NOTICE OF RULE 81-102 AND
COMPANION POLICY 81-102CP
MUTUAL FUNDS

Notice of Rule and Policy

The Commission has made National Instrument 81-102 Mutual Funds (the "National Instrument") a Rule under the under section 196.1 of the *Securities Act* (the "Act"), and has adopted Companion Policy 81-102CP Mutual Funds (the "Companion Policy") as a policy under the Act. It is anticipated that the National Instrument will become effective on February 1, 2000. The Companion Policy will come into force on the date that the National Instrument comes into force.Consequential changes that will be required to implement the National Instrument will be the subject of later Notices and will be effective on the date the National Instrument comes into force.

Substance and Purpose of National Instrument and Companion Policy

The National Instrument is designed to replace NP 39 and will regulate all publicly offered investment funds that fall within the definition of "mutual fund" contained in Canadian securities legislation. Accordingly, all publicly offered investment funds that give investors the right to redeem securities on demand at a price based on the net asset value of those securities will be required to comply with the National Instrument. Specialized mutual funds such as labour sponsored investment funds, mortgage funds and commodity pools will generally be required to comply with the National Instrument and also applicable securities regulation that is in addition to, or in partial substitution for, the provisions of the National Instrument.

The purpose of the Companion Policy is to state the views of the CSA on various matters relating to the National Instrument.

Written Comments Received by the Commission

The CSA published drafts of the National Instrument (the "1999 Draft Instrument") and Companion Policy (the "1999 Draft Policy") in March 1999.[1] The instruments had been previously published for comment in June 1997.[2]

During the comment period on the 1999 Draft Instrument and the 1999 Draft Policy, which ended on May 18, 1999, the CSA received a number of submissions. The comments provided

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[1] In Alberta, at (1999) 8 ASCS (Supp.).

[2] In Alberta, at (1997) 6 ASCS (Supp.).

in these submissions have been considered by the CSA and the final versions of the National Instrument and Companion Policy being published with this Notice reflect the decisions of the CSA in this regard.

Appendix A of this Notice lists the commenters on the 1999 Draft Instrument and Proposed Companion Policy and Appendix B provides a summary of the comments received and the response of the CSA.

Background

This Notice summarizes in a general manner the changes made in the proposed National Instrument and Companion Policy from the 1999 Draft Instrument and 1999 Draft Policy. As described above, Appendix B to this Notice outlines the comments received in respect of the 1999 materials, together with CSA responses.

The CSA have received a number of comments, in connection with the drafts of the National Instrument and Companion Policy published both in 1997 and March 1999 on the need for change in the following seven areas:

- Use of swap instruments by mutual funds;
- Securities lending by mutual funds and the use of repurchase agreements by mutual funds;
- Standardized regime for the structure of so-called “funds of funds”;
- Timing of transfers among financial institutions and among mutual funds;
- Principal trading in securities between mutual funds and entities related to the manager of the mutual fund;
- Acquisition of securities by mutual funds from underwriters related to the mutual fund manager; and
- Inter-fund trading of securities.

The CSA have decided to permit mutual funds to use swaps and the National Instrument contains the rules in this regard.

The CSA have considered the comments on the other areas listed above and have decided not to make changes to the National Instrument in those areas at the present. The CSA propose that these issues be addressed as part of a parallel process that will enable sufficient public comment and industry consultation regarding any revised rules. The CSA propose to publish proposed rules later during 1999 or 2000 as amending instruments to the National Instrument to deal with these issues. The CSA consider that their anticipated process of dealing with these significant comments will permit appropriate regulatory and public consideration of the issues, as well as permit the timely replacement of National Policy Statement No. 39 ("NP39"), through the finalization of the National Instrument in advance of finalizing the appropriate regulatory response to these significant comments.

Summary of Changes to National Instrument from 1999 Draft Instrument

This section describes changes made in the National Instrument from the 1999 Draft Instrument except that changes of a minor nature, or those made only for purposes of clarification or drafting reasons, are generally not discussed. For a detailed summary of the contents of the 1999 Draft Instrument, reference should be made to the Notice published with that instrument. As the changes to the National Instrument from the 1999 Draft Instrument are not material, the National Instrument is not subject to a further comment period.

The majority of the changes were made in response to comments received; others were made as the result of further consideration of the applicable rules by the CSA.

Section 1.1

The definitions of *"approved credit rating" and "approved credit rating organization"* have been amended to recognize Duff & Phelps Credit Rating Co. as an approved credit rating organization and to include, as approved credit ratings, that organization's ratings for commercial paper/short term debt and long term debt. The ratings included are those considered by the CSA to be equivalent to the rating levels of other organizations already contained in the definition of *"approved credit rating"*.

The definition of *"fundamental investment objectives"* has been amended to remove from the definition the inclusion of the phrase "whether the mutual fund is managed to constitute foreign property under the *Income Tax Act* (Canada) ("ITA")". The CSA state, in section 2.5 of the Companion Policy, their view that whether a mutual fund's securities are foreign or non-foreign property under the ITA is a fundamental investment objective of the mutual fund as a

matter of interpretation. For this reason, this reference has been removed from the definition in the National Instrument.

A definition of *"index mutual fund"* has been added to refer to a mutual fund whose fundamental investment objectives require it to hold securities, or invest, in a manner that replicates a specified widely quoted market index. The definition is used in subsection 15.3(3) to exempt young index mutual funds from a prohibition concerning the content of its sales communications applicable generally to young mutual funds. See the discussion on that subsection in this Notice for further information.

The definition of *"investor fees"* has been amended to clarify that the definition only pertains to fees, charges and expenses payable to the mutual fund organization in which an investor invests. The change was made to clarify that the definition does not include sales commissions paid to participating dealers. The definition also clarifies that it does not include fees, charges and expenses paid to a member of the organization of the mutual fund acting solely as a participating dealer.

Section 2.1

Subsection 2.1(1) has been amended to clarify that the prohibition contained in that section is triggered by the entering into of a specified derivatives transaction or the purchase of index participation units, in addition to the purchase of a security of an issuer. Subsection (3) has been amended to clarify that it is operative only in respect of long positions of the mutual fund in specified derivatives.

Section 2.5

Subsection 2.5(1)(b) has been amended by an inclusion of a reference to incentive fees to clarify that there may be no duplication of incentive fees in arrangements in which a mutual fund invests in the securities of another mutual fund. The change was made to remove ambiguity over whether incentive fees were included in the prohibition against duplication of management fees.

Section 2.6

Section 2.6 has been amended in two ways.

First, subparagraph (a)(i) has been amended to permit a mutual fund to borrow cash or provide a security interest in order to permit it to settle portfolio transactions, so long as after the borrowing, the outstanding amount of all borrowing of the mutual fund does not exceed five percent of its net assets. The CSA have made this change to recognize a procedure that has developed in the industry and that is considered necessary to permit timely and smooth settlement of portfolio transactions.

Second, the language of section 2.6 has been changed to apply generally to "security interests" granted by a mutual fund, rather than encumbrances or specific types of security interests. The CSA believe that the principles contained in the section should apply to all security interests, regardless of the type of security interest that is used in a given context. The CSA have added a provision to permit only those security interests in a specified derivative transaction that are made in accordance with industry practice for the relevant type of transaction and relate only to obligations under particular specified derivatives positions. These changes reflect existing practice and the existing views of the CSA on what was implied by NP39.

Section 2.7

Subsection 2.7(4) has been amended to clarify that the specified derivatives counterparty limit rule contained in that subsection applies only in respect of the exposure of a mutual fund to a counterparty, and therefore does not include the exposure of a counterparty to a mutual fund under the specified derivatives positions.

Section 2.11

Section 2.11 has been amended to provide that the exemption from the notice requirement contained in that section is available if each simplified prospectus of the mutual fund has contained the required disclosure since the later of January 1, 1994 and its inception. The provision formerly required that disclosure since the inception of the mutual fund. The CSA recognize that the former approach did not work well for mutual funds that were in existence before the advent of the derivatives regime introduced in NP39 in 1992.

Section 4.4

The liability regime contained in section 4.4 has been amended in two ways.

First, subsections (1) and (2) have been amended to provide that a manager of a mutual fund is responsible only for its own failure, or the failure of any person or company retained by it or by the mutual fund to discharge any of the manager's responsibilities to the mutual fund, to exercise the prescribed standard of care. The version of section 4.4 contained in the 1999 Draft Instrument would have had the manager liable for the failure of any person or company providing services to the mutual fund or to the manager in connection with the mutual fund to satisfy the standard of care. This approach could have made the manager liable for matters outside its own area of responsibility, which the CSA consider inappropriate.

Second, subsection (5) has been amended to provide that a director of a mutual fund is not subject to the liability regime contained in section 4.4. Directors are subject to the liability regime imposed by the relevant corporate legislation.

Section 6.1

Section 6.1 has been amended in two ways.

First, subsection 6.1(2) has been amended to provide that a sub-custodian or custodian outside of Canada may be retained if appropriate to facilitate portfolio transactions of the mutual fund outside Canada. The 1999 Draft Instrument would have permitted such a retention only if "required to execute" transactions outside of Canada. The CSA do not wish to impose an overly onerous standard concerning the appointment of non-Canadian custodians or sub-custodians, and have therefore returned to the wording now contained in NP39 in this regard.

Second, subsection (6) has been added to clarify that a manager of a mutual fund shall not act as custodian or sub-custodian of the mutual fund. The CSA have included this provision to reflect existing CSA policy, which is to have the portfolio assets held by an entity other than the manager; without subsection (6), the National Instrument would have operated to permit the manager to act as custodian.

Sections 6.2 and 6.3

Each of these sections contains a requirement permitting certain entities to act as custodian or sub-custodian of a mutual fund if its shareholders' equity, as reported in its most recent audited financial statements, exceeds certain prescribed amounts. These requirements have been amended to remove the provision that this test must be based on financial statements that have been made public. The CSA recognize that some custodians are not required to make their

financial statements public; for instance, some custodians are members of a larger corporate group that do not make public segregated financial statements pertaining only to the custodian.

Section 6.4

This section has been amended in two ways.

First, the section has been amended to permit a custodian or sub-custodian agreement to provide for the granting of a security interest by a mutual fund to secure the obligations of the mutual fund to repay borrowings by the fund from a custodian or sub-custodian for the purpose of settling portfolio transactions. This change corresponds to the change to section 2.6 described above.

Second, the section has been amended to permit a custodian or sub-custodian to charge a mutual fund a safekeeping and administrative services fee arising on the transfer of portfolio assets of the mutual fund.

Both these changes are designed to recognize commercial realities and existing practice.

Section 6.5

Section 6.5 has been amended to permit a mutual fund to pay a safekeeping and administrative services fee to a custodian or sub-custodian arising on the transfer of portfolio assets of the mutual fund. This change corresponds to the change described above in relation to section 6.4.

Section 6.6

This section has been amended to remove the provision that prevented a custodian or sub-custodian from being indemnified by a mutual fund unless the mutual fund had reasonable grounds to believe that the action or inaction of the custodian or sub-custodian that led to the claim was in the best interests of the mutual fund. The CSA recognize that custodians and sub-custodians typically act on instructions from the mutual fund or the manager and do not consider whether given instructions are in the best interests of the mutual fund. Therefore, the National Instrument composes a requirement that custodians and sub-custodians not be negligent in carrying out their duties, but not a requirement that any indemnification of their actions be contingent on whether or not the mutual fund has reasonable grounds to believe they act in the best interests of the mutual fund.

Section 6.8

Subsection 6.8(3) has been amended to provide that a mutual fund may deposit with its counterparty portfolio assets over which it has granted a security interest in connection with a particular specified derivatives transaction. This change represents an exemption from the otherwise applicable custodian provisions, and corresponds to the change to section 2.6 that permits the mutual fund to grant such a security interest.

Section 9.2

Paragraph 9.2(a) has been amended to provide that a mutual fund has one business day to decide whether to reject a purchase order, rather than 24 hours. The one business day requirement is more workable in connection with purchase orders received before weekends or holidays.

Section 9.4

Subsection 9.4(4) has been amended to ensure that the provisions applicable to cheques that are not honoured are also applicable in the case of other forms of payment that are not honoured.

In addition, subsection (4) now provides that a redemption required by that subsection shall be processed as if the redemption order was received on the fourth business day, rather than the third business day, after the pricing date of the original sale order. This change was necessary to tie properly to the provision that specifies that such a redemption is required only if payment on the relevant purchase order is not made on or before the third business day after the pricing date.

Sections 11.1 and 11.2

Paragraphs 3(c) of sections 11.1 and 11.2 have been amended. Those paragraphs set out the purposes for which a dealer holding client funds may withdraw those funds from the relevant trust account. The paragraphs have been amended to provide that the funds may be withdrawn to pay, among other things, fees, charges and expenses payable by an investor in connection with purchase, conversion, holding, transfer or redemption of the relevant securities. The paragraphs no longer make reference to using the funds to pay for "investor fees". This change, together with the clarification to the definition of "investor fees" described above, clarifies that

funds in a trust account may be withdrawn to pay any fees owing by the investor in connection with a mutual fund investment, including fees owed to a participating dealer.

Section 12.1

Paragraph 12.1(2)(b) has been amended to provide that the compliance report relating to the principal distributor of a mutual fund may be prepared by the auditor of the principal distributor or by the auditor of the mutual fund.

Section 14.1

Section 14.1 has been amended by the addition of paragraph (b), which permits a mutual fund to set as the record date for a dividend or distribution the last day on which the net asset value per security is calculated before the day on which the net asset value per security is calculated for purposes of the dividend or distribution. This change has been made to accommodate existing practice and to clarify an ambiguity in the corresponding provision of NP39.

Section 15.2

Subsection 15.2(2) has been amended to provide that performance data and disclosure specifically required by the National Instrument included in a written sales communication must be in at least 10-point type. The 1999 Draft Instrument required all of the text in a written sales communication to be in at least 10-point type. This change relieves mutual fund organizations and distributors from extra expense associated with purchasing more advertisement space in order to accommodate the proposed requirements of the 1999 Draft Instrument, but ensures that some of the most important information contained in a sales communication is presented in at least 10-point type.

Section 15.3

Section 15.3 has been amended in three ways.

First, subsection (1) has been amended to provide greater flexibility in the preparation of sales communications that involve comparison of the performance of a mutual fund or asset allocation service with a benchmark. Paragraph (d) of the 1999 Draft Instrument provided that such a comparison could be made only if the benchmark existed and was widely available during the period for which the comparison was made. Paragraph (d) has been amended to permit the comparison of the performance of a mutual fund or asset allocation service with a benchmark

that did not exist for all or part of the relevant period, so long as a reconstruction or calculation of what the benchmark would have been during that period, calculated on a basis consistent with its current basis of calculation, is widely recognized and available. This change has been made to recognize that in the case of some new benchmarks, such as the SP/TSE 60, the preparers of the benchmarks have made generally available calculations of what the benchmark would have been prior to its introduction.

Second, subsection (3) is new, and exempts young index mutual funds from the prohibition of not disclosing the performance of a benchmark during the period for which other young mutual funds are not permitted to publish performance data. The CSA are satisfied that the publication of the performance of the index on which the investments of a young index mutual fund are based is appropriate and not subject to abuse.

Third, subsection (4) has been amended to provide that a sales communication that provides performance ratings or ranking for a mutual fund or asset allocation service shall provide the relevant rating or ranking for each period for which standard performance data is required to be given. This change is designed to prevent sales communications from "cherry picking" rankings for a mutual fund, and is consistent with the approach of the National Instrument relating to the presentation of performance data.

Section 15.4

Section 15.4 has been amended through changes to the mandated warning disclosure contained in that section. The CSA have attempted to make the required disclosure simpler, shorter and more understandable for the average investor.

In connection with these changes, subsection 15.4(11) of the 1999 Draft Instrument has been deleted. That provision would have required a shorter form of warning than was otherwise required in the case of certain types of sales communication. The CSA have deleted this provision on the basis that the new required forms of disclosure are now simpler and shorter than in the 1999 Draft Instrument or in NP39.

Section 15.5

Section 15.5 has been amended in three ways.

First, subsection (1) has been amended to provide that a mutual fund shall not be described as a "no load" fund if investor fees are payable by an investor on a purchase or redemption of the

securities of the mutual fund, or if fees, charges or expenses are payable by an investor to a participating dealer named in the sales communication. This approach is consistent with the approach now contained in NP39. The 1999 Draft Instrument would have prevented a mutual fund from being described as a "no load" fund if sales commissions were charged by participating dealers that were independent of the mutual fund organization. The CSA did not intend this result, and have amended the definition of "investor fees" and amended subsection 15.5(1) accordingly.

Second, subsection (2) has been amended to require that a sales communication for a "no load" mutual fund disclose that management fees and operating expenses are paid by the mutual fund. The 1999 Draft Instrument would have required a summary of those fees, and the CSA have decided that that approach is excessive in the circumstances.

Third, subsection (3) has been amended in a manner similar to subsection (2). Subsection (3) requires that a sales communication contained a reference to the existence or absence of fees or charges, other than the disclosure required by section 15.4 or a reference to the term "no load" shall disclosure the types of fees and charges that exist. The 1999 Draft Instrument required disclosure of a summary of the fees and charges that exist.

Section 15.6

Section 15.6 has been amended in three ways.

First, subsection (1) has been amended to permit sales communications for young mutual funds to contain performance data for those funds if they are sent to securityholders of a mutual fund or participants in an asset allocation service under common management with the mutual fund or asset allocation service. This subsection already permitted such materials to go to securityholders of the young mutual fund. The change has been made to recognize that mutual fund organizations with multiple funds will prepare one document containing performance information about all the funds to be sent to all securityholders of all the funds.

Second, subsection (2) is new, and reflects existing CSA policy that has been developed to deal with mutual funds that issue different classes or series of securities, all of which relate to the same investment portfolio. Subsection (2) provides that sales communication for such mutual funds must specify the class or series to which any performance data presented in a sales communication related, and, if the sales communication relates to more than one class or series of security and provides performance data, then the sales communication must provide performance data for each class or series of security and clearly explain the reasons for the

different performance data among the classes or series. The rationale for this provision is to prevent a mutual fund from "cherry picking" performance data from fewer than all of its classes or series.

Third, subsection (3) is also new and provides that a sales communication for a new class or series of security that pertains to the same investment portfolio as an existing class or series shall not provide performance data for any existing series or class unless such data is provided for all existing series or classes. Again, this provision is designed to prevent "cherry picking" by mutual funds.

Section 16.1

Section 16.1 has been amended in three ways.

First, subsections (3) and (4) have been amended to apply to all non-optional investor fees, rather than only management fees. This change has been made to ensure that all relevant fees are taken into account for purposes of calculating management expense ratio.

Second, subsection (5) has been changed in an analogous way, in order to provide that all mutual fund expenses rebated by a manager or a mutual fund to a securityholder, rather than only management fees, are properly taken into account in the calculation of management expense ratio.

Third, subsections (7) and (8) have been added to clarify the calculation of management expense ratio in cases of financial years that are less than 12 months. Subsection (7) provides that the phrase "financial year" used in subsection (1) includes a period other than 12 month for which an issuer is required by securities legislation to prepare audited financial statements. Subsection (8) provides that the management expense ratio of a mutual fund for a financial year of less than 12 months shall be annualized. This approach is consistent with the approach taken in National Policy Statement No. 36 and carried forward into National Instrument 81-101 Mutual Fund Prospectus Disclosure. Section 16.1 continues to provide that the calculation of management expense ratio must be based on expenses shown for a financial year; mutual funds may not disclose a management expense ratio for less than a financial year, thereby ensuring that its management expense ratio will be based on total expenses derived from audited financial statements.

Section 18.1

Section 18.1 has been amended by the removal of the requirement that a mutual fund maintain records "for at least as long as the mutual fund is in existence". The CSA are satisfied that the length of time that a mutual fund maintains records is an issue properly left to the business judgment of the organization, having regard to limitation periods and statutory and other common law requirements.

Section 18.2

Section 18.2 has been amended to clarify the purposes for which a securityholder list may be obtained, in order to make to conform more closely with corporate legislation. The provision now provides that a list may be requested for a matter relating to the relationships among the mutual fund, the members of the organization of the mutual fund, and the securityholders, partners, directors and officers of those entities. This parallels the corporate provisions that provide that shareholder lists may be obtained for a matter relating to the "affairs" of an issuer, which is defined as the relationship among a corporation, its affiliates and shareholders and the officers and directors of such bodies corporate.[3]

Part 20

Part 20 has been amended to include the relevant dates relating to the implementation of the National Instrument and various dates relating to transitional matters.

Section 20.1 provides that the National Instrument comes into force on February 1, 2000.

Section 20.2 permits sales communications printed before December 31, 1999 to be used until August 1, 2000, despite any requirements in the National Instrument.

Subsection 20.5(1) provides that subsection 4.4(1) of the National Instrument does not come into force until August 1, 2000; this gives mutual fund organizations six months to ensure that all relevant agreements conform with the requirements of that subsection. Subsection 20.5(2) provides that subsections 2.4(2), 2.7(4) and 6.4(1) do not come into force until February 1, 2001; this gives mutual fund organizations one year from the date of the coming into force of the rest of the National Instrument to put systems in place to monitor compliance with subsections

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[3] See for example, the definition of "affairs" in section 2(1) of the *Canada Business Corporations Act*.

2.4(2) and 2.7(4) and to ensure that agreements with custodians and sub-custodians comply with the requirements of subsection 6.4(1).

Summary of Changes to the Companion Policy from the 1999 Draft

This section describes the changes made in the Companion Policy from the 1999 Draft Policy. For a detailed summary of the 1999 Draft Policy, reference should be made to the Notice published with that policy. Changes of a minor nature, or those made for drafting or clarification reasons or to conform the Companion Policy to the National Instrument are not discussed in this section.

Section 2.5

Section 2.5 has been substantially expanded to discuss the meaning of the definition "fundamental investment objectives" and its relationship to the disclosure of the fundamental investment objectives of a mutual fund in a simplified prospectus under National Instrument 81-101 and Form 81-101F1. Section 2.5 explains that the definition in the National Instrument is designed to refer to the disclosure of fundamental investment objectives made under National Instrument 81-101, and that a change to the mutual fund requiring a change to that disclosure will require securityholder approval under National Instrument 81-102. Section 2.5 also states that views of the Canadian securities regulatory authorities that whether the securities of a mutual fund are foreign property under the ITA is a fundamental investment objective, and that a change in the management of the mutual fund to change that status would be a change in the fundamental investment objectives of the mutual fund.

Section 2.9 of the 1999 Draft Policy

This section, which discussed the definition of "investor fees" has been deleted in conjunction with the amendments to that definition in the National Instrument.

Section 2.14

Paragraph 4 of subsection 2.13(3) has been added to provide a further example of a circumstance that the Canadian securities regulatory authorities would generally not consider to be a "purchase" of a security by a mutual fund. This paragraph refers to the decision of a mutual fund not to tender into an issuer bid, even though its decision is likely to result in an increase in its percentage holdings of a security beyond what the mutual fund would be permitted under the National Instrument to purchase.

Section 3.3

A reference to section 2.1 of the National Instrument has been added to this section to emphasize that "quasi-mutual funds" are subject to all of the investment restrictions of the National Instrument, including section 2.1.

Section 4.2

Paragraph 4 of section 4.2 has been added to clarify the operation of the commodity futures legislation of Ontario in connection with a non-resident sub-adviser.

Section 4.4

Section 4.4 has been added to clarify that the definition of "cash cover" includes interest accrued on the securities or other portfolio assets used for cash cover purposes.

Section 7.2 of the 1999 Draft Policy

This section has been deleted in conjunction with the expansion of the discussion of the term "fundamental investment objectives" in section 2.5.

Section 7.2

Section 7.2 has been amended by the deletion of subsection (2), which noted the need for separate approvals for certain transactions in Quebec. The CVMQ is proceeding to take steps to make such approvals unnecessary following the implementation of the National Instrument.

Section 11.1

Subsection 11.1(6) has been added to discuss the status of non-interest bearing trust accounts maintained under sections 11.1 or 11.2 of the National Instrument.

Section 12.1

Section 12.1 is new and discusses subsection 13.1(4) of the National Instrument. Section 12.1 emphasizes that the Canadian securities regulatory authorities expect mutual funds to calculate their net asset value per security as quickly as commercially practicable and to make the results of that calculation available to the financial press as quickly as is commercially practicable.

Section 14.1

Section 14.1 is new and states the views of the Canadian securities regulatory authorities on matters concerning management expense ratio calculations. The section emphasizes that the rules of calculation of management expense ratio contained in the National Instrument are applicable regardless of the context in which a mutual fund disclosures its management expense ratio. The section also discusses issues relating to the determination of "total expenses" used in the calculation of management expense ratio.

Section 15.1

Section 15.1 discusses section 18.1 of the National Instrument, and states that it is up to a mutual fund, having regard to prudent business practice and any applicable statutory limitation periods, to decide how long it wishes to retain securityholder records required by this section.

DATED: October 29, 1999.

APPENDIX A
LIST OF COMMENTERS ON
NATIONAL INSTRUMENT 81-102 AND
COMPANION POLICY 81-102CP

1 AGF Group of Funds
2. Duff & Phelps Credit Rating Co. (2 submissions)
3. Fasken Campbell Godfrey
4. Fidelity Investments Canada Limited
5. Global Strategems
6. Investors Group
7. Mackenzie Financial Corporation
8. Osler, Hoskin & Harcourt
9. PricewaterhouseCoopers
10. Royal Bank of Canada, Royal Trust and Royal Mutual Funds Inc.
11. TD Asset Management Inc.
12. The Association of Global Custodians
13. The Investment Funds Institute of Canada (IFIC)
14. Trimark Investment Management Inc.

APPENDIX B
SUMMARY OF COMMENTS RECEIVED ON
NATIONAL INSTRUMENT 81-102 AND
COMPANION POLICY 81-102CP AND
RESPONSE OF THE CANADIAN SECURITIES ADMINISTRATORS

1. INTRODUCTION

The CSA published drafts of National Instrument 81-102 (the "National Instrument") and Companion Policy 81-102CP (the "Companion Policy") in March 1999[4]. The instruments published in March 1999 are called the "1999 Draft Instrument" and "1999 Draft Policy" in this Appendix. The instruments had been previously published for comment in June 1997.[5]

During the comment period on the 1999 Draft Instrument and the 1999 Draft Policy, which ended on May 18, 1999, the CSA received 15 submissions from 14 commenters. The commenters can be grouped as follows:

Mutual fund management companies:	8	
Stock exchanges and rating agencies:	1	
Accounting firms:		1
Law firms:		2
Trade Associations:		2
TOTAL:		**14**

The two trade associations listed each made submissions in respect of the 1999 Draft Instrument and the 1999 Draft Policy on behalf of their respective members.

The comments provided in these submissions have been considered by the CSA and the final versions of the National Instrument and Companion Policy being published with this Notice reflect the decisions of the CSA in this regard. The CSA thank all commenters for providing their comments on the 1999 Draft Instrument and the 1999 Draft Policy.

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[4] In Ontario, at (1999) 22 OSCB (Supp).

[5] In Ontario, at (1997), 20 OSCB (Supp2).

Copies of the comment letters may be viewed at the office of Micromedia, 20 Victoria Street, Toronto, Ontario (416) 312-5211 or (800) 387-2689; the office of the British Columbia Securities Commission, 1100-865 Hornby Street, Vancouver, British Columbia (604) 899-6500; the office of the Alberta Securities Commission, 10025 Jasper Avenue, Edmonton, Alberta (403) 427-5201; and the office of the Commission des valeurs mobilières du Québec, Stock Exchange Tower, 800 Victoria Square, 17th Floor, Montréal, Québec.

Many of the commenters provided detailed comments on specific sections of the 1999 Draft Instrument and the 1999 Draft Policy. Some comments were of a very technical, non-substantive nature. The following is a summary of the substantive comments received, together with the CSA's responses and, where applicable, the changes adopted by the CSA. As the changes to the 1999 Draft Instrument and the 1999 Draft Policy were not material, the National Instrument and the Companion Policy are not subject to a further comment period.

2. COMMENTS PREVIOUSLY RAISED ON 1997 DRAFT NI AND CP

A number of commenters provided comments on issues that had previously been raised in connection with the draft instrument published in June 1997. The following is a list of those issues:

- the use of repurchase agreements;
- reducing the equity requirement for sub-custodians from $100 million to $50 million;
- reducing the time for completing a redemption from T+10 to T+3;
- using a currency other than the Canadian or U.S. dollar for calculating net asset value;
- including receivables from the acceptance of purchase orders for mutual fund securities in the definition of “cash equivalent”;
- eliminating the requirement for unitholder approval for a change of auditor;
- permitting the use of specified derivatives with underlying interests in commodities other than gold.

The CSA reconsidered the comments received with respect to these issues and concluded that their responses have not changed since March 1999. Accordingly, the comments on these issues are not set out in the tabular summary of comments which follows. Reference should be made to the Summary of Comments on the 1999 Draft Instrument and the 1999 Draft Policy for the CSA response to these issues.

3. SUBSTANTIVE COMMENTS ON SPECIFIC PROVISIONS

Note: In this Table, "NI" means the proposed National Instrument 81-102 Mutual Funds and "CP" means Proposed Companion Policy 81-102CP Mutual Funds; "March 1999 Draft" means the version of the NI and CP published for comment in March 1999; "Final" means the version of the NI made as a Rule by the Ontario Securities Commission and the CP made as a Policy by the Ontario Securities Commission; "NP 39" means National Policy Statement No. 39; and "CSA" means the Canadian Securities Administrators.

	March 1999 Draft Reference	***Final Reference***	***Comment***	***CSA Response***
1.	Definition of "approved credit rating" and "approved credit rating organization"	_____	Duff & Phelps should be included as an approved credit rating organization since it is one of only four credit rating agencies recognized by the SEC (U.S.) as a "nationally recognized statistical rating organization" for rating all types of securities. The company has a presence in Canada in the form of a joint venture relationship with DBRS Inc. to provide ratings and research specifically designed for investors in high yield U.S. dollar denominated Canadian issues.	Change made.
2.	Definition of "cash cover'	_____	Commercial paper of an approved credit rating should be included in the definition, particularly since it is already permitted for money market funds by clause (d)(iii) of the definition of "money market fund".	No change. The use of commercial paper will be considered as part of a parallel amending process.

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3.	Definition of "cash equivalent"	_____	The definition should be amended to include instruments with a term of 13 months, or 25 months in the case of government obligations, and the dollar weighted term to maturity "not exceeding 90 days" (see definition of "money market fund") should be restored to 180 days instead of 90 days. Long-term instruments provide potential for yield improvement without significantly altering the risk profile of a money market portfolio.	No change. This is a comment that was raised prior to the reformulation process when there was some controversy concerning what is a money market fund. The definition reflects the CSA's understanding of the industry consensus on this issue.
4.	Definition of "cash equivalent"	_____	The definition should be expanded to include commercial paper (with an "approved credit rating"), repurchase agreements and money market funds. Even if repurchase agreements and commercial paper are not included, money market funds should be included even if they invest in commercial paper and repurchase agreements. The reason for this is that the inter-position of a money market fund changes and enhances the stability and liquidity of the investment beyond the characteristics of the fund's own investment holdings.	No change. Repurchase agreements will be addressed as part of a parallel amending process. The use of money market funds will be considered as part of the review of fund on fund investments. The CSA has concerns about the implications of a "top fund" which uses derivatives investing up to 80% or 90% of its assets in a related money market fund. Any changes in these areas will be made as amendments to the NI. No change with respect to commercial paper (see comment re "cash cover" above).
5.	Definition of "conventional convertible security"	_____	An essential element of a conventional convertible security is that the rate or formula for conversion or exchange is fixed by the terms of the convertible security. Otherwise, any exchange or trade of a security (including those at market rates) would be caught by the definition. Such an exchange is not a convertible security, conventional or otherwise. Nonetheless, it should also be clear that they do not constitute "specified derivatives".	Change made. The words "according to its terms" have been added to the definition.

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6.	Definition of "dealer managed mutual fund" and "dealer manager"	_____	It is not clear whether these definitions recognize funds with third party advisors (i.e. without a "specified dealer" in the chain) as dealer-managed. Please clarify.	No change. The CSA will consider this issue in their review of the restrictions imposed on related party transactions. The current wording carries forward the requirements of NP 39.
7.	Definition of "debt-like security"	_____	It is not clear whether equity-linked GICs and/or linked notes fall within the parameters of the definition. Section 2.4 of the CP should be amended to provide more clarification.	No change. The CSA believe that the definition is clear. Whether a particular investment fits within the definition will be depend on the facts as applied to the test in the definition.

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8.	Definition of "fundamental investment objectives"	_____	The definition does not clearly distinguish between investment objectives and investment strategies. The definition should be amended to clearly distinguish between objectives and strategies to ensure that unnecessary unitholder meetings (which are costly, time consuming and almost invariably poorly attended) are not required. As a result, some funds may provide more general disclosure of their investment objectives in order to avoid having to call unnecessary meetings. With respect to whether the fund is managed to constitute non-foreign property under the ITA, will relief be granted to permit changes to currently disclosed fundamental investment objectives?	Changes made. The CP has been amended to refer to the disclosure requirements of NI 81-101 and Form 81-101F1 which recognizes the difference between investment objectives and investment strategies. Examples of fundamental investment objectives are provided in the CP. The reference to management of a mutual fund so as to constitute foreign property has been removed from the definition since it was but one example of a fundamental investment objective. The CP has been amended to state that the CSA are of the view that whether securities of a mutual fund are foreign property under the ITA is a fundamental investment objective. The NI does not require a change in fundamental investment objective. If a fund is currently being managed to be non-foreign property then that is part of the fundamental investment objective of that fund.
9.	Definition of "hedging"	_____	A threshold of "high" degree in relation to the stated variables should be specified.	No change. See subsection 2.7(1) of the CP.
10.	Definition of "index participation units"	_____	The definition appears to preclude the use of index participation units which track an index and employ indexation strategies other than replication of the composition of the index. Please clarify.	Change made. Clause (b) added to provide for strategies that replicate performance of an index.

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11.	Definition of "investor fees"	_____	Does the definition include all fees applied by the fund manufacturer or must this definition contemplate **all** possible fee expenses that could be applied by a broker/dealer and/or a financial planner?	Definition amended for clarity.
12.	Definition of "mutual fund conflict of interest investment restrictions"	_____	Part (b) of the definition could be problematic since it prevents the crossing of securities. For example, it would preclude a fixed income portfolio manager from buying a bond and then, as it nears maturity, cross the securities to a shorter term bond fund, and in turn crossing the security to a money market fund as it approaches maturity. This type of transaction should be permissible if executed at fair market value through an independent broker/dealer.	No change. Inter-fund trading not permitted by section 118 of Securities Act (Ontario). Issue to be addressed as part of parallel amending process.
13.	Definition of "permitted supranational agency"	_____	The European Investment Bank should be included in the definition.	No change. The European Investment Bank has been prescribed under paragraph (g) of the definition of "foreign property" in subsection 206(1) of the ITA. Therefore, it is incorporated, by reference, into the definition.

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14.	Definition of "purchase"	_____	A transaction should be considered to be a "purchase" only where securities are acquired as a result of a positive action by a fund and not as a result of a passive incident. The automatic conversion of securities in connection with an amalgamation, merger or other reorganization ought not be considered a "purchase", regardless of how the fund voted in connection with the transaction. To make the characterization of a subsequent conversion dependent on the fund's vote may encourage elements of gamesmanship with respect to voting (i.e. to attempt to ensure 100% conversion without any compliance violation). The definition should be simplified to remove the relevance of voting and to classify all automatic or forced conversions (even those with an element of selection) as not being "purchases"	Change made to section 2.13 of CP to clarify that a transaction would not be a "purchase" if the mutual fund declined to tender into an issuer bid. The CSA recognize that referring to voting may not be a perfect solution but voting is fundamental to decision-making.
15.	Definition of "report to securityholders"	_____	The definition should be expanded to include any reports sent to securityholders generally. Quarterly reports would be included in the current definition of "sales communications" and this serves no valid policy objective. The expanded definition should then be excluded from the definition of "sales communication". Such reports are only sent to existing securityholders, are not "primarily promotional" in nature and are still subject to section 15.8 with respect to the use of performance data.	No change. The CSA believe that such quarterly reports should contain the modified warning language (see section 15.4).

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16.	Definition of "significant change"	_____	The proposed change to measure the subjective event of "significant change" by estimating investor perception (as opposed to the view of an issuer in the former definition of "material change") is an onerous task. Is the "investor" of average financial knowledge? Given the varying degree of investor sophistication, fund companies require more guidance and examples of instances where a change would be considered "significant". Part 7 of the CP only provides two examples of what the CSA considers "significant changes". This is not sufficient.	No change. The definition imposes a "reasonable" person test.
17.	Definition of "special warrant"	_____	In today's market, "special warrant" can include instruments such as special shares or special units and therefore the definition should be expanded to recognize this.	No change. The CSA do not believe that it is necessary to change the term since what is important is whether the security fits within the definition.
18.	Section 2.1	_____	Why are securities issued by U.S. states and governments of other foreign jurisdictions not excluded from the concentration restriction? It is not clear why such securities would not be given the same treatment if the basis for the exclusion is low risk, low volatility and sufficient liquidity. Despite subsection 3.1(3) of the CP, it is not clear why the CSA is not willing to codify the standard exemptions granted to international bond funds. Applications of this type are commonly made, the bases for the applications are usually very similar, orders are routinely issued and are very similar in most cases. Why should an international equity fund not be given the same flexibility as an international bond fund on a discretionary basis (s.3.1(3) of CP)?	No change. The CSA would consider an application for discretionary relief by an international equity fund.

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19.	S. 2.1(3) and (4)	_____	These provisions do not clearly instruct whether the fund should appraise index participation units for asset concentration or not.	Subsection 2.1(1) of the NI and subsection 3.3(2) of the CP have been amended to clarify that the purchase of index participation units is subject to section 2.1 of the NI.
20.	S. 2.2	_____	Why is the issue of control for a mutual fund or a group of mutual funds different than for any other market participant? The control restrictions in Canadian securities legislation already contain adequate restriction on aggregate holdings of securities of an issuer through the take-over bid, early warning and insider reporting requirements. The concentration restrictions in s. 2.1 provide the necessary diversification protections to guard the interests of investors. From a control perspective the issue is not how may shares are owned by a particular fund i.e. it is irrelevant if a control position is allocated among a dozen funds or restricted to a single account.	No change. This rule is not addressed to the secondary market but is rather intended to address the management of a mutual fund. The fundamental feature of a mutual fund is that it should not control another issuer. The rule is not intended to address diversification. Diversification is addressed by section 2.1.
21.	S.2.2(2)	_____	Although section 2.14 of the CP contains examples of acquisitions that would not generally be considered "purchases", the list is not exhaustive. The current wording might (inadvertently) catch a situation in which a fund's holdings increase as a result of a decision not to tender to an offer (and other unforeseen circumstances). The process for reducing holdings once the 10% level is reached should be amended to conform with the requirements of section 2.4 concerning "illiquid assets".	Change made to s. 2.13 of CP. If the mutual fund acquires securities pursuant to an issuer bid to which it declined to tender, that acquisition would not be considered a purchase. No change. The CSA believe that the time provided is adequate and appropriate.

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22.	S. 2.4(2)	_____	The monitoring of a fund's holdings in illiquid assets is typically done on a monthly basis. Therefore, the subsection should be amended to provide that "a mutual fund shall not have invested, as at the first month-end following a period of 90 days, more than 15 percent of its net assets taken at market value, in illiquid assets".	No change. The CSA believe that the time provided is adequate and appropriate.
23.	S. 2.5(2)(b)	_____	The clause should be amended to extend the exemption to funds listed on exchanges in the United States and other countries. Such an amendment would be parallel to the rule for index participation units. There does not appear to be any policy reason to restrict mutual funds from investing in closed-end funds listed on a U.S. exchange.	No change.
24.	S. 2.6	_____	Mutual funds should be able to purchase, for non-hedging purposes, listed warrants and debt-like securities on margin. Hedge funds are permitted to regularly engage in such transactions. Perhaps the CSA should encourage funds to submit statements or implement modest disclosure arrangements to assist in monitoring these transactions.	No change. The CSA believe that leveraged investing is not appropriate for mutual funds offered by way of prospectus.

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25.	S. 2.6(a)	_____	This subsection should be amended to permit a mutual fund to borrow money on a short-term basis to settle investment transactions. The purchase and sale of fund securities are typically settled on a "contractual settlement" basis. As a result, it is market practice for a custodian's client accounts to regularly go into overdraft. These overdrafts usually are for very short periods of time. In other words, the custodian advances funds to the mutual fund in order to prevent trades from failing given the difference in settlement times and dates. This advance would constitute a borrowing by the mutual fund. Therefore, the subsection should be amended to include an additional exception as follows: *The transaction is a temporary measure to facilitate the settlement of investment transactions by the custodian or a sub-custodian of the mutual fund.*	Change made. The 5% restriction on amount of all borrowings is aggregate (i.e. includes both redemptions and settlements).
26.	S. 2.6(a)(ii)	_____	The commentary to the NI states that amendments to this provision were made "in response to comments that mutual funds should be permitted to encumber portfolio assets to effect derivatives transactions instead of being restricted to posting margin". However, the wording of the clause does not appear to meet this objective. The wording "to post margin" is more restrictive than permitting a mutual fund to encumber portfolio assets "to effect derivatives transactions". Subsection 6.8(3) does not use the term margin. The words "to post margin" should be deleted.	Drafting changes made to reflect original intention. The words "encumbrance", and "post margin" have been deleted. Reference is now made to a "security interest". The security interest must relate only to obligations under specified derivatives positions. Clause 2.6(a)(iv) has been deleted.

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27.	S. 2.7	_____	The three to five year term limit on swaps may reduce the ability of a fund to effectively eliminate or decrease its market or currency risk. Other conditions relating to swaps, particularly those pertaining to eligible counterparties, should alleviate regulatory concerns about extended term limits. To alleviate a counterparty credit risk that may arise from long-term swaps, a current practice is to include a 3 year mutual put in the swap terms which would permit the mutual fund to put the swap back to the counterparty in 3 years. Thus the counterparty risk is only three years although the term of the swap is much longer. The Canadian swap market has become mature, highly liquid and active, enabling swaps to be unwound at any time therefore term limits should not be imposed.	No change. The CSA consider that the five year limit is acceptable since, among other things, derivatives with limits exceeding five years are not very prevalent. The CSA believe that any impact on a fund's ability to act will not be material. Furthermore, the CSA does not believe that all segments of the Canadian swap market are highly liquid (eg. equity and commodity swaps).
28.	Section 2.10	_____	Section 4.2 of the CP appears to add additional requirements that would severely limit the number of entities eligible to act as sub-advisers for funds that wish to use derivatives. Provided the requirements of s. 2.10 of the NI are satisfied, there is no reason why a credible, established foreign sub-adviser should be required to acquire the specific Canadian registrations or qualifications set out in s. 4.2 of the CP. Section 4.2 of the CP should be deleted so as not to reverse the long-standing policy of Canadian law which has recognized the ability of non-resident advisers to advise on Canadian mutual funds. Both the NI and the CP over-emphasize the difficulties associated with managing funds that employ derivative instruments. Derivative instruments are now a well established part of portfolio management and do not require the degree of focus and special requirements set out in the NI.	No change. Section 4.2 of the CP does not impose any requirements but merely reminds industry participants of registration requirements that exist under securities legislation. The CSA believe that the provisions governing derivative instruments are necessary and appropriate.

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29.	S. 2.10(1)	_____	It is not clear why the restrictions in this subsection only apply to advice of a non-resident adviser concerning standardized futures and options.	No change. There are registration requirements with respect to investments in options and futures. See section 4.2 of the CP.
30.	S. 2.11(2)	_____	The exemption does not cover funds in existence before NP 39 was amended to permit derivatives, which have disclosed in their most recent SP that they may use derivatives and have previously given unitholders notice of their intention to use derivatives, but have not actually done so to date. Such funds should not be required to provide notice to unitholders again simply because each of its simplified prospectuses since inception have not contained this disclosure.	Change made. Notice not required if SP has contained disclosure concerning the use of specified derivatives since the later of January 1, 1994 (the date on which derivative rules for mutual funds came into force) and the inception of the fund.
31.	S. 4.1(1)	_____	Determining the start of the 60 day period is linked to the time that the relevant securities are out of distribution. In some cases that may be the date of closing of the transaction, but in other cases it may not be until sometime after that date. For example, in a firm commitment offering that is not fully subscribed on the date of closing the unsold securities are taken into the underwriter's inventory after closing and are marked to market. Section 4.1 should be amended to ensure that the 60 day period starts to run at the date of the closing of the transaction. This would be sufficient to adequately safeguard mutual fund investors against potential harms.	No change. The CSA believe that it is appropriate to tie the restriction to the end of the distribution.

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32.	S.4.4(3)	_____	If this provision is intended simply to deal with the indemnification of the manager of the mutual fund by the mutual fund and not all service providers to the mutual funds then it should be clearly specified. The liability and indemnification scheme should apply to persons or companies retained to perform duties or activities that the manager would otherwise be obligated to perform but not to those providing services used by the manager in performing its services for the mutual fund. For example, to the extent the manager or a sub-contractor uses a pricing feed to discharge its portfolio valuation obligations, the liability and indemnification scheme in 4.4 should not apply. Such service providers cannot agree to that standard of care since it would expose them to a potential liability out of all proportion to the use and pricing of the service. Further, it is not reasonable that the manager should bear liability for the failure of the pricing service if reasonable care were exercised in choosing the service. The provision should be amended to clearly exclude the trustee of the mutual fund. At common law, a trustee of a trust fund would be entitled to indemnification out of the assets of the trust fund for any claims, losses, liabilities, demands or expenses that it may incur as a result of acting as trustee of the trust fund provided the trustee acted in accordance with its standard of care. This is the standard that should be applicable to trustees and it is not necessary for the NI to address specifically the indemnification of trustees. Clarification should also be given regarding the status of directors of mutual funds which are corporations and members of independent advisory boards of mutual funds which are trusts. Such persons should indemnified by the mutual fund, provided they meet an appropriate	Changes made to subsections 4.4(1) and (2) to clarify that the section relates to persons retained by the manager or the mutual fund to discharge any of the manager's responsibilities to the mutual fund. Subsection 4.4(5) has been amended so that it does not apply to a director of a mutual fund. The liability and indemnification of directors is addressed by corporate law.

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33.	S. 5.1(a)	_____	Further clarification is needed on the scope of the obligations intended, particularly with respect to the kinds of changes that would require securityholder approval. Is an "increase" measured in absolute dollars or in percentage terms? Do the words "could result in increases" impose a test based on possibility, reasonable expectation or what is conceivable in a worst case scenario? Examples and elaborations in the CP would assist in interpreting the provision.	No change. The CSA believe that section 6.3 of the CP provides sufficient clarification.
34.	S. 5.1(f)	_____	The requirement for securityholder approval should be subject to a "significant change" test as in s. 5.1(g). A 60 day notice period would be preferable so that if any securityholder did not support a reorganization, despite there being no significant change to the mutual fund or the securityholder's rights, the securityholder could redeem his or her securities.	No change. The CSA believe that securityholders should be able to vote on arrangements that result in the mutual fund in which they originally invested ceasing to exist and the securityholders becoming securityholders of another mutual fund.
35.	s.5.1(g)	_____	Despite the definition of "significant change" in section 1.1, the meaning of the term in the context of a merger of mutual funds is highly subjective, and will be very difficult to interpret and apply.	No change. Subsection 7.3(2) of the CP provides guidance.
36.	S. 5.3	_____	There should be no difference in the required treatment of an increase in charges to the mutual fund between that required for those mutual funds which are permitted to be described as "no load" and those which are not. In either case, investors are equally affected by non-arms length charges and should be afforded the same protections.	No change. The CSA believe that this distinction is valid because there would be no charge to the unitholder of a no-load fund who chooses to redeem.

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37.	S. 5.5(2) and 5.8(1)	_____	Whether there is a change of manager or a change of control of the manager, the substantive result is the same - namely, another (new) organization now operates the mutual fund or group of funds. Accordingly, it seems logically inconsistent that these two types of transactions should be treated differently. Presumably, for the time being, securityholder approval will not be required in relation to a proposed change of control of a manager?	No change. At this time securityholder approval is not required for a change in control of manager.
38.	S. 5.6(1)(b)	_____	Certain other transactions which do not fall within the meaning of "qualifying exchange" under section 132.2 of the ITA should be exempted from obtaining pre-approval of securities regulatory authorities. These would include mergers of mutual fund corporations which, in the normal course, may be equally, if not more, straightforward than a "qualified exchange". As drafted, the provision would require pre-approval for such transactions. These types of transactions should not require pre-approval therefore the provision should be deleted.	No change. The CSA believe that mergers of mutual fund corporations would be the only comparable transaction. The CSA prefer to review such transactions.
39.	S. 5.6(1)(i)	_____	Requiring that redemptions be permitted up to the close of business on the day before the effective date of a merger or conversion could be problematic since a fund company's systems could be legitimately inoperative on that date. Consequently, redemptions received on that date would not be processed.	No change. the CSA note that most meregers of mutual funds carried out to date have permitted redemptions up to the close of business of the dy before the effective date of the merger.

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40.	S. 5.8	_____	The notice requirement may not work in cases where the fund manager is a public company and the target of a hostile take-over bid. The level of prescribed disclosure may entail preparation of an entirely separate disclosure document geared to securityholders of the funds as opposed to shareholders of the current manager to whom the take-over bid circular is directed. A notice to securityholders of the funds summarizing the key elements of the transaction should be sufficient. The notice requirement should be restricted to changes of control as a result of the agreement of the mutual fund manager or its owner. For indirect changes of control, prior regulatory approval should be required instead (which could require advance notice to unitholders in appropriate cases) with notice to unitholders in the next mailing of continuous disclosure material.	No change. It is correct that a separate disclosure document addressed to securityholders of the fund may have to be prepared. An application for an exemption can be made in cases where such requirements may be problematic.
41.	S. 6.1(2)(b)	_____	The words “if appropriate to facilitate” in the 1997 Draft have been replaced by the words “if required to execute”. Although in most cases foreign investment requires foreign custody, there are countries in which it would be possible to take physical possession of securities certificates and remove them to Canada. It is unclear whether the current words would compel Canadian funds to transport physical certificates in such circumstances. Such a requirement would be ill-advised given related delays and risks which would render such securities significantly less liquid than if they were held in a depository or by a sub-custodian in the relevant jurisdiction.	Change made. There was no intention to change the standard. The words “required to execute” have been deleted and the words “appropriate to facilitate” have been included.
42.	S. 6.1(3)(c)	_____	Please confirm that this requirement is satisfied where the agreement between the custodian and the sub-custodian permits the custodian to enforce its contractual rights against the sub-custodian with respect to the portfolio assets held by the appointed sub-custodian.	No change. The mutual fund must be able to require the custodian or the sub-custodian to enforce rights on behalf of the mutual fund.

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43.	S. 6.1(4)	_____	Please confirm that a provision, either in the constating documents of the mutual fund itself (where there is no separate custodian agreement) or in the custodian agreement between the mutual fund and the custodian, which permits the custodian to appoint in its discretion one or more sub-custodians would be sufficient to meet the requirement of this provision.	No change.
44.	S. 6.2 and 6.3	_____	The requirement that the trust company's audited financial statements have to have been made public should be deleted. There are very few trust companies left in Canada which make their financial statements available to the public, except on a consolidated basis.	Change made. The words "that have been made public" have been deleted from sections 6.2 and 6.3.
45.	S. 6.4(3)	_____	It is industry practice for custodian agreements to provide that no encumbrance on the portfolio assets of the mutual fund will be created except for either a good faith claim for payment of the fees and expenses of the custodian or for a claim for payment of any amounts advanced by the custodian to the mutual fund for the purpose of settling transactions. If custodians are not permitted to have a security interest in respect of such advances, custodians would not make the advance and the reality is that the majority of investment transactions would fail. Therefore, the NI should be amended to permit encumbrances for amounts owing in respect of advances made by the custodian to settle transactions.	Change made. Clause s. 6.4(3)(a) amended to permit security interest in portfolio assets to secure obligations of a mutual fund to repay amounts advanced by the custodian for the purpose of settling portfolio transactions.

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46.	S. 6.4(3)(b) and S. 6.5(5)	_____	It is common for custodians to charge an administrative and safekeeping fee which includes a charge for processing the receipt of assets into custody or the delivery of assets out of custody. Although such processing occurs as a result of purchases and sales by the mutual fund, these transaction-based fees compensate the custodian for performing a specific service, not for the transfer of beneficial ownership. Such fees have never been regarded as inconsistent with s. 7.01(8) of NP 39 which expressly permits contractual provisions requiring payment of "the fees and expenses of the Custodian or sub-custodian as the case may be for safekeeping and administrative services". To avoid possible confusion, s. 6.4(3)(b) and s. 6.5(5) should be amended to conform to the language in NP 39 by adding to the end of each the following words: "*other than for safekeeping and administrative services in connection with acting as Custodian or sub-custodian*". Similar language is in Rule 17f-5(c)(2)(i)(C) under the Investment Company Act of 1940 (U.S.).	Change made to s. 6.4(3)(b) and s. 6.5(5).
47.	S. 6.5(5)	_____	This provision should be deleted. It introduces a prohibition which could prevent a mutual fund from achieving proper ownership of assets in markets where such transfers are beneficial and are only available if fees are paid. Many markets, particularly foreign or emerging markets, have different and changing practices regarding securities trading and settlement. As long as the fees paid by the fund are reasonable and consistent with industry norms, it is in the best interests of the fund to be permitted to make transfers in the same way as other investors may.	No change. The CSA believe that it is appropriate to continue the prohibition in NP 39 against the payment of such fees.

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48.	S. 6.6(3)	_____	Indemnificiation should be permitted if the "custodian" rather than the "mutual fund" has reasonable grounds to believe that the action is in the best interests of the fund. Custodians must meet certain prescribed requirements and act in a fiduciary capacity towards a fund therefore they are in the best position to determine what is in the best interests of a fund. Since a custodian must follow its client's instructions and has no discretion to assess the wisdom of those instructions, it would be highly unfair to require custodians to bear losses resulting from the due execution of instructions that the mutual fund later asserts were not in its best interests. Therefore, the word "and" which joins clauses (a) and (b) should be replaced by the word "or". In the alternative, clause (b) should be deleted. Subsection 6.6(4) should also be amended accordingly.	Change made. Clause 6.6(3)(b) deleted. Subsection 6.6(4) not changed.
49.	S. 6.6(3)	_____	The use of the words "legal fees, judgments and amounts paid in settlement" arguably requires some form of litigation in order for the indemnity to operate. However, where a custodian has clearly met its standard of care, the custodian should be entitled to be indemnified out of the assets of the mutual fund without having to take any legal action. In addition, this restrictive language may subject the mutual fund itself to additional costs in order to defend a bona fide claim by the custodian, which cannot be the intent of this provision.	No change. The provision does not make the commencement of formal legal proceedings a precondition for indemnification.
50.	S. 6.8(1)	_____	The reference to "initial margin" should be changed to "margin" since the concept of initial margin does not appear elsewhere in the section.	Change made.

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51.	S. 6.8	_____	The exception in s. 6.8(3) needs to be better expressed to reflect three issues: (i) the exception remains limited to transactions involving forward contracts or options that are not clearing corporation options; (ii) the current language, dealing with "depositing...as collateral" does not encompass the full range of ways in which a mutual fund's assets can be "encumbered"; (iii) the placement of 6.8(3) in the custodial section does not clearly reflect the intention to grant an exception - such an intention should be expressed in the same section which contains the prohibition (i.e in Part 2). A new section should be added to Part 2 to permit the encumbrance of portfolio assets by way of granting a security interest in those assets.	Change made. Subsection 6.8(3) has been amended to permit the granting of a security interest in connection with specified derivative transactions. This conforms to the changes made to section 2.6 of the NI.
52.	S. 6.8(4)	_____	A transitional provision should be included in Part 20 to allow agreements by which portfolio assets are deposited in accordance with section 6.8 to be amended as is the case for custodial agreements under section 6.4.	Change made. Paragraph 20.5(2)4 added.
53.	S. 9.1(3)	_____	The word "transmitted" should be replaced by the word "sent" for consistency with subsections 9.1(1) and (2).	Change made.
54.	S. 9.1(4) and (6)	_____	The ability to establish cut-off times should extend to paper orders as well. Fund managers and dealers my need to establish different cut-off times for different orders, depending on the manner in which the order is processed. Cut-off times for electronic orders could be later than those for paper orders since electronic orders can be processed more quickly. While the language of the NI appears sufficiently permissive to allow for this, a section should be added to the CP to clarify this point. These comments also apply to subsection 10.2(4) and (7).	No change. A distinction has been made for electronic orders because such orders go directly to the order receipt office on the same day.

	March 1999 Draft Reference	***Final Reference***	***Comment***	***CSA Response***
55.	S. 9.1(7)	_____	The provision seems to require either (i) that the person responsible for approving new accounts receive a copy of each and every purchase order received by the dealer, despite the fact that the person responsible for reviewing client trades is also receiving this information, or (ii) that the person approving new accounts must also be the person who performs the know your client review of trades. Dealers should be entitled to establish, within the limits of generally applicable supervisory requirements imposed by securities laws, how they will meet these obligations. To the extent that an "in the jurisdiction" requirement is imposed by the laws of a jurisdiction, the obligation to satisfy that requirement exists notwithstanding this provision. Where such a requirement is not imposed this NI is not the appropriate place to establish such a requirement.	Change made. The words "approving the opening of new client accounts and for" have been deleted.
56.	S. 9.1(7)	_____	The provision should make clear that the relevant information can be communicated electronically.	No change. Electronic transmission is not precluded.
57.	S. 9.2(a)	_____	The provision should be amended to state that "the rejection of the order is made no later than the close of business on the business day after the date of receipt of the order by the mutual fund". If the 24 hour requirement is retained, it could mean that a mutual fund that received an order on Friday would have to reject the order on a non-business day.	Change made. The reference to "24 hours" has been replaced with "one business day".
58.	S. 9.2(b)	_____	The provision should be amended to require that money be refunded within 3 business days (T+3), to be consistent with the rest of the NI and to ensure that the purchaser's cheque had cleared the banking system.	No change. The CSA believe that there should be no delay in refunding cash to an investor when a purchase order is rejected.
59.	S. 9.4(1)	_____	This provision enshrines the T+3 standard. The settlement standard for money market funds should be dealt with separately. The industry norm is currently T+1 for such funds.	No change. The provision imposes a minimum standard. A shorter settlement period is permitted.

	March 1999 Draft Reference	***Final Reference***	***Comment***	***CSA Response***
60.	S. 9.4(3) & 10.4(4)	_____	In cases of both purchases and redemptions the requirement to include details in the statement of portfolio transactions should be deleted. To put this requirement into effect by segregating these assets would require systems enhancements. Owing to systems resources being fully committed to Y2K initiatives, it will be virtually impossible to make any systems changes at this stage.	No change. The reporting requirement for *in specie* redemptions that is currently in section 13.03 of NP 39 is retained.
61.	S. 9.4(4)	_____	The provision should be amended to include any situation in which the mutual fund discovers, after T+3, that there are insufficient funds to settle the purchase. There are forms of payment, other than cheques, which may be returned to the mutual fund if insufficient payor's monies are available. The provision should be amended to address all forms of insufficient payment. For example, payment via electronic fund transfer.	Change made. Reference to "method of payment" has been added.
62.	S. 9.4(4)(a)	_____	This clause should be amended to clarify that the order to redeem the securities purchased and force settle the purchase order is deemed to be received on the business day following T+3. This follows the same approach as NP 39 but simply reflects the shorter settlement cycle.	Change made.
63.	S. 10.1	_____	For registered accounts the registered holder must be the trustee. The trustee typically delegates a number of functions regarding the administration of the registered plan to the fund company or dealer that sponsors the registered plan and so the trade is often approved by the fund company or dealer and then processed. It would be helpful to clarify these requirements with respect to registered accounts in section 10.2 of the CP.	No change. Paragraph 10.1(1)(b)(i) permits a redemption order to be completed "on behalf of" a securityholder. Therefore, parties are not precluded from making arrangements that they consider appropriate.
64.	S. 10.2(6)	_____	Since all orders come from registered dealers, the notice proposed should be given to the participating dealer rather than the securityholder.	No change. The CP clarifies that reference to "securityholder" is to the registered securityholder.

	March 1999 Draft Reference	*Final Reference*	*Comment*	*CSA Response*
65.	S. 11.1	_____	The provision requires a dealer to have "a" trust account. It should be amended to clarify that this does not mean that a dealer must only maintain a single trust account (some may wish to maintain trust accounts with different financial institutions to make it easier to transmit client funds).	Change made to clause 11.1(1)(a) to permit more than one trust account.
66.	S. 11.1(4)	_____	Permitting dealers to remit interest annually to a contingency fund, as previously suggested, is viable and positive option which should be considered by the CSA.	No change. This is an issue to address once the MFDA is in operation.
67.	S. 11.3	_____	Some financial institutions will not pay interest on an account if there is not a sufficient balance maintained in the account at all times. In smaller communities, dealers may not be able to access a branch of a competing financial institution. Assuming the financial institution imposes the same requirements on all accounts with a dealer and pays no interest on any of those accounts, this would presumably meet the specific requirements of clause 11.3(1)(b). Clarification of this point was not included in the recent CSA Staff Notice 33-303 and 81-304 and would be helpful.	No change. The provision does not require that interest always be paid. If no interest is charged "on comparable accounts of the financial institution" then the requirement is satisfied. See subsection 11.1(6) of the CP.
68.	S. 11.3(1)(c)	S. 11.3(c)	This provision is unnecessary and should be deleted. The mutual funds benefit from all interest earned on the account. Bank charges are a customary and reasonable cost of obtaining bank services. There is no valid policy reason why the funds should enjoy the benefits associated with the account without paying the normal costs associated with a bank account.	No change. The CSA consider charges against a trust account to be a cost of doing business for principal distributors and participating dealers.

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69.	S. 11.5	_____	There is no apparent policy rationale for requiring the custodian to open its records to the fund's principal distributor for inspection. It seems reasonable that the manager of operations and the auditors should have access to the fund's records and a cogent argument could be made that the trustee should also have access to these records. The designation of "representatives of the mutual fund" as having the authority to request inspection of contracts may be problematic since the term is not defined in either the NI or the CP.	Change made. The reference to principal distributor has been deleted.
70.	S. 12.1	_____	The filing requirement for dealers and distributors should be 140 days (as it is for funds).	No change. The provision is consistent with the financial filing requirements for registrants.
71.	S. 12.1(2)(b)	_____	The clause should be amended to allow the principal distributor to file a report of its own auditor or that of the funds' auditor. In certain cases, the auditor of the principal distributor is different from the auditor of the mutual funds. The audit of financial statements of a mutual fund includes an examination of the securityholder accounting system procedures and controls and also covers the co-mingling of money. If the clause is not modified, the auditor of the principal distributor would be required to perform the same procedures as the auditor of the mutual fund performs in rendering an opinion on the financial statements of the mutual fund. This will result in a duplication of effort and cost inefficiency.	Change made.

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72.	Part 13	_____	The CICA and other professional bodies are in a better position to offer guidance on these issues and therefore the CSA should not impose detailed and specific regulations regarding the valuation of securities. For example, sections 13.4 and 13.5 should be deleted since it is inappropriate and unnecessary to provide specific direction on only limited subsets of investments. The wording contained in s.14.05 of NP 39 is preferable to the approach set out in subsection 13.5(4) and if the provision is retained it should be amended back to the wording used in NP 39. The requirement of s.13.5(4)(b) should only apply in circumstances in which the daily limits have been reached rather than for all standardized futures for which daily limits are applicable. It would be appropriate to also consider the time value of money that may be built into the futures contract i.e. the "fair value" of the futures contract should be established. It is inappropriate for the CSA to attempt to mandate a particular valuation method given the need for judgment in determining fair value in certain circumstances.	No change. The CSA believe that it is necessary and appropriate to address these issues in the NI. Change made. No change. The CSA believe that the time value is accounted for by basing the value of the future on the gain or loss on the future.
73.	S. 13.1(4)	_____	Reference is made to publication of net asset value. Net asset value <u>per security</u> is published. The two concepts are different and equally important. The NI should deal carefully and separately with each.	Changes made throughout NI.
74.	S. 13.1(4)	_____	The provision should be deleted. If the provision is retained, it should be amended so that it is not mandatory but instead reflects a concept of "commercially reasonable efforts". Also, the word "timely" must be clarified.	No change. See section 12.1 of the CP.

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75.	S. 13.4	_____	This section does not address adequately the complexities associated with valuing restricted shares. For example, it does not deal with instances where the information required is not available (eg. proportional class information at the time of purchase and valuation). Also, the time remaining until the lifting of a restriction is a factor in valuation and has not been addressed. There is no room for manager discretion which is advisable in certain situations.	No change. The time remaining until lifting of a restriction is addressed in clause (b).
76.	S. 13.5, 6	_____	The term “mark-to-market” should be defined.	Change. The provision has been deleted. The valuation of swaps is now addressed by paragraph 13.5,3.
77.	Part 14	_____	Section 13.3 requires that capital transactions will be reflected in the first valuation date after the date used to establish an issue or redemption price. Accordingly, it appears that the net asset value per security for distribution purposes will not include capital activity for transactions of that date. This is an inconsistency which will impact calculations, including the capital gains refund mechanism, to the disadvantage of securityholders of the fund. The provision should be clarified so that transactions be reflected in the net asset value per security for distribution purposes.	No change. The CSA are of the opinion that there is no conflict between s. 13.3 and s.14.1(a).

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78.	S. 14.1	_____	Some funds utilize the following model for distributions: *Day X: 1. - calculate NAVPS* *2.- process orders received prior to cut-off time on Day X at Day X NAVPS* *3.- develop unitholder record* *Day X+1: 1.- calculate NAVPS and distribution per unit* *2.- process orders received since Day X cut-off time and before Day X+1 cut-off time at Day X+1 NAVPS* *3.- process distributions (reinvestments and cheques as appropriate) to unitholders shown on unitholder record.* This is an efficient an fair method of dealing with distributions. The section should be amended to make clear that it will continue to be possible to declare a record date on a day immediately prior to the actual distribution.	Change made. The record date can be the date on which the NAVPS is determined for purposes of paying a dividend or distribution or the last day on which NAVPS was calculated before the date of payment.
79.	Part 15	_____	This part does not mention image advertisements, nor does the Notice preceding the NI. The CSA should confirm that CSA Notice 7 - National Policy No. 39 - Mutual Funds - Sales Communications, which excludes image advertisements from the definition of “sales communications”, continues to apply.	No change. Subsection 2.15(3) of the CP addresses image advertising.

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80.	S. 15.2(2)	_____	The change to requiring 10-point type will make the creation and use of some advertisements and sales communications prohibitively expensive, as all text will need to be enlarged accordingly and the overall space required will need to be increased to accommodate this. The new requirement may also eliminate the use of certain graphical presentations in advertisements, such as mountain charts. The new requirement is anti-competitive since no other participant in the financial services industry is subject to the same standards. Ultimately, there are sufficient safeguards in the requirement that sales communications not be misleading and the current 8-point type requirement. As a minimum, the 10-point type requirement should be restricted to specified text (including headlines, performance data, warning language), with the flexibility to use any other type size for the balance of the text.	Change made. The 10-point type requirement applies to performance data or disclosure specifically required by the NI.
	S. 15.2(2) (continued)	_____	The point size of type is merely one factor that determines readability and changing the type size is not an effective way of making disclaimers more readable. The leading (amount of space between the lines), tracking (amount of space between the letters) and font selection can be much more important. An alternative would be to establish a minimum point size and leading relationship, to make the type easier to read. Although a disclaimer would be made larger, because designers can increase the size of the other type, the net result may be that the disclaimer is no more prominent, attractive or effective. The requirement may also make it less efficient to provide French materials since such materials are generally more space intensive than in English. Extensive re-design costs will have to be incurred for many standard documents.	

	March 1999 Draft Reference	***Final Reference***	***Comment***	***CSA Response***
81.	S. 15.3(1)(d)	_____	The clause prohibits comparison to a benchmark that has or will become discontinued(eg. TSE 100) if that benchmark only existed for a portion of the period subject to comparison, thus limiting the period that can be compared. The use of reconstructed benchmarks is the norm. For example, the TSE/S&P 60 will be reconstructed back over a number of years. CSA concerns could be addressed by appropriate disclosure concerning the transition from the discontinued benchmark to another benchmark.	Change made. Clause 15.3(1)(d) has been amended to permit the use of reconstructed benchmarks that are widely recognized and available.
			The clause prohibits the use of peer group indices and other benchmarks produced by an independent organization which may be entirely suitable for comparison but are not permitted simply because they are or were not widely available throughout the entire period of comparison.	Change made. A new subsection 15.3(3) has been added to permit an index mutual fund to provide performance data for its benchmark index provided the benchmark is widely recognized and available.
			For some funds (eg. balanced funds) there are no currently available indices against which to benchmark. To date, the practice has been to take two or more appropriate benchmarks and average the performance on the indices in order to develop a benchmark appropriate to the fund. The clause would appear to prohibit this practice for no valid policy reason.	No change. Exemptive relief can be requested in appropriate circumstances.

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82.	S. 15.3(2)	_____	This subsection needs to be clarified. The apparent intention is that any comparison of performance data about young funds made to existing securityholders includes only a comparison to a fund or asset allocation service under common management and not to a benchmark. The reference to the prohibition under 15.6(a) is unclear, since 15.6(a) describes the situations in which performance data can be used in a sales communication. Also, it is not clear why the performance data about young funds cannot be compared to a recognized benchmark.	Change made. Subsection 15.3(3) has been added to permit a young fund to make comparisons to a widely recognized and available index.
83.	S. 15.3(3)(b)	S. 15.3(4)(b)	For the purposes of comparability of rankings, it is more meaningful to have the ranking information for the standard periods of 1,3,5 and 10 years as opposed to the standard performance data for these periods. The provision should be amended to read: "*the rating or ranking is provided for each of the standard performance periods of 1,3,5, and 10 years, if applicable*".	Change made. New paragraph (c) added.
84.	S. 15.3(5)	S. 15.3(6)	This subsection appears to conflict with subsection 15.13(3) which restricts references in communications to funds that <u>are</u> money market funds instead of to funds that are or were money market funds under the NI or NP 39. Why does subsection 15.13(3) refer to "communications" while subsection 15.3(5) refers to "sales communications"?	Change made. Subsection 15.13(3) has been deleted.
85.	S. 15.3(4)(c)	S. 15.3(5)(c)	Is it correct that if there is a differential between credit ratings that the lower credit rating would have to be used, as is currently the requirement under subclause 16.04(a)(xv) of NP 39?	Yes. No change.

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86.	S. 15.4	_____	The sample warning language remains too lengthy and inaccessible. The following shorter, simpler general warning language should be adopted for subsection 15.4(3): *There are direct and/or indirect costs to you associated with a mutual fund investment. Please read the prospectus before investing. Mutual funds are not guaranteed, their values change frequently and past performance may not be repeated.* This warning language should form the basis for all of the other specific warnings required under section 15.4, modified as necessary.	Change made. All of the sample warnings and disclosure have been amended.
87.	S. 15.4(7)(b)	_____	Does the CSA intend that the prescribed statement appear adjacent to the performance numbers or on the same page? Subsection 15.4(6) regarding non-money market funds does not prescribe where the required statement is to be positioned. If the intent of this part is to ensure that disclosure statements appear coterminus to the performance numbers, it is plausible that the remaining disclosure statements will not be read. In light of the change to a minimum of 10 point type, it is submitted that the disclosure will be read and should be part of main disclosure.	Yes. No change.
88.	S. 15.4(11)	DELETED	The approach in NP 39 and the 1997 Draft is preferable since there should be no need for warning language in such situations. However, the 50% should refer to the size or area of the communication and not to the text (number of words) of the communication.	Change made. This subsection has been deleted since the warnings have been reduced.
89.	S. 15.5	_____	To describe a fund as no-load is misleading notwithstanding this provision. All mutual funds pay distribution costs in some way.	No change.

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90.	S. 15.5(2)	_____	The term "fees and charges paid by the mutual fund" is very broad and would arguably include fees such as management fees, custody fees, trustee fees, brokerage fees etc. which are not required to be disclosed by any other mutual fund in their sales communications. There is no rationale for requiring such disclosure. Sufficient disclosure is in the prospectus and financial statements. Such disclosure would be misleading since it implies that "load" funds do not have such fees and charges. By singling out the existence of trailing commissions in sales communications of "no-load" funds some unsophisticated investors may conclude that funds purchased on another basis, i.e. front-end load, do not pay trailing commissions. There is no rationale for disclosing trailing commissions which may vary from dealer to dealer and in many cases not apply at all. It is misleading to require disclosure of trailing commissions in such cases. The disclosure of fees, charges and trailing commissions should not be required unless such fees and charges are payable by the investor. The market is generally aware that "no load' means no fees or charges payable directly by the investor.	Change made. The words "fees and charges" have been replaced with the words "management fees and operating expenses". The revised warning language in subsections 15.4(3) and (6) which applies to all mutual funds (other than money market funds) refers to trailing commissions, fees and expenses.
91.	S. 15.5(2)(b)	_____	This requirement goes far beyond the NP 39 requirements and will, in practice, proscribe all advertising by no-load funds since even a summary description of all fees and charges paid by the mutual fund will be extensive. General warning language (see comment re 15.4(3)) would address any potential for confusion by alerting investors to the possibility of fees and charges, both direct and indirect.	Change made. The requirement to include a summary of fees and charges has been replaced by a requirement to disclose that management fees and operating expenses are paid by the mutual fund.
92.	S. 15.5(2)(c)	_____	Despite the statement in footnote 133 that the CSA wish to alleviate confusion between the term "no-load" and the existence of trailers, the proposed regulatory solution may create confusion.	No change.

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93.	S. 15.5(3)	_____	The wording should be limited to only fees and charges payable by the investor directly. To do otherwise would be impractical and would result in no fund referring to itself as "no load". This would not be in the best interests of investors.	Change made. The communication does not need to provide a summary but must disclose the types of fees and charges that exist.
94.	S. 15.6(a)(i)	S. 15.6(1)(a)(i)	Is this clause breached by delivering a combined annual or semi-annual report to securityholders for all funds within a fund family where one or more funds has operated for less than 12 months? If reports to securityholders are excluded from the definition of "sales communication", then providing combined reports to securityholders will not violate this clause.	Change made. New paragraph 15.6(1)(ii)(B) added to permit delivering of sales communication to securityholders/participants of a mutual fund/asset allocation service under common management.
95.	S. 15.7	_____	Would an advertisement making reference to investments available through an asset allocation service profiling the performance of mutual funds not under common management be deemed as "comparing performance"? This type of advertisement does not actually instruct readers to compare, but rather observe the performance history of various funds which comprise portfolios offered through the assets allocation service.	No. No change.
96.	S. 15.7(b)	_____	The possibility for fund comparisons has been dramatically narrowed by this provision, particularly in respect of funds that are not under common management. Restricting comparisons of funds in different families to those with similar fundamental investment objectives is troubling given the breadth of the definition.	No change. The CSA believe that comparisons should be permitted only where the fundamental investment objectives are similar.
97.	S. 15.8(2)(a)	_____	Is it correct to presume that the CSA will not require sales communications to necessarily present data in a 10, 5, 3 and 1 year order?	No change. The order is not prescribed however the data must be consecutive.
98.	S. 15.8(2)(b)(i) and (ii)	_____	Please clarify the methodology that should be employed to ensure compliance with these provisions.	No change. The CSA believe that the provisions are clear.

	March 1999 Draft Reference	*Final Reference*	*Comment*	*CSA Response*
99.	S. 15.8(4)	_____	Will this requirement be waived if fund companies use the most current standard performance data in the sales communication? Many fund companies have newspaper performance advertisements, which are based upon the most current data, and are promptly updated.	Change made. The second part of the provision has been deleted.
100.	S. 15.9	_____	It is doubtful whether the additional disclosure requirements imposed by this section are practical and may be adhered to in a manner that is meaningful or useful for investors in a sales communication.	No change.
101.	S. 15.9(2)	_____	This provision imposes significant new requirements. Essentially it limits the use of performance data to either stale-dated performance of the two funds that existed before the transaction or to performance data of the continuing fund, but only after that fund has been in existence for one year. It is not clear what investors gain from seeing stale-dated performance of the two funds prior to reorganization and from not seeing any performance data for the continuing fund for one year. The acquiring fund existed before and continues to exist after the transaction. Therefore, why is it prejudicial to a securityholder to be given performance data of the continuing fund anytime after the transaction, provided there is disclosure about the merger in the sales communication. Requiring performance information for the non-continuing fund may be misleading, especially if the non-continuing fund was considerably smaller than the continuing fund. Investors may be encouraged to make “quick calculations” by blending the performance data for both funds which, for many reasons, may be undesirable (as noted by the rejection of this approach by the CSA).	No change. The application of the provision is limited to cases where there was a significant change to the continuing fund as a result of the transaction.

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102.	S. 15.12	_____	Does this preclude reference to the anticipated availability date of a new fund in a newsletter or a reader newspaper advertisement? It does not appear that s.15.12(e) prohibits fund companies from mentioning an anticipated launch date when read in conjunction with s. 65 of the Securities Act (Ontario). The CSA should clarify this, perhaps with a cross-reference to corresponding sections in the Securities Act (Ontario).	No change. Reference to anticipated availability is not precluded.
103.	Part 16	_____	The calculation does not appear to exclude interest charges, taxes and commissions and brokerage fees on the purchase and sale of portfolio assets. It is in effect a total operating expense ratio. This is a significant change and will have the effect of increasing industry MERs. Comparison with a previous year will yield inconsistent results. Certain taxes, which relate solely to the investing activity of a fund, rather than operating expenses, ought not to be included in the MER calculation. Specifically, for corporate funds, the inclusion of corporate income taxes, capital tax, and foreign withholding taxes are a consequence of investing activity and accordingly, are most properly reflected in the performance of the fund. These costs are outside the control of the manager and bear no relation to operating activities. Therefore, these taxes should be excluded from the calculation of MER. The 1997 CICA Research Report stated that GST/PST should be included in "total expenses" but that income and capital tax be excluded. The industry practice has been to exclude GST when reporting MER.	No change. See subsection 14.1(2) of the CP. The MER is designed to be an all inclusive expense ratio regardless of control over these expenses. The aim is to show investors the actual cost of investing.
104.	S. 16.1(1)	_____	Please clarify whether calendar or business days should be employed.	No change. The CSA believe that the provision is clear as drafted.

	March 1999 Draft Reference	***Final Reference***	***Comment***	***CSA Response***
105.	S. 16.1(2)	_____	Please clarify what is meant by "note to disclosure". Does this include only financial statement disclosure, or does it also include prospectuses and other continuous disclosure documents?	No change. See subsection 14.1(1) of the CP.
106.	S. 16.1(2)	_____	The calculation is complex for each fund and some fund companies do not presently provide these details. Presently, notation is made in the financial statements that a portion of the fees otherwise payable by the funds has been absorbed by the mutual fund. This appears to be no longer adequate. Please clarify if this is an accurate interpretation of the new requirement.	No change. The provision requires that a mutual fund disclose more than that some fees have been waived or absorbed.
107.	S. 18.1	_____	Some limits should be placed on the type of information to be retained, the length of time it must be retained and what information securityholders can access. Some funds are 30 to 40 years old and may not currently have records dating back that far. Further, consolidation in the industry may have resulted in records being kept by prior custodians being in different formats and difficult to search. Also, storage expenses have to be considered. The expense does not enhance securityholders' rights and will reduce their returns since it is paid out of the fund. The requirement should be replaced by a requirement that records be retained for 7 years (in keeping with the Income Tax Act) or some other reasonable time limit. Also, it should be clarified that records and registers may be kept in electronic form rather than in paper form.	Change made. The words "for at least as long as the mutual fund is in existence" have been deleted. See section 15.1 of the CP. The provision does not require that records be kept in paper form.

	March 1999 Draft Reference	***Final Reference***	***Comment***	***CSA Response***
108.	S. 18.2	_____	The second purpose - "a matter relating to the administration of the mutual fund" - is a very broadly stated purpose and there are no guidelines in the CP concerning how it may be limited. Without some guidance in the CP, it may not be possible to adequately control access to securityholder record information that may be sought for an improper purpose. Each mutual fund company has an obligation of confidentiality to holders of its securities which should only be lessened in the clearest of cases (such as to influence the voting of securities).	Change made. Subsection 18.2(1) has been amended to refer to a "matter relating to the relationships of the mutual fund, the members of the organization of the mutual fund, and the securityholders, directors and officers of those entities".
109.	S. 19.1(1)	_____	Clause 2.2(2)(b) of NI 13-101 SEDAR permits electronic filing of exemptive relief applications "reasonably required to facilitate a distribution of securities to which a prospectus relates". Notwithstanding that provision, all applications for exemptive relief under NI 81-102 should be filed on SEDAR including applications under proposed National Policy 12-201 MRRS, subject to existing rules and policy considerations pertaining to confidentiality. Orders granted should be published or otherwise made publicly available as other orders or decisions of CSA members.	Applications for relief from the NI will be filed and processed on SEDAR as is currently the practice with NP 39 applications.
110.	S. 19.2(1)	_____	The provision should be amended to clarify that the revocation by the CSA of any exemption order or waiver previously given under NP 39 may not be made without the relevant market participant first having the right to be heard.	No change. Any action taken by a regulator or securities regulatory authority would be subject to the general principles of administrative law as well as any specific requirements in securities law.
111.	Appendix B - Compliance Reports	_____	The audit reports essentially provide that there is compliance in all material respects with the applicable requirements of NI 81-102. However, the compliance reports do not contain an exclusion for non-material deviations. The language of the compliance reports should be amended to state that there is compliance "in all material respects" with the applicable requirements of NI 81-102.	No change. The CSA want to know whether there has been compliance in all respects with the applicable provisions.

	March 1999 Draft Reference	***Commenters***	***Comment***	***CSA Response***
112.	S. 7.5(2) & (3) CP	S. 7.5(2) & (3) CP	Recently there have been a number of moves of high profile individual portfolio managers to competing mutual fund organizations. Some mutual fund groups have also heavily marketed, both in public advertising and advertising to the broker network, individual "star" portfolio managers who are managing particular funds. Perhaps there should be at least a minimum notice period (eg. to permit investors to switch to another fund outside or within the existing fund group) before there is such a change (other than a termination for cause, which could occur immediately) rather than tying the change to timely disclosure and amending the prospectus. Consideration should be given to requiring a minimum notice period or even a requirement of securityholder or securities regulatory approval. Notwithstanding 7.5(2) of the CP, the name of the individual portfolio manager may not appear in the prospectus therefore an amendment to the SP may not be necessary to disclose the departure of a particular individual.	No change.