

Note: [16 Oct 2009] – Proposed amendments to Companion Policy 81-106CP. Refer to Appendix C of CSA Notice announcing proposed amendments to NI 81-106 dated 16 Oct 2009.

**Proposed Amendments to  
COMPANION POLICY 81-106CP - TO NATIONAL INSTRUMENT 81-106  
INVESTMENT FUND CONTINUOUS DISCLOSURE**

1. *Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure is amended.*
2. *Section 1.3 is amended by adding the following after subsection (2):*
  - (3) The Instrument uses terminology that may be defined or referred to in Canadian GAAP. Some of these terms may be defined differently in securities legislation. National Instrument 14-101 *Definitions* provides that a term used in the Instrument and defined in the securities statute of a local jurisdiction has the meaning given to it in the statute unless the definition in that statute is restricted to a specific portion of the statute, or the context otherwise requires.
3. *Section 2.1 is amended by*
  - (a) *adding the following before subsection (2):*
    - (1.1) Subsection 2.6(2) of the Instrument, applicable to financial years beginning on or after January 1, 2011, refers to Canadian GAAP for publicly accountable enterprises, which is IFRS incorporated into the Handbook contained in Part I of the Handbook. Subsection 2.6(1) of the Instrument, applicable to financial years beginning before January 1, 2011, refers to Canadian GAAP applicable to public enterprises contained in Part IV of the Handbook. ;
  - (b) *repealing subsection (2) and substituting the following:*
    - (2) The CSA believe that an investment fund’s financial statements must include certain information, at a minimum, in order to provide full disclosure. The Instrument sets out these minimum requirements, but does not mandate all the required disclosure. Canadian GAAP applicable to publicly accountable enterprises also contains minimum requirements relating to the content of financial statements. An investment fund’s financial statements must meet these requirements as well.

In some cases, the Instrument prescribes line items that may already be required by Canadian GAAP, but these line items are expressed more specifically for the activities of an investment fund. For example, Canadian GAAP requires a “trade and other receivables” line item on the statement of financial position, but the Instrument requires accounts receivable to be broken down into more specific categories. In other instances, the line items prescribed in the Instrument are in addition to

those in Canadian GAAP. Investment funds are responsible for disclosing all material information concerning their financial position and results in the financial statements. ; *and*

(c) *repealing subsection (3).*

4. *Part 2 is amended by adding the following after section 2.1:*

**2.1.1 Classification of Securities Issued by an Investment Fund**

- (1) One goal of the Instrument is comparable financial statement presentation between investment funds. However, the adoption of IFRS results in certain changes to this presentation. For example, the presentation is impacted by the classification of an investment fund's securities as either equity instruments or financial liabilities. Certain line items, such as "total equity or net assets attributable to securityholders", acknowledge the difference between an equity and liability presentation, but maintain a comparable measurement between investment funds regardless of this classification.
- (2) If an investment fund's securities are classified as financial liabilities, IFRS requires financing costs to include the distributions made by the investment fund to those securityholders. However, if an investment fund's securities are classified as equity instruments, distributions to holders of these securities are not included in financing costs (and are not recognized as an expense), creating a difference that reduces comparability. To address this, the Instrument requires distributions to be excluded from certain calculations, specifically: (i) increase or decrease in net assets attributable to securityholders from operations as disclosed in the statement of comprehensive income, and (ii) determination of total expenses for the management expense ratio (MER).
- (3) For investment funds that classify their own securities as financial liabilities, "net assets attributable to securityholders" represents the equivalent of "total equity" for investment funds that classify their own securities as equity instruments. Net assets attributable to securityholders does not include amounts owed on securities issued by the investment fund that provide leverage to the fund.

5. *Section 2.3 is repealed.*

6. *Section 2.5 is amended by striking out "statement of operations" wherever it occurs and substituting "statement of comprehensive income".*

7. *Subsection 2.7(2) is amended by striking out "statement of net assets" and substituting "statement of financial position".*

8. *Subsection 2.8(3) is amended by striking out “Interim financial statements” and substituting “The interim financial report”.*

9. *Section 3.2 is repealed and the following substituted:*

**3.2 Modification of Opinion**

- (1) The Instrument generally prohibits an auditor’s report from containing a modification of opinion under Canadian GAAS. A modification of opinion includes a qualification of opinion, an adverse opinion, and a disclaimer of opinion.
- (2) Part 17 of the Instrument permits the regulator or securities regulatory authority to grant exemptive relief from the Instrument, including the requirement that an auditor’s report not contain a modification of opinion or other similar communication that would constitute a modification of opinion under Canadian GAAS. However, we believe that such exemptive relief should not be granted if the modification of opinion or other similar communication is
  - (a) due to a departure from accounting principles permitted by the Instrument, or
  - (b) due to a limitation in the scope of the auditor’s examination that
    - (i) results in the auditor being unable to form an opinion on the financial statements as a whole,
    - (ii) is imposed or could reasonably be eliminated by management, or
    - (iii) could reasonably be expected to be recurring.

10. *Section 3.3 is repealed and the following substituted:*

**3.3 Auditor’s Involvement with Management Reports of Fund Performance -** Investment funds’ auditors are expected to comply with the Handbook with respect to their involvement with the annual and interim management reports of fund performance required by the Instrument as these reports contain financial information extracted from the financial statements.

11. *Section 3.4 is amended by*

- (a) *in the title, striking out “Interim Financial Statements” and substituting “Interim Financial Reports”;*

- (b) *in subsection (1), striking out “interim financial statements” and substituting “interim financial reports”;*
- (c) *in subsection (2), striking out the first occurrence of “interim financial statements” and substituting “interim financial reports”;*
- (d) *in subsection (2), striking out the second occurrence of “interim financial statements” and substituting “an interim financial report”; and*
- (e) *repealing subsections (3) and (4) and substituting the following:*
  - (3) The terms “review” and “written review report” used in section 2.12 of the Instrument refer to the auditor’s review of and report on an interim financial report using standards for a review of an interim financial report by the auditor as set out in the Handbook.
  - (4) The Instrument does not specify the form of notice that should accompany an interim financial report that has not been reviewed by the auditor. The notice accompanies, but does not form part of, the interim financial report. We expect that the notice will normally be provided on a separate page appearing immediately before the interim financial report, in a manner similar to an audit report that accompanies annual financial statements.

**12. Section 9.3 is amended by**

- (a) *striking out “defines” and substituting “describes”; and*
- (b) *striking out “who are under no compulsion to act” and substituting “motivated by normal business considerations”.*

**13. Section 10.1 is amended by**

- (a) *repealing subsection (2) and substituting the following:*
  - (2) Paragraph 15.1(1)(a) requires the investment fund to use its "total expenses" (other than distributions if these are an expense for the investment fund) before income taxes for the relevant period as the basis for the calculation of MER. Total expenses, before income taxes, include interest charges and taxes, including sales taxes, GST and capital taxes payable by the investment fund. Withholding taxes need not be included in the MER calculation.

The CSA is of the view that if an investment fund issues securities that provide leverage to the fund, amounts paid to holders of these securities are financing costs and should not be excluded from total expenses when calculating the MER of the investment fund’s residual securities. Securities that provide leverage generally include preferred shares.

Non-optional fees paid directly by investors in connection with the holding of an investment fund's securities do not have to be included in the MER calculation, which differs from the previous requirement in NI 81-102. ;

- (b) *in subsection (5),*
  - (i) *striking out* “Handbook Section 1506 *Accounting Changes*” *and substituting* “International Accounting Standard 8 *Accounting Policies, Changes in Accounting Estimates and Errors*” *in the first paragraph;*
  - (ii) *striking out* “retroactive restatement of the financial information” *and substituting* “retrospective application of the change” *in the first paragraph; and*
  - (iii) *striking out* “retroactively” *in the second paragraph.*

**14. Appendix B is amended by**

- (a) *in the address for New Brunswick Securities Commission,*
  - (i) *striking out* “606 – 133 Prince William Street” *and substituting* “85 Charlotte Street, Suite 300”, *and*
  - (ii) *striking out* “E2L 2B5” *and substituting* “E2L 2J2”;

- (b) *striking out*

**Newfoundland and Labrador Securities Commission**

P.O. Box 8700  
2<sup>nd</sup> Floor, West Block  
Confederation Building  
75 O’Leary Avenue  
St. John’s, NFLD  
A1B 4J6  
Attention: Director of Securities

*and substituting*

**Financial Services Regulation Division**

**Department of Government Services**

P.O. Box 8700  
St. John’s, NL  
A1B 4J6  
Attention: Superintendent of Securities

- (c) *in the address for Department of Justice, Northwest Territories,*

- (i) *striking out* “Legal Registries” *and substituting* “Securities Office”, *and*
  - (ii) *striking out* “Director, Legal Registries” *and substituting* “Superintendent of Securities”;
- (d) *in the address for Department of Justice, Nunavut, striking out* “Attention: Director, Legal Registries Division” *and substituting* “Attention: Superintendent of Securities”;
- (e) *in the address for Autorité des marchés financiers, striking out* “Direction des marchés des capitaux” *and substituting* “Direction des fonds d’investissement et de l’information continue”;
- (f) *in the address for the Saskatchewan Financial Services Commission, striking out* “S4P 3V7” *and substituting* “S4P 4H2”; *and*
- (g) *in the address for the Government of Yukon, striking out* “Registrar of Securities” *wherever it occurs and substituting* “Superintendent of Securities”.
15. *These amendments become effective on January 1, 2011.*