

## ANNEX D

### PROPOSED CHANGES TO COMPANION POLICY 41-101 CP TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. *The changes to Companion Policy 41-101CP To National Instrument 41-101 General Prospectus Requirements are set out in this Annex.*

2. *Section 2.10 is replaced by the following:*

#### **2.10 Lapse Date**

An amendment to a prospectus, even if it amends and restates the prospectus, does not change the lapse date under section 17.2 of the Instrument or other securities legislation. An amendment to an ETF facts document also does not change the lapse date for a prospectus of an ETF.

3. *Subsection 3.10(3) is changed by replacing the second paragraph with the following:*

Similarly, if an issuer wishes to add a new class of securities to a prospectus before the distribution under that prospectus is completed the issuer must file a preliminary prospectus for that class of securities and an amended and restated prospectus and obtain receipts for both the preliminary prospectus and the amended prospectus. Alternatively the issuer may file a separate preliminary prospectus and prospectus for the new class of securities. We interpret this requirement to also apply to mutual funds. If a mutual fund adds a new class or series of securities to a prospectus that is referable to a new separate portfolio of assets, a preliminary prospectus and preliminary ETF facts document must be filed. However, if the new class or series of securities is referable to an existing portfolio of assets, the new class or series may be added by way of amendment to the prospectus. In this case, a preliminary ETF facts document for the new class or series must still be filed.

4. *The Companion Policy is changed by adding the following after Part 5:*

#### **PART 5A: ETF Facts Documents for ETFs**

##### **5A.1 General Purpose**

(1) The Instrument requires that the ETF facts document be in plain language, be no longer than four pages in length, and highlight key information important to investors, including performance, risk and cost. The ETF facts document is incorporated by reference into the prospectus. A sample ETF facts document is set out in Appendix B to this Policy. The sample is provided for illustrative purposes only.

- (2) The Instrument and Form 41-101F4 set out detailed requirements on the content and format of an ETF facts document, while allowing some flexibility to accommodate different kinds of ETFs. The Instrument requires an ETF facts document to include only information that is specifically mandated or permitted by the required Form 41-101F4 and to use the headings and sub-headings stipulated in the Instrument and Form 41-101F4. The requirements are designed to ensure that the information in an ETF facts document of an ETF is clear, concise, understandable and easily comparable with information in the ETF facts documents of other ETFs.
- (3) The CSA generally consider volatility to be a suitable basis for determining the investment risk rating of an ETF. For this reason, Form 41-101F4 prescribes specific disclosure in the ETF facts document explaining how volatility can be used as a measure to gauge the risk of an investment. If the disclosure is not compatible with the specific investment risk classification methodology that is used by the manager of the ETF, the CSA will consider applications for relief from Item 4 in Part I of Form 41-101F4. In making the application, the manager must demonstrate the suitability of using an alternative measure in determining the investment risk rating of its ETF. The application must also provide sample disclosure in place of the prescribed disclosure that would assist investors in understanding the investment risk rating of the ETF.
- (4) The CSA encourages the use and distribution of the ETF facts document as a key part of the sales process in helping to inform investors about ETFs they are considering for investment.

## **5A.2 Plain Language and Presentation**

- (1) Section 3B.2 of the Instrument requires that an ETF facts document be written in plain language. Issuers should apply the plain language principles set out in section 4.1 when they prepare an ETF facts document.
- (2) Section 3B.2 of the Instrument requires that an ETF facts document be presented in a format that assists in readability and comprehension. The Instrument and Form 41-101F4 also set out certain aspects of an ETF facts document that must be presented in a required format, requiring some information to be presented in the form of tables, charts or diagrams. Within these requirements, ETFs have flexibility in the format used for ETF facts documents.

The formatting of documents can contribute substantially to the ease with which the document can be read and understood.

- (3) To help write the ETF facts document in plain language, the Flesch-Kincaid methodology can be used to assess the readability of an ETF facts document. The Flesch-Kincaid grade level scale is a methodology that rates the readability of a text to a corresponding grade level and can be determined by the use of Flesch-

Kincaid tests built into commonly used word processing programs. The CSA will generally consider a grade level of 6.0 or less on the Flesch-Kincaid grade level scale to indicate that an ETF facts document is written in plain language. For French-language documents, ETF companies may wish to consider using other appropriate readability tools.

### **5A.3 Filing**

- (1) Subparagraph 9.1(1)(a)(iv.2) of the Instrument requires that an ETF facts document for each class and series of the securities of an ETF be filed concurrently with the prospectus.
- (2) The most recently filed ETF facts document for an ETF is incorporated by reference into the prospectus under section 15.2 of the Instrument, with the result that any ETF facts document filed under the Instrument after the date of receipt for the prospectus supersedes the ETF facts document previously filed.
- (3) Any amendment to an ETF facts document must be in the form of an amended and restated ETF facts document. Accordingly, the commercial copy of an amended and restated ETF facts document can only be created by reprinting the entire document
- (4) An amendment to the ETF facts document should be filed when there is a material change to the ETF that requires a change to the disclosure in the ETF facts document. This is consistent with the requirement in paragraph 11.2(1)(d) of National Instrument 81-106 *Investment Fund Continuous Disclosure*. We would not generally consider changes to the top 10 investments, investment mix or year-by-year returns of the ETF to be material changes. We would generally consider changes to the ETF's investment objective or risk level to be material changes under securities legislation.
- (5) Subsection 6.2(e) of the Instrument requires an amendment to a prospectus to be filed whenever an amendment to an ETF facts document is filed. If the substance of the amendment to the ETF facts document would not require a change to the text of the prospectus, the amendment to the prospectus would consist only of the certificate page referring to the ETF to which the amendment to the ETF facts document pertains.
- (6) General Instruction (9) of Form 41-101F4 permits an ETF to disclose a material change and proposed fundamental change, such as a proposed merger, in an amended and restated ETF facts document. We would permit flexibility in selecting the appropriate section of the amended and restated ETF facts document to describe the material change or proposed fundamental change. However, we also expect that the variable sections of the ETF facts document, such as the Top 10 investments and investment mix, to be updated within 60 days before the date of the ETF facts document. In addition, if an ETF completes a calendar year or files a management

report of fund performance prior to the filing of the amended and restated ETF facts document, we expect the ETF facts document to reflect the updated information.

#### **5A.4 Website**

Section 3B.4 of the Instrument requires an ETF to post its ETF facts document to the website of the ETF, the ETF's family or the manager of the ETF, as applicable. An ETF facts document should remain on the website at least until the next ETF facts document for the ETF is posted. Only a final ETF facts document filed under this Instrument should be posted to a website. A preliminary or pro forma ETF facts document, for example, should not be posted. An ETF facts document must be displayed in an easily visible and accessible location on the website. It should also be presented in a format that is convenient for both reading online and printing on paper.

#### **5A.5 Delivery**

- (1) The Instrument contemplates delivery to all investors of an ETF facts document in accordance with the requirements in securities legislation. It does not require the delivery of the prospectus, or any other documents incorporated by reference into the prospectus, unless requested. ETFs or dealers may also provide purchasers with any of the other disclosure documents incorporated by reference into the prospectus.
- (2) For delivery of the ETF facts document, subsection 3C.3(1) of the Instrument permits an ETF facts document to be combined with certain other materials or documents. With the exception of a general front cover, a table of contents or a trade confirmation, subsection 3C.3(4) requires the ETF facts document to be located as the first item in the package of documents or materials.
- (3) Nothing in the Instrument prevents an ETF facts document from being prepared in other languages, provided that these documents are delivered or sent in addition to any disclosure document filed and required to be delivered in accordance with the Instrument. We would consider such documents to be sales communications.
- (4) The Instrument and related forms contain no restrictions on the delivery of non-educational material such as promotional brochures with the prospectus. This type of material may, therefore, be delivered with, but cannot be included within, or attached to, the prospectus. The Instrument does not permit the binding of educational and non-educational material with the ETF facts document. The intention of the Instrument is not to unreasonably encumber the ETF facts document with additional documents..

**5. *The Companion Policy is changed by adding the following as Appendix B – Sample ETF Facts Document after Appendix A – Financial Statement Disclosure Requirements for Significant Acquisitions:***

*[insert Sample ETF Facts Document]*

**6.** *These changes become effective on [•].*