



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA NOTICE AND REQUEST FOR COMMENT

IMPLEMENTATION OF STAGE 2 OF POINT OF SALE DISCLOSURE FOR MUTUAL FUNDS

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 81-101 *MUTUAL FUND PROSPECTUS DISCLOSURE*, FORM 81-101F3 AND COMPANION POLICY 81-101CP *MUTUAL FUND PROSPECTUS DISCLOSURE* AND CONSEQUENTIAL AMENDMENTS

August 12, 2011

Introduction

The members of the Canadian Securities Administrators (the CSA or we), are publishing for a comment period of 90 days proposed amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), Form 81-101F3 *Contents of Fund Facts Document* and Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure* (the Proposed Amendments).

The Proposed Amendments, together with consequential amendments, set out Stage 2 of the CSA's implementation of the point of sale disclosure framework published in October 2008 by the Joint Forum of Financial Market Regulators (the Joint Forum), which includes the CSA.¹

The Fund Facts document (the Fund Facts) is central to the point of sale disclosure framework. It is in plain language, no more than two pages double-sided and highlights key information that is important to investors, including past performance, risks and the costs of investing in a mutual fund. Stage 1, which came into force January 1, 2011, requires mutual funds to produce and file the Fund Facts and for it to be available on the mutual fund's or mutual fund manager's website.

The Proposed Amendments will require delivery of the Fund Facts within two days of buying a mutual fund. The Proposed Amendments will also permit the delivery of the Fund Facts to satisfy the current prospectus delivery requirements under securities legislation. Although delivery of the simplified prospectus will no longer be required, it will continue to be available to investors upon request.

This is an important step in the implementation of this investor-focused initiative. We think delivery of the Fund Facts would provide investors with access to key information about a mutual fund, in language they can easily understand, at a time that is relevant to their investment decision.

¹ The goal of the Joint Forum is to continuously improve the financial services regulatory system through greater harmonization, simplification and co-ordination of regulatory activities. Under the framework, investors would receive more meaningful information about a mutual fund or segregated fund at a time that is relevant to their investment decision.

Prior to implementing the Proposed Amendments, some jurisdictions may require legislative amendments to preserve an investor's right to withdraw from a purchase within two business days after receiving the Fund Facts and to claim damages or to rescind the purchase if the investor does not receive the Fund Facts.

The CSA remains committed to implementing point of sale disclosure for mutual funds. A staged implementation allows us to make the Fund Facts available to investors and market participants sooner, while we continue to consult with stakeholders and consider the issues a large number of commenters have raised related to point of sale delivery for mutual funds and the applicability of the point of sale regime to other types of publicly offered investment funds.

The text of the amendments follows this Notice and is available on the websites of members of the CSA. We are also making consequential amendments to National Instrument 81-102 *Mutual Funds*.

We expect the Proposed Amendments and consequential amendments to be adopted in each jurisdiction of Canada. In some jurisdictions, legislative amendments may need to be sought and enacted prior to implementing the Proposed Amendments and consequential amendments.

Background

Concurrently with the Joint Forum's publication of the framework in October, 2008, we published CSA Notice 81-318 *Request for Comment Framework 81-406 Point of Sale Disclosure for Mutual Funds and Segregated Funds* seeking feedback from all stakeholders on issues related to implementation of the framework and its principles. The CSA considered these comments in developing its proposed amendments, which were published on June 19, 2009.

These amendments were aimed at implementing all of the elements of the point of sale disclosure regime set out in the framework, including the new Fund Facts, pre-sale delivery options, investor rights and the regulatory requirements for preparing, filing and delivering the Fund Facts.

The comments showed that stakeholders generally agreed with the benefits of providing investors with a more meaningful and simplified form of disclosure, and supported the Fund Facts as a way of providing concise, plain language information that describes key elements of the mutual fund under consideration. However, we received significant comments related to operational and compliance concerns with point of sale delivery for mutual funds. A large number of commenters also asked the CSA to implement a point of sale disclosure regime for other types of publicly offered investment funds and other securities at the same time as mutual funds.

Consequently, on June 16, 2010, the CSA published CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds* (the Staff Notice), which outlined the CSA's decision to implement the point of sale disclosure framework in three stages.

Stage 1 was completed on January 1, 2011 when amendments to NI 81-101 came into force. These amendments, published on October 6, 2010, require mutual funds subject to NI 81-101 to produce and file the Fund Facts and for it to be available on the mutual fund's or mutual fund manager's website. The Fund Facts must also be delivered or sent to investors free of charge upon request.

Stage 2, now underway, proposes amendments to NI 81-101 to allow delivery of the Fund Facts to satisfy the current prospectus delivery requirements under securities legislation to deliver a prospectus within two days of buying a mutual fund.

The Staff Notice also specified that, while work on Stage 2 is underway, the CSA would consider applications for exemptive relief to permit the early use of the Fund Facts to satisfy the current prospectus delivery requirements. On February 24, 2011, we published CSA Staff Notice 81-321 *Early Use of the Fund Facts to Satisfy Prospectus Delivery Requirements*, which provides guidance on key terms and conditions that the CSA will look for when considering these types of applications. One such condition is that any exemptive relief granted will include a 'sunset clause', in recognition of the public comment process.

Once the CSA has completed its review and consideration of the issues related to point of sale delivery, in Stage 3 the CSA will publish for further comment any proposed requirements that would implement point of sale delivery for mutual funds. As part of Stage 3, we will consider point of sale delivery for other types of publicly offered investment funds.

As the CSA's implementation of the point of sale disclosure framework continues to progress, we should achieve the Joint Forum's vision for the point of sale disclosure regime described in the framework. This vision focuses on three principles:

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

These principles keep pace with developing global standards on point of sale disclosure and delivery, which we consider essential to the continued success of the Canadian mutual fund industry.

You can find additional background information and other Joint Forum publications on the topic of point of sale disclosure for mutual funds and segregated funds on the Joint Forum website at www.jointforum.ca and on the websites of members of the CSA.

Substance and Purpose of the Proposed Amendments

We know that many investors do not use the information in the simplified prospectus because they have trouble finding and understanding the information they need. Research on investor preferences for mutual fund information, including our own testing of the Fund Facts, indicates

investors prefer to be offered a concise summary of key information.² Financial literacy research further reinforces the need for clear and simple disclosure.

The CSA designed the Fund Facts to make it easier for investors to find and use key information. The format provides investors with basic information about the mutual fund, followed by a concise explanation of mutual fund expenses and fees, adviser compensation and the investor's rights. Introductory text specifies that more detailed information about the mutual fund is available in its simplified prospectus.

While the CSA agrees that further review and consideration of issues related to point of sale delivery for mutual funds is necessary, we also think that it would be beneficial for the Fund Facts to be made available to investors and market participants as soon as possible.

The Proposed Amendments and consequential amendments should enhance investor protection by providing investors with the opportunity to make more informed investment decisions. Investors will be able to review key information about the potential benefits, risks and costs of investing in a mutual fund in an accessible format at a time that is relevant to their investment decision. We also think familiarity with the Fund Facts may assist investors in their decision-making process and in discussions with advisers, and highlight for investors who may want more detail where they can find further information about the mutual fund.

The Proposed Amendments and consequential amendments are not intended to detract from a dealer's existing obligation to 'know your client' and to determine suitability of all purchases of mutual funds. We expect dealers and their representatives will continue to conduct due diligence reviews, including a review of the simplified prospectus, to properly discharge their 'know your product' obligations.³ We anticipate that dealers will use the Fund Facts as a tool in making investment recommendations.

Summary of the Proposed Amendments

Application

The Proposed Amendments and consequential amendments apply only to mutual funds subject to NI 81-101.

Delivery of Fund Facts instead of the simplified prospectus

Currently, under NI 81-101, the requirement under securities legislation to deliver a prospectus of a mutual fund may be satisfied by delivery of the simplified prospectus. The Proposed Amendments will require delivery of the Fund Facts in all instances where the prospectus would otherwise be required to be delivered. The most recently filed Fund Facts for the applicable class or series of securities of the mutual fund will be required to be delivered and will satisfy the current prospectus delivery requirements under securities legislation.

² You can find a list of the research, studies and other sources that the Joint Forum reviewed and relied on in developing the point of sale disclosure framework in Appendix 4 to the proposed framework (the proposed Framework), published in June 2007. The proposed Framework is available on the Joint Forum website and on the websites of members of the CSA. The *Fund Facts Document Research Report* prepared by Research Strategy Group can be found in Appendix 5 to the proposed Framework.

³ For further guidance, see CSA Staff Notice 33-315 *Suitability Obligation and Know Your Product*.

The Proposed Amendments will restrict the documents that may be attached to, or bound with, the Fund Facts on delivery.

We have not made any changes to a mutual fund's obligation to file its simplified prospectus and annual information form with the CSA. These documents will continue to be made available to investors on a website and upon request, at no cost.

The delivery provisions in the Proposed Amendments are drafted to reflect current differences in the legislative authority of members of the CSA. While drafting may differ among the members of the CSA, each jurisdiction will achieve the same outcome of requiring delivery of the Fund Facts to satisfy legislative requirements to deliver the prospectus. Prior to implementing the Proposed Amendments, legislative amendments may be sought and enacted in some jurisdictions to achieve a harmonized provision.

Effect on Investor rights

Right for failure to deliver the Fund Facts

If the Fund Facts is to be delivered instead of the simplified prospectus, as noted previously some jurisdictions may require legislative amendments in order to preserve an investor's right to damages or to rescind the purchase if the investor does not receive the Fund Facts.

Right for withdrawal of purchase

If the Fund Facts is to be delivered instead of the simplified prospectus, some jurisdictions may require legislative amendments in order to preserve an investor's right to withdraw from the purchase within two business days after receiving the Fund Facts.

Right for misrepresentation

The right for misrepresentation related to the Fund Facts has not changed. The Fund Facts is incorporated by reference into the simplified prospectus. This means that the existing statutory rights of investors who apply for misrepresentations in a prospectus will apply to misrepresentations in the Fund Facts.

Amendments to Fund Facts

We are proposing minor edits and clarifications to Form 81-101F3 *Contents of Fund Facts Document* at this time. For example, we have clarified that all fees and expenses payable directly by the investor when buying, holding, selling or switching units or shares of the mutual fund must be disclosed in the Fund Facts. We have also introduced the option of the mutual fund to include the fund code for the class or series.

As the CSA moves forward with its review and consideration of the issues related to point of sale delivery for mutual funds, we intend to seek further feedback on the content of the Fund Facts, in particular the presentation of risk and the inclusion of a benchmark.

No change to filing requirements

The filing requirements related to the Fund Facts have not changed. The Fund Facts must continue to be filed concurrently with the mutual fund's simplified prospectus and annual information form. The certificate for the mutual fund, which verifies the disclosure in the simplified prospectus and annual information form, applies to the Fund Facts just as it applies to all documents incorporated by reference into the simplified prospectus.

If a material change to the mutual fund relates to a matter that requires a change to the disclosure in the Fund Facts, an amendment to the Fund Facts must be filed. If managers want to provide more current information in the Fund Facts, they may choose to amend the Fund Facts at any time. In all instances, an amendment to a mutual fund's Fund Facts must be accompanied by an amendment to the mutual fund's annual information form.

Any Fund Facts filed after the date of the simplified prospectus is intended to supersede the Fund Facts previously filed. Once filed, the Fund Facts must be posted to the mutual fund's or the mutual fund manager's website.

Alternatives Considered

The earlier publications by the Joint Forum outlined the alternatives we considered, as members of the Joint Forum, in developing the point of sale disclosure regime for mutual funds contemplated by the Proposed Amendments. These publications also set out the pros and cons to each alternative. You can find these documents on the Joint Forum website and on the websites of members of the CSA.

Anticipated Costs and Benefits

We think that allowing delivery of the Fund Facts instead of the simplified prospectus to satisfy the current prospectus delivery requirements under securities legislation would benefit both investors and the capital markets by helping to begin to address the "information asymmetry" that exists between participants in the mutual fund industry and investors.

Unlike industry participants, investors often do not have key information about a mutual fund before they make their investment decision. We also know that many investors do not use the information in the simplified prospectus because they have trouble finding and understanding the information they need.⁴ The CSA designed the Fund Facts to make it easier for investors to find and use key information. Providing investors with basic information about a mutual fund at a time that is relevant to their investment decision should help bridge this information gap.

The earlier publications by the Joint Forum and CSA outlined some of the anticipated costs and benefits of implementation of the point of sale disclosure regime for mutual funds contemplated by the framework. We consider the costs and benefits set out in the CSA's June 2009 proposals

⁴ See footnote 2 for where to find a list of the research, studies and other sources that the Joint Forum reviewed and relied on in developing the point of sale disclosure framework.

to still be valid. Overall, we continue to believe that the potential benefits of the changes to the disclosure regime for mutual funds as contemplated by the Proposed Amendments are proportionate to the costs of making them.

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

Consequential Amendments

National amendments

Proposed amendments to National Instrument 81-102 *Mutual Funds* are set out in Annex C to this Notice.

Local rule amendments

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

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

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

Unpublished Materials

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

Request for Comments

We would like your input on the Proposed Amendments and consequential amendments. To allow for sufficient review, we are providing you with 90 days to comment. While we recognize that stakeholders may have an interest in commenting more broadly on other aspects of the point of sale disclosure regime, at this time we are seeking feedback only on the amendments contemplated by the Proposed Amendments.

Deadline for Comments

Your comments must be submitted in writing by **November 10, 2011**.

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

Please send your comments electronically in Word, Windows format.

Where to Send Your Comments

Please address your comments to the following CSA members:

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

Please send your comments **only** to the addresses below. Your comments will be forwarded to the other CSA members.

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Questions

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The text of the Proposed Amendments and consequential amendments follows or is available on the websites of members of the CSA.

[Annex A – Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* and Form 81-101F3 *Contents of Fund Facts Documents*](#)

[Annex B – Amendments to Companion Policy 81-101CP *Mutual Fund Prospectus Disclosure*](#)

[Annex C – Amendments to National Instrument 81-102 *Mutual Funds*](#)

Annex A

Proposed Amendments to National Instrument 81-101 Mutual Fund Prospectus Disclosure

1. *National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.*

2. *Section 1.1 is amended by adding the following definitions:*

“statutory right of action” means,

- (a) in Alberta, paragraph 206(a) of the *Securities Act* (Alberta),
- (b) in British Columbia, section 135 of the *Securities Act* (British Columbia), and
- (c) in New Brunswick, section 155 of the *Securities Act* (New Brunswick);; **and**

“statutory right of withdrawal” means,

- (a) in Alberta, subsection 130(1) of the *Securities Act* (Alberta),
- (b) in British Columbia, subsections 83(3) and (5) of the *Securities Act* (British Columbia),
and
- (c) in New Brunswick, subsection 88(2) of the *Securities Act* (New Brunswick);.

3. *Section 3.2 is amended by replacing subsection (2) with the following:*

(2) Where a prospectus is required under securities legislation to be sent or delivered to a person or company, the fund facts document most recently filed under this Instrument for the applicable class or series of securities must be sent or delivered to the person or company at the same time and in the same manner as otherwise required for the prospectus.

(2.1) The requirement in securities legislation to send or deliver a prospectus does not apply when a fund facts document is sent or delivered under subsection (2).

(2.2) In Ontario, the fund facts document is a disclosure document prescribed under subsection 71(1.1) of the *Securities Act* (Ontario)..

4. *The following sections are added after section 3.2:*

3.2.1 Fund facts document – purchaser’s right of withdrawal

(1) A purchaser has a right of withdrawal in respect of a fund facts document that was sent or delivered under subsection 3.2(2) as the purchaser would otherwise have when a prospectus is required to be sent or delivered under securities legislation and, for that purpose, a fund facts document is a prescribed document under the statutory right of withdrawal.

(2) In Ontario, instead of subsection (1), subsection 71(2) of the *Securities Act* (Ontario) applies.

- (3) In Québec, instead of subsection (1), section 30 of the *Securities Act* (Québec) applies.

3.2.2 Fund facts document – purchaser’s right of action for failure to send or deliver

- (1) A purchaser has a right of action if a fund facts document is not sent or delivered as required by subsection 3.2(2) as the purchaser would otherwise have when a prospectus is not sent or delivered as required under securities legislation and, for that purpose, a fund facts document is a prescribed document under the statutory right of action.
- (2) In Ontario, instead of subsection (1), section 133 of the *Securities Act* (Ontario) applies.
- (3) In Québec, instead of subsection (1), section 214 of the *Securities Act* (Québec) applies.

5. *Section 3.5 is amended by replacing “must” with “may”.*

6. *Subsection 4.1(1) is amended by replacing “in a format” with “be in a format”.*

7. *Paragraph 5.1(3)5 is repealed.*

8. *The following section is added after section 5.1:*

5.1.1 Combinations of Fund Facts Documents for Delivery Purposes

- (1) For the purposes of section 3.2, a fund facts document may only be attached to, or bound with, one or more of the following documents:
1. The confirmation of purchase for the mutual fund.
 2. Another fund facts document of a mutual fund to be delivered or sent to satisfy section 3.2.
 3. The simplified prospectus or the multiple SP of the mutual fund.
 4. The annual information form, management reports of fund performance and financial statements of the mutual fund.
- (2) If the documents referred to in subsection (1) are attached to, or bound with, one or more fund facts documents, no pages must come before the fund facts documents in the package other than the confirmation of purchase, front cover or a table of contents pertaining to the entire package..

9. *Section 5.2(1)(b) is amended by replacing “must” with “may”.*

10. *Form 81-101F3 Contents of Fund Facts Document is amended:*

- a. *in paragraph (15) of the General Instructions by replacing reference to “section 5.4” with “Part 5”;*

b. by replacing paragraph (16) of the General Instructions with the following:

- (16) *Fund facts documents must not be consolidated with each other to form a multiple fund facts document, except as permitted by Part 5 of National Instrument 81-101 Mutual Fund Prospectus Disclosure. A multiple fund facts document permitted under the Instrument must provide information about each of the mutual funds described in the document on a fund-by-fund or catalogue basis and must set out for each fund separately the information required to be included in this Form. Each fund facts document must start on a new page.;*

c. by replacing item 1(c) of Part I with the following:

(c) the name of the mutual fund to which the fund facts document pertains;;

d. by adding the following after item 1(c) of Part I:

(c.1) if the mutual fund has more than one class or series of securities, the name of the class or series described in the fund facts document and, at the option of the mutual fund, any applicable fund identification code for the class or series;;

e. except in British Columbia, by adding “and” at the end of Item 6(1)(a) in Part I;

f. except in British Columbia, in Item 1.3(5) in Part II by replacing “where” with “in which”;

g. by replacing Item 1.4(1) of Part II with the following:

(1) Under the sub-heading “Other fees” provide an introduction using wording similar to the following:

You may have to pay other fees when you buy, hold, sell or switch [units/shares] of the fund.

h. by adding “buy, hold,” before “sell or switch” to Item 1.4(2) of Part II;

i. by replacing Instruction (1) to Item 1.4 of Part II with the following:

- (1) *Under this Item, it is necessary to include only those fees that apply to the particular series or class of the mutual fund. Examples include management fees and administration fees payable directly by investors, short-term trading fees, switch fees and change fees. This would also include any requirement for an investor to participate in a fee-based arrangement with their dealer in order to be eligible to purchase the particular class or series of the mutual fund. If there are no other fees associated with buying, holding, selling or switching units or shares of the mutual fund, replace the table with a statement to that effect.;*

j. by replacing Instruction (2) to Item 1.4 of Part II with the following:

- (2) *Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee. If the amount of the fee varies so that specific disclosure of the amount of the fee cannot be disclosed, where possible, include the highest possible rate or range for that fee.; and*

k. by replacing Item 2 in Part II with the following:

Item 2: Statement of Rights

Under the heading “What if I change my mind?” state in substantially the following words:

Under securities law in some provinces and territories, you have the right to:

- *withdraw from an agreement to buy mutual funds within two business days after you receive a fund facts document, or*
- *cancel your purchase within 48 hours after you receive confirmation of the purchase.*

In some jurisdictions of Canada, you also have the right to cancel a purchase or claim damages if the simplified prospectus, annual information form, fund facts document or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in the applicable province or territory.

For more information, see the securities law of the province or territory or ask a lawyer..

11. Transition

Any exemption from or waiver of a provision of National Instrument 81-101 Mutual Fund Prospectus Disclosure in relation to the prospectus delivery requirements for mutual funds, or an approval in relation to those requirements, expires on the date that this Instrument comes into force.

12. This Instrument comes into force on .

Annex B

Proposed Amendments to Companion Policy 81-101CP To National Instrument 81-101 Mutual Fund Prospectus Disclosure

- 1. Companion Policy 81-101CP To National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.***

- 2. Section 2.1.1(4) is replaced by the following:***

The CSA encourages the use and distribution of the fund facts document as a key part of the sales process in helping to inform investors about mutual funds they are considering for investment. The Instrument also requires delivery of the fund facts document, which will satisfy the prospectus delivery requirements under applicable securities legislation.

- 3. Section 2.2(1) is replaced by the following:***

(1) A simplified prospectus is the prospectus for the purposes of securities legislation. While the Instrument only requires delivery of a fund facts document to an investor in connection with a purchase, an investor may also request delivery of the simplified prospectus, or any other documents incorporated by reference into the simplified prospectus..

- 4. Section 7.1(1) is replaced by the following:***

7.1 Delivery of the Simplified prospectus and Annual Information Form – (1) The Instrument contemplates delivery to all investors of a fund facts document in accordance with the requirements in securities legislation. It does not require the delivery of the simplified prospectus, or any other documents incorporated by reference into the simplified prospectus, unless requested. Mutual funds or dealers may also provide investors with any of the other disclosure documents incorporated by reference into the simplified prospectus.

- 5. Section 7.4 is replaced by the following***

7.4 Delivery of Non-Educational Material – The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with either of the simplified prospectus and the annual information form. This type of material may, therefore, be delivered with, but cannot be included within, wrapped around, or attached or bound to, the simplified prospectus and the annual information form.

- 6. This Instrument becomes effective on •.***

Annex C

Proposed Amendments to National Instrument 81-102 *Mutual Funds*

- 1. *National Instrument 81-102 Mutual Funds is amended by this Instrument.***
- 2. *Subparagraph 5.6(1)(f)(ii) is replaced with the following:***
 - (ii) the most recently filed fund facts document for the mutual fund into which the mutual fund will be reorganized, and.
- 3. *This Instrument comes into force on •.***