

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

**PART 1 DEFINITIONS AND APPLICATIONS**

**1.1 Definitions** - In this Instrument

“AIF” means an annual information form filed under section 10.1 of this Instrument;

“annual financial statement filing requirement” means the provision in securities legislation that requires the filing of annual financial statements by

- (a) a reporting issuer other than a mutual fund, or
- (b) a mutual fund in the jurisdiction;

“annual financial statements” means the financial statements required to be filed under the annual financial statement filing requirement;

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

“current value” means, for a portfolio asset held by, or a liability of, an investment fund,

- (a) for restricted securities, the value determined in accordance with section 13.4 of NI 81-102 Mutual Funds,
- (b) for derivatives, the value determined in accordance with section 13.5 of NI 81-102 Mutual Funds,
- (c) the market value of the portfolio asset or liability, or,
- (d) if the market value of the portfolio asset or liability is not readily available, the fair value of the portfolio asset or liability;

“designation” means,

- (a) for an equity security, the class of the security,
- (b) for a debt security not referred to in paragraph (c), an identification of the security that includes, as a minimum,
  - (i) the name of the security,
  - (ii) the interest rate of the security,

- (iii) the maturity date of the security,
  - (iv) if the security is convertible or exchangeable, disclosure of that fact, and
  - (v) if the security is ordinarily identified by reference to its priority, disclosure of that priority; and
- (c) for a security referred to in the definition of “money market fund” in National Instrument 81-102 Mutual Funds,
- (i) the name of the security,
  - (ii) the interest rate of the security, and
  - (iii) the maturity date of the security,
- (d) for any other type of security,
- (i) the name or type of security, and
  - (ii) any material terms and conditions of the security commonly used commercially in describing the security;

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

“exchange traded investment fund” means an investment fund whose securities are listed and posted for trading, or quoted on, a marketplace;

“fair value” means, for a portfolio asset or liability of an investment fund, the amount of the consideration that would be agreed upon in a transaction of purchase and sale of the portfolio asset or liability between knowledgeable, willing parties who are under no compulsion to act and who are not affiliates or associates of one another;

“financial quarter” means, for an investment fund,

- (a) if the investment fund has not completed its first financial year,
  - (i) a period, no longer than three months in duration, beginning on the date of incorporation or

organization of the investment fund and ending nine, six or three months before the end of the first financial year of the investment fund, or

- (ii) a three month period ending nine, six or three months before the end of the first financial year, and
- (b) if the investment fund has completed its first financial year, a three month period ending three, six or nine months after the end of the most recently completed financial year of the investment fund;

“formal valuation” means a valuation of either or both of the assets and liabilities of an investment fund that contains the opinion of a qualified and independent valuator as to the current value of the assets or liabilities, and that is prepared in accordance with Part 9;

“group scholarship plan” means a scholarship plan the securities of which entitle the beneficiaries, who are designated in connection with the acquisition of the securities that have the same year of maturity, to a scholarship award proportionate to the value of the securities in respect of which they are designated, on or after maturity of the securities;

“independent valuator” means, for an investment fund, a valuator that is independent of the investment fund, as determined in accordance with section 9.1;

“interim financial statements” means the financial statements required to be filed by an investment fund under the interim financial statement filing requirement;

“interim financial statement filing requirement” means the provision in securities legislation that

- (a) for a reporting issuer that is not a mutual fund, requires the filing of interim financial statements on a quarterly basis, and
- (b) for a mutual fund in the jurisdiction, requires the filing of interim financial statements on a semi-annual basis;

“interim period” means a period required to be covered by interim financial statements under the interim financial statement filing requirement;

“investment fund” means a mutual fund, a non-redeemable investment fund or a scholarship plan;

“labour sponsored fund” means an investment fund that is

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

“management fees” means the total fees paid or payable by an investment fund to its manager or one or more portfolio advisers, excluding audit fees, directors’ fees, custodial fees and legal fees, but including incentive or performance fees;

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

“market value” means,

- (a) for a portfolio asset held by an investment fund, the amount obtainable from the sale of the portfolio asset in an active market, excluding transaction costs, and
- (b) for a liability of an investment fund, the amount payable on the acquisition of the portfolio asset in an active market, excluding transaction costs;

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

“mutual fund in the jurisdiction” means an incorporated or unincorporated mutual fund that is a reporting issuer in, or that is organized under the laws of, the local jurisdiction;

“National Instrument 54-101” means National Instrument 54-101 Communications with Beneficial Owners of Securities of a Reporting Issuer;

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

“non redeemable investment fund” means an issuer

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

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

“related party” means, in relation to a mutual fund, a person or company listed in section 4.2 of National Instrument 81-102 Mutual Funds;

“restricted shares” has the meaning ascribed to that term in National Instrument 51-102 Continuous Disclosure Obligations;

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

“scholarship plan” means an investment fund the securities of which

- (a) constitute or represent an interest in an education savings plan, and
- (b) are referable to a portfolio of assets pertaining to more than one education savings plan;

“securityholder” means, for a security, the registered holder of the security, the beneficial owner of the security, or both, depending upon the context;

“significant change” means

- (a) a change in the business, operations or affairs of an investment fund that would be considered important.
  - (i) by a reasonable investor in determining whether to purchase securities of the investment fund, or
  - (ii) by a reasonable securityholder of the investment fund in determining whether to continue to hold securities of the investment fund, or

- (b) a decision to implement a change referred to in a paragraph (a) made
  - (i) by senior management of the investment fund who believe that confirmation of the decision by the board of directors of the investment fund is probable, or
  - (ii) by senior management of the manager of the investment fund who believe that confirmation of the decision by the board of directors of the manager of the investment fund is probable;

“subject securities” has the meaning ascribed to that term in National Instrument 51-102 Continuous Disclosure Obligations;

“valuation date” means the date of the investment fund’s financial year end; and

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

## 1.2 **Application**

- (1) This Instrument applies to
  - (a) an investment fund, other than a mutual fund, that is a reporting issuer;
  - (b) a mutual fund in the jurisdiction; and
  - (c) a person or company in respect of activities pertaining to an investment fund referred to in paragraph (a) or a mutual fund referred to in paragraph (b).
- (2) This Instrument applies to
  - (a) annual financial statements and annual management reports of fund performance for financial years of an investment fund beginning on or after • [date Instrument comes into force]; and
  - (b) interim financial statements and quarterly management reports of fund performance for interim periods in financial years of an investment fund beginning on or after • [date Instrument comes into force].

- (3) Part 6 of this Instrument does not apply to scholarship plans.
- (4) Parts 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of this Instrument do not apply to investment funds that are not reporting issuers.
- (5) Section 8.3 and Part 9 of this Instrument do not apply in British Columbia.
- (6) Subsections 1.3(3), (4) and (5) of this Instrument do not apply in Quebec.

### **1.3 Interpretation**

- (1) Each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund for purposes of this Instrument.
- (2) Terms defined in National Instrument 14-101 Definitions, National Instrument 21-101 Marketplace Operation and National Instrument 81-102 Mutual Funds and used in this Instrument have the respective meanings ascribed to them in those Instruments.
- (3) In this Instrument, a person or company is an affiliate of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is controlled by the same person or company.
- (4) In this Instrument, a person or company is considered to be controlled by a person or company if
  - (a) in the case of a person or company
    - (i) voting securities of the first-mentioned person or company carrying more than 50 percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and
    - (ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;
  - (b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned

person or company holds more than 50 percent of the interests in the partnership; or

- (c) in the case of a limited partnership, the general partner is the second-mentioned person or company.
- (5) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if
- (a) it is controlled by
    - (i) that other, or
    - (ii) that other and one or more persons or companies, each of which is controlled by that other, or
    - (iii) two or more persons or companies, each of which is controlled by that other; or
  - (b) it is a subsidiary entity of a person or company that is that other's subsidiary entity.

#### **1.4 Language of Documents**

- (1) An investment fund must file a document required to be filed under this Instrument in either French or English or both.
- (2) If an investment fund files a document in French or English, there is a translation of the document in the other language, and the translation is delivered to securityholders, the investment fund must file the translated document.
- (3) In Quebec, the linguistic obligations and rights prescribed by Quebec law must be complied with.

### **PART 2 ANNUAL FINANCIAL STATEMENTS**

**2.1 Filing of Annual Financial Statements** - The annual financial statement filing requirement is varied as it applies to an investment fund to require that an investment fund file its annual financial statements within 90 days, rather than 140 days, from the end of its last financial year.

#### **2.2 Delivery of Annual Financial Statements**

- (1) An investment fund shall send annually, for each of its financial years, a request form to each registered holder and beneficial owner of its securities under which the securityholder may request,

at no cost to the securityholder, to receive the investment fund's annual financial statements for that financial year.

- (2) An investment fund shall send the request form referred to in subsection (1) to the beneficial owners of its securities in accordance with the requirements of National Instrument 54-101.
- (3) An investment fund shall maintain, for each of its financial years, a supplemental mailing list that sets out the registered holders and beneficial owners of its securities who have requested to receive the investment fund's annual financial statements for that financial year by returning a completed request to the investment fund.
- (4) An investment fund shall send its annual financial statements to the registered holders and beneficial owners of its securities on the supplemental mailing list required by subsection (3) concurrently with the filing of those annual financial statements.
- (5) An investment fund that complies with subsections (1) to (4) is exempt from the requirements of securities legislation to send its annual financial statements for a financial year to registered holders of its securities.

## **2.3 Contents of Annual Financial Statements**

- (1) The annual financial statements of an investment fund shall contain,
  - (a) a statement of net assets as at the end of the most recently completed financial year of the investment fund and a comparative statement of net assets as at the end of the immediately preceding financial year;
  - (b) a statement of operations for the most recently completed financial year of the investment fund and a comparative statement of operations for the immediately preceding financial year;
  - (c) a statement of investment portfolio as at the end of the most recently completed financial year of the investment fund;<sup>1</sup>
  - (d) a summary of portfolio investments as at the end of the most recently completed financial year of the investment

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<sup>1</sup> The CSA note that a statement of investment portfolio and the summary statement of investment portfolio need not be comparative.

fund, prepared in accordance with Item 3 of Form 81-106F1;

- (e) if required by the Handbook to be prepared, a statement of cashflows for and as at the end of the most recently completed financial year of the investment fund and a comparative statement of cashflows for the immediately preceding financial year;
  - (f) if a statement of cashflows is not required by the Handbook to be prepared, a statement of changes in net assets for the most recently completed financial year of the investment fund and a comparative statement of changes in net assets for the immediately preceding financial year;
  - (g) a statement of financial highlights prepared in accordance with Form 81-106F1; and
  - (h) notes to the annual financial statements.
- (2) An investment fund shall file an auditor's report on the financial statements filed under subsection (1).

## **2.4 Approval of Annual Financial Statements**

- (1) The board of directors of an investment fund that is a corporation shall approve the annual financial statements of the investment fund, before those financial statements are filed or made available to holders, or potential purchasers, of securities of the investment fund; and
- (2) The manager or the trustee or trustees of an investment fund that is a trust, or another person or company authorized to do so by the constating documents of the investment fund, shall approve the annual financial statements of the investment fund, before those financial statements are filed or made available to holders, or potential purchasers, of securities of the investment fund.

## **2.5 Auditor's Report**

- (1) An auditor's report required by section 2.3 must be prepared by a person or company that is expressly permitted to sign an auditor's report under the laws of the jurisdiction in which the report is signed.
- (2) Subject to subsection (3), for the purposes of section 2.3, an investment fund must file an auditor's report that is prepared in

accordance with Canadian GAAS and does not contain a reservation.

- (3) An auditor's report required under section 2.3 must identify all audited financial periods presented for which the auditor has issued an auditor's report. Where the issuer has changed its auditor and comparative periods presented in the financial statements were audited by a different auditor, the auditor's report must refer to the former auditor's report on the comparative periods.

### **PART 3 INTERIM FINANCIAL STATEMENTS**

#### **3.1 Filing of Interim Financial Statements**

- (1) The interim financial statement filing requirement is varied as it applies to an investment fund to require that an investment fund file its interim financial statements within 45 days, rather than 60 days, after the end of the interim period.
- (2) An investment fund is not required to prepare or file interim financial statements for any period that is less than three months.

#### **3.2 Delivery of Interim Financial Statements**

- (1) An investment fund shall annually follow the same procedures in connection with its interim financial statements and a supplemental mailing list as is required by section 2.2 in connection with its annual financial statements and a supplemental mailing list and shall send its interim financial statements to registered and beneficial owners of its securities on the supplemental mailing list concurrently with the filing of those interim financial statements.
- (2) An investment fund that complies with subsection (1) is exempt from the requirements of securities legislation to send its interim financial statements for a financial year to registered holders of its securities.

#### **3.3 Contents of Interim Financial Statements** - The interim financial statements of an investment fund shall contain,

- (a) a statement of net assets as at the end of the most recently completed interim period of the investment fund and a comparative statement of net assets as at the end of the corresponding period in the immediately preceding financial year;
- (b) a statement of operations for the most recently completed interim period of the investment fund and a comparative statement of

operations for the corresponding period in the immediately preceding financial year;

- (c) a statement of investment portfolio as at the end of the most recently completed interim period of the investment fund;<sup>2</sup>
- (d) a summary of portfolio investments as at the end of the most recently completed financial year of the investment fund, prepared in accordance with Item 3 of Part B of Form 81-106F1;
- (e) if required by the Handbook to be prepared, a statement of cashflows for and as at the end of the most recently completed interim period of the investment fund and a comparative statement of cashflows for the corresponding period in the immediately preceding financial year;
- (f) if a statement of cashflows is not required by the Handbook to be prepared, a statement of changes in net assets for the most recently completed interim period of the investment fund and a comparative statement of changes in net assets for the corresponding period in the immediately preceding financial year;
- (g) a statement of financial highlights prepared in accordance with Item 2 of Part B of Form 81-106F1; and
- (h) notes to the interim financial statements.

**3.4** **Review of Interim Financial Statements** - The persons referred to in each subsection of section 2.4, as applicable, shall review the interim financial statements of the investment fund before those financial statements are filed or made available to holders, or potential purchasers, of securities of the investment fund.

## **PART 4 FINANCIAL DISCLOSURE REQUIREMENTS**

### **4.1 Generally Accepted Accounting Principles**

- (1) The financial statements required to be filed under section 2.1 and 3.1 and any other financial statements an investment fund included in a document required by this Instrument must be prepared in accordance with Canadian GAAP.

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<sup>2</sup> The CSA note that a statement of investment portfolio and the summary statement of investment portfolio need not be comparative.

- (2) An investment fund must use the same accounting principles to prepare the financial information for all the periods presented in the financial statements referred to in subsection (1).

**4.2** **Statement of Net Assets** - The statement of net assets of an investment fund shall disclose the following as separate line items:

1. cash, term deposits and, if not included in the statement of investment portfolio, short term debt instruments.
2. investments at current value.
3. accounts receivable relating to shares or units sold.
4. accounts receivable relating to portfolio assets sold.
5. accounts receivable relating to margin paid or deposited on standardized futures or forward contracts.
6. any other class of assets representing more than five percent of the total assets of the investment fund.
7. amounts receivable and/or payable in respect of specified derivatives transactions.
8. accrued expenses.
9. liabilities for portfolio assets purchased.
10. liabilities for shares or units redeemed.
11. income tax payable.
12. any other class of liability that represents more than five percent of total liabilities of the investment fund.
13. total net assets and shareholders' or unitholders' equity.
14. net asset value per security.

**4.3** **Statement of Operations** - The statement of operations of an investment fund shall disclose the following information as separate line items:

1. dividend revenue.
2. interest revenue.
3. revenue from specified derivatives.

4. revenue from securities lending.
5. management fees, excluding incentive or performance fees.
6. incentive or performance fees.
7. audit fees.
8. directors' or trustees' fees.
9. custodial fees.
10. legal fees.
11. securityholder information costs.
12. any other item of expense that represents more than five percent of total expenses of the investment fund.
13. capital tax.
14. net investment income (loss) before taxes.
15. amounts that would otherwise have been payable by the investment fund that were waived or paid by the manager or a portfolio adviser of the investment fund.<sup>3</sup>
16. provision for income tax, if applicable.
17. net investment income (loss) for the period.
18. realized gains or losses.
19. unrealized gains or losses.
20. increase (decrease) in net assets from operations.

#### **4.4 Statement of Investment Portfolio**

- (1) The statement of investment portfolio of an investment fund shall disclose the following:
  1. the name of the issuer of each security held.

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<sup>3</sup> The amount of fund expenses waived or paid by the manager or portfolio adviser of the investment fund excludes those amounts waived or paid due to an expense cap that would require securityholder approval to change.

2. the designation of each security held.
  3. the number or aggregate face value for each designation of securities held.
  4. the cost for each designation of securities held.
  5. the current value for each designation of securities held.
- (2) Despite subsection (1), the information referred to in subsection (1) may, at the option of the investment fund, be provided only in the aggregate for those short term debt instruments that are issued by a bank listed in Schedule 1, 2 or 3 to the *Bank Act* (Canada) or a loan corporation or trust corporation registered under the laws of a jurisdiction, or that have achieved an investment rating within the highest or next highest categories of ratings of each approved credit rating organization.
- (3) If an investment fund discloses short term debt instruments as permitted by subsection (2),
- (a) the investment fund shall break down the disclosure by currency of issue, and
  - (b) shall disclose separately the aggregate short term debt instruments denominated in any currency for each currency that represents more than five percent of the net assets of the fund.
- (4) If an investment fund holds positions in derivatives, the investment fund shall disclose in the statement of investment portfolio or the notes to that statement:<sup>4</sup>
1. for long positions in clearing corporation options, the number of options, the underlying interest, the strike price, the expiration month and year, the cost and the current value.
  2. for long positions in options on futures, the number of options on futures, the futures contracts that form the underlying interest, the strike price, the expiration month and year of the option on futures, the delivery month and year of the futures contract that forms the underlying

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<sup>4</sup> This section is currently section 17.1 of National Instrument 81-102 which will be revoked once this National Instrument comes into force.

interest of the option on futures, the cost and the current value.

3. for clearing corporation options written by the investment fund, the particulars of the deferred credit account, indicating the number of options, the underlying interest, the strike price, the expiration month and year, the premium received and the current value.
4. for options purchased by the investment fund that are not clearing corporation options, the number of options, the credit rating of the issuer of the options, whether the rating has fallen below the approved credit rating, the underlying interest, the principal amount or quantity of the underlying interest, the strike price, the expiration date, the cost and the current value.
5. for options written by the investment fund that are not clearing corporation options, the particulars of the deferred credit account, indicating the number of options, the underlying interest, the principal amount or quantity of the underlying interest, the exercise price, the expiration date, the premium received and the current value.
6. for positions in standardized futures, the number of standardized futures, the underlying interest, the price at which the contract was entered into, the delivery month and year and the current value.
7. for positions in forward contracts, the number of forward contracts, the credit rating of the counterparty, whether the rating has fallen below the approved credit rating level, the underlying interest, the quantity of the underlying interest, the price at which the contract was entered into, the settlement date and the current value.
8. for debt-like securities, the principal amount of the debt, the interest rate, the payment dates, the underlying interest, the principal amount or quantity of the underlying interest, a description of whether the derivative component is an option or a forward contract with respect to the underlying interest, the strike price in the case of an options component and the set price in the case of a forward component, and the current value.

9. for positions in swaps, the number of swap contracts, the credit rating of the counterparty, whether the rating has fallen below the approved credit rating, the underlying interest, the principal or notional amount, the payment dates, and the current value.
- (5) If applicable, the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or the notes to the statement of investment portfolio, shall identify by an asterisk or other notation the underlying interest that is being hedged by each position taken by the investment fund in a specified derivative.
- (6) The information required by subsection (1) about mortgages may be omitted from a statement of investment portfolio if, the statement of investment portfolio instead discloses
  - (a) the total number of mortgages held;
  - (b) the total current value of mortgages held;
  - (c) a breakdown of mortgages, by reference to number and current value among mortgages insured under the *National Housing Act* (Canada), insured conventional mortgages and uninsured conventional mortgages;
  - (d) a breakdown of mortgages, by reference to number and current value, among mortgages that are pre-payable and those that are not pre-payable; and
  - (e) a breakdown of mortgages, by reference to number, current value, amortized cost and outstanding principal value, among groups of mortgages having contractual interest rates varying by no more than one quarter of one percent.

#### 4.5

**Statement of Changes in Net Assets** - The statement of changes in net assets of an investment fund shall disclose the following as separate line items:

1. net assets at the beginning of the period to which the statement applies.
2. increase or decrease in net assets from operations.
3. proceeds from the issuance of securities of the investment fund.

4. the aggregate redemption amount for which securities of the investment fund were redeemed.
5. distributions by the investment fund, including distributions that were immediately reinvested.
6. net assets at the end of the period reported upon.

**4.6** **Statement of Cashflows** - The statement of cashflows of an investment fund shall disclose the following as separate line items:

1. net investment income (loss).
2. proceeds on disposition of investments.
3. purchase of investments.
4. proceeds from issue of securities of the investment fund.
5. amounts paid on redemption of securities of the investment fund.
6. if applicable, compensation paid in respect of the sale of securities of the investment fund.

**4.7** **Notes to Financial Statements**

- (1) The notes to the financial statements of an investment fund shall disclose the following:
  1. the basis for determining current value and cost of portfolio assets, and, if a method of determining cost other than by reference to the average cost of the portfolio assets is used, disclosure of the method used.
  2. details of portfolio transactions with related parties of the investment fund, including the dollar amount of commission that the investment fund paid to any related party in connection with a portfolio transaction.
  3. if the investment fund has outstanding more than one class or series of securities ranking equally against its net assets, but differing in other respects,
    - (a) the number of authorized securities of each class or series,

- (b) the number of securities of each class or series that have been issued and are outstanding.
  - (c) the differences between the classes or series, including differences in sales charges, and management fees.
  - (d) the method used to allocate income and expenses, and realized and unrealized capital gains and losses, to each class;
  - (e) the fee arrangements for any class-level expenses paid to affiliates; and
  - (f) transactions involving the issue or redemption of securities of the investment fund undertaken in the period for each class of securities to which the financial statements pertain.
- 4. details of the total commission paid to dealers by the investment fund for its portfolio transactions during the period reported upon, including dollar amount of commissions paid and soft dollar transactions.
  - 5. the basis for calculating the management fees paid by the investment fund and the services received in consideration of the management fees.
- (2) An investment fund that borrows money shall disclose in a note to the financial statements and in the management reports of fund performance,
- 1. the minimum and maximum amount borrowed during the period;
  - 2. the percentage of net assets of the investment fund that the borrowing represented as of the end of the period;
  - 3. how the borrowed money was used; and
  - 4. details of the terms of the borrowing arrangements.

- 4.8**            **Inapplicable Line Items** - Despite the requirements of this Part, an investment fund need not include in annual or interim financial statement a line item for any matter that is not applicable to the investment fund or for which there is nothing for the investment fund to disclose.

**PART 5    ANNUAL MANAGEMENT REPORT OF FUND PERFORMANCE**

- 5.1**            **Filing of Annual Management Report of Fund Performance** - An investment fund shall file its annual management report of fund performance for each financial year at the same time that it files its annual financial statements for that financial year.

- 5.2**            **Delivery of Annual Management Report of Fund Performance** - An investment fund shall annually follow the same procedure in connection with its annual management report of fund performance and a supplemental mailing list as is required by section 2.2 in connection with its annual financial statements and a supplemental mailing list and shall send its annual management report of fund performance to registered and beneficial owners of its securities concurrently with the filing of that annual management report of fund performance.

- 5.3**            **Contents of Annual Management Report of Fund Performance** - The annual management report of fund performance of an investment fund shall be prepared in accordance with Form 81-106F1.

**5.4**            **Approval of Annual Management Report of Fund Performance**

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

**5.5**            **Plain Language and Presentation**

- (1)        An annual management report of fund performance shall be prepared using plain language and a format that assists in readability and comprehension.

- (2) An annual management report of fund performance shall
  - (a) present all information briefly and concisely;
  - (b) present the items listed in Part B of Form 81-106F1 in the order stipulated in that part;
  - (c) use the headings and sub-headings stipulated in Form 81-106F1, and may use sub-headings in items for which no sub-headings are stipulated; and
  - (d) not incorporate by reference into the annual management report of fund performance, from any other document, information that is required to be included in an annual management report of fund performance.

## **PART 6 QUARTERLY MANAGEMENT REPORT OF FUND PERFORMANCE**

- 6.1 Filing of Quarterly Management Report of Fund Performance** - The investment fund shall file its quarterly management report of fund performance for each financial quarter of the investment fund within 45 days after the end of the financial quarter.
- 6.2 Delivery of Quarterly Management Report of Fund Performance** - An investment fund shall annually follow the same procedure in connection with its quarterly management reports of fund performance and a supplemental mailing list as is required by section 2.2 in connection with its annual financial statements and a supplemental mailing list and shall send its quarterly management reports of fund performance to registered and beneficial owners of its securities concurrently with the filing of those quarterly management reports of fund performance.
- 6.3 Contents of Quarterly Management Report of Fund Performance** - A quarterly management report of fund performance of an investment fund shall be prepared in accordance with Form 81-106F1.
- 6.4 Review of Quarterly Management Report of Fund Performance** - The persons referred to in each subsection of section 2.4, as applicable, shall review the quarterly management reports of fund performance of the investment fund before those management reports of fund performance are filed or made available to holders, or potential purchasers, of securities of the investment fund.

## **6.5 Plain Language and Presentation**

- (1) A quarterly management report of fund performance shall be prepared using plain language and in a format that assists in readability and comprehension.
- (2) A quarterly management report of fund performance shall
  - (a) present all information briefly and concisely;
  - (b) present the items listed in Part C of Form 81-106F1 in the order stipulated in that part;
  - (c) use the headings and sub-headings stipulated in Form 81-106F1, and may use sub-headings in items for which no sub-headings are stipulated; and
  - (d) not incorporate by reference into the quarterly management report of fund performance, from any other document, information that is required to be included in a quarterly management report of fund performance.

**6.6 Exemption for Short Periods** - Despite the requirements of this Part, a quarterly management report of fund performance need not be prepared for a financial period of an investment fund that is less than three months.

## **PART 7 SPECIFIC FINANCIAL STATEMENT REQUIREMENTS**

### **7.1 Securities Lending Transactions<sup>5</sup>**

- (1) An investment fund shall disclose, in the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or in the notes to the financial statements
  - (a) the aggregate dollar value of securities that were lent in the securities lending transactions of the investment fund that remain outstanding as at the date of the financial statements; and
  - (b) the type and aggregate amount of collateral received by the investment fund under securities lending transactions of the investment fund that remain outstanding as at the date of the financial statements.

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<sup>5</sup> This section is currently section 14.3 of the Companion Policy 81-102 CP which will be revoked once this National Instrument comes into force.

- (2) The statement of net assets of an investment fund that has received cash collateral in securities lending transactions that remain outstanding as of the date of the financial statements shall present
  - (a) the cash collateral received by it as an asset; and
  - (b) the obligation to repay the cash collateral as a liability.
- (3) The asset and liability referred to in subsection (2) shall be shown as separate line items in the statement of net assets.
- (4) The statement of operations of an investment fund shall present income from securities lending transactions as revenue and not as deductions from expenses.

## **7.2 Repurchase Transactions**

- (1) An investment fund, in the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or in the notes to that statement, shall, for the repurchase transactions of the investment fund that remain outstanding as at the date of the statement, disclose the date of the transaction, the expiration date of the transaction, the name of the counterparty of the investment fund, the nature and current value of the securities sold by the investment fund, the amount of cash received, the repurchase price to be paid by the investment fund and the current value of the sold securities as at the date of the statement.
- (2) The statement of net assets of an investment fund that has entered into a repurchase transaction that remains outstanding as of the date of the statement of net assets shall present the obligation of the investment fund to repay the collateral as a liability.
- (3) The liability referred to in subsection (2) shall be shown as a separate line item in the statement of net assets.
- (4) The statement of operations of an investment fund shall present income from the use of the cash received on repurchase transactions as revenue and not as a deduction from expenses incurred in connection with the repurchase transaction.
- (5) The information required by this section may be presented on an aggregate basis.

### **7.3 Reverse Repurchase Transactions**

- (1) An investment fund, in the statement of investment portfolio included in the annual and interim financial statements of the investment fund, or in the notes to that statement, shall for each reverse repurchase transaction of the investment fund that remains outstanding as at the date of the statement, disclose the date of the transaction, the expiration date of the transaction, the name of the counterparty of the investment fund, the total dollar amount paid by the investment fund, the nature and value or principal amount of the securities received by the investment fund and the current value of the purchased securities as at the date of the statement.
- (2) The statement of net assets of an investment fund that has entered into a reverse repurchase transaction that remains outstanding as of the date of the financial statements shall present the reverse repurchase agreement relating to the transaction as an asset at current value.
- (3) The asset referred to in subsection (2) shall be shown as a separate line item in the statement of net assets.
- (4) The statement of operations of an investment fund shall present income from reverse repurchase transactions as revenue and not as a deduction from expenses incurred in connection with the reverse repurchase transaction.
- (5) The information required by this section may be presented on an aggregate basis.

### **7.4 Incentive or Performance Fees**

- (1) The statement of net assets of an investment fund shall recognize as a liability of the investment fund an accrual of incentive or performance fee compensation based on the current value of the underlying as of the date of the statement.
- (2) The statement of operations of an investment fund shall recognize changes in the amount of the liability referred to in subsection (1) as an expense.
- (3) The calculation of the management expense ratio shall include, as an expense of the investment fund, an incentive or performance fee change referred to in subsection (2).

- 7.5**            **Costs of Distribution of Securities** - All costs and expenses associated with the issue and distribution of securities of an investment fund that distributes its securities on a continuous basis shall be recognized as expenses in the statement of operations of the investment fund in the period in which they were incurred.
- 7.6**            **Trailing Commissions** - An investment fund that is permitted to pay costs associated with securityholders holding securities of the investment fund shall recognize those costs as an expense of the investment fund in the period in which they were incurred.

## **PART 8    GENERAL PROVISIONS**

### **8.1            Binding of Financial Statements**

- (1)      Annual and interim financial statements pertaining to more than one investment fund may be bound into one document, if all information for an investment fund is presented together, and not interspersed with information for any other investment fund.
- (2)      Despite subsection (1), notes to financial statements or discussion of accounting policies that are similar for more than one investment fund may be combined.
- (3)      The information contained in a management report of fund performance for an investment fund shall not be bound with the information contained in a management report of fund performance for another investment fund.

### **8.2            Multiple Class Investment Funds**

- (1)      An investment fund that has more than one class or series of security outstanding that is referable to a single portfolio, may, at its option,
  - (a)      prepare separate financial statements and management reports of fund performance for each class or series; or
  - (b)      combine the information concerning all of the classes or series into one set of financial statements and annual and quarterly management reports of fund performance.
- (2)      An investment fund that combines information concerning all of its classes or series of securities in one set of financial statements and management reports of fund performance shall disclose in those materials any distinctions between the classes or series of securities.

### 8.3 Labour Sponsored Funds

- (1) Despite section 4.4, a labour sponsored fund may, in its statement of investment portfolio, or summary statement of investment portfolio,
  - (a) for securities for which a market value is readily available, provide the details of the securities as required by paragraphs 4.4(1) 1 to 5 ; and
  - (b) for securities for which a market value is not readily available,
    - (i) provide the details of the securities as required by paragraphs 4.4(1) 1 to 4 if the statement of investment portfolio groups those securities by industry, type or stage of development and discloses the cost amount of each security, with an aggregate adjustment from cost to current value, for each group, and
      - (A) for a statement of investment portfolio contained in annual financial statements, the labour sponsored fund has obtained and filed a formal valuation relating to the information contained in those annual financial statements in accordance with Part 9, concurrently with the filing of the annual financial statements containing the statement of investment portfolio; or
      - (B) for a statement of investment portfolio contained in interim financial statements, the labour sponsored fund has obtained and filed a formal valuation relating to the information contained in the most recent annual financial statements of the labour sponsored fund in accordance with Part 9, and
    - (ii) disclose that a formal valuation has been obtained as of the year end date.

**8.4 Commodity Pools<sup>6</sup>** - In addition to the requirements of section 4.3, the statement of operations of a commodity pool shall include,

- a) the total amount of realized net gain or net loss on positions liquidated during the period;
- b) the change in unrealized net gain or net loss on open positions during the period;
- c) the total amount of net gain or net loss from all other transactions in which the commodity pool engaged during the period, including interest; and
- d) the total amount of all brokerage commissions paid during the period.

**8.5 Group Scholarship Plans** - In addition to the requirements of Part 2 and Part 3, a group scholarship plan shall disclose, as a separate statement or schedule to the financial statements,

- (a) a summary of scholarship agreements and units by year of eligibility; and
- (b) a statement of scholarships paid to qualified students.

## **PART 9 FORMAL VALUATIONS**

### **9.1 Independence of Valuator**

- (1) Every formal valuation prepared under this Instrument shall be prepared by an independent valuator having appropriate qualifications.
- (2) It is a question of fact as to whether a valuator
  - (a) is independent of an investment fund; and
  - (b) has appropriate qualifications.

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<sup>6</sup> This section is currently section 8.3 of proposed National Instrument 81-104 Commodity Pools and this section will be revoked once that National Instrument comes into force.

- 9.2 Disclosure Concerning Valuator** - An investment fund that obtains a formal valuation of its venture investment assets shall include, in the statement of investment portfolio contained in its annual financial statements, or the notes to the annual financial statements,
- (a) a statement by the directors or trustees of the fund that the valuator is qualified and independent;
  - (b) a description of any past, present or anticipated relationship between the valuator and the investment fund or its manager or portfolio adviser;
  - (c) a description of the compensation paid or to be paid to the valuator;
  - (d) the basis for determining that the valuator is qualified; and
  - (e) the basis for determining that the valuator or the person or company is independent.
- 9.3 Subject Matter of Formal Valuation** - A formal valuation under this Instrument shall provide, as of the year end, the valuation, in aggregate, of all venture investment assets of the investment fund, other than those venture investment assets whose current value is readily available and whose current value has been disclosed separately.
- 9.4 Filing of Formal Valuation** - Subject to section 9.5 an investment fund that obtains a formal valuation shall file a copy of the formal valuation concurrently with the filing of its annual financial statements.
- 9.5 Valuator's Consent** - An investment fund obtaining a formal valuation shall
- (a) obtain the valuator's consent to its filing; and
  - (b) include a statement, signed by the valuator, in substantially the following form:

“We refer to the formal valuation dated ●, which we prepared for (indicate name of the person or company) for (briefly describe the venture investments for which the formal valuation was prepared). We consent to the filing of the formal valuation with the securities regulatory authorities.”

## **PART 10 ANNUAL INFORMATION FORM**

### **10.1 Requirement to File an Annual Information Form**

- (1) Subject to subsection (2), an investment fund must file an AIF.
- (2) An investment fund is not required to file an AIF if
  - (a) the investment fund has a current prospectus prepared and filed under National Instrument 81-101 Mutual Fund Prospectus Disclosure; or
  - (b) the investment fund is in continuous distribution of its securities and has a current prospectus prepared and filed under securities legislation other than National Instrument 81-101 Mutual Fund Prospectus Disclosure.

**10.2 Filing Deadline for an AIF** – An investment fund shall file an AIF required to be filed under section 10.1 no later than 90 days after the end of its most recently completed financial year.

### **10.3 Preparation of an AIF**

- (1) An AIF required to be filed under section 10.1 shall be prepared as of the end of the most recently completed financial year of the investment fund to which it pertains.
- (2) An AIF required to be filed under section 10.1 shall be prepared in accordance with Form 81-101F2, except that:
  - (a) General Instructions (3), (10), (11), (12) and (14) of Form 81-101F2 are not applicable;
  - (b) Subsections (3) and (6) of Item 1.1 of Form 81-101F2 are not applicable;
  - (c) Item 1.2 of Form 81-101F2 is not applicable;
  - (d) Item 5 of Form 81-101F2 shall be completed in connection with all of the securities of the investment fund;
  - (e) Item 15 of Form 81-101F2 is not applicable to an investment fund that is a corporation; and
  - (f) Items 19, 20, 21 and 22 of Form 81-101F2 are not applicable.

- (3) An AIF for an investment fund may not be consolidated, combined or bound with, an AIF for another investment fund.

## **PART 11 MATERIAL/SIGNIFICANT CHANGE REPORTS**

### **11.1 Publication of Material Change or Significant Change**

- (1) If a material or significant change occurs in the affairs of an investment fund, that investment fund must:
  - (a) promptly issue and file a news release that is authorized by an executive officer of the manager of the investment fund and that discloses the nature and substance of the material change or significant change;
  - (b) post all disclosure made under paragraph (a) on the website of the investment fund or the investment fund manager;
  - (c) as soon as practicable, but in any event no later than 10 days after the date on which the change occurs, file a report containing the information required by Form 51-102F3, except that a reference in Form 51-102F3 to:
    - (i) “material change” shall be read as a reference to “significant change”, if applicable;
    - (ii) “paragraph 7.1(1)(a) of National Instrument 51-102” in Item 3 shall be read as a reference to “paragraph 11.1(1)(c) of National Instrument 81-106”;
    - (iii) “subsection 7.1(2) of National Instrument 51-102” in Item 6 shall be read as a reference to “subsection 11.1(2) of National Instrument 81-106”;
    - (iv) “subsection 7.1(4) of National Instrument 51-102” in Item 6 shall be read as a reference to “subsection 11.1(3) of National Instrument 81-106”; and
    - (v) “executive officer of your company” in Item 8 shall be read as a reference to “officer of the investment fund or of the manager of the investment fund”.
  - (d) file an amendment to its prospectus or simplified prospectus that discloses the significant change in accordance with the requirements of securities legislation

as if the amendment were required to be filed under securities legislation<sup>7</sup>.

- (2) The requirements of paragraph (1)(a) and (b) do not apply to investment funds that immediately file a report containing the information required by Form 51-102F3 marked “Confidential” together with written reasons why a news release under paragraph (1)(a) should not be issued and information posted to the website, if
  - (a) in the opinion of the investment fund, the issuance of the news release required by subsection (1) would be unduly detrimental to its interest; or
  - (b) the material change or the significant change
    - (i) consists of a decision to implement a change made by senior management of the manager of the investment fund who believe that confirmation of the decision by the directors or trustee is probable; and
    - (ii) senior management of the manager of the investment fund has no reason to believe that persons with knowledge of the material change or significant change have made use of that knowledge in purchasing or selling securities of the investment fund.
- (3) The requirements of subsection (2) do not apply in Quebec if senior management of the investment fund has reasonable grounds to believe that disclosure would be seriously prejudicial to the interests of the investment fund and that no transaction in securities of the investment fund has been or will be carried out on the basis of the information not generally known. The investment fund must comply with subsection (2) when circumstances that justify non-disclosure have ceased to exist.
- (4) If a report has been filed under subsection (2), the investment fund must advise the applicable regulator or securities regulatory authority by letter marked “Confidential”, within 10 days of the date of filing the report and every 10 days thereafter, that it believes that the report should continue to remain confidential,

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<sup>7</sup> This section is currently section 5.10 of NI 81-102 Mutual Funds, which will be revoked once this National Instrument comes into force.

until the material change or significant change is generally disclosed in the manner referred to in subsection (1).

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

## **PART 12 PROXY SOLICITATION AND INFORMATION CIRCULARS**

### **12.1 Sending of Proxies and Information Circulars**

- (1) If management of an investment fund or the manager of an investment fund gives or intends to give notice of a meeting to securityholders of the investment fund, management or the manager must, at the same time as or before giving that notice, send to each securityholder who is entitled to notice of the meeting a form of proxy for use at the meeting.
- (2) A person or company that solicits proxies from securityholders of an investment fund shall:
  - (a) in the case of a solicitation by or on behalf of management of the investment fund, send with the notice of meeting to each securityholder whose proxy is solicited a completed Form 51-102F5; or
  - (b) in the case of a solicitation by or on behalf of any person or company other than management of the investment fund, concurrently with or before the solicitation, send a completed Form 51-102F5 and a form or proxy to each securityholder whose proxy is solicited.

### **12.2 Exemption**

- (1) Paragraph 12.1(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15.

- (2) For the purposes of subsection (1), two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.

**12.3**            **Compliance with National Instrument 51-102** – A person or company that solicits proxies under section 12.1 shall do so in compliance with the requirement of Sections 9.3 and 9.4 of National Instrument 51-102 Continuous Disclosure Obligations as if those Sections applied to the person or company, and as if references in those Sections to “a reporting issuer” were references to “an investment fund”.

### **PART 13 RESTRICTED SHARE DISCLOSURE REQUIREMENTS**

**13.1**            **Restricted Share Disclosure Requirements** - An investment fund that has restricted shares, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted shares or subject securities shall comply with Part 10 of National Instrument 51-102.

### **PART 14 CHANGE OF AUDITOR**

**14.1**            **Change of Auditor** - An investment fund shall not change its auditor unless it complies with section 4.14 of National Instrument 51-102 as if that section applied to the investment fund, and as if

- (a) references in that section to “a reporting issuer” were references to “an investment fund”; and
- (b) references in that section to the “board of directors” were references to the “board of directors of the investment fund, or the board of directors of the manager of the investment fund, as applicable,”.

### **PART 15 FINANCIAL STATEMENTS – GENERAL**

**15.1**            **Books and Records** - An investment fund shall maintain books and records in accordance with the requirements of securities legislation including all portfolio transactions undertaken by the investment fund.

#### **15.2**            **Documents Available on Request**

- (1) An investment fund shall deliver or send to any person or company, on request, the most recent annual or interim financial statements of the investment fund and the most recent annual or quarterly management reports of fund performance, unless the investment fund has previously delivered or sent those financial

statements or management reports of fund performance to that person or company.

- (2) An investment fund shall deliver or send, free of charge, all documents requested under this section within three business days of receipt of the request.

**15.3 Toll-Free Telephone Number or Collect Telephone Calls** - An investment fund shall have a toll-free telephone number for, or accept collect telephone calls from, persons or companies that want to receive a copy of any or all of the most recent annual or interim financial statements or the quarterly or annual management reports of fund performance of the investment fund.

## **PART 16 ADDITIONAL FILING REQUIREMENTS**

### **16.1 Additional Filing Requirements**

- (1) An investment fund must file a copy of any material information that it sends to its securityholders.
- (2) An investment fund must file the document referred to in subsection (1) on the same date as, or as soon as practicable after, the date on which the investment fund sends the document to its securityholders.

## **PART 17 FILING OF MATERIAL CONTRACTS**

**17.1 Filing of Material Contracts** – An investment fund that is not subject to National Instrument 81-101 Mutual Fund Prospectus Disclosure or securities legislation that imposes a similar requirement shall file a copy of any material contract of the investment fund not previously filed, or any amendment to any material contract of the investment fund not previously filed

- (a) with the final prospectus of the investment fund; or
- (b) upon the execution of the material contract or amendment.

## **PART 18 TRANSITION**

**18.1 Transition Year** - Despite section 5.2, an investment fund must deliver to each securityholder the annual management report of fund performance for the first financial year end of the investment fund after the effective date of this Instrument together with an explanation of the new financial

disclosure requirements.

**18.2**        **Comparative Information** - Despite any provision of this Instrument, an investment fund is not required to provide comparative information in its financial statements for the financial year, and for interim periods in the financial year, in which the investment fund is first subject to this Instrument if

- (a)        it is impracticable to present prior period information on a basis consistent with this Instrument;
- (b)        the prior period information that is available is presented;  
and
- (c)        the prior period information that is presented has not been prepared in accordance with this Instrument and this fact is disclosed.

## **PART 19 EXEMPTIONS**

### **19.1**        **Exemption**

- (1)        The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2)        Despite subsection (1), in Ontario only the regulator may grant an exemption from any part of this Instrument, except Parts 11 and 12.

## **PART 20 EFFECTIVE DATE**

**20.1**        **Effective Date** - This Instrument comes into force on •.