1. Assess the nature and significance of the problem the agency is trying to solve, so the agency knows whether there is a problem that could be solved through regulation and, if so, the agency can tailor a solution that will effectively solve the problem.
2. Identify a wide variety of alternative solutions.
3. Define the benefits the agency seeks to achieve in terms of ultimate outcomes that affect citizens’ quality of life, and assess each alternative’s ability to achieve those outcomes.
4. Identify the good things that regulated entities, consumers, and other stakeholders must sacrifice in order to achieve the desired outcomes under each alternative. In economics jargon, these sacrifices are known as “costs,” but just like benefits, costs may involve far more than monetary expenditures.

Without all this information, regulatory choices are based on intuition.”²

In 1995, the Organization for Economic Cooperation and Development (**OECD**) produced the *OECD Reference Checklist for Regulatory Decision-making* (see Appendix A). The regulatory checklist poses questions that policy makers should ask themselves when evaluating their response to a perceived policy problem. The checklist sets out the framework for a rigorous RIA process that will ensure that:

- a. the policy problem that needs to be addressed is properly articulated and supported;
- b. the problem can only properly be addressed through rule-making; and
- c. the rule-making strikes an appropriate balance between the benefits to investors and the cost borne by the industry, which costs are ultimately borne by investors.

¹ *Consultation on proposals to improve shareholder engagement*—Consultation Paper CP19/7 (January 2019) <https://www.fca.org.uk/publication/consultation/cp19-07.pdf> at pages 27 to 34

² Ellig, J and Williams R., *Reforming Regulatory Analysis, Review, and Oversight: A Guide for the Perplexed*. Mercatus Center at George Mason University Working Paper No. 14-23 (August 2014) at pages 6-7.

We note that this last element of the RIA process is consistent with our first recommendation regarding a robust cost-benefit analysis.

Blanket Relief

We recommend that the Act be amended to provide the OSC with the authority to issue blanket exemptive relief. It is unduly burdensome and costly to both the OSC and individual firms to address individual applications for exemptive relief that is required or desired by multiple industry participants on a firm-by-firm basis.³ Blanket rulings and orders eliminate costs, delays and uncertainty caused by individual applications for exemptive relief. All other members of the Canadian Securities Administrators (**CSA**) have the ability to provide blanket exemptive relief, which increases efficiency for both the regulator and the industry.

In addition, we urge the OSC to periodically review exemptive relief that is routinely granted and codify the relief wherever possible. However, the terms and conditions of existing relief should be grandfathered to reduce uncertainty for registrants that are relying on the granted relief in their business operations.

2. Changes to Current Rules

We provide the following specific suggestions to amend or eliminate certain regulatory requirements to reduce the regulatory burden on registrants.

Repeal Section 117 of the Act

Section 117 pre-dates the introduction of National Instrument 81-107 *Independent Review Committee for Investment Funds*. The conflicts of interest matters that must be reported under section 117 are now dealt with through the oversight of a fund's independent review committee. The filings under section 117 are therefore unnecessary and time-consuming. This change would also require a repeal of section 169 of Regulation 1015 of the Act and the related Form 38.

Exemption from Trade Confirmation Delivery for Payment of Account Fees

We urge the OSC to work with the other members of the CSA to amend section 14.12 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* to provide that delivery of a transaction confirmation is not required where the account holder has provided instructions to sell fund units to pay the account fee. The account holder has already provided instructions to sell fund units and receives reporting of the transaction in the monthly or quarterly account statement. Therefore, delivery of a trade confirmation is unnecessary and costly.

A corollary change to the rules of the self-regulatory organizations (**SROs**) will also be necessary to implement this recommendation.

Eliminate SEDAR Form 6 Requirement

Section 4.3(3) of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* requires the filing of a SEDAR Form 6 as a certificate of authentication for filings containing certificates signed in electronic format. It requires each person whose signature appears in electronic format on documents filed through SEDAR to sign a SEDAR Form 6 and deliver it by mail or courier to the CSA.

With innovations in technology, including increasing use of electronic signatures, and the obligation on issuers to have policies and procedures in place to ensure the validity of the

³ For example, Notice and Access relief and relief to reference the Lipper Awards were obtained by multiple industry participants.

electronic signature, Form 6 is an unnecessary filing requirement. We urge the OSC to work with the other members of the CSA to eliminate this outdated requirement.

A Consistent Approach to Reporting Outside Business Activities

The regulatory approach to reportable outside business activities (**OBA**s) is continually evolving and is not harmonized nationally. We urge the OSC work with the other members of the CSA and with the SROs to develop and communicate a consistent approach concerning the reporting of OBAs by registrants.

Given the ongoing evolution regarding OBAs, we strongly urge the offering of an amnesty period to permit registrants to report activities once a consistent national approach to OBAs is developed. This will encourage registrants to report OBAs that were not previously reportable, without being subject to significant late filing penalties. We also encourage the OSC to reconsider the quantum of applicable late filing fees, which are disproportionately high for what is generally not an intentional delay in filing and are not in line with other CSA jurisdictions.

Investment Fund Continuous Disclosure

We have attached IFIC's letter dated September 28, 2017 with suggestions for reducing the regulatory disclosure burden for investment fund issuers⁴. We understand that the CSA will publish rule proposals to address some of these suggestions later this year.

IFIC reaffirms our support for adopting all of our previous suggestions, including the following suggestions relating to investment fund continuous disclosure:

- Remove Part 3 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) so that financial statements are prepared exclusively in accordance with International Financial Reporting Standards (**IFRS**). By removing the specific disclosures required by Part 3, the financial statements will be easier to understand, simpler to prepare and less costly to audit. If there are specific items in Part 3 that the securities regulatory authorities consider necessary to fulfill their oversight obligations, those items can be filed separately with the principal regulator. Such items might include the requirement to separately disclose securities lending revenue (including recent additional note disclosure) and "soft dollars".
- In the alternative, if Part 3 of NI 81-106 is not removed, we recommend removing some of the more onerous non-IFRS requirements in Part 3. In particular, we recommend elimination of:
 - a) The requirement to prepare the Statement of Changes in Financial Position for each series of a fund. The Statement of Changes should be consistent with IFRS requirements and only require information at the fund level.
 - b) The detailed listing of each portfolio investment required in the Schedule of Investments. We believe that complying with the risk and concentration disclosures in accordance with IFRS is sufficient. Listing several hundred or more small investments is of limited value, may obscure information that is more meaningful and adds to the fund's audit cost.
 - c) The requirement for separate disclosure of income from derivatives and revenue from securities lending. Today, derivatives are a well-understood portfolio investment, compared to when NI 81-106 was first published. IFRS already provides meaningful risk and concentration disclosures for derivatives. As a result, this additional disclosure is unnecessary.
- Make changes to the Management Report of Fund Performance (**MRFP**) requirements to eliminate the interim MRFP and streamline the annual MRFP.

Please see a further discussion of these suggestions in our letter attached as Appendix B.

⁴ See Appendix B.

We also recommend that the OSC rationalize and harmonize the various sources of investment fund continuous disclosure available to clients (e.g. financial statements, MRFP, Fund Facts, quarterly portfolio disclosure).

We urge the OSC to work with other members of the CSA to effect these changes, which will reduce the regulatory burden on fund companies, including the cost relating to the audit work, without significantly reducing client access to financial information.

Remove Requirement for Investment Fund Issuers to File a Prospectus Annually

We note that National Instruments form the vast majority of investment fund regulation and there remain many opportunities for the CSA to reduce the regulatory burden on the investment funds industry through amendments to the applicable National Instruments.

For example, we recommend the elimination of the requirement to annually renew and file a prospectus for investment fund issuers, along with all accompanying documents other than the Fund Facts or ETF Facts document. Today, the Fund Facts and ETF Facts serve as the essential disclosure documents that provide the key information investors need to inform their purchase decision. The information in these documents should continue to be refreshed on an annual basis. However, in many instances, the information contained in the prospectus does not change materially each year. The annual prospectus filing process is a costly exercise that requires significant internal and external resources to complete. We believe the continuous disclosure regime in NI 81-106 ensures investors continue to be informed of material changes and that the prospectus is amended at the appropriate time.⁵

3. Improvements to the OSC's Operations

One of the most significant burden reduction initiatives that would benefit the investment funds industry is ensuring consistency of approach and interpretation within and across the branches of the OSC and between the OSC and other members of the CSA and the SROs. It is a significant burden on industry to address inconsistencies in interpretation or approach within and among regulators.

Below we set out some specific suggestions for regulatory consistency.

Audit to the Rule, not to Guidance

While we appreciate the publication of guidance by OSC staff on current issues, it is important to recognize that compliance with the rules can be achieved in a number of ways, not solely by compliance with the published guidance. We recommend the OSC clearly articulate that guidance is only provided to assist registrants in implementing their compliance program. As a result, when conducting compliance reviews staff must audit for compliance with the regulatory requirement, not with any guidance. This clarification will reduce the regulatory burden on the industry by providing flexibility in complying with regulatory requirements. Industry members will have certainty that their compliance policies and procedures will not be judged inadequate solely in light of published guidance.

Clarify the Purpose and Scope of OSC Advisory Committees

We note that the OSC has ten advisory committees established to gather input on securities regulation and industry trends. Two of these advisory committees deal with issues relating to the investment fund industry:

- The Registrant Advisory Committee “discusses issues and challenges faced by registrants in interpreting and complying with Ontario securities law, including

⁵ We note that a similar suggestion was made by Glorianne Stromberg in *Investment Funds in Canada and Consumer Protection: Strategies for the Millenium* (October 1998) at page 55.

registration and compliance-related matters⁶ and supports the Compliance & Registrant Regulation Branch.

- The Investment Funds Product Advisory Committee advises OSC staff “on emerging product developments and innovations occurring in the investment fund industry”⁷ and supports the Investment Funds & Structured Products Branch.

We recommend the OSC consult with the advisory committees early in the rule-making process. Seeking input on the options being considered by the OSC (or the CSA) in response to perceived policy issues will help to identify potential impacts (both positive and negative) as well as other options to respond prior to a formal proposal for consultation. We also recommend that the Investment Funds Product Advisory Committee be consulted on all matters impacting investment funds, not just product specific issues and innovations.

Improve the Compliance Reviews and Sweeps Process

In May 2014, the OSC adopted the *OSC Service Commitment: Our Service Standards and Timelines*. We commend the OSC for adopting these standards, but note that they do not extend to on-site compliance reviews, desk reviews or industry sweeps. Admittedly, it is difficult to anticipate when a review or sweep might be completed. However, our members appreciate being advised of the progress, completion or termination of the review or sweep for purposes of management reporting and resource allocation. We note that the British Columbia Securities Commission (**BCSC**) has service standards which require that a detailed, written examination report be provided to a registrant within thirty days after the completion of an examination closed meeting.

Our members also note the apparent lack of coordination within and amongst branches of the OSC concerning the timing of reviews or sweeps, and the apparent lack of coordination with other regulators. Reviews and sweeps demand significant resources, and multiple reviews or sweeps ongoing at the same time or in close succession place a significant strain on member resources. We recommend the OSC adopt a formalized process for coordinating registrant reviews and sweeps.

In addition, our members note the difficulty, at times, of providing information electronically to the OSC in response to questions raised in the course of a compliance review due to the size of the electronic file. We recommend that the Compliance & Registrant Regulation Branch and the Investment Funds & Structured Products Branch establish a portal through which filings, including the Risk Assessment Questionnaire (**RAQ**), can be made, similar to the OSC portal for filing Form 45-106F1 and similar to the portals used by IIROC and by the AMF.

Assign a Designated Relationship Manager

We recommend that the OSC assign a relationship manager to registrants overseen by the OSC to whom the registrants can turn to ask questions or seek guidance. This would ensure consistency of approach in the guidance provided. We note that other regulators such as the BCSC and the SROs designate a relationship manager for each registered firm. A relationship manager could also help coordinate the timing of on-site compliance reviews, desk reviews and industry sweeps.

Rely on Principal Regulator for Compliance Reviews

We encourage CSA members to only conduct reviews of registrants for whom they are the principal regulator. Currently, the securities commission from one province may conduct compliance reviews of registrants whose principal location is in another province. Such reviews duplicate the reviews of the principal regulator. We recommend that CSA members rely upon the reviews conducted by a registrant’s principal regulator.

⁶ http://www.osc.gov.on.ca/en/About_advisory-committees_index.htm#h2-about-the-OSC

⁷ http://www.osc.gov.on.ca/en/About_advisory-committees_index.htm#h2-about-the-OSC

The principal regulator could notify the other CSA jurisdictions of its intention to conduct a review so that other CSA members can provide input on any issues they wish to include in the review. In this way, registrants deal only with their principal regulator.

Report Risk Ranking Arising out of OSC Risk Assessment Questionnaire

The OSC sends out a RAQ to gather information about registered firms' operations every two years. The information collected is used to apply a risk ranking to each firm so that higher risk firms can be targeted for review. However, this risk ranking is not communicated to the registered firms.

The BCSC and IROC also use a questionnaire to apply a risk ranking to firms. They communicate the resulting risk ranking to each firm together with an indication of how the registered firm ranks relative to other registrants. This helps firms allocate resources more effectively. We recommend that the OSC adopt a similar approach to communicating a firm's risk ranking.

Improve the Prospectus Review Process

We offer the following suggestions to reduce the regulatory burden posed by the prospectus filing and renewal process:

- Consider assigning the same reviewer for all prospectus filings from the same fund complex and, where possible, annually thereafter. Currently, many fund managers file prospectuses for different fund families within their fund complex at different times of the year. These prospectuses are assigned to different reviewers, often resulting in differing, and sometimes conflicting, comments. This can result in a lack of consistent disclosure across fund families within the same fund complex, or can result in changes to previously approved disclosure. Additionally, our members find that comments that have been resolved in prior years are made again because the reviewer is not familiar with the resolution reached in past filings. This is unnecessarily burdensome as fund company staff and external legal advisors are required to devote resources to helping the reviewer understand the fund family and previously resolved comments.
- Develop and apply a materiality threshold for all staff comments on the review of prospectus filings. Many members receive comments that are inconsequential to the decision to grant a prospectus receipt. Responding to these minor comments delays the review process and increases the internal and external resources required to complete the filing. Introducing a materiality threshold that ensures OSC staff comments are both directly relevant and material to the decision to issue a receipt will significantly streamline the review process and reduce the operational burden.
- Establish an internal process for co-ordinating comments among OSC staff reviewing the prospectus filing such that all comments are received and addressed prior to a prospectus being cleared for final filing.

Introduce a Materiality Threshold for Exemptive Relief

Consistent with the discussion under "Improve the Prospectus Review Process" above, we recommend applying a materiality threshold for staff comments on exemptive relief applications.

OSC Should Join the Passport System

Our members whose principal regulator is not the OSC believe the absence of the OSC from the passport system is an unnecessary regulatory burden. They must file applications for exemptive relief as well as prospectuses for review with both their principal regulator and the OSC, requiring a cumbersome coordination process between the two regulators. In contrast, filers for whom the OSC is the principal regulator do not bear this regulatory burden.

4. Improvements to the CSA's Information Technology Systems

In its business plan for 2016-2019 the CSA indicated it had initiated the National Systems Rebuild Project (**NSRP**), a “wide scale project” to replace its information technology systems⁸ with a “single, intuitive and secure filing system for regulators and market participants”.⁹ IFIC encourages the CSA to make tangible advances in this important project and include input from industry stakeholders in order to improve the internal work-flow processes of both the CSA and the industry. Our members have a number of suggestions for increased functionality and improvements, which will enable both regulators and industry to leverage these systems and the information stored within them to automate work-flow processes, streamline operations and reduce costs.

* * * * *

We thank you for this opportunity to provide input on opportunities for regulatory burden reduction and look forward to participating in the Round Table on March 27, 2019.

We would be pleased to provide further information or answer any questions you may have in the interim. Please feel free to contact me by email at pbourque@ific.ca or by phone at 416-309-2300.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA

A handwritten signature in black ink, appearing to read "Paul C. Bourque", with a long horizontal line extending to the right.

By: Paul C. Bourque Q.C.
President and CEO

⁸ SEDAR, SEDI, National CTO Database, NRD, National Registration Search and Disciplined List

⁹ https://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_Business_Plan_2016-2019.pdf at page7

APPENDIX A

OECD REFERENCE CHECKLIST FOR REGULATORY DECISION-MAKING

1. Is the problem correctly defined?

The problem to be solved should be precisely stated, giving evidence of its nature and magnitude, and explaining why it has arisen (identifying the incentives of affected entities).

2. Is government action justified?

Government intervention should be based on explicit evidence that government action is justified, given the nature of the problem, the likely benefits and costs of action (based on a realistic assessment of government effectiveness), and alternative mechanisms for addressing the problem.

3. Is regulation the best form of government action?

Regulators should carry out, early in the regulatory process, an informed comparison of a variety of regulatory and non-regulatory policy instruments, considering relevant issues such as costs, benefits, distributional effects and administrative requirements.

4. Is there a legal basis for regulation?

Regulatory processes should be structured so that all regulatory decisions rigorously respect the “rule of law”; that is, responsibility should be explicit for ensuring that all regulations are authorised by higher-level regulations and consistent with treaty obligations, and comply with relevant legal principles such as certainty, proportionality and applicable procedural requirements.

5. What is the appropriate level (or levels) of government for this action?

Regulators should choose the most appropriate level of government to take action, or if multiple levels are involved, should design effective systems of co-ordination between levels of government.

6. Do the benefits of regulation justify the costs?

Regulators should estimate the total expected costs and benefits of each regulatory proposal and of feasible alternatives, and should make the estimates available in accessible format to decision-makers. The costs of government action should be justified by its benefits before action is taken.

7. Is the distribution of effects across society transparent?

To the extent that distributive and equity values are affected by government intervention, regulators should make transparent the distribution of regulatory costs and benefits across social groups.

8. Is the regulation clear, consistent, comprehensible and accessible to users?

Regulators should assess whether rules will be understood by likely users, and to that end should take steps to ensure that the text and structure of rules are as clear as possible.

9. Have all interested parties had the opportunity to present their views?

Regulations should be developed in an open and transparent fashion, with appropriate procedures for effective and timely input from interested parties such as affected businesses and trade unions, other interest groups, or other levels of government.

10. How will compliance be achieved?

Regulators should assess the incentives and institutions through which the regulation will take effect, and should design responsive implementation strategies that make the best use of them.



September 28, 2017

Delivered By Email: jmountain@osc.gov.on.ca, hugo.lacroix@lautorite.qc.ca

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Dear John and Hugo

RE: IFIC Submission on Project RID

Introduction

IFIC is pleased to provide the Ontario Securities Commission (OSC) and the Autorité des marchés financiers (AMF), on behalf of the CSA, with our initial suggestions for reducing the regulatory disclosure burden for investment funds.

IFIC believes effective disclosure is important in a well-functioning securities regulatory regime. Indeed, under the *Securities Act* (Ontario), one of the primary means for achieving the purposes of the Act is the requirement for “timely, accurate and efficient disclosure of information.”¹

In response to your invitation to participate in Project RID, the Legal and Compliance Working Group established the Regulatory Burden Sub-Group (the Sub-Group) which has met several times over the course of the summer to prepare this submission.

Our submission covers six areas:

1. Combine the simplified prospectus and annual information form into one annual disclosure document, eliminating redundant disclosure requirements and updating other requirements.
2. Create a new, streamlined form requirement for information circulars for meetings required by Part 5 of NI 81-102.
3. Make certain changes to financial reporting requirements to align with the direction of the International Accounting Standards Board, including addressing regulatory overlap and inconsistencies.

¹ Securities Act (Ontario), ss. 2.1(2)(i)

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4. Make changes to the Management Report of Fund Performance (MRFP) requirements to either eliminate the MRFP in its entirety or, alternatively, to eliminate the interim MRFP and streamline the annual MRFP.
5. Introduce mechanisms for the delivery of certain fund documents and for availability of all other fund disclosure documents other than Fund Facts.
6. Eliminate Personal Information Form information requirements that are already filed and available through the National Registration Database (NRD) or arrange for the information to be populated through the NRD.

Combine the Simplified Prospectus and Annual Information Form into One Annual Disclosure Document

The Sub-Group recommends that the Simplified Prospectus (SP) and Annual Information Form (AIF) be combined into one disclosure document which must be prepared and filed annually. Attached to this letter is Appendix A which is a chart setting out the SP and AIF disclosure requirements. We have identified disclosure requirements that we recommend be maintained in the newly combined document (New SP) and duplicative requirements that we recommend be eliminated.

In addition, the Sub-Group has identified other areas of required disclosure which we not be included in the New SP either because they are found elsewhere (on client statements, in the Fund Facts, in the IRC report) or are generic that they can be included on the website of the regulators instead.

The Sub-Group also has noted certain disclosure requirements that we recommend not be included in the New SP if they are instead disclosed on the fund manager website. The Sub-Group recommends that these disclosure items remain form items, however. The Sub-Group also recommends that the ability to make these disclosures on the website of the fund manager be OPTIONAL; if not disclosed on the website they will need to be disclosed in the New SP. The Sub-Group believes it is critical that fund managers be given as much flexibility as possible when it comes to website disclosure. Given the speed with which technology is evolving, and to permit maximum flexibility to respond to any potential cybersecurity concerns, the Sub-Group recommends that any rules around the disclosure of information on fund manager websites be principles-based.

Create A New, Streamlined Form Requirement for Information Circulars for Meetings Required by Part 5 of NI 81-102

Information circulars for NI 81-102 Part 5 (Fundamental Changes) meetings must be prepared in accordance with Form 51-102F5 "Information Circular". Many of these Form 51-102F5 content requirements are not applicable to investment funds generally, and in particular to investment funds which are holding a meeting of security holders to obtain approval for a fundamental change. The Sub-Group therefore recommends that a new information circular form, with disclosure appropriate to investment funds holding a meeting of security holders to obtain approval for a fundamental change, be developed.

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Changes to Financial Reporting Requirements

The Sub Group recommends changes to address the regulatory overlap and inconsistencies between IFRS and NI 81-106 Part 3.

Part 3 of NI 81-106 was created long before IFRS and was, in effect, GAAP for Canadian mutual funds. Since IFRS was mandated as GAAP a few years ago, funds have been trying to incorporate the prescriptive requirements of Part 3 into their IFRS statements, but it has been very challenging. IFRS is principles-based. The IFRS Conceptual Framework makes it clear that IFRS financial statements are general purpose financial reports and *“do not and cannot provide all of the information that existing and potential investors, lenders and other creditors need”*. While stakeholders including investors and regulators may find some of the financial information contained in IFRS financial statements useful, they are not designed to be the only source of information.

Over the past several years, there has been a significant increase in the quantity and availability of relevant financial information that stakeholders have access to whether through MRFPs, Quarterly Portfolio Disclosures (QPD), offering documents, Fund Facts, websites or even personalized CRM2 compliant client statements. This has led to a duplication of information being provided as well as significant complexity of IFRS financial statements, including the very prescriptive items contained in Part 3 of NI 81-106. Prior to the transition to IFRS, mutual fund financial statements were relatively simple and all virtually identical as they were able to rely on AcG 18 under Canadian GAAP which permitted investment fund industry-specific presentation and disclosures. Currently, IFRS mutual fund financial statements, being both IFRS and NI 81-106 compliant, have become very lengthy, more complex and difficult to understand for even skilled financial statement readers. The International Accounting Standards Board (“IASB”) has recently undertaken an initiative to streamline disclosures to remove excessive and immaterial disclosures that obscure meaningful information. The IASB has acknowledged that years of incremental additional disclosures have created “disclosure overload” and detract from the usefulness of the statements, rather than improve them. This, compounded with additional regulatory disclosures, has added to the “regulatory overburden”.

The Sub-Group therefore recommends moving NI 81-106 Part 3 disclosures to other documents, so that financial statements would be pure IFRS compliant. The Sub-Group also recommends deleting some of the more onerous requirements in NI 81-106 Part 3 that are not required under IFRS. Appendix B sets out further details of these recommendations.

Improvements to Management Report of Fund Performance (MRFP)

The MRFP was intended to provide investors with information about the returns of their fund. Now with CRM2 investors receive personalized rates of return so the MRFP is no longer as relevant for investors as it once was. Similar to financial statements, investors appear to have very little interest in these documents as noted from the low investor request rates across the industry. Further, the MRFP was meant to augment the financial statements, much like the Management Discussion & Analysis (MD&A) does for public companies. However, unlike public companies that issue MD&A, mutual funds are required to prepare and issue other reporting documents (e.g. client statements with personalized rates of return and CRM2 cost disclosures).

As a result, the Sub-Group recommends two alternatives. The first alternative is to eliminate the MRFP in its entirety. The second alternative is to eliminate the interim MRFP and to streamline the annual MRFP. Both alternatives are discussed in further detail in Appendix C.

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Introduce Mechanisms for the Availability of Certain Fund Documents and for Delivery of Fund Documents Other Than Fund Facts

The Sub-Group notes that only one jurisdiction continues to require “delivery” of fund disclosure documents, and that the draft Capital Markets Act does not contain such a requirement. As a result, we recommend changes to the delivery requirements for all fund disclosure documents other than Fund Facts.

- (a) **Codify Notice & Access Relief for Proxy Materials.** The Sub-Group notes that exemptive relief has been provided to some fund managers to use notice & access for proxy materials (including Information Circulars), which contain important information about matters on which security holders are being asked to vote. The Sub-Group recommends that this relief be codified.
- (b) **Permit Access Equals Delivery for all other Fund Disclosure Documents (other than Fund Facts).** The Sub-Group recommends that financial statements, MRFP, (if the requirement for MRFP is retained), and opt-in cards be permitted to be “delivered” using an Access Equals Delivery form of delivery.

Personal Information Forms

As a final matter, the Sub-Group is recommending that Personal Information Form requirements which require information already filed through the National Registration Database (NRD) either be eliminated or be set up so that the information can be populated through the NRD.

Conclusion

IFIC, through the Regulatory Burden Sub-Group, is pleased to have this opportunity to provide you with our initial suggestions for reducing the regulatory disclosure burden for investment funds. Streamlining and reducing disclosure requirements is compatible with investor protection. In fact, succinct and targeted disclosure requirements are more likely to be read and understood by investors and ultimately achieve their investor protection purpose.

We would be happy to meet with you to discuss our suggestions, and to continue a dialogue on Project RID and our proposed recommendations.

* * * * *

If you have any questions or comments, please contact me by email (jsalter@ific.ca) or by phone at 416-309-2328.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Janet Salter
Senior Policy Advisor

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Appendix A—SP and AIF Disclosure Requirements

SP 81-101F1 Disclosure:

Contents	Comments on Whether to Retain Requirement	Views on duplication, necessity, audience or delivery method for requirement
PART A GENERAL DISCLOSURE Item 1: Front Cover Disclosure	keep	
Item 2: Table of Contents	keep	
Item 3: Introductory Disclosure	keep	
Item 4: General Investment Risks	keep	As part of the review, we recommend revisiting the instructions
Item 5: Organization and Management Details for a Multiple SP	keep	
Item 6: Purchases, Switches and Redemptions	keep	
Item 7: Optional Services Provided by Mutual Fund Organization	keep	
Item 8: Fees and Expenses	keep	
Item 9: Dealer Compensation	keep BUT remove section 9.2	Duplication with CRM2 requirement to include at client level on statements
Item 10: Income Tax Considerations for Investors	keep	
Item 11: Statement of Rights	delete	Duplication with Fund Facts
Item 12: Additional Information	keep	
Item 13: Part B Introduction	keep	
Item 14: Back Cover	keep	
PART B FUND-SPECIFIC INFORMATION Item 1: General	keep	Parking lot: In future, revisit the interaction of Fund Facts with Part B of SP
Item 2: Introductory	keep	

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Contents	Comments on Whether to Retain Requirement	Views on duplication, necessity, audience or delivery method for requirement
Item 3: General Information	delete	Move to provincial regulators' websites
Item 4: Organization and Management Details	keep	
Item 5: Fund Details	keep	
Item 6: Fundamental Investment Objectives	keep	
Item 7: Investment Strategies	keep	
Item 8: [Repealed]		
Item 9: Risks	keep	
Item 9.1 Investment Risk Classification Methodology	keep	
Item 10: Suitability	delete	Duplication with Fund Facts
Item 11: [Repealed]		
Item 12: Distribution Policy	keep	
Item 13: Financial Highlights	delete	Duplication with Fund Facts and the disclosure in Fund Facts is preferable
Item 14: Additional Information	keep	

Continued on next page.

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AIF 81-101F2 Disclosure

Contents	Comments on Whether to Retain Requirement	Views on duplication, necessity, audience or delivery method for requirement
GENERAL INSTRUCTIONS Item 1: Front Cover Disclosure	delete	Duplication with SP
Item 2: Table of Contents	delete	Duplication with SP
Item 3: Name, Formation and History of the Mutual Fund	keep	Move to IFM website, if desired by IFM, but keep as a form requirement
Item 4: Investment Restrictions	keep	Include in New SP
Item 5: Description of Securities Offered by the Mutual Fund	keep	Include in New SP
Item 6: Valuation of Portfolio Securities	keep	Is standard for all funds. Move to IFM website (at the option of IFM; otherwise remains a disclosure item in New SP)
Item 7: Calculation of Net Asset Value	keep	Move to IFM website as included in DoT or corporate class articles, most of which are available on SEDAR as well
Item 8: Purchases and Switches	delete	Duplication with SP
Item 9: Redemption of Securities	delete	Duplication with SP
Item 10: Responsibility for Mutual Fund Operations	delete	Duplication with SP
Item 11: Conflicts of Interest	delete 11.1 where there are unrelated holders, add materiality threshold to 11.2 and 11.3	
Item 12: Fund Governance	keep	Move to IFM website. Likely more detail than is necessary. Proxy voting policy could accompany proxy voting

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Item 13: Fees and Expenses	delete	Duplication with SP
Item 14: Income Tax Considerations	delete	Duplication with SP
Item 15: Remuneration of Directors, Officers and Trustees	delete	Is in the IRC report
Item 16: Material Contracts	move to IFM website	
Item 17: Legal and Administrative Proceedings	keep	Include in New SP
Item 18: Other Material Information	keep	Include in New SP
Item 19: Certificate of the Mutual Fund	keep	Review the language in light of amendments to certification language in 72-503
Item 20: Certificate of the Manager of the Mutual Fund	keep	Review the language in light of amendments to certification language in 72-503
Item 21: Certificate of Each Promoter of the Mutual Fund	keep	Review the language in light of amendments to certification language in 72-503
Item 22: Certificate of the Principal Distributor of the Mutual Fund	keep	Review the language in light of amendments to certification language in 72-503
Item 23: Exemptions and Approvals	keep	Include in SP to be read holistically with investment objectives. In Part A if for multiple or all funds, Part B if one fund only
Item 24: Back Cover	keep	

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Appendix B—Changes to Financial Reporting Requirements

Option 1: Move NI 81-106 Part 3 Disclosures to other documents. Under this proposal, financial statements would be pure IFRS compliant so the financial statements would be much easier to read and understand. The other requirements in Part 3 are either already contained in other existing regulatory documents or could be moved to those documents. For example, remove the requirement to separately disclose IRC costs, securities lending revenue (including recent additional note disclosure), differences in sales charges and management fees between different series of a fund and “soft dollars”. If there are policy objectives related to these items, another technique may be more appropriate than additional disclosure, such as IRC oversight.

Option 2: Remove some of the more onerous requirements in NI 81-106 Part 3 that are not required under IFRS. In particular we recommend that the following be removed:

1. We recommend that the requirement to prepare the Statement of Changes in Financial Position by series be eliminated. We recommend that the Statement of Changes in Financial Position only be prepared at the fund level, given series level details of distributions per unit and increase/decrease from operations are included in the Financial Highlights of the MRFP.
2. We recommend that the Schedule of Investments not require a detailed listing of all individual investments. We believe that complying with the risk and concentration disclosures in accordance with IFRS should be sufficient. Listing several hundred or more small investments is of no value to investors and in fact is a distraction to readers and may obscure more meaningful information.
3. We recommend removing the requirement for separate disclosure of dividend revenue, interest revenue, income from derivatives and revenue from securities lending. These amounts are usually not the same as the amounts distributed to investors for tax purposes and may in fact confuse investors. Under IFRS, they are all part of the “change in fair value” which is disclosed as one line item.

Appendix C— Improvements to Management Report of Fund Performance

Alternative 1: Eliminate MRFPs

As discussed above, MRFP was intended to provide investors with information about the returns on their fund. Now with CRM2 investors receive personalized rates of return so the MRFP is no longer as relevant for investors as it once was. Similar to financial statements, investors appear to have very little interest in these documents as noted from the low investor request rates across the industry. Further, the MRFP was meant to augment the financial statements, much like MD&A. However, unlike public companies that issue MD&A, mutual funds are required to prepare and issue other reporting (e.g. client statements with personalized rates of return and CRM2 cost disclosures).

Alternative 2: Eliminate Interim MRFP and Streamline Annual MRFP

We recommend eliminating the interim MRFP. Clients who now receive CRM2 compliant statements receive personalized rates of return on a timely basis. In place of the interim MRFP (which contains a significant amount of redundant information with the annual MRFP), we recommend adding a third quarterly portfolio disclosure document (QPD) and augment each QPD with the applicable 3, 6, and 9 months rates of return as an update to the annual MRFP.

Further, redundant information in the annual MRFP can be removed from the document with no detrimental impact on the relevance or value to investors. On the contrary, we believe a streamlined document focused on key information only would be more informative and easier for clients to navigate.

The following recommendations would simplify the annual MRFP:

1. Remove the objectives and risk sections since they are already in the SP and Fund Facts. If not removed, align disclosure requirements with Fund Facts instructions to be consistent (reduce confusion to clients and effort to maintain multiple versions for preparers).
2. Remove the disclosure of management fee breakdown as CRM2 now provides more fulsome and personalized information.
3. Remove the requirement to disclose related party transactions since they are also disclosed in the financial statements. Public companies do not repeat related party transaction in their MD&A.
4. Remove disclosure of differences between series (series information) as this is disclosed in the financial statements, SP and AIF. Public companies do not repeat detailed share class differences in their MD&A.
5. We recommend that comparative disclosure only be for two years not five, consistent with financial statements.
6. Remove the prescribed method to calculate the reconciliation of net assets per security in the Financial Highlights tables; modern systems have abilities to calculate more accurately.
7. Create a fund level table in the Financial Highlights with the turnover ratios and trading ratios since this is identical for each series.
8. Remove the requirement to disclose series assets/unit since it is in the financial statements.

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9. Remove the requirement to disclose NAV per unit since this is also disclosed in the financial statements and the difference created by GAAP (bid/ask vs closing price) is now eliminated.
10. This would only leave MERs as the remaining series specific values and they would be better incorporated into the Financial Highlights section as supplemental information.
11. We recommend that the requirement to bifurcate returns between long and short positions be eliminated since the information can be misleading. The MRFP is meant to be written through the eyes of management, and management typically uses shorts in conjunction with the long positions to manage risk and not as stand-alone investments.