

Nova Scotia Securities Commission

Rule 81-101(Amendment)
Mutual Fund Prospectus Disclosure

- and-

Amendments to National Instrument 81-101
Mutual Fund Prospectus Disclosure

- and-

Changes to Companion Policy 81-101CP to
National Instrument 81-101
Mutual Fund Prospectus Disclosure

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the Rule) and Changes to Companion Policy 81-101CP to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (the Companion Policy), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;

- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Companion Policy as a policy of the Commission; and
- (c) declares that the Rule approved and made pursuant to clause (a) and the Companion Policy issued pursuant to clause (b) shall take effect on **March 11, 2015**, unless the Minister disapproves the Rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the Rule and the Companion Policy shall not become effective until the Rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 17th day of December, 2014.



Sarah P. Bradley, Chair



Paul Radford Q.C., Vice-chair

Attachments

**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:*

“managed account” has the meaning ascribed to that term in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“permitted client” has the meaning ascribed to that term in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“pre-authorized purchase plan” means a contract or other arrangement for the purchase of securities of a mutual fund, by payments of a specified amount, on a regularly scheduled basis, and which can be terminated at any time;

3. *Subsections 3.2(2) to (2.3) are repealed.*

4. *The following sections are added:*

3.2.01 Pre-Sale Delivery of Fund Facts Document

- (1) If securities legislation requires a dealer to deliver or send a prospectus in connection with a purchase of a security of a mutual fund, the dealer must, unless the dealer has previously done so, deliver to the purchaser the fund facts document most recently filed under this Instrument for the applicable class or series of securities of the mutual fund before the dealer accepts an instruction from the purchaser for the purchase of the security.
- (2) In Nova Scotia, a fund facts document is a disclosure document prescribed under subsection 76(1A) of the *Securities Act* (Nova Scotia).
- (3) In Ontario, a fund facts document is a disclosure document prescribed under subsection 71(1.1) of the *Securities Act* (Ontario).
- (4) The requirement under securities legislation to deliver or send a prospectus in connection with a purchase of a security of a mutual fund does not apply if
 - (a) a fund facts document for the applicable class or series of securities of the mutual fund is
 - (i) delivered to the purchaser before the dealer accepts an instruction from the purchaser for the purchase of the security, or
 - (ii) delivered or sent to the purchaser in accordance with section 3.2.02 or 3.2.04 and the conditions set out in the applicable section are satisfied, or

- (b) section 3.2.03 applies and the conditions set out in that section are satisfied.

3.2.02 Exception to Pre-Sale Delivery of Fund Facts Document

- (1) Despite subsection 3.2.01(1), a dealer may deliver or send to the purchaser the most recently filed fund facts document for the applicable class or series of securities of the mutual fund not later than midnight on the second business day after entering into the purchase of a security of the mutual fund, if all of the following apply:
- (a) the purchaser instructs the dealer that the purchase must be completed immediately or by a specified time;
 - (b) it is not reasonably practicable for the dealer to deliver the fund facts document before the time specified by the purchaser under paragraph (a);
 - (c) before the instruction from the purchaser for the purchase of a security of the mutual fund is accepted,
 - (i) the dealer informs the purchaser of the existence and purpose of the fund facts document and explains the dealer's obligation to deliver the fund facts document,
 - (ii) the purchaser consents to the dealer delivering or sending the fund facts document after entering into the purchase, and
 - (iii) the dealer verbally discloses to the purchaser a summary of all of the following:
 - (A) the fundamental features of the mutual fund, and what it primarily invests in, as set out under the heading "What does the fund invest in?" in Item 3 of Part I of the fund facts document;
 - (B) the investment risk level of the mutual fund as set out under the heading "How risky is it?" in Item 4 of Part I of the fund facts document;
 - (C) the suitability of the mutual fund for particular investors as set out under the heading "Who is this fund for?" in Item 7 of Part I of the fund facts document;
 - (D) any costs associated with buying, owning and selling a security of the mutual fund as set out under the heading "How much does it cost?" in Item I of Part II of the fund facts document;
 - (E) any applicable withdrawal rights or rescission rights that the purchaser is entitled to under securities legislation, as set out under

the heading “What if I change my mind?” in Item 2 of Part II of the fund facts document.

- (2) For the purposes of subparagraph (1)(c)(ii), the consent must be given in respect of a specific instruction to purchase a security of a mutual fund and, for greater certainty, cannot be in the form of blanket consent from the purchaser.

3.2.03 Delivery of Fund Facts for Subsequent Purchases Under a Pre-authorized Purchase Plan

Despite subsection 3.2.01(1), a dealer is not required to deliver the fund facts document to a purchaser in connection with a purchase of a security of a mutual fund made pursuant to a pre-authorized purchase plan if all of the following apply:

- (a) the purchase is not the first purchase under the plan;
- (b) the dealer has provided a notice to the purchaser that states,
 - (i) subject to paragraph (c), the purchaser will not receive a fund facts document after the date of the notice, unless the purchaser specifically requests it,
 - (ii) the purchaser is entitled to receive upon request, at no cost to the purchaser, the most recently filed fund facts document by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address,
 - (iii) how to access the fund facts document electronically,
 - (iv) the purchaser will not have a right of withdrawal under securities legislation for subsequent purchases of a security of a mutual fund under the plan, but will continue to have a right of action if there is a misrepresentation in the prospectus or any document incorporated by reference into the prospectus, and
 - (v) the purchaser may terminate the plan at any time;
- (c) at least annually during the term of the plan, the dealer notifies the purchaser in writing of how the purchaser can request the most recently filed fund facts document; and
- (d) the dealer delivers or sends the most recently filed fund facts document to the purchaser if the purchaser requests it.

3.2.04 Delivery of Fund Facts for Managed Accounts and Permitted Clients

Despite subsection 3.2.01(1), a dealer may deliver or send to the purchaser of a security of a mutual fund the most recently filed fund facts document for the applicable class or series of securities of the mutual fund not later than midnight on the second business day after entering into the purchase of a security of the mutual fund if

- (a) the purchase is made in a managed account, or
- (b) the purchaser is a permitted client that is not an individual.

3.2.05 Electronic Delivery of the Fund Facts Document

- (1) If the purchaser of a security of a mutual fund consents, a fund facts document that may be or is required to be delivered or sent under this Part may be delivered or sent electronically.
- (2) For the purposes of subsection (1), a fund facts document may be delivered or sent to the purchaser by means of an e-mail that contains
 - (a) the fund facts document as an attachment, or
 - (b) a hyperlink that leads directly to the fund facts document..

5. *Subsection 3.2.1(1) is amended by replacing “subsection 3.2(2)” with “sections 3.2.01, 3.2.02 or 3.2.04”.*

6. *Subsection 3.2.2(1) is amended by replacing “subsection 3.2(2)” with “sections 3.2.01, 3.2.02 or 3.2.04”.*

7. *Section 5.2 is replaced with the following:*

5.2 Combinations of Fund Facts Documents for Delivery Purposes

- (1) If a fund facts document for a particular class or series of securities of a mutual fund is delivered under subsection 3.2.01(1), the fund facts document must not be combined with any other materials or documents.
- (2) Despite subsection (1), a fund facts document may be combined with one or more other fund facts documents if the combination of documents is not so extensive as to cause a reasonable person to conclude that the combination of documents prevents the information from being presented in a simple, accessible and comparable format.
- (3) Despite subsection (2), if multiple fund facts documents are being delivered electronically at the same time, those fund facts documents cannot be combined into a single e-mail attachment or a single document accessible through a hyperlink.
- (4) A fund facts document delivered or sent under section 3.2.02, 3.2.03, or 3.2.04 must not be combined with any other materials or documents including, for greater certainty, another fund facts document, except one or more of the following:
 - (a) a general front cover pertaining to the package of attached or bound materials and documents;
 - (b) a trade confirmation which discloses the purchase of securities of the mutual fund;

- (c) a fund facts document of another mutual fund if that fund facts document is also being delivered or sent under section 3.2.02, 3.2.03, or 3.2.04;
 - (d) the simplified prospectus or the multiple SP of the mutual fund;
 - (e) any material or document incorporated by reference into the simplified prospectus or the multiple SP of the mutual fund;
 - (f) an account application document;
 - (g) a registered tax plan application or related document.
- (5) If a trade confirmation referred to in paragraph (4)(b) is combined with a fund facts document, any other disclosure documents required to be delivered or sent to satisfy a regulatory requirement for purchases listed in the trade confirmation may be combined with the fund facts document.
- (6) If a fund facts document is combined with any of the materials or documents referred to in subsection (4), a table of contents specifying all documents must be combined with the fund facts document, unless the only other documents combined with the fund facts document are the general front cover permitted under paragraph (4)(a) or the trade confirmation permitted under paragraph (4)(b).
- (7) If one or more fund facts documents are combined with any of the materials or documents referred to in subsection (4), only the general front cover permitted under paragraph (4)(a), the table of contents required under subsection (6) and the trade confirmation permitted under paragraph (4)(b) may be placed in front of the fund facts documents..

8. Section 5.5 is replaced with the following:

5.5 Combinations of Fund Facts Documents for Filing Purposes

For the purposes of section 2.1, a fund facts document may be combined with another fund facts document of a mutual fund in a simplified prospectus or, if a multiple SP, another fund facts document of a mutual fund combined in the multiple SP..

Expiration of exemptions and waivers

9. Any exemption from or waiver of a provision of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* in relation to the prospectus or fund facts document delivery requirements for mutual funds expires on May 30, 2016.

Transition for pre-authorized purchase plans

10. (1) For the purposes of section 3.2.03 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, as enacted by section 4 of this Instrument, the first purchase of a security of a mutual fund made pursuant to a pre-authorized purchase plan on or after May 30, 2016, is considered to be the first purchase transaction under the plan.

- (2) Subsection (1) does not apply to a pre-authorized purchase plan established prior to May 30, 2016, if a notice in a form substantially similar to the notice contemplated under paragraph 3.2.03(c) was delivered or sent to the purchaser between May 30, 2015 and May 30, 2016.

Effective date

11. (1) Subject to subsection (2), this Instrument comes into force on March 11, 2015.
- (2) The provisions of this Instrument listed in column 1 of the following table come into force on the date set out in column 2 of the table:

| Column 1: Provisions of this Instrument | Column 2: Date |
|--|-----------------------|
| Sections 3, 4, 5, 6, 7, 8 and 10 | May 30, 2016 |
| | |

**CHANGES TO
COMPANION POLICY 81-101CP TO NATIONAL INSTRUMENT 81-101 MUTUAL FUND
PROSPECTUS DISCLOSURE**

1. *The changes to Companion Policy 81-101CP To National Instrument 81-101 Mutual Fund Prospectus Disclosure are set out in this Annex.*
2. *Part 7 is replaced with the following:*

PART 7 Delivery

7.1 Delivery of the Simplified Prospectus and Annual Information Form – 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.

7.2 Pre-Sale Delivery of the Fund Facts Document – (1) The Instrument requires a fund facts document to be delivered before a dealer accepts an instruction for the purchase of a security of a mutual fund. The purpose of pre-sale delivery of a fund facts document is to provide a purchaser with key information about the mutual fund that will inform a purchase decision. What constitutes “before” is intended to be flexible, provided it occurs within a reasonable timeframe before the purchaser’s instruction to purchase. Accordingly, the Canadian securities regulatory authorities would generally expect that delivery of a fund facts document will occur within a timeframe that provides a purchaser with a reasonable opportunity to consider the information in the fund facts document before proceeding with the transaction. It should not be delivered so far in advance of the purchase of a security of a mutual fund that the delivery cannot be said to have any connection with the purchaser’s instruction to purchase the mutual fund.

(2) Where a purchaser has already received a fund facts document for a particular class or series of securities of a mutual fund, it is not necessary to deliver to the purchaser another fund facts document for a subsequent purchase of that same class or series of securities of a mutual fund, unless a more recent version of the fund facts document has been filed.

7.3 Post-Sale Delivery of the Fund Facts Document – (1) While the Instrument generally requires pre-sale delivery of the fund facts document, it also sets out specific requirements that would permit post-sale delivery of the fund facts document in circumstances where the purchaser has indicated that they require the purchase of a security of a mutual fund to be completed immediately, or by a specified time, and it is not reasonably practicable for the dealer to effect pre-sale delivery of the fund facts document within the timeframe specified by the purchaser.

(2) The requirements for post-sale delivery of the fund facts document are set out in section 3.2.02 and should be interpreted consistently with the dealer’s general duties to act fairly,

honestly and in good faith and to establish and maintain a compliance system in accordance with securities legislation. Accordingly, the Canadian securities regulatory authorities expect dealers will adapt their business models to comply with the general requirement for pre-sale delivery of the fund facts document.

(3) Section 3.2.02 requires dealers to provide a summary of the information contained in the fund facts document. This should include describing the purpose of the fund facts document, the type of information it contains, and advising purchasers that they are entitled to receive and review the fund facts document before the purchase of a security of a mutual fund. Where the purchaser consents to post-sale delivery of the fund facts document, dealers are required to provide verbal disclosure of certain information contained in the fund facts document. This would include a description of the fundamental features of the mutual fund and what it primarily invests in, as well as the investment risk level of the mutual fund. The Canadian securities regulatory authorities would not generally consider it necessary to disclose the information included in the fund facts document under “Top 10 investments” or “Investment mix”. In disclosing the suitability of the mutual fund for particular investors, dealers would be required to describe the characteristics of the investor for whom the mutual fund may or may not be an appropriate investment, and the portfolios for which the mutual fund is and is not suited. In terms of providing an overview of any costs associated with buying, selling and owning the mutual fund, the information provided should, at a minimum, include a discussion of any applicable sales charges, as well as ongoing fund expenses (e.g., MER and TER), and any applicable trailing commissions. Information related to sales charges and trailing commissions is also required as part of pre-trade disclosure requirements set out in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. Finally, dealers would also be required to provide purchasers with a summary of any applicable right to withdraw from a purchase within two days after receipt of the fund facts document and to rescind a purchase within 48 hours after receipt of the trade confirmation for the purchase. This latter requirement is intended to alert purchasers to the fact that they will have an opportunity to consider the information in the fund facts document that will be delivered or sent post-sale and, based on that information, determine whether they want to cancel their purchase of the mutual fund securities at that time.

(4) Where a purchaser consents to receive delivery of the fund facts document after entering into the purchase of a security of a mutual fund, the consent will only be valid for the particular transaction. A dealer cannot rely on a blanket consent from a purchaser to carry out post-sale delivery of the fund facts document for other purchases of mutual fund securities.

(5) In accordance with existing practices, dealers must establish internal policies and procedures to ensure delivery of the fund facts document occurs in accordance with Part 3. Dealers must maintain evidence of delivery of the fund facts document, as well as receipt of purchaser consents to receive delivery of the fund facts document after entering into the purchase of a security of a mutual fund. Dealers must also maintain adequate records to evidence that satisfactory disclosure about the fund facts document has been provided to purchasers in compliance with section 3.2.02. Such records should also indicate why delivery of the fund facts document was impracticable in the circumstances. The Canadian

securities regulatory authorities expect that dealers will follow their current practices to maintain evidence of required disclosures to sufficiently document delivery of the fund facts document.

(6) The Instrument does not specify a particular manner of evidencing a purchaser's consent to allow delivery of the fund facts document after entering into the purchase of a security of a mutual fund. In particular, the Instrument does not require dealers to obtain written consent from clients. The Canadian securities regulatory authorities expect that dealers will follow their current policies and procedures for tracking and monitoring client instructions and authorizations.

(7) The Canadian securities regulatory authorities expect that dealers will remain faithful to the overall objective of ensuring that purchasers are provided with a fund facts document prior to accepting instructions to purchase a security of a mutual fund. Although the instrument allows for post-sale delivery of the fund facts document in certain limited circumstances, the Canadian securities regulatory authorities expect that post-sale delivery of the fund facts document will be the exception rather than the norm. The Canadian securities regulatory authorities may examine practices or arrangements that raise the suspicion of being structured to permit dealers to do indirectly what they cannot do directly and that are inconsistent with the overall intent of providing key information to investors at a time that is most relevant to their purchase decision.

(8) Section 3.2.03 sets out an exception from the requirement to deliver a fund facts document for subsequent purchases of a mutual fund made pursuant to a pre-authorized purchase plan provided certain conditions are met. One of these conditions requires investors to be provided with an initial notice indicating, among other things, that they will not receive a fund facts document unless they specifically request it. The notice must also specify how a fund facts document can be obtained. Investors must also be provided with an annual notice reminding them about how they can request a fund facts document. The Canadian securities regulatory authorities expect that both the initial notice and the annual notice will be presented in a clear, comprehensible and prominent manner so that investors can easily ascertain how they can avail themselves of the option to request a fund facts document.

7.4 Methods of Delivery – (1) The methods of delivery of a fund facts document are consistent with methods of delivery of a prospectus under securities legislation. A fund facts document required to be delivered or sent under Part 3 of the Instrument may be delivered or sent electronically, subject to the purchaser's consent. Electronic delivery may include providing an electronic copy of a fund facts document to the purchaser in the form of an e-mail attachment or providing a hyperlink to the fund facts document.

(2) The Canadian securities regulatory authorities will not consider the making of a fund facts document available on a website, or referring an investor to a general website address where the fund facts document can be found to constitute delivery under the Instrument, even if the investor consents to that method of delivery.

(3) Where a hyperlink is provided to the purchaser, the link should lead the purchaser directly to the specific fund facts document for the applicable class or series of the mutual fund being purchased. Consideration should be given to ensuring that the hyperlink remains accessible to the purchaser for so long as the purchaser may reasonably need to consult it.

(4) In the case of online transactions conducted through order execution service accounts, there may be a number of ways in which compliance with the requirement for pre-sale delivery of the fund facts document could be achieved. For example, dealers could consider the use of a “pop-up” notice informing the purchaser that a fund fact document is available for review and provide a hyperlink to the relevant fund facts document. Dealers could also consider requiring the purchaser to “click through” the fund facts document prior to accepting their purchase order.

(5) In addition to the requirements in the Instrument and the guidance in this section, dealers may want to refer to National Policy 11-201 *Electronic Delivery of Documents* for additional guidance.

7.5 Consolidation of Fund Facts Documents – (1) For the purposes of pre-sale delivery, subsection 5.2(2) of the Instrument allows a fund facts document to be combined with one or more fund facts documents, provided the size of the document does not make the presentation of the information inconsistent with the principles of simplicity, accessibility and comparability. For example, a fund facts document may be combined with fund facts documents of other classes or series of securities of the same mutual fund, other mutual funds from the same fund family, or other mutual funds of a similar type from different fund families. In making this determination, mutual funds, managers and participants in the mutual fund industry should consider the ability of an investor to easily find and use the information that is relevant to the particular mutual funds securities they are considering purchasing, and whether a reasonable person in the circumstances would come to the same conclusion. We think a document combining more than 10 fund facts documents may discourage an investor from finding and reading each fund facts document and obscure key information, which is inconsistent with the principles of simplicity, accessibility and comparability.

(2) Where multiple fund facts documents are being delivered electronically in compliance with the pre-sale delivery requirement, subsection 5.2(3) prohibits those fund facts documents from being combined into a single e-mail attachment. The use of a hyperlink that directs the investor to a single document combining all the relevant fund facts would also be prohibited under the Instrument. Instead, a dealer would be expected to provide individual attachments or hyperlinks for each fund facts document that is required to be delivered.

(3) When delivery of the fund facts document occurs after the purchase transaction, subsections 5.2(4) to (6) of the Instrument permit a fund facts document to be combined with certain other materials or documents. With the exception of a general front cover, a table of contents or a trade confirmation, subsection 5.2(7) requires the fund facts document to be located as the first item in the package of documents or materials.

7.6 Preparation of Disclosure Documents in Other Languages – Nothing in the Instrument prevents the simplified prospectus, annual information form or fund facts document from being prepared in other languages, provided that these documents are delivered or sent in addition to any disclosure document filed and required to be delivered in accordance with the Instrument. The Canadian securities regulatory authorities would consider such documents to be sales communications.

7.7 Delivery of Documents by a Mutual Fund – Section 3.3 of the Instrument requires that a mutual fund deliver or send to a person or company, upon request and free of charge, a simplified prospectus or documents incorporated by reference. The Canadian securities regulatory authorities are of the view that compliance with this specifically-mandated requirement by an unregistered entity is not a breach of the registration requirements of securities legislation.

7.8 Delivery of Separate Part A and Part B Sections – Mutual fund organizations that create physically separate Part B sections are reminded that any obligation to provide the simplified prospectus would be satisfied only by the delivery of both the Part A and Part B sections of a simplified prospectus.

7.9 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, or attached to, the simplified prospectus and the annual information form. The Instrument does not permit the binding of educational and non-educational material with the fund facts document. The intention of the Instrument is not to unreasonably encumber the fund facts document with additional documents..