

## Chapter 6

# Request for Comments

### 6.1.1 CSA Notice and Request for Comment – Mandating a Summary Disclosure Document for Exchange-Traded Mutual Funds and Its Delivery – Proposed Amendments to NI 41-101 General Prospectus Requirements and to Companion Policy 41-101CP to NI 41-101 General Prospectus Requirements and Related Consequential Amendments



Canadian Securities  
Administrators

Autorités canadiennes  
en valeurs mobilières

#### CSA NOTICE AND REQUEST FOR COMMENT

#### MANDATING A SUMMARY DISCLOSURE DOCUMENT FOR EXCHANGE-TRADED MUTUAL FUNDS AND ITS DELIVERY

#### PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

AND TO

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

AND

#### RELATED CONSEQUENTIAL AMENDMENTS

June 18, 2015

#### Introduction

The Canadian Securities Administrators (the CSA or we) are publishing for a comment period of 90 days proposed amendments to National Instrument 41-101 *General Prospectus Requirements* (the Rule), Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements* (the Companion Policy) and related consequential amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure* and Companion Policy 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure* (the Consequential Amendments). New Form 41-101F4 *Information Required in an ETF Facts Document* (Form 41-101F4) is part of the Rule. We refer to the proposed amendments to the Rule, the proposed changes to the Companion Policy and the Consequential Amendments together as the Proposed Amendments.

The Proposed Amendments are part of Stage 3 of the CSA's implementation of the point of sale disclosure project (the POS Project).

The Proposed Amendments will require mutual funds in continuous distribution, the securities of which are listed and traded on an exchange or an alternative trading system (ETFs), to produce and file a summary disclosure document called "ETF Facts", which must be made available on the ETF's or the ETF manager's website. The Proposed Amendments also introduce a new delivery regime which will require dealers that receive an order to purchase ETF securities to deliver an ETF Facts to investors within two days of the purchase. Delivery of the prospectus will not be required, but there will be a requirement for the prospectus to be made available to investors upon request, at no cost.

We think the introduction of the ETF Facts will help provide investors with access to key information about an ETF, in language they can easily understand. Delivery of the ETF Facts to investors will also help improve the consistency with which disclosure is provided to investors of ETFs, and help create a more consistent disclosure framework between conventional mutual funds and ETFs. Implementation of this initiative is also responsive to comments received throughout the course of the POS Project, from both industry and investor stakeholders, regarding the need to ensure greater consistency in terms of the disclosure regime for conventional mutual funds and ETFs, which are generally both sold to retail investors.

The text of the Proposed Amendments follows this Notice and is available on the websites of members of the CSA.

We expect the Proposed Amendments to be adopted in each jurisdiction of Canada. Some jurisdictions may need to seek legislative amendments, which will need to be enacted prior to implementing the Proposed Amendments.<sup>1</sup>

### Background

CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds*<sup>2</sup> outlined the CSA's decision to implement the POS Project in three stages.

With the publication of final amendments on December 11, 2014, the POS Project for conventional mutual funds is now complete. Since July 2011, every mutual fund has been required to prepare a fund facts document<sup>3</sup> (Fund Facts) for each class and series. Since June 2014, every dealer has been required to deliver the Fund Facts instead of the prospectus in connection with the purchase of mutual fund securities. On May 30, 2016, dealers will be required to deliver the Fund Facts at or before the point of sale.

As part of final stage of the POS Project, two concurrent workstreams are under way:

1. ETF summary disclosure document and a new delivery model – The Proposed Amendments will require the filing of an ETF Facts and delivery of the ETF Facts within two days of an investor purchasing securities of an ETF; and
2. CSA risk classification methodology – The CSA is currently developing a CSA risk classification methodology to be applied in determining a fund's investment risk level on the scale in the Fund Facts and, now, the ETF Facts. *CSA Notice 81-324 and Request for Comment on Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts* was published for comment on December 12, 2013. A status update<sup>4</sup> was published on January 29, 2015.

### The ETF Distribution Model

The Proposed Amendments recognize the differences in the distribution model for ETFs and conventional mutual funds. In particular, unlike mutual funds, individual investors seeking to purchase an ETF generally cannot subscribe directly for ETF securities. Instead, they must purchase ETF securities over an exchange. In addition, unlike conventional mutual funds where each purchase results in a distribution, in the case of ETFs, a purchase results in a distribution only when it is a trade in securities of the ETF that have not been previously issued (the Creation Units).

Since the prospectus delivery requirement under securities legislation is triggered by a distribution, prospectus delivery would generally only apply to an investor's purchase if the order is filled with Creation Units. Creation Units are issued by ETFs to dealers that are authorized to purchase newly issued securities directly from the ETF. The dealers, in turn, re-sell these Creation Units on an exchange.<sup>5</sup>

The first re-sale of a Creation Unit on an exchange or another marketplace in Canada will generally constitute a distribution. If, however, the ETF investor's purchase order is filled through a secondary market trade of previously issued existing ETF securities, the prospectus delivery requirement would not apply. This means that investors who purchase ETF securities that are trading in the secondary market may not be entitled to receive a prospectus under securities legislation unless they specifically request it.

### Exemptive Relief and the Delivery of an ETF Summary Disclosure Document

To deal with issues arising from the ETF distribution model, in Fall 2013, the CSA granted exemptive relief (the Exemptive Relief) to ETF managers and a group of dealers from the existing prospectus delivery requirements under securities legislation in order to permit the delivery of a summary disclosure document (Summary Document) in place of the prospectus.<sup>6</sup>

---

<sup>1</sup> In Ontario, legislative amendments have been passed and are awaiting proclamation upon the effective date of the Proposed Amendments.

<sup>2</sup> Published on June 18, 2010.

<sup>3</sup> See Form 81-101F3 *Contents of Fund Facts Document*.

<sup>4</sup> CSA Staff Notice 81-325 *Status Report on Consultation under CSA Notice 81-324 and Request for Comment on Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts*.

<sup>5</sup> This initial re-sale from a "creation unit" on an exchange would be considered a trade in the securities of an issuer that have not been previously issued and a purchase and re-sale by the dealer in the course of or incidental to a distribution.

<sup>6</sup> *In the Matter of BMO Nesbitt Burns Inc. and BMO Investorline Inc.* (July 19, 2013); *In the Matter of CIBC World Markets Inc. and CIBC Investor Services Inc.* (July 19, 2013); *In the Matter of ITG Canada Corp.* (November 18, 2014); *In the Matter of National Bank Financial Inc. and National Bank Direct Brokerage Inc.* (July 19, 2013); *In the Matter of RBC Dominion Securities Inc. and RBC Direct Investing Inc.* (July 19, 2013); *In the Matter of Scotia Capital Inc. and DWM Securities Inc.* (July 19, 2013); *In the Matter of TD Securities Inc. and TD*

The Exemptive Relief requires dealers that are parties to the relief to deliver to investors a Summary Document within two days of the investor buying an ETF, whether or not the investor's purchase order is filled with Creation Units.<sup>7</sup> This delivery obligation applies to dealers acting as agents of the purchaser on the "buy" side of the transaction, rather than to dealers acting in a distribution on the "sell" side of the transaction, as currently required under securities legislation.

The Proposed Amendments, along with related legislative amendments, codify the concepts of the Exemptive Relief, to make it applicable to all dealers who act as agent of the purchaser of an ETF security.

### Substance and Purpose

Consistent with the principles of the POS Project, we think the Proposed Amendments will provide investors with the opportunity to make more informed investment decisions, by giving investors access to key information about an ETF, in language they can easily understand.<sup>8</sup> Furthermore, investors in conventional mutual funds and ETFs will be treated more equally with respect to the disclosure available in connection with a purchase of securities.

The proposed ETF Facts has been tested with investors and the content of the ETF Facts is informed by the results of the testing. The ETF Facts will allow investors to review key information about the potential benefits, risks and costs of investing in an ETF in an accessible format. It also highlights for investors where they can find further information about an ETF. We encourage advisors and investors to use ETF Facts as a tool in their conversations.

As was the case with the Exemptive Relief, the Proposed Amendments recognize the differences in the current ETF distribution model. In particular, as outlined above:

- not all ETF purchases are distributions;
- the dealer on the "sell" side of an ETF trade may not be able to readily discern whether a particular ETF trade is a distribution;
- there may be different dealers on the "sell" side and "buy" side of an ETF trade;
- the dealer on the "sell" side of an ETF trade that is a distribution cannot readily identify the purchaser over the exchange; and
- the dealer on the "buy" side of an ETF trade that is a distribution is not subject to the delivery obligation if it acts solely for the purchaser.

### Summary of the Proposed Amendments

#### *Application*

The Proposed Amendments apply only to ETFs.

---

*Waterhouse Canada Inc.* (July 19, 2013); *In the Matter of Timber Hill Canada Co.* (November 5, 2014); *In the Matter of Blackrock Asset Management Canada Limited et. al.* (July 19, 2013); *In the Matter of BMO Asset Management Inc. et. al.* (July 19, 2013); *In the Matter of First Asset Investment Management Inc. et. al.* (July 19, 2013); *In the Matter of FT Portfolios Canada Co. et. al.* (July 19, 2013); *In the Matter of Horizons ETFs Management (Canada) Inc. and AlphaPro Management Inc. et. al.* (July 19, 2013); *In the Matter of Invesco Canada Ltd. et. al.* (July 19, 2013); *In the Matter of Purpose Investments Inc. et. al.* (August 6, 2013); *In the Matter of Questrade Wealth Management Inc. et. al.* (January 23, 2015); *In the Matter of RBC Global Asset Management Inc. et. al.* (July 19, 2013); and *In the Matter of Vanguard Investments Canada Inc. et. al.* (July 19, 2013).

<sup>7</sup> Similar to delivery of the Fund Facts, delivery would only be required in instances where the investor has not previously received the latest Summary Document of the ETF.

<sup>8</sup> This is consistent with the International Organization of Securities Commission (IOSCO) Principles on Point of Sale Disclosure published in February 2011. See, for example: Principles on Point of Sale Disclosure, Final Report, Technical Committee of the IOSCO, February 2011; G20 High-level principles on Financial consumer protection, Organization for Economic Co-operation and Development (OECD), October 2011; and Regulation of Retail Structured Products, Consultation Report, IOSCO, April 2013.

Principle 2 of the IOSCO Principles on Point of Sale Disclosure specifies: "key information should be delivered, or made available, for free, to an investor before the point of sale, so that the investor has the opportunity to consider the information and make an informed decision about whether to invest."

### **ETF Facts**

The creation of a summary disclosure document that highlights key information that is important for investors to consider when they purchase an investment product has been a central component of the POS Project. As was the case for the Fund Facts, the ETF Facts is a critical element of the new delivery regime that is being proposed for ETFs.

The starting point for the development of the ETF Facts was the Fund Facts, which was the result of extensive research, consultation and testing. Like the Fund Facts, the ETF Facts is required to be in plain language, no more than two pages double-sided and highlights key information that is important to investors, including risks, past performance, and the costs of investing in an ETF.

Although ETFs are substantially similar to conventional mutual funds, they are different in one significant aspect. Individual investors cannot subscribe for ETF securities directly from the fund. Instead, ETF securities are bought and sold over an exchange like stocks. Therefore, we have included additional content in the ETF Facts that speaks to trading and pricing characteristics of ETFs. For example, we have proposed the inclusion of information related to market price, bid-ask spread, as well as premium/discount of market price to net asset value. We have also proposed the inclusion of content that explains some of the pricing issues to consider when trading ETFs.

The form requirements for the ETF Facts are set out in the Proposed Amendments as Form 41-101F4. A separate ETF Facts is required for each class or series of securities of an ETF. For illustrative purposes, a sample ETF Facts is set out as Annex A to this Notice.

The CSA is developing a CSA risk classification methodology for use in the Fund Facts and the ETF Facts. Once implemented, it is anticipated that the “risk rating” currently proposed in the ETF Facts will be determined according to the CSA risk classification methodology

Please see Annex B to this Notice which sets out some specific issues for comment relating to the specific content of the ETF Facts.

### **Testing of the ETF Facts**

The CSA tested the proposed ETF Facts with investors during Summer/Fall 2014 using Allen Research Corporation of Toronto, Ontario.

The research was conducted in two phases: (1) qualitative research conducted through 28 one-on-one in-depth interviews and (2) quantitative research conducted through an online questionnaire with 533 retail investors, including 348 ETF investors. The ETF Facts was tested both in English and French.

The testing showed that investors generally find the ETF Facts contains important information, and that it is expressed in easy-to-read language. Other key findings included:

- investors generally considered the ETF Facts to be a useful document and were committed to using it as a major component of their decision-making process for ETF investing;
- investors generally understood the terms “currency”, “exchange”, “average daily volume” and “total value” in the “Trading information” section;
- investors generally did not understand that ETFs have both a market price and a “NAV”;
- investors found it hard to understand the concepts “bid-ask spread” and “premium and discount” in the “Trading ETFs” section and asked for examples;
- investors did not understand “CUSIP” in the “Trading information” section; and
- investors wanted to know about the trailing commission even if the trailing commission is zero.

The results of this testing helped to inform the content of the proposed ETF Facts form requirements in the Proposed Amendments. The following changes to the proposed ETF Facts were made in response to the testing results:

- the “Trading ETFs” section is replaced with the “How ETFs are priced” section, which describes the concepts of “market price” versus “NAV” with respect to pricing of ETFs;

- in the “How ETFs are priced” section, the concepts of “bid-ask spread” and “premium and discount” are discussed in the context of how ETFs are priced;
- metrics for “market price”, “NAV”, “average bid-ask spread” and “average premium/discount to NAV” are added to illustrate each of these concepts under a new “Pricing information” section;
- CUSIP is now identified as “for dealer use only” and moved out of the “Trading Information” section; and
- an explanation of “trailing commission” is added, which is consistent with the Fund Facts.

The final report, “*CSA Point of Sale Disclosure Project: ETF Facts Document Testing*,” is available on the websites of the Ontario Securities Commission and the Autorité des marchés financiers at [www.osc.gov.on.ca](http://www.osc.gov.on.ca) and [www.lautorite.qc.ca](http://www.lautorite.qc.ca), respectively. Copies are also available from any CSA member.

### **Filing Requirements**

Consistent with the Exemptive Relief, the ETF Facts must be filed concurrently with the ETF’s prospectus. The certificate page for the ETF, which verifies the disclosure in the prospectus, applies to the ETF Facts just as it applies to all documents incorporated by reference into the prospectus.

If a material change to the ETF relates to a matter that requires a change to the disclosure in the ETF Facts, an amendment to the ETF Facts must be filed. If ETF managers want to update information in the ETF Facts at their discretion, they may choose to amend the ETF Facts at any time. In all instances, an amendment to an ETF Facts must be accompanied by an amendment to the ETF’s prospectus. In cases where the ETF prospectus would not have any changes, it would be sufficient to simply file an updated certificate page.

Any ETF Facts filed after the date of the prospectus is intended to supersede the ETF Facts previously filed. Once filed, the ETF Facts must be posted to the ETF’s or the ETF manager’s website.

### **Delivery of the ETF Facts Instead of the Prospectus**

The Proposed Amendments require delivery of the most recently filed ETF Facts to a purchaser within two days of purchase of ETF securities, pursuant to the proposed delivery requirement. The proposed delivery requirement shifts the current prospectus delivery obligation under securities legislation from the dealer acting as underwriter in an ETF distribution (the “sell” side of an ETF transaction) to the dealer when acting as agent of the purchaser of an ETF security (the “buy” side of an ETF transaction). The proposed delivery requirement also provides a carve-out from the existing prospectus delivery requirement for ETF securities.

Under the Exemptive Relief, a Summary Document is being delivered to investors that are clients of dealers that account for approximately 80% of all ETF assets under management held by retail investors in Canada today.<sup>9</sup> Implementation of the Proposed Amendments means that all investors, including those that are not clients of dealers that are parties to the Exemptive Relief, would receive an ETF Facts within two days of purchase.

Consistent with securities legislation in some jurisdictions today, the Proposed Amendments do not require delivery of the ETF Facts if the purchaser has already received the most recently filed ETF Facts.

The Proposed Amendments will restrict the documents that may be combined with the ETF Facts on delivery.

We have not made any changes to an ETF’s obligation to file its prospectus. There will be a requirement to provide investors with a copy of the prospectus upon request, at no cost.

The delivery requirement in the Proposed Amendments is drafted to reflect current differences in the legislative authority of members of the CSA. While drafting may differ among the members of the CSA, each jurisdiction will achieve the same outcome of requiring delivery of the ETF Facts to ETF investors within 2 days of purchase. Prior to implementing the Proposed Amendments, legislative amendments may be sought and enacted in some jurisdictions to achieve a harmonized provision.

The method for delivery of the ETF Facts is expected to be consistent with the method for delivery of a prospectus under securities legislation. For example, it could be in person, by mail, by fax, electronically or by other means. Access will not equal delivery, nor will a referral to the website on which the ETF Facts is posted.

---

<sup>9</sup> Source: Investor Economics.

## Investor Rights

### Right for failure to deliver the ETF Facts

If the investor does not receive the ETF Facts, the investor has a right to seek damages or to rescind the purchase. The rights of the investor for failure of delivery of the ETF Facts will be enacted by legislative amendments and will be consistent with the rights under securities legislation today for failure to deliver the prospectus within two days of purchasing securities of an ETF.

### Right for withdrawal of purchase

The Proposed Amendments do not extend the current right of withdrawal of purchase to investors of ETF securities. Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. As indicated, not all ETF purchases are distributions. Only purchase orders filled with Creation Units trigger a prospectus delivery requirement and would therefore also be subject to a withdrawal right. As a result, this right does not today apply to all ETF investors, nor is there a way for an ETF investor today to know whether they have received Creation Units and are therefore eligible for a withdrawal right.

In some jurisdictions, investors have a right of rescission with delivery of the trade confirmation for the purchase of mutual fund securities, including ETF securities.<sup>10</sup> This right remains unchanged under the Proposed Amendments.

Please see Annex B to this Notice which sets out specific issues for comment relating to this approach.

### Right for misrepresentation

The ETF Facts is incorporated by reference into the prospectus. This means that the existing statutory rights of investors that apply for misrepresentations in a prospectus will also apply to misrepresentations in the ETF Facts. Furthermore, as most ETF purchases occur on the secondary market, investors may also have a right of action for civil liability for secondary market disclosure.

### Transition

The Proposed Amendments have two transition periods. The first relates to the requirement for ETF managers to file and make available an ETF Facts for each class or series of securities of the ETF (the ETF Facts Filing Requirement). The second relates to the requirement for dealers to deliver an ETF Facts in connection with a purchase of an ETF security (the ETF Facts Delivery Requirement).

Subject to the nature of comments received, as well as the rule approval process, we anticipate publishing final rules aimed at implementing the Proposed Amendments in early 2016 (the Publication Date). We anticipate the Proposed Amendments will be proclaimed into force three months after the Publication Date (the In-Force Date).

The proposed transition period timeline in the Proposed Amendments is illustrated below:



<sup>10</sup> See for example section 137 of the *Securities Act* (Ontario). In Ontario, this right only applies in respect of purchases that are less than \$50,000. An investor that exercises this right is entitled to receive the lesser of their original investment amount and the net asset value of the shares/units at the time of exercise. The investor would also be entitled to receive all costs incurred in connection with their purchase.

### **ETF Facts Filing Requirement**

We are proposing the ETF Facts Filing Requirement would take effect 9 months after the Publication Date (the ETF Facts Effective Date) of the Proposed Amendments in final form. This means that ETF managers will have 6 months from the In-Force Date to make any changes to compliance and operational systems that are necessary to produce the ETF Facts.

As of the ETF Facts Effective Date, an ETF that files a preliminary or pro forma prospectus must concurrently file an ETF Facts for each class or series of securities of the ETF offered under the prospectus and post the ETF Facts to the ETF's or ETF manager's website. Until such time, ETF managers that are subject to the Exemptive Relief will continue to prepare and file the Summary Document.

In order to fully implement the Proposed Amendments within a reasonable time period, we propose that an ETF manager must, if it has not already done so, file an ETF Facts for each class or series of securities of the ETF within 14 months of the ETF Facts Effective Date. Based on the prospectus renewal cycle for ETFs, we anticipate that it would take approximately 13 months for ETF Facts to be filed for all ETFs. This final deadline date, however, will ensure that ETF Facts for all ETFs will be available prior to implementation of the ETF Facts Delivery Requirement.

### **ETF Facts Delivery Requirement**

We are proposing the ETF Facts Delivery Requirement would take effect 24 months after the Publication Date (the Delivery Effective Date).

This means that dealers that are subject to Exemptive Relief will be required to deliver either the most recently filed ETF Facts, or until the initial ETF Facts is filed, the most recently filed Summary Document. The sunset provisions of the Exemptive Relief will generally expire by the end of the transition period for the Proposed Amendments. We do not anticipate that there will be any significant issues related to the transition from the delivery of the Summary Document to delivery of the ETF Facts.

Dealers that are not subject to the Exemptive Relief will have 21 months from the In-Force Date to make any changes to compliance and operational systems that are necessary to effect ETF Facts delivery.

Please see Annex B to this Notice which sets out some specific issues for comment relating to the two transition periods.

### ***Anticipated Costs and Benefits***

Similar to the delivery of Fund Facts for mutual funds, we think delivery of the ETF Facts, as set out in the Proposed Amendments, would benefit both investors and market participants by helping address the "information asymmetry" that exists between participants in the ETF industry and investors. Unlike industry participants, investors often do not have key information about an ETF and may not know where to find the information. We also know that many investors do not use the information in the prospectus because they have trouble finding and understanding the information they need. The CSA designed the ETF Facts to make it easier for investors to find and use key information, which should help bridge this information gap.

The earlier publications related to the POS Project outlined some of the anticipated costs and benefits of implementation of the point of sale disclosure regime for mutual funds. We consider the costs and benefits set out in prior publications to still be valid and we consider them to be equally applicable to ETFs.<sup>11</sup> You can find these documents on the websites of members of the CSA.

Overall, we continue to believe that the potential benefits of the changes to the disclosure regime for ETFs as contemplated by the Proposed Amendments are proportionate to the costs of making them.

### ***Benefits***

As stated throughout the POS Project, the benefits of a more effective disclosure regime can be subtle and difficult to measure. It is difficult to quantify the value of investors having the opportunity to make more informed investment decisions. Research suggests that certain behavioral biases of investors may impact the effectiveness of policy initiatives that are designed to encourage better choices about financial products. However, research on investor preferences for mutual fund information, including our own testing of the Fund Facts and ETF Facts, indicates investors prefer a concise summary of the information that they can use to make a decision. The Proposed Amendments would also improve the consistency with which disclosure is provided to investors of ETFs and help create a more consistent disclosure framework between conventional mutual funds and ETFs.

---

<sup>11</sup> The costs and benefits of pre-sale delivery are not applicable as the Proposed Amendments only contemplate delivery of the ETF Facts within two days of purchase of ETF securities.

Some anticipated benefits of delivery of the ETF Facts include:

- less risk of investors buying inappropriate products;
- investors being in a position to better understand, discuss, and compare one ETF to another, particularly the costs of investing in the ETFs;
- greater transparency in areas such as charges and commissions, which may enhance the overall efficiency of the market; and
- investors becoming better informed overall, which reinforces investor confidence in ETFs.

### **Costs**

We think the costs of a new disclosure regime for ETFs fall into two main categories: the one-time costs of change in moving to the new regime and the ongoing costs of maintaining the new system, in comparison with the cost of the existing regime.

We anticipate that costs to industry stakeholders will fall into the following general categories:

- preparation of the ETF Facts;
- reprogramming and updating information delivery systems;
- regulatory filings; and
- compliance and staff costs in overseeing and maintaining the delivery regime.

As all ETF managers already prepare and file a Summary Document pursuant to the Exemptive Relief, we think the costs to prepare the ETF Facts will be incremental in nature and the costs for regulatory filings of the ETF Facts will be more or less the same.

For the dealers that already deliver a Summary Document to ETF investors under the Exemptive Relief, we think delivery systems are already in place and the compliance and staff costs in overseeing and maintaining the delivery regime should be more or less the same.

For the dealers that are not parties to the Exemptive Relief, we think there will be one-time costs to reprogram and update information delivery systems and ongoing costs relating to compliance and staff to oversee and maintain the delivery regime. However, there are a number of third party service providers that have expertise in creating automated programs and applications for delivery of disclosure documents. To the extent that affected dealers already have systems in place to accommodate post-sale delivery of the Fund Facts, it may also be possible for those dealers to leverage those existing systems to implement delivery of the ETF Facts. For these dealers, we request specific data on the anticipated costs of delivering the ETF Facts.

Please see Annex B to this Notice which sets out some specific issues for comment relating to the anticipated costs and benefits of the Proposed Amendments.

### **Local Matters**

Annex G to this Notice is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Some jurisdictions may require amendments to local securities legislation, in order to implement the Proposed Amendments. If statutory amendments are necessary in a jurisdiction, these changes will be initiated and published by the local provincial or territorial government.

### **Unpublished Materials**

In developing the Proposed Amendments, we have not relied on any significant unpublished study, report or other written materials.

## **Request for Comments**

We welcome your comments on the Proposed Amendments. To allow for sufficient review, we are providing you with 90 days to comment. In addition to any general comments you may have, we also invite responses to the specific questions for comment identified in Annex B to this Notice.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period.

Please submit your comments in writing on or before September 16, 2015. If you are not sending your comments by email, please send a CD containing your submissions (in Microsoft Word format).

### **Where to Send Your Comments**

Address your submission to all of the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission (New Brunswick)  
Office of the Superintendent of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Office of the Superintendent of Securities, Newfoundland and Labrador  
Office of the Superintendent of Securities, Northwest Territories  
Office of the Yukon Superintendent of Securities  
Office of the Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA members.

The Secretary  
Ontario Securities Commission  
20 Queen Street West  
22<sup>nd</sup> Floor  
Toronto, Ontario M5H 3S8  
Fax: 416-593-2318  
comments@osc.gov.on.ca

M<sup>e</sup> Anne-Marie Beaudoin  
Corporate Secretary  
Autorité des marchés financiers  
800, square Victoria, 22<sup>e</sup> étage  
C.P. 246, tour de la Bourse  
Montréal (Québec) H4Z 1G3  
Fax : 514-864-6381  
consultation-en-cours@lautorite.qc.ca

### **Contents of Annexes**

The text of the Amendments is contained in the following annexes to this Notice and is available on the websites of members of the CSA:

- Annex A – Sample ETF Facts Template
- Annex B – Issues for Comment
- Annex C – Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*
- Annex D – Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements*
- Annex E – Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*

## Request for Comments

---

Annex F – Proposed Changes to Companion Policy 81-106CP to National Instrument 81-106 *Investment Fund Continuous Disclosure*

Annex G – Local Information

### Questions

Please refer your questions to any of the following:

Solange Bilodeau  
Analyst,  
Investment Funds Branch  
Autorité des marchés financiers  
514-395-0337, ext. 4483  
solange.bilodeau@lautorite.qc.ca

Irene Lee, Project Lead  
Senior Legal Counsel,  
Investment Funds and  
Structured Products Branch  
Ontario Securities Commission  
416-593-3668  
ilee@osc.gov.on.ca

Wayne Bridgeman  
Acting Deputy Director,  
Corporate Finance  
Manitoba Securities Commission  
204-945-4905  
wayne.bridgeman@gov.mb.ca

Stephen Paglia, Project Lead  
Senior Legal Counsel,  
Investment Funds and  
Structured Products Branch  
Ontario Securities Commission  
416-593-2393  
spaglia@osc.gov.on.ca

Melody Chen  
Senior Legal Counsel,  
Corporate Finance  
British Columbia Securities Commission  
604-899-6530  
mchen@bcsc.bc.ca

Susan Swayze  
Senior Editorial Advisor  
Ontario Securities Commission  
416-593-2338  
sswayze@osc.gov.on.ca

Rhonda Goldberg  
Director,  
Investment Funds and  
Structured Products Branch  
Ontario Securities Commission  
416-593-3682  
rgoldberg@osc.gov.on.ca

Rajeeve Thakur  
Legal Counsel,  
Corporate Finance  
Alberta Securities Commission  
403-355-9032  
rajeeve.thakur@asc.ca

George Hungerford  
Senior Legal Counsel,  
Corporate Finance  
British Columbia Securities Commission  
604-899-6690  
ghungerford@bcsc.bc.ca

Michael Wong  
Securities Analyst,  
Corporate Finance  
British Columbia Securities Commission  
604-899-6852  
mpwong@bcsc.bc.ca

Ella Mosu  
Securities Review Officer  
Alberta Securities Commission  
403-297-2079  
ella.mosu@asc.ca

Abid Zaman  
Accountant,  
Investment Funds and  
Structured Products Branch  
Ontario Securities Commission  
416-204-4955  
azaman@osc.gov.on.ca

M<sup>e</sup> Chantal Leclerc  
Senior Policy Advisor,  
Investment Funds Branch  
Autorité des marchés financiers  
514-395-0337, ext. 4463  
chantal.leclerc@lautorite.qc.ca

**ANNEX A**

**SAMPLE ETF FACTS TEMPLATE**

[The template follows on separately numbered pages.]

This document contains key information you should know about XYZ S&P/TSX 60 Index ETF. You can find more details about this exchange-traded fund (ETF) in its prospectus. Ask your representative for a copy, contact XYZ ETFs at 1-800-555-5555 or investing@xyzetfs.com, or visit www.xyzetfs.com.

**Before you invest, consider how the ETF would work with your other investments and your tolerance for risk.**

### Quick facts

Date ETF started	March 31, 20XX
Total value on June 1, 20XX	\$220.18 million
Management expense ratio (MER)	0.20%
Fund manager	XYZ ETFs
Portfolio manager	Capital Asset Management Ltd.
Distributions	Quarterly
Dividend Reinvestment Plan (DRIP)	Yes

### Trading information

(12 months ending June 1, 20XX)

Ticker symbol	XYZ
Exchange	TSX
Currency	Canadian dollars
Average daily volume	308,000 units
Number of days traded	249 out of 251 trading days

### Pricing information

(12 months ending June 1, 20XX)

Market price	\$9.50-\$13.75
Net asset value (NAV)	\$9.52-\$13.79
Average bid-ask spread	0.07%
Average premium/discount to NAV	+/- 0.05%

### What does the ETF invest in?

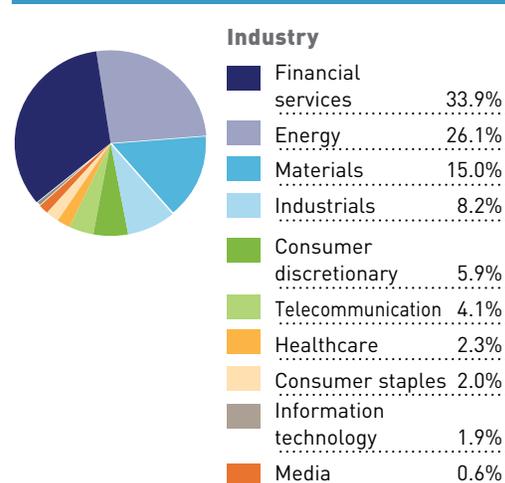
This ETF invests in the same companies and in the same proportions as the S&P/TSX 60 Index. The S&P/TSX 60 Index is made up of 60 of the largest (by market capitalization) and most liquid securities listed on the Toronto Stock Exchange (TSX), as determined by S&P Dow Jones Indices.

The charts below give you a snapshot of the ETF's investments on June 1, 20XX. The ETF's investments will change to reflect changes in the S&P/TSX 60 Index.

#### Top 10 investments (June 1, 20XX)

1. Royal Bank of Canada	7.5%
2. Toronto-Dominion Bank	7.1%
3. Canadian Natural Resources	5.8%
4. The Bank of Nova Scotia	4.1%
5. Cenovus Energy Inc.	3.7%
6. Suncor Energy Inc.	3.2%
7. Enbridge Inc.	3.1%
8. Canadian Imperial Bank of Commerce	2.9%
9. Manulife Financial Corporation	2.7%
10. Canadian National Railway Company	1.9%
<b>Total percentage of top 10 investments</b>	<b>42.0%</b>
<b>Total number of investments</b>	<b>60</b>

#### Investment mix (June 1, 20XX)



### How risky is it?

The value of the ETF can go down as well as up. You could lose money.

One way to gauge risk is to look at how much an ETF's returns change over time. This is called "volatility". In general, ETFs with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and may have a greater chance of higher returns. ETFs with lower volatility tend to have returns that change less over time. They typically have lower returns and may have a lower chance of losing money.

### Risk rating

XYZ ETFs has rated the volatility of this ETF as **medium**. This rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future. The rating can change over time. An ETF with a low risk rating can still lose money.



For more information about the risk rating and specific risks that can affect the ETF's returns, see the Risk section of the ETF's prospectus.

### No guarantees

ETFs do not have any guarantees. You may not get back the amount of money you invest.

## How has the ETF performed?

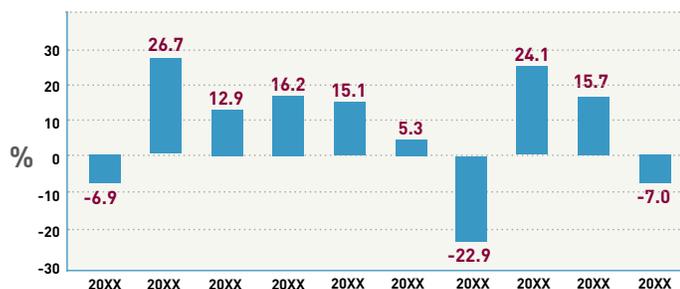
This section tells you how units of the ETF have performed over the past 10 years.

Returns<sup>1</sup> are after expenses have been deducted. These expenses reduce the ETF's returns. This means that the ETF's returns may not match the returns of the S&P/TSX 60 Index.

### Year-by-year returns

This chart shows how units of the ETF performed in each of the past 10 years. The ETF dropped in value in 3 of the 10 years.

The range of returns and change from year to year can help you assess how risky the ETF has been in the past. It does not tell you how the ETF will perform in the future.



### Best and worst 3-month returns

This table shows the best and worst returns for units of the ETF in a 3-month period over the past 10 years. The best and worst 3-month returns could be higher or lower in the future. Consider how much of a loss you could afford to take in a short period of time.

	Return	3 months ending	If you invested \$1,000 at the beginning of the period
<b>Best return</b>	32.6%	Apr. 30, 20XX	Your investment would rise to \$1,326.
<b>Worst return</b>	-24.7%	Nov. 30, 20XX	Your investment would drop to \$753.

### Average return

The annual compounded return of the ETF was 6.8% over the past 10 years. A \$1,000 investment in the ETF 10 years ago would now be worth \$1,930.

## How ETFs are priced

ETFs are unique because they hold a basket of investments, like mutual funds, but trade on exchanges like stocks. For this reason, they have two sets of prices: market price and net asset value (NAV).

### Market price

- You buy and sell ETFs at the market price. The market price can change throughout the trading day. Factors like supply, demand and changes in the value of the ETF's investments can affect the market price.
- You can get price quotes any time during the trading day. Quotes have two parts: **bid** and **ask**.
- The bid is the highest price a buyer is willing to pay if you want to sell your units. The ask is the lowest price a seller will accept if you want to buy units. The difference between the two is called the "**bid-ask spread**".
- In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

### Net asset value (NAV)

- Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments.
- NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.
- If the market price is lower than the NAV, the ETF is trading at a **discount**. If the market price is higher than the NAV, the ETF is trading at a **premium**. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth.

## Who is this ETF for?

Investors who:

- are looking for a long-term investment
- want to invest in a broad range of stocks of Canadian companies
- can handle the ups and downs of the stock market.

 Don't buy this ETF if you need a steady source of income from your investment.

## A word about tax

In general, you'll have to pay income tax on any money you make on an ETF. How much you pay depends on the tax laws where you live and whether or not you hold the ETF in a registered plan, such as a Registered Retirement Savings Plan or a Tax-Free Savings Account.

Keep in mind that if you hold your ETF in a non-registered account, distributions from the ETF are included in your taxable income, whether you get them in cash or have them reinvested.

<sup>1</sup> Returns are calculated using the ETF's net asset value (NAV).

**How much does it cost?**

This section shows the fees and expenses you could pay to buy, own and sell units of the ETF. Fees and expenses – including any trailing commissions – can vary among ETFs.

Higher commissions can influence representatives to recommend one investment over another. Ask about other ETFs and investments that may be suitable for you at a lower cost.

**1. Brokerage commissions**

You may have to pay a commission when you buy and sell units of the ETF.

**2. ETF expenses**

You don't pay these expenses directly. They affect you because they reduce the ETF's returns.

As of March 31, 20XX, the ETF's expenses were 0.21% of its value. This equals \$2.10 for every \$1,000 invested.

	Annual rate (as a % of the ETF's value)
<b>Management expense ratio (MER)</b>	
This is the total of the ETF's management fee and operating expenses. XYZ ETFs waived some of the ETF's expenses. If it had not done so, the MER would have been higher.	0.20%
<b>Trading expense ratio (TER)</b>	
These are the ETF's trading costs.	0.01%
<b>ETF expenses</b>	<b>0.21%</b>

**Trailing commission**

The trailing commission is an ongoing commission. It is paid for as long as you own the ETF. It is for the services and advice that your representative and their firm provide to you.

This ETF doesn't have a trailing commission.

**What if I change my mind?**

Under securities law in some provinces and territories, you have the right to cancel your purchase within 48 hours after you receive confirmation of the purchase.

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the prospectus, ETF Facts or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

**For more information**

Contact XYZ ETFs or your representative for a copy of the ETF's prospectus and other disclosure documents. These documents and the ETF Facts make up the ETF's legal documents.

XYZ ETFs  
456 Asset Allocation St.  
Toronto, ON M1A 2B3

**Phone:** 416.555.5555  
**Toll-free:** 1.800.555.5555  
**Email:** [investing@xyzetfs.com](mailto:investing@xyzetfs.com)  
**Website:** [www.xyzetfs.com](http://www.xyzetfs.com)

## ANNEX B

### ISSUES FOR COMMENT

#### Content of the ETF Facts

1. The ETF Facts is substantially similar to the Fund Facts, except for additional information related to trading and pricing (e.g., average daily volume, number of days traded, market price range, net asset value range, average bid-ask spread and average premium/discount to NAV). We seek specific feedback on these proposed elements of the ETF Facts. In particular, please comment on the disclosure instructions for these elements as outlined in Form 41-101F4. For example, should the range of market prices exclude odd lot trades? In terms of the calculation of the average bid-ask spread, should trading days that do not have a minimum number of quotes be excluded from the calculation? We also seek feedback on whether there are alternative methods or alternative metrics that can be used to convey this information in a more meaningful way for investors.
2. The “How ETFs are priced” section of the ETF Facts is intended to provide ETF investors with some additional information on the factors that influence trading prices and to explain the difference between market price and NAV. This section has been modified in response to investor testing, which showed that investors valued this type of information but were not necessarily aware of how to use it in practice. We seek feedback on whether there is an alternative form of presentation of this information that may better assist investors.
3. Please comment on whether there are other disclosure items/topics that should be added to reflect the differences between ETFs and conventional mutual funds.

#### Anticipated Costs of Delivery of the ETF Facts

4. We seek feedback on the anticipated costs of delivery of ETF Facts for those dealers who do not have Exemptive Relief and are not currently delivering ETF Facts; specifically, the anticipated one-time infrastructure costs and ongoing costs.

#### Transition Period

5. We seek feedback from dealers on the appropriate transition period for ETF Facts delivery under the Proposed Amendments. We are specifically interested in feedback from dealers who are not subject to the Exemptive Relief. Please comment on the feasibility of implementing the delivery requirement under the Proposed Amendments within 21 months of the date the Proposed Amendments come into force. In responding, please comment on the impact a 21 month transition period might have in terms of cost, systems implications, and potential changes to current sales practices.
6. We seek feedback from ETF managers on the appropriate transition period to file the initial ETF Facts. We currently contemplate that 6 months after the date the Proposed Amendments come into force, ETF managers will be required to file an initial ETF Facts concurrently with a preliminary or pro forma prospectus for their ETFs. Please comment on the feasibility of making the changes to compliance and operational systems that are necessary to produce the ETF Facts, instead of the summary disclosure document pursuant to the Exemptive Relief, within this timeline.
7. We seek feedback from ETF managers and dealers on whether they prefer a single switch-over date for filing the initial ETF Facts rather than following the prospectus renewal cycle as currently contemplated. The CSA implemented a single switch-over date for the Stage 2 Fund Facts, and recognize that there are challenges in doing so, especially for ETF managers, from a business planning and business cycle perspective. If a single switch-over date is preferred, are there specific months or specific periods of the year that should be avoided in terms of selecting a specific switch-over date? Please explain.

#### Right for Withdrawal of Purchase

8. Currently, under securities legislation, investors have a right for withdrawal of purchase within two business days after receiving the prospectus. This right only applies in respect of a distribution for which prospectus delivery is required. In the case of ETFs, today only purchases filled with Creation Units trigger a prospectus delivery requirement and are therefore subject to a withdrawal right.

## Request for Comments

---

Consistent with the approach taken in the Exemptive Relief, the Proposed Amendments do not extend the right of withdrawal of purchase to investors for the delivery of the ETF Facts. In some jurisdictions, investors will continue to have a right of rescission with delivery of the trade confirmation.<sup>1</sup>

We seek feedback on this proposed approach. Specifically, please highlight if any practical impediments exist to introducing a right of withdrawal for purchases made in the secondary market in connection with delivery of the ETF Facts, should we decide to pursue this.

---

<sup>1</sup> See footnote 10.

ANNEX C

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 41-101 GENERAL PROSPECTUS REQUIREMENTS

1. **National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.**
2. **Section 1.1 is amended by adding the following definitions:**

“ETF” means an exchange-traded mutual fund;

“ETF facts document” means a completed Form 41-101F4;

“exchange-traded mutual fund” means a mutual fund in continuous distribution, the securities of which are

  - (a) listed on an exchange, and
  - (b) trading on an exchange or an alternative trading system;

“Form 41-101F4” means Form 41-101F4 *Information Required in an ETF Facts Document* of this Instrument;
3. **Subsection 1.2(6) is amended by replacing “and Form 41-101F3” with “, Form 41-101F3 and Form 41-101F4”.**
4. **Subsection 2.1(1) is replaced with the following:**
  - (1) Subject to subsection (2), this Instrument applies to a prospectus filed under securities legislation, a distribution of securities subject to the prospectus requirement and a purchase of securities of an ETF.
5. **The Instrument is amended by adding the following Parts:**
  - (a) **PART 3B: ETF Facts Document Requirements**
    - 3B.1 Application**

This Part applies only to an ETF.
    - 3B.2 Plain language and presentation**
      - (1) An ETF facts document must be prepared using plain language and be in a format that assists in readability and comprehension.
      - (2) An ETF facts document must
        - (a) be prepared for each class and each series of securities of an ETF in accordance with Form 41-101F4,
        - (b) present the items listed in the Part I section of Form 41-101F4 and the items listed in the Part II section of Form 41-101F4 in the order stipulated in those parts,
        - (c) use the headings and sub-headings stipulated in Form 41-101F4,
        - (d) contain only the information that is specifically required or permitted to be in Form 41-101F4,
        - (e) not incorporate any information by reference, and
        - (f) not exceed four pages in length.
    - 3B.3 Preparation in the required form**

Despite provisions in securities legislation relating to the presentation of the content of a prospectus, an ETF facts document for an ETF must be prepared in accordance with this Instrument.

**3B.4 Websites**

- (1) If an ETF or the ETF's family has a website, the ETF must post to at least one of those websites an ETF facts document filed under this Part as soon as practicable and, in any event, within 10 days after the date that the document is filed.
- (2) An ETF facts document posted to the website referred to in subsection (1) must
  - (a) be displayed in a manner that would be considered prominent to a reasonable person; and
  - (b) not be combined with another ETF facts document.
- (3) Subsection (1) does not apply if the ETF facts document is posted to a website of the manager of the ETF in the manner required under subsection (2).

**(b) PART 3C: Delivery of ETF Facts Documents for Investment Funds**

**3C.1 Application**

This Part applies only to an ETF.

**3C.2 Obligation to deliver ETF facts documents**

- (1) The obligation to deliver or send a prospectus under securities legislation does not apply in respect of an ETF.
- (2) A dealer acting as agent for a purchaser who receives an order for the purchase of a security of an ETF must, unless the dealer has previously done so, deliver or send to the purchaser the most recently filed ETF facts document for the applicable class or series of securities of the ETF not later than midnight on the second business day after entering into the purchase of the security.
- (3) In Ontario, an ETF facts document is a disclosure document prescribed under subsection 71(1.1) of the *Securities Act* (Ontario).

- |   |
|---|
| <p>(4) In Ontario, a security of an ETF is an investment fund security prescribed for the purposes of subsections 71(1.2) and (1.3) of the <i>Securities Act</i> (Ontario).</p> |
|---|

<p><i>Note: In Ontario, subsections 71(1.2) and (1.3) of the Securities Act (Ontario) come into force on proclamation.</i></p>
--

**3C.3 Combinations of ETF Facts Documents for Delivery Purposes**

- (1) An ETF facts document delivered or sent under section 3C.2 must not be combined with any other materials or documents including, for greater certainty, another ETF facts document, except one or more of the following:
  - (a) a general front cover pertaining to the package of combined materials and documents;
  - (b) a trade confirmation which discloses the purchase of securities of the ETF;
  - (c) an ETF facts document of another ETF if that ETF facts document is also being delivered or sent under section 3C.2;
  - (d) the prospectus of the ETF;
  - (e) any material or document incorporated by reference into the prospectus;
  - (f) an account application document;
  - (g) a registered tax plan application or related document.

- (2) If a trade confirmation referred to in subsection (1)(b) is combined with an ETF facts document, any other disclosure documents required to be delivered or sent to satisfy a regulatory requirement for purchases listed in the trade confirmation may be combined with the ETF facts document.
- (3) If an ETF facts document is combined with any of the materials or documents referred to in subsection (1), a table of contents specifying all documents must be combined with the ETF facts document, unless the only other documents combined with the ETF facts document are the general front cover permitted under paragraph (1)(a) or the trade confirmation permitted under paragraph (1)(b).
- (4) If one or more ETF facts documents are combined with any of the materials or documents referred to in subsection (1), only the general front cover permitted under paragraph (1)(a), the table of contents required under subsection (3) and the trade confirmation permitted under paragraph (1)(b) may be placed in front of those ETF facts documents.

### **3C.4 Combinations of ETF Facts Documents for Filing Purposes**

For the purposes of sections 6.2, 9.1 and 9.2, an ETF facts document may be combined with another ETF facts document in a prospectus.

*Note: Implementation of this initiative is dependent on each jurisdiction enacting the necessary legislative changes. Since the legislative model adopted may vary from jurisdiction to jurisdiction, the following provisions that have been set out in this textbox have been included for illustrative purposes and may need to be varied depending on any legislative changes that are adopted. For example, in Ontario, these provisions are not necessary because it is expected that equivalent legislative amendments will be proclaimed contemporaneously with the coming-into-force of this initiative.*

### **3C.5 Time of receipt**

- (1) For the purpose of this Part, where the latest ETF facts document referred to in subsection 3C.2(2) is sent by prepaid mail, it shall be deemed conclusively to have been received in the ordinary course of mail by the person or company to whom it was addressed.
- (2) Subsection (1) does not apply in Ontario.

*[Note: In Ontario, the same time of receipt is reflected in an amendment to s. 71(4) of the Securities Act (Ontario) that comes into force on proclamation.]*

### **3C.6 Dealer as agent**

- (1) For the purpose of this Part, a dealer acts as agent of the purchaser if the dealer is acting solely as agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.
- (2) Subsection (1) does not apply in Ontario.

*[Note: In Ontario, the same agency rule is reflected in an amendment to s. 71(7) of the Securities Act (Ontario) in legislative amendments that comes into force on proclamation.]*

### **3C.7 Purchaser's right of action for failure to deliver or send**

- (1) A purchaser has a right of action if an ETF facts document is not delivered or sent as required by subsection 3C.2(2), as the purchaser would otherwise have when a prospectus is not delivered or sent as required under securities legislation and, for that purpose, an ETF facts document is a prescribed document under the statutory right of action.
- (2) In Alberta, instead of subsection (1), section 206 of the *Securities Act* (Alberta) applies.
- (3) In Manitoba, instead of subsection (1), section 141.2 of the *Securities Act* (Manitoba) applies and the ETF facts document is a prescribed document for the purposes of section 141.2.
- (4) In Ontario, instead of subsection (1), section 133 of the *Securities Act* (Ontario) applies.

*[Note: In Ontario, the right of action is reflected in paragraph 2.1 of s. 133 of the Securities Act (Ontario) which comes into force on proclamation.*

*In Quebec, legislative changes are under consideration.]*

6. **Section 5.2 is amended by replacing “or the amendment to the prospectus” with “, the amendment to the prospectus or the amendment to the ETF facts document”.**
7. **Section 6.1 is amended by adding the following subsection:**
  - (4) An amendment to an ETF facts document must be prepared in accordance with Form 41-101F4 without any further identification, and dated as of the date the ETF facts document is being amended.
8. **Section 6.2 is amended by deleting “and” at the end of paragraph (c), by replacing “.” at the end of paragraph (d) with “, and” and by adding the following paragraph:**
  - (e) in the case of an ETF, if the amendment relates to information in the ETF facts document,
    - (i) file an amendment to the ETF facts document, and
    - (ii) deliver to the regulator a copy of the ETF facts document, blacklined to show changes, including text deletions, from the latest ETF facts document previously filed.
9. **The Instrument is amended by adding the following section:**
  - 6.2.1 **Required documents for filing an amendment to an ETF Facts** – An ETF that files an amendment to an ETF facts document must, unless section 6.2 applies,
    - (a) file an amendment to the corresponding prospectus, certified in accordance with Part 5,
    - (b) deliver to the regulator a copy of the ETF facts document, blacklined to show changes, including text deletions, from the latest ETF facts document previously filed, and
    - (c) file or deliver any other supporting documents required under this Instrument or other securities legislation, unless the documents originally filed or delivered are correct as of the date the amendment is filed.
10. **Section 9.1 is amended:**
  - (a) **in paragraph (1)(a) by adding the following subparagraph:**
    - (iv.2) if the issuer is an ETF, in addition to the documents filed under subparagraph (iv), an ETF facts document for each class or series of securities of the ETF;
  - (b) **by replacing subparagraph (1)(b)(i) with the following:**
    - (i) Blackline Copy of the Prospectus – in the case of a pro forma prospectus, a copy of the pro forma prospectus blacklined to show changes from the latest prospectus filed;
    - (i.1) Blackline Copy of the ETF Facts Document – in the case of a pro forma prospectus for an ETF, a copy of the pro forma ETF facts document for each class or series of securities of the ETF blacklined to show changes from the latest ETF facts document previously filed;
11. **Section 9.2 is amended:**
  - (a) **by replacing “9.1(a)(ii)” with “9.1(1)(a)(ii)” in subparagraph (a)(ii),**
  - (b) **by replacing subparagraph (a)(iv) with the following:**
    - (iv) Investment Fund Documents – a copy of any document described under subparagraph 9.1(1)(a)(iv), (iv.1) or (iv.2) that has not previously been filed;

(c) **by replacing “9.1(a)(v) or 9.1(a)(vi)” with “9.1(1)(a)(v) or (vi)” in clause (a)(v)(B),**

(d) **by replacing subparagraph (b)(i) with the following:**

- (i) Blackline Copy of the Prospectus – a copy of the final long form prospectus blacklined to show changes from the preliminary or pro forma long form prospectus;
- (i.1) Blackline Copy of the ETF Facts Document – in the case of a final long form prospectus for an ETF, a copy of the ETF facts document for each class or series of securities of the ETF blacklined to show changes and the text of deletions from the preliminary or *pro forma* ETF facts document; and

**12. The Instrument is amended by adding the following section:**

**15.3 Documents to be delivered or sent upon request** – (1) An ETF must deliver or send to any person or company that requests the prospectus of the ETF or any of the documents incorporated by reference into the prospectus, a copy of the prospectus or requested document.

(2) An ETF must deliver or send all documents requested under this section within three business days of receipt of the request and free of charge.

**13. Form 41-101F2 Information Required in an Investment Fund Prospectus is amended**

(a) **by replacing item 1.15 under “Documents Incorporated by Reference” with the following:**

For an investment fund in continuous distribution, state in substantially the following words:

“Additional information about the fund is available in the following documents:

- the most recently filed ETF Facts for each class or series of securities of the ETF; *[insert if applicable]*
- the most recently filed annual financial statements;
- any interim financial reports filed after those annual financial statements;
- the most recently filed annual management report of fund performance;
- any interim management report of fund performance filed after that annual management report of fund performance.

These documents are incorporated by reference into this prospectus which means that they legally form part of this prospectus. Please see the “Documents Incorporated by Reference” section for further details.”

(b) **by adding the following item:**

**12.2 Investment Risk Classification Methodology**

For an ETF,

- (a) briefly describe the methodology used by the manager for the purpose of identifying the investment risk level of the ETF as required by Item 4(2)(a) in Part I of Form 41-101F4;
- (b) state how frequently the investment risk level of the ETF is reviewed; and
- (c) disclose that the methodology that the manager uses to identify the investment risk level of the ETF is available on request, at no cost, by calling [toll-free/collect call telephone number] or by writing to [address].

**INSTRUCTIONS:**

*Include a brief description of the formulas, methods or criteria used by the manager of the ETF in identifying the investment risk level of the ETF.*

*Note: The CSA is currently working on the development of a CSA mutual fund risk classification methodology. Once that work is complete, we anticipate including an instruction to Form 41-101F2 regarding the use of the CSA mutual fund risk classification methodology.*

(c) **by replacing the first paragraph in item 36.2 under “Mutual Funds” with the following:**

If the investment fund is a mutual fund, other than an ETF, under the heading “Purchasers’ Statutory Rights of Withdrawal and Rescission” include a statement in substantially the following form:

(d) **by adding the following item:**

**36.2.1 Exchange-traded Mutual Funds**

If the investment fund is an ETF, under the heading “Purchasers’ Statutory Rights of Rescission” include a statement in substantially the following form:

Securities legislation in [certain of the provinces [and territories] of Canada/the Province of [insert name of local jurisdiction, if applicable]] provides purchasers with the right to withdraw from an agreement to purchase ETF securities within 48 hours after the receipt of a confirmation of a purchase of such securities. [In several of the provinces/provinces and territories], [T/t]he securities legislation further provides a purchaser with remedies for rescission [or [, in some jurisdictions,] revisions of the price or damages]] if the prospectus and any amendment contains a misrepresentation, or non-delivery of the ETF Facts, provided that the remedies for rescission [, revisions of the price or damages] are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser’s province [or territory].

The purchaser should refer to the applicable provisions of the securities legislation of the province [or territory] for the particulars of these rights or should consult with a legal adviser.

(e) **by replacing item 37.1 under “Mandatory Incorporation by Reference” with the following:**

**37.1 Mandatory Incorporation by Reference**

If the investment fund is in continuous distribution, incorporate by reference the following documents in the prospectus, by means of the following statement in substantially the following words under the heading “Documents Incorporated by Reference”:

“Additional information about the fund is available in the following documents:

1. The most recently filed ETF Facts for each class or series of securities of the ETF, filed either concurrently with or after the date of the prospectus. *[insert if applicable]*
2. The most recently filed comparative annual financial statements of the investment fund, together with the accompanying report of the auditor.
3. Any interim financial reports of the investment fund filed after those annual financial statements.
4. The most recently filed annual management report of fund performance of the investment fund.
5. Any interim management report of fund performance of the investment fund filed after that annual management report of fund performance.

These documents are incorporated by reference into the prospectus, which means that they legally form part of this document just as if they were printed as part of this document. You can get a copy of these documents, at your request, and at no cost, by calling [toll-free/collect] [insert the toll-free telephone number or telephone number where collect calls are accepted] or from your dealer.

[If applicable] These documents are available on the [investment fund’s/investment fund family’s] Internet site at [insert investment fund’s Internet site address], or by contacting the [investment fund/investment fund family] at [insert investment fund’s /investment fund family’s email address].

These documents and other information about the fund are available on the Internet at [www.sedar.com](http://www.sedar.com).”

**14. The Instrument is amended by adding the following Form:**

**Form 41-101F4 – Information Required in an ETF Facts Document**

**General Instructions:**

**General**

- (1) *This Form describes the disclosure required in an ETF facts document for an ETF. Each Item of this Form outlines disclosure requirements. Instructions to help you provide this disclosure are in italic type.*
- (2) *Terms defined in National Instrument 41-101 General Prospectus Requirements, National Instrument 81-102 Investment Funds, National Instrument 81-105 Mutual Fund Sales Practices or National Instrument 81-106 Investment Fund Continuous Disclosure and used in this Form have the meanings that they have in those national instruments.*
- (3) *An ETF facts document must state the required information concisely and in plain language.*
- (4) *Respond as simply and directly as is reasonably possible. Include only the information necessary for a reasonable investor to understand the fundamental and particular characteristics of the ETF.*
- (5) *National Instrument 41-101 General Prospectus Requirements requires the ETF facts document to be presented in a format that assists in readability and comprehension. This Form does not mandate the use of a specific format or template to achieve these goals. However, ETFs must use, as appropriate, tables, captions, bullet points or other organizational techniques that assist in presenting the required disclosure clearly and concisely.*
- (6) *This Form does not mandate the use of a specific font size or style but the text must be of a size and style that is legible. Where the ETF facts document is made available online, information must be presented in a way that enables it to be printed in a readable format.*
- (7) *An ETF facts document can be produced in colour or in black and white, and in portrait or landscape orientation.*
- (8) *Except as permitted by subsection (9), an ETF facts document must contain only the information that is specifically mandated or permitted by this Form. In addition, each Item must be presented in the order and under the heading or sub-heading stipulated in this Form.*
- (9) *An ETF facts document may contain a brief explanation of a material change or a proposed fundamental change. The disclosure may be included in a textbox before Item 2 of Part I or in the most relevant section of the ETF facts document. If necessary, the ETF may provide a cross-reference to a more detailed explanation at the end of the ETF facts document.*
- (10) *An ETF facts document must not contain design elements (e.g., graphics, photos, artwork) that detract from the information disclosed in the document.*

**Contents of an ETF Facts Document**

- (11) *An ETF facts document must disclose information about only one class or series of securities of an ETF. ETFs that have more than one class or series of securities that are referable to the same portfolio of assets must prepare a separate ETF facts document for each class or series.*
- (12) *The ETF facts document must be prepared on letter-size paper and must consist of two Parts: Part I and Part II.*
- (13) *The ETF facts document must begin with the responses to the Items in Part I of this Form.*
- (14) *Part I must be followed by the responses to the Items in Part II of this Form.*
- (15) *Each of Part I and Part II must not exceed one page in length, unless the required information in any section causes the disclosure to exceed this limit. Where this is the case, an ETF facts document must not exceed a total of four pages in length.*

- (16) *For a class or series of securities of the ETF denominated in a currency other than the Canadian dollar, identify the other currency under the heading “Quick Facts” and provide the dollar amounts in the other currency, where applicable, under the headings “How has the ETF performed?” and “How much does it cost?”.*
- (17) *For items that must be as at a date within 60 days before the date of the ETF facts document or over a period ending within 60 days before the date of the ETF facts document, the same date within 60 days before the date of the ETF facts document must be used and disclosed in the ETF facts document.*
- (18) *An ETF must not attach or bind other documents to an ETF facts document, except those documents permitted under Part 3C of National Instrument 41-101 General Prospectus Requirements.*

**Consolidation of ETF Facts Document into a Multiple ETF Facts Document**

- (19) *ETF facts documents must not be consolidated with each other to form a multiple ETF facts document, except as permitted by Part 3C of National Instrument 41-101 General Prospectus Requirements. When a multiple ETF facts document is permitted under the Instrument, an ETF must provide information about each of the ETFs described in the document on a fund-by-fund or catalogue basis and must set out for each ETF separately the information required by this Form. Each ETF facts document must start on a new page and may not share a page with another ETF facts document.*

**Multi-Class ETFs**

- 20. *As provided in National Instrument 81-102 Investment Funds, each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund. Those principles are applicable to this Form.*

**Part I – Information about the ETF**

**Item 1 – Introduction**

Include at the top of the first page a heading consisting of:

- (a) the title “ETF Facts”;
- (b) the name of the manager of the ETF;
- (c) the name of the ETF to which the ETF facts document pertains;
- (d) if the ETF has more than one class or series of securities, the name of the class or series described in the ETF facts document;
- (e) specify the ticker symbol(s) for the class or series of securities of the ETF;
- (f) the date of the document;
- (g) if the final prospectus of the ETF includes textbox disclosure on the cover page, provide substantially similar textbox disclosure on the ETF facts document;
- (h) a brief introduction to the document using wording substantially similar to the following:

This document contains key information you should know about [insert name of the ETF]. You can find more details about this exchange-traded fund (ETF) in its prospectus. Ask your representative for a copy, contact [insert name of the manager of the ETF] at [insert if applicable the toll-free number and email address of the manager of the ETF] or visit [insert the website of the ETF, the ETF’s family or the manager of the ETF] [as applicable]; and

- (i) state in bold type using wording substantially similar to the following:

**Before you invest, consider how the ETF would work with your other investments and your tolerance for risk.**

**INSTRUCTIONS:**

- (1) *The date for an ETF facts document that is filed with a preliminary prospectus or final prospectus must be the date of the preliminary prospectus or final prospectus, respectively. The date for an ETF facts document that is filed with a pro forma prospectus must be the date of the anticipated final prospectus. The date for an amended ETF facts document must be the date on which it is filed.*
- (2) *If the investment objectives of the ETF are to track a multiple (positive or negative) of the daily performance of a specified underlying index or benchmark, provide textbox disclosure in bold type using wording substantially similar to the following:*

This ETF is highly speculative. It uses leverage, which magnifies gains and losses. It is intended for use in daily or short-term trading strategies by sophisticated investors. If you hold this ETF for more than one day, your return could vary considerably from the ETF's daily target return. Any losses may be compounded. Don't buy this ETF if you are looking for a longer-term investment.

- (3) *If the investment objectives of the ETF are to track the inverse performance of a specified underlying index or benchmark, provide textbox disclosure in bold type using wording substantially similar to the following:*

This ETF is highly speculative. It is intended for use in daily or short-term trading strategies by sophisticated investors. If you hold this ETF for more than one day, your return could vary considerably from the ETF's daily target return. Any losses may be compounded. Don't buy this ETF if you are looking for a longer-term investment.

- (4) *If the ETF is a commodity pool, and (2) or (3) do not apply, provide textbox disclosure in bold type using wording substantially similar to the following:*

This ETF is a commodity pool and is highly speculative and involves a high degree of risk. You should carefully consider whether your financial condition permits you to participate in this investment. You may lose a substantial portion or even all of the money you place in the commodity pool.

**Item 2 – Quick Facts, Trading Information and Pricing Information**

- (1) Under the heading "Quick Facts", include disclosure in the form of the following table:

<b>Date ETF started</b> (see instruction 1)
<b>Total value on [date]</b> (see instruction 2)
<b>Management expense ratio (MER)</b> (see instruction 3)
<b>Fund manager</b> (see instruction 4)
<b>Portfolio manager</b> (see instruction 5)
<b>Distributions</b> (see instruction 6)
<b>Dividend Reinvestment Plan (DRIP)</b> (see instruction 7)

- (2) Under the heading “Trading Information (12 months ending [date])”, include disclosure in the form of the following table:

<b>Ticker symbol</b> (see instruction 8)
<b>Exchange</b> (see instruction 9)
<b>Currency</b> (see instruction 10)
<b>Average daily volume</b> (see instruction 11)
<b>Number of days traded</b> (see instruction 12)

- (3) Under the heading “Pricing Information (12 months ending [date])”, include disclosure in the form of the following table:

<b>Market price</b> (see instruction 13)
<b>Net asset value (NAV)</b> (see instruction 14)
<b>Average bid-ask spread</b> (see instruction 15)
<b>Average premium/discount to NAV</b> (see instruction 16)

- (4) At the option of the ETF, include the Committee on Uniform Securities Identification Procedures (CUSIP) number for the class or series of securities of the ETF at the bottom of the first page by stating:

For dealer use only: CUSIP [insert CUSIP number]

**INSTRUCTIONS:**

- (1) *Use the date that the securities of the class or series of the ETF described in the ETF facts document first became available to the public.*
- (2) *Specify the net asset value of the ETF as at a date within 60 days before the date of the ETF facts document. The amount disclosed must take into consideration all classes or series that are referable to the same portfolio of assets. For a newly established ETF, state that this information is not available because it is a new ETF.*
- (3) *Use the management expense ratio (MER) disclosed in the most recently filed management report of fund performance for the ETF. The MER must be net of fee waivers or absorptions and, despite subsection 15.1(2) of National Instrument 81-106 Investment Fund Continuous Disclosure, need not include any additional disclosure about the waivers or absorptions. For a newly established ETF that has not yet filed a management report of fund performance, state that the MER is not available because it is a new ETF.*
- (4) *Specify the name of the fund manager of the ETF.*
- (5) *Specify the name of the portfolio manager of the ETF. The ETF may also name the specific individual(s) responsible for portfolio selection and if applicable, the name of the sub-advisor(s).*
- (6) *Include disclosure under this element of the “Quick Facts” only if distributions are a fundamental feature of the ETF. Disclose the expected frequency and timing of distributions. If there is a targeted amount for distributions, the ETF may include this information.*
- (7) *Indicate whether the class or series of securities of the ETF are eligible for a dividend reinvestment plan.*

- (8) Specify the ticker symbol(s) for the class or series of securities of the ETF.
- (9) Specify the exchange(s) on which the class or series of securities of the ETF are listed.
- (10) Specify the currency that the class or series of securities of the ETF is denominated.
- (11) Show the consolidated (all trading venues) average daily trading volume of the class or series of securities of the ETF over a 12 month period ending within 60 days before the date of the ETF facts document. Include non-trading (zero volume) days in the average daily trading volume calculation. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.
- (12) Show the number of days the class or series of securities of the ETF has traded out of the total number of available trading days over a 12 month period ending within 60 days before the date of the ETF facts document. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.
- (13) Show the range for the market price of the class or series of securities of the ETF by specifying the highest and lowest prices at which the class or series of securities of the ETF have traded on all trading venues over a 12 month period ending within 60 days before the date of the ETF facts document. The dollar amounts shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.
- (14) Show the range for the net asset value per share or unit of the class or series of securities of the ETF by specifying the highest and lowest net asset value per share or unit of the class or series of securities of the ETF over a 12 month period ending within 60 days of the date of the ETF facts document. The dollar amounts shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.
- (15) Show the daily average bid-ask spread based on the national best bid and offer (NBBO) for the class or series of securities of the ETF over a 12 month period ending within 60 days before the date of the ETF facts document. Daily bid-ask spreads must be calculated by taking the average of the quoted spreads based on NBBO for each day the primary market or exchange for the class or series of securities of the ETF is open for trading over a 12 month period ending within 60 days of the date of the ETF facts document. Each quoted spread must be calculated by taking the difference between the national best bid and best ask price, expressed as a percentage of the midpoint of those prices. The percentages shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.
- (16) Show the average premium/discount to NAV for the class or series of securities of the ETF over a 12 month period ending within 60 days before the date of the ETF facts document. To calculate the average premium/discount to NAV, calculate and record daily the absolute value of the percentage difference between (i) the last NBBO midpoint price quoted before the NAV per share or unit of the class or series of securities of the ETF is calculated and (ii) the NAV per share or unit of the class or series of securities of the ETF. The average of all daily absolute premium/discount to NAV must then be calculated for the 12 month period ending within 60 days before the date of the ETF facts document. The average premium/discount to NAV must be shown with a "+/-" sign preceding it. The percentages shown under this Item may be rounded to two decimal places. For a newly established ETF, state that this information is not available because it is a new ETF. For an ETF that has not completed 12 consecutive months, state that this information is not available because the ETF has not yet completed 12 consecutive months.

**Item 3 – Investments of the ETF**

- (1) Briefly set out under the heading "What does the ETF invest in?" a description of the fundamental nature of the ETF, or the fundamental features of the ETF that distinguish it from other ETFs.
- (2) For an ETF that replicates an index,

- (a) disclose the name or names of the permitted index or permitted indices on which the investments of the index ETF are based, and
  - (b) briefly describe the nature of that permitted index or those permitted indices.
- (3) For an ETF that uses derivatives, state using wording substantially similar to the following:
- It uses derivatives, such as options, futures and swaps, to get exposure to the [index/benchmark] without investing directly in the securities that make up the [index/benchmark].
- (4) Include an introduction to the information provided in response to subsection (5) and subsection (6) using wording similar to the following:
- The charts below give you a snapshot of the ETF's investments on [insert date]. The ETF's investments will change.
- (5) Unless the ETF is a newly established ETF, include under the sub-heading "Top 10 investments [date]", a table disclosing the following:
- (a) the top 10 positions held by the ETF, each expressed as a percentage of the net asset value of the ETF;
  - (b) the percentage of net asset value of the ETF represented by the top 10 positions; and
  - (c) the total number of positions held by the ETF.
- (6) Unless the ETF is a newly established ETF, under the sub-heading "Investment mix [date]" include at least one, and up to two, charts or tables that illustrate the investment mix of the ETF's investment portfolio.
- (7) For a newly established ETF, state the following under the sub-headings "Top 10 investments [date]" and "Investment mix [date]":

This information is not available because this ETF is new.

**INSTRUCTIONS:**

- (1) *Include in the information under "What does this ETF invest in?" a description of what the ETF primarily invests in, or intends to primarily invest in, or that its name implies that it will primarily invest in, such as*
  - (a) *particular types of issuers, such as foreign issuers, small capitalization issuers or issuers located in emerging market countries;*
  - (b) *particular geographic locations or industry segments; or*
  - (c) *portfolio assets other than securities.*
- (2) *Include a particular investment strategy only if it is an essential aspect of the ETF, as evidenced by the name of the ETF or the manner in which the ETF is marketed.*
- (3) *If an ETF's stated objective is to invest primarily in Canadian securities, specify the maximum exposure to investments in foreign markets.*
- (4) *The information under "Top 10 investments" and "Investment mix" is intended to give a snapshot of the composition of the ETF's investment portfolio. The information required to be disclosed under these sub-headings must be as at a date within 60 days before the date of the ETF facts document. The date shown must be the same as the one used in Item 2 for the total value of the ETF.*
- (5) *If the ETF owns more than one class of securities of an issuer, those classes should be aggregated for the purposes of this Item, however, debt and equity securities of an issuer must not be aggregated.*
- (6) *Portfolio assets other than securities should be aggregated if they have substantially similar investment risks and profiles. For instance, gold certificates should be aggregated, even if they are issued by different financial institutions.*

- (7) *Treat cash and cash equivalents as one separate discrete category.*
- (8) *In determining its holdings for purposes of the disclosure required by this Item, an ETF must, for each long position in a derivative that is held by the ETF for purposes other than hedging and for each index participation unit held by the ETF, consider that it holds directly the underlying interest of that derivative or its proportionate share of the securities held by the issuer of the index participation unit.*
- (9) *If an ETF invests substantially all of its assets directly or indirectly (through the use of derivatives) in securities of one other mutual fund, list the 10 largest holdings of the other mutual fund and show the percentage of the other mutual fund's net asset value represented by the top 10 positions. If the ETF is not able to disclose this information as at a date within 60 days before the date of the ETF facts document, the ETF must include this information as disclosed by the other mutual fund in the other mutual fund's most recently filed ETF facts document or fund facts document, or its most recently filed management report of fund performance, whichever is most recent.*
- (10) *Indicate whether any of the ETF's top 10 positions are short positions.*
- (11) *Each investment mix chart or table must show a breakdown of the ETF's investment portfolio into appropriate subgroups and the percentage of the aggregate net asset value of the ETF constituted by each subgroup. The names of the subgroups are not prescribed and can include security type, industry segment or geographic location. The ETF should use the most appropriate categories given the nature of the ETF. The choices made must be consistent with disclosure provided under "Summary of Investment Portfolio" in the ETF's management report of fund performance.*
- (12) *In presenting the investment mix of the ETF, consider the most effective way of conveying the information to investors. All tables or charts must be clear and legible.*
- (13) *For new ETFs where the information required to be disclosed under "Top 10 investments" and "Investment mix" is not available, include the required sub-headings and provide a brief statement explaining why the required information is not available.*

**Item 4 – Risks**

- (1) Under the heading "How risky is it?", state the following:

The value of the ETF can go down as well as up. You could lose money.

One way to gauge risk is to look at how much an ETF's returns change over time. This is called "volatility".

In general, ETFs with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and may have a greater chance of higher returns. ETFs with lower volatility tend to have returns that change less over time. They typically have lower returns and may have a lower chance of losing money.

- (2) Under the sub-heading "Risk rating",
  - (a) using the investment risk classification methodology adopted by the manager of the ETF, identify the ETF's investment risk level on the following risk scale:

Low	Low to medium	Medium	Medium to high	High
-----	---------------	--------	----------------	------

- (b) unless the ETF is a newly established ETF, include an introduction to the risk scale which states the following:

[Insert name of the manager of the ETF] has rated the volatility of this ETF as [insert investment risk level identified in paragraph (a) in bold type].

This rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future. The rating can change over time. An ETF with a low risk rating can still lose money.

- (c) for a newly established ETF, include an introduction to the risk scale which states the following:

[Insert name of the manager of the ETF] has rated the volatility of this ETF as [insert investment risk level identified in paragraph (a) in bold type].

Because this is a new ETF, the risk rating is only an estimate by [insert name of the manager of the ETF]. Generally, the rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future. The rating can change over time. An ETF with a low risk rating can still lose money.

- (d) following the risk scale, state using wording substantially similar to the following:

For more information about the risk rating and specific risks that can affect the ETF's returns, see the [insert cross-reference to the appropriate section of the ETF's final prospectus] section of the ETF's prospectus.

**INSTRUCTIONS:**

*Based upon the investment risk classification methodology adopted by the manager of the ETF, identify where the ETF fits on the continuum of investment risk levels by showing the full investment risk scale and highlighting the applicable category on the scale. Consideration should be given to ensure that the highlighted investment risk rating is easily identifiable.*

*Note: The CSA is currently working on the development of a CSA mutual fund risk classification methodology. Once that work is complete, we anticipate including an instruction to Form 41-101F4 regarding the use of the CSA mutual fund risk classification methodology.*

**Item 5 – Guarantee**

- (1) If the ETF does not have any guarantee or insurance, under the sub-heading “No guarantees”, state using wording substantially similar to the following:

ETFs do not have any guarantees. You may not get back the amount of money you invest.

- (2) If the ETF has an insurance or guarantee feature protecting all or some of the principal amount of an investment in the ETF, under the sub-heading “Guarantees”:

- (a) identify the person or company providing the guarantee or insurance; and
- (b) provide a brief description of the material terms of the guarantee or insurance, including the maturity date of the guarantee or insurance.

**Item 6 – Past Performance**

- (1) Unless the ETF is a newly established ETF, under the heading “How has the ETF performed?”, include an introduction using wording substantially similar to the following:

This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed over the past [insert number of calendar years shown in the bar chart required under paragraph (3)(a)] years. Returns [add a footnote stating: Returns are calculated using the ETF's net asset value (NAV).] are after expenses have been deducted. These expenses reduce the ETF's returns. This means that the ETF's returns may not match the returns of the [index/benchmark].

- (2) For a newly established ETF, under the heading “How has the ETF performed?”, include an introduction using the following wording:

This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed, with returns calculated using the ETF's net asset value (NAV). However, this information is not available because the ETF is new.

- (3) Under the sub-heading “Year-by-year returns”,
- (a) for an ETF that has completed at least one calendar year:
- (i) provide a bar chart that shows the annual total return of the ETF, in chronological order with the most recent year on the right of the bar chart, for the lesser of:
1. each of the 10 most recently completed calendar years, and
  2. each of the completed calendar years in which the ETF has been in existence and which the ETF was a reporting issuer; and
- (ii) include an introduction to the bar chart using wording substantially similar to the following:
- This chart shows how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF performed in each of the past [insert number of calendar years shown in the bar chart required under paragraph (a)]. The ETF dropped in value in [for the particular years shown in the bar chart required under paragraph (a), insert the number of years in which the value of the ETF dropped] of the [insert number of calendar years shown in the bar chart required in paragraph (a)] years. The range of returns and change from year to year can help you assess how risky the ETF has been in the past. It does not tell you how the ETF will perform in the future.
- (b) for an ETF that has not yet completed a calendar year, state the following:
- This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed in past calendar years. However, this information is not available because the ETF has not yet completed a calendar year.
- (c) for a newly established ETF, state the following:
- This section tells you how [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF have performed in past calendar years. However, this information is not available because the ETF is new.

- (4) Under the sub-heading “Best and worst 3-month returns”,
- (a) for an ETF that has completed at least one calendar year:
- (i) provide information for the period covered in the bar chart required under paragraph (3)(a) in the form of the following table:

	<b>Return</b>	<b>3 months ending</b>	<b>If you invested \$1,000 at the beginning of the period</b>
Best return	(see instruction 7)	(see instruction 9)	Your investment would [rise/drop] to (see instruction 11).
Worst return	(see instruction 8)	(see instruction 10)	Your investment would [rise/drop] to (see instruction 12).

- (ii) include an introduction to the table using wording substantially similar to the following:
- This table shows the best and worst returns for the [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF in a 3-month period over the past [insert number of calendar years shown in the bar chart required under paragraph (3)(a)]. The best and worst 3-month returns could be higher or lower in the future. Consider how much of a loss you could afford to take in a short period of time.

- (b) for an ETF that has not yet completed a calendar year, state the following:

This section shows the best and worst returns for the [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF in a 3-month period. However, this information is not available because the ETF has not yet completed a calendar year.

- (c) for a newly established ETF, state the following:

This section shows the best and worst returns for the [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF in a 3-month period. However, this information is not available because the ETF is new.

- (5) Under the sub-heading “Average return”, show the following:

- (a) for an ETF that has completed at least 12 consecutive months:

- (i) the final value of a hypothetical \$1,000 investment in the ETF as at the end of the period that ends within 60 days before the date of the ETF facts document and consists of the lesser of:

(A) 10 years, or

(B) the time since inception of the ETF; and

- (ii) the annual compounded rate of return that equates the hypothetical \$1,000 investment to the final value.

- (b) for an ETF that has not yet completed 12 consecutive months, state the following:

This section shows the value and annual compounded rate of return of a hypothetical \$1,000 investment in [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF. However, this information is not available because the ETF has not yet completed 12 consecutive months.

- (c) for a newly established ETF, state the following:

This section shows the value and annual compounded rate of return of a hypothetical \$1,000 investment in [name of class/series of securities described in the ETF facts document] [units/shares] of the ETF. However, this information is not available because the ETF is new.

**INSTRUCTIONS:**

- (1) *In responding to the requirements of this Item, an ETF must comply with the relevant sections of Part 15 of National Instrument 81-102 Investment Funds as if those sections applied to an ETF facts document.*
- (2) *Use a linear scale for each axis of the bar chart required by this Item.*
- (3) *The x-axis and y-axis for the bar chart required by this Item must intersect at zero.*
- (4) *An ETF that distributes different classes or series of securities that are referable to the same portfolio of assets must show performance data related only to the specific class or series of securities being described in the ETF facts document.*
- (5) *The dollar amounts shown under this Item may be rounded up to the nearest dollar.*
- (6) *The percentage amounts shown under this Item may be rounded to one decimal place.*
- (7) *Show the best rolling 3-month return as at the end of the period that ends within 60 days before the date of the ETF facts document.*

- (8) *Show the worst rolling 3-month return as at the end of the period that ends within 60 days before the date of the ETF facts document.*
- (9) *Insert the end date for the best 3-month return period.*
- (10) *Insert the end date for the worst 3-month return period.*
- (11) *Insert the final value that would equate with a hypothetical \$1,000 investment for the best 3-month return period shown in the table.*
- (12) *Insert the final value that would equate with a hypothetical \$1,000 investment for the worst 3-month return period shown in the table.*

### **Item 7 – Pricing**

Under the sub-heading “How ETFs are priced”, state the following:

ETFs are unique because they hold a basket of investments, like mutual funds, but trade on exchanges like stocks. For this reason, ETFs have two sets of prices: market price and net asset value (NAV).

#### **Market Price** [*in bold type*]

- You buy and sell ETFs at the market price. The market price can change throughout the trading day. Factors like supply, demand, and changes in the value of the ETF’s investments can affect the market price.
- You can get price quotes any time during the trading day. Quotes have two parts: bid and ask.
- The bid is the highest price a buyer is willing to pay if you want to sell your units. The ask is the lowest price a seller will accept if you want to buy units. The difference between the two is called the “bid-ask spread”.
- In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

#### **Net Asset Value (NAV)** [*in bold type*]

- Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF’s investments.
- NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.
- If the market price is lower than the NAV, the ETF is trading at a discount. If the market price is higher than the NAV, the ETF is trading at a premium. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth.

### **Item 8 – Suitability**

Provide a brief statement of the suitability of the ETF for particular investors under the heading “Who is this ETF for?”. Describe the characteristics of the investor for whom the ETF may or may not be an appropriate investment, and the portfolios for which the ETF is and is not suited.

#### **INSTRUCTION:**

- (1) *If the ETF is particularly unsuitable for certain types of investors or for certain types of investment portfolios, emphasize this aspect of the ETF. Disclose both the types of investors who should not invest in the ETF, with regard to investments on both a short- and long-term basis, and the types of portfolios that should not invest in the ETF. If the ETF is particularly suitable for investors who have particular investment objectives, this can also be disclosed.*

- (2) *If there is textbox disclosure on the cover page pursuant to Item 1(g) of Part I of this form, the brief statement of the suitability of the ETF in Item 8 of this form must be consistent with any suitability disclosure in the textbox.*

**Item 9 – Impact of Income Taxes on Investor Returns**

Under the heading “A word about tax”, provide a brief explanation of the income tax consequences for investors using wording similar to the following:

In general, you'll have to pay income tax on any money you make on an ETF. How much you pay depends on the tax laws where you live and whether or not you hold the ETF in a registered plan such as a Registered Retirement Savings Plan, or a Tax-Free Savings Account.

Keep in mind that if you hold your ETF in a non-registered account, distributions from the ETF are included in your taxable income, whether you get them in cash or have them reinvested.

**Part II – Costs, Rights and Other Information**

**Item 1 – Costs of Buying, Owning and Selling the ETF**

*1.1 – Introduction*

Under the heading “How much does it cost?”, state the following:

This section shows the fees and expenses you could pay to buy, own and sell [name of the class/series of securities described in the ETF facts document] [units/shares] of the ETF. Fees and expenses – including trailing commissions – can vary among ETFs. Higher commissions can influence representatives to recommend one investment over another. Ask about other ETFs and investments that may be suitable for you at a lower cost.

*1.2 – Brokerage commissions*

Under the sub-heading “Brokerage commissions”, provide a brief statement using wording substantially similar to the following:

You may have to pay a commission when you buy and sell [shares/units] of the ETF.

*1.3 – ETF expenses*

- (1) Under the sub-heading “ETF expenses” include an introduction using wording similar to the following:

You don't pay these expenses directly. They affect you because they reduce the ETF's returns.

- (2) Unless the ETF has not yet filed a management report of fund performance, provide information about the expenses of the ETF in the form of the following table:

	<b>Annual rate (as a % of the ETF's value)</b>
<p><b>Management expense ratio (MER)</b></p> <p>This is the total of the ETF's management fee and operating expenses.</p> <p>(If the ETF pays a trailing commission, state the following: “This is the total of the ETF's management fee (which includes the trailing commission) and operating expenses.”)</p> <p>(see instruction 1)</p>	<p>(see instruction 2)</p>

	Annual rate (as a % of the ETF's value)
<b>Trading expense ratio (TER)</b> These are the ETF's trading costs.	(see instruction 3)
<b>ETF expenses</b>	(see instruction 4)

- (3) Unless the ETF has not yet filed a management report of fund performance, above the table required under subsection (2), include a statement using wording similar to the following:

As of [see instruction 5], the ETF's expenses were [insert amount included in table required under subsection (2)]% of its value. This equals \$[see instruction 6] for every \$1,000 invested.

- (4) For an ETF that has not yet filed a management report of fund performance, state the following:

The ETF's expenses are made up of the management fee, operating expenses and trading costs. The [class'/series'/ETF's] annual management fee is [see instruction 7]% of the [class'/series'/ETF's] value. As this [class/series/ETF] is new, operating expenses and trading costs are not yet available.

- (5) If the ETF pays an incentive fee that is determined by the performance of the ETF, provide a brief statement disclosing the amount of the fee and the circumstances in which the ETF will pay it.

- (6) Under the sub-heading "Trailing commission", include a description using wording substantially similar to the following:

The trailing commission is an ongoing commission. It is paid for as long as you own the ETF. It is for the services and advice that your representative and their firm provide to you.

- (7) If the manager of the ETF or another member of the ETF's organization does not pay trailing commissions, include a description using wording substantially similar to the following:

This ETF doesn't have a trailing commission.

- (8) If the manager of the ETF or another member of the ETF's organization pays trailing commissions, disclose the range of the rates of the trailing commission after providing a description using wording substantially similar to the following:

[Insert name of the manager of the ETF] pays the trailing commission to your representative's firm. It is paid from the ETF's management fee and is based on the value of your investment.

- (9) If the manager of the ETF or another member of the ETF's organization pays trailing commissions for the class or series of securities of the ETF described in the ETF facts document but does not pay trailing commissions for another class or series of securities of the same ETF, state using wording substantially similar to the following:

This ETF also offers a [class/series] of [shares/units] that does not have a trailing commission. Ask your representative for details.

**INSTRUCTIONS:**

- (1) *If any fees or expenses otherwise payable by the ETF were waived or otherwise absorbed by a member of the organization of the ETF, despite subsection 15.1(2) of National Instrument 81-106 Investment Fund Continuous Disclosure, only include a statement in substantially the following words:*

*[Insert name of the manager of the ETF] waived some of the ETF's expenses. If it had not done so, the MER would have been higher.*

- (2) *Use the same MER that is disclosed in Item 2 of Part I of this Form. If applicable, include a reference to any fixed administration fees in the management expense ratio description required in the table under Item 1.3(2).*

- (3) *Use the trading expense ratio disclosed in the most recently filed management report of fund performance for the ETF.*

- (4) *The amount included for ETF expenses is the amount arrived at by adding the MER and the trading expense ratio. Use a bold font or other formatting to indicate that ETF expenses is the total of all ongoing expenses set out in the chart and is not a separate expense charged to the ETF.*
- (5) *Insert the date of the most recently filed management report of fund performance.*
- (6) *Insert the equivalent dollar amount of the ongoing expenses of the ETF for each \$1,000 investment.*
- (7) *The percentage disclosed for the management fee must correspond to the percentage shown in the fee table in the final prospectus.*
- (8) *For an ETF that is required to include the disclosure under subsection (4), in the description of the items that make up ETF fees, include a reference to any fixed administrative fees, if applicable. Also disclose the amount of the fixed administration fee in the same manner as required for the management fee. The percentage disclosed for the fixed administration fee must correspond to the percentage shown in the fee table in the final prospectus.*
- (9) *In disclosing the range of rates of trailing commissions, show both the percentage amount and the equivalent dollar amount for each \$1,000 investment.*

**1.4 – Other Fees**

- (1) If applicable, provide the sub-heading “Other Fees”.
- (2) Provide information about the amount of fees payable by an investor when they buy, hold, sell or switch units or shares of the ETF, substantially in the form of the following table:

Fee	What you pay
Redemption Fee	[Insert name of the manager of the ETF] may charge you up to [see instruction 1]% of the value of your [units/shares] you redeem or exchange directly from [insert name of the manager of the ETF].  (see instruction 1)
Other fees [specify type]	[specify amount]  (see instructions 2 and 3)

**INSTRUCTIONS:**

- (1) *The percentage disclosed for the redemption fee must correspond to the percentage shown in the final prospectus.*
- (2) *Under this Item, it is necessary to include only those fees that apply to the particular class or series of securities of the ETF. Examples include management fees and administration fees payable directly by investors. This also includes any requirement for an investor to participate in a fee-based arrangement with their dealer in order to be eligible to purchase the particular class or series of securities of the ETF. If there are no other fees associated with buying, holding, selling or switching units or shares of the ETF, replace the table with a statement to that effect.*
- (3) *Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee. If the amount of the fee varies so that specific disclosure of the amount of the fee cannot be disclosed include, where possible, the highest possible rate or range for that fee.*

**Item 2 – Statement of Rights**

Under the heading “What if I change my mind?”, state using wording substantially similar to the following:

Under securities law in some provinces and territories, you have the right to cancel your purchase within 48 hours after you receive confirmation of the purchase.

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the prospectus, ETF Facts or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

**Item 3 – More Information about the ETF**

- (1) Under the heading “For more information”, state using wording substantially similar to the following:

Contact [insert name of the manager of the ETF] or your representative for a copy of the ETF’s prospectus and other disclosure documents. These documents and the ETF Facts make up the ETF’s legal documents.

- (2) State the name, address and toll-free telephone number of the manager of the ETF. If applicable, also state the e-mail address and website of the manager of the ETF.

**15. Transition**

- (1) An ETF must, on or before [23 months from date of final publication of this Instrument], file a completed Form 41-101F4 *Information Required in an ETF Facts Document* for each class or series of securities of the ETF that, on that date, are the subject of disclosure under a prospectus.

- (2) The date of an ETF facts document filed under subsection (1) must be the date on which it was filed.

**16. Effective date**

- (1) Subject to subsection (2), this Instrument comes into force on [●] [Note: 90 days after final publication of this Instrument].

- (2) The provisions of this Instrument listed in column 1 of the following table come into force on the date set out in column 2 of the table:

<b>Column 1: Provisions of this Instrument</b>	<b>Column 2: Date</b>
5(a), 6-14	[9 months after date of final publication of this Instrument]
5(b)	[24 months after date of final publication of this Instrument]

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:***

*[The Sample ETF Facts Document follows on separately numbered pages.]*

This document contains key information you should know about XYZ S&P/TSX 60 Index ETF. You can find more details about this exchange-traded fund (ETF) in its prospectus. Ask your representative for a copy, contact XYZ ETFs at 1-800-555-5555 or investing@xyzetfs.com, or visit www.xyzetfs.com.

**Before you invest, consider how the ETF would work with your other investments and your tolerance for risk.**

### Quick facts

Date ETF started	March 31, 20XX
Total value on June 1, 20XX	\$220.18 million
Management expense ratio (MER)	0.20%
Fund manager	XYZ ETFs
Portfolio manager	Capital Asset Management Ltd.
Distributions	Quarterly
Dividend Reinvestment Plan (DRIP)	Yes

### Trading information

(12 months ending June 1, 20XX)

Ticker symbol	XYZ
Exchange	TSX
Currency	Canadian dollars
Average daily volume	308,000 units
Number of days traded	249 out of 251 trading days

### Pricing information

(12 months ending June 1, 20XX)

Market price	\$9.50-\$13.75
Net asset value (NAV)	\$9.52-\$13.79
Average bid-ask spread	0.07%
Average premium/discount to NAV	+/- 0.05%

### What does the ETF invest in?

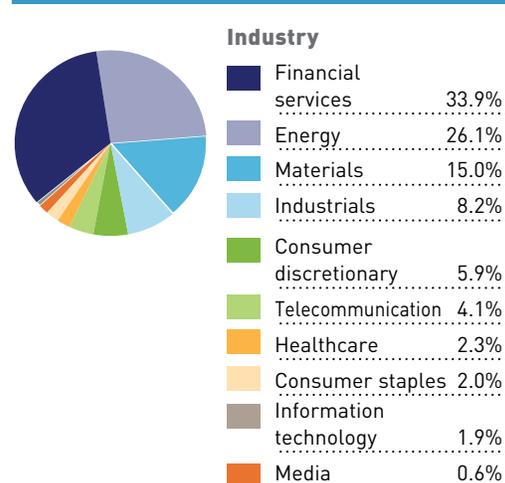
This ETF invests in the same companies and in the same proportions as the S&P/TSX 60 Index. The S&P/TSX 60 Index is made up of 60 of the largest (by market capitalization) and most liquid securities listed on the Toronto Stock Exchange (TSX), as determined by S&P Dow Jones Indices.

The charts below give you a snapshot of the ETF's investments on June 1, 20XX. The ETF's investments will change to reflect changes in the S&P/TSX 60 Index.

#### Top 10 investments (June 1, 20XX)

1. Royal Bank of Canada	7.5%
2. Toronto-Dominion Bank	7.1%
3. Canadian Natural Resources	5.8%
4. The Bank of Nova Scotia	4.1%
5. Cenovus Energy Inc.	3.7%
6. Suncor Energy Inc.	3.2%
7. Enbridge Inc.	3.1%
8. Canadian Imperial Bank of Commerce	2.9%
9. Manulife Financial Corporation	2.7%
10. Canadian National Railway Company	1.9%
<b>Total percentage of top 10 investments</b>	<b>42.0%</b>
<b>Total number of investments</b>	<b>60</b>

#### Investment mix (June 1, 20XX)



### How risky is it?

The value of the ETF can go down as well as up. You could lose money.

One way to gauge risk is to look at how much an ETF's returns change over time. This is called "volatility". In general, ETFs with higher volatility will have returns that change more over time. They typically have a greater chance of losing money and may have a greater chance of higher returns. ETFs with lower volatility tend to have returns that change less over time. They typically have lower returns and may have a lower chance of losing money.

### Risk rating

XYZ ETFs has rated the volatility of this ETF as **medium**. This rating is based on how much the ETF's returns have changed from year to year. It doesn't tell you how volatile the ETF will be in the future. The rating can change over time. An ETF with a low risk rating can still lose money.



For more information about the risk rating and specific risks that can affect the ETF's returns, see the Risk section of the ETF's prospectus.

### No guarantees

ETFs do not have any guarantees. You may not get back the amount of money you invest.

## How has the ETF performed?

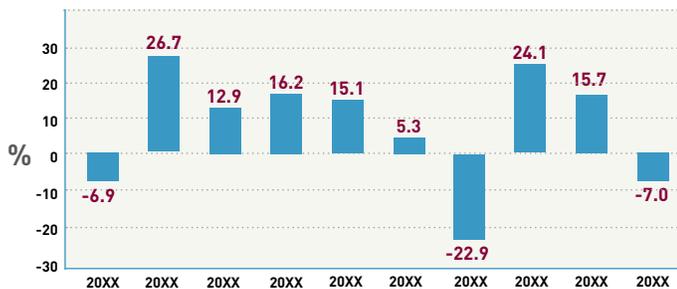
This section tells you how units of the ETF have performed over the past 10 years.

Returns<sup>1</sup> are after expenses have been deducted. These expenses reduce the ETF's returns. This means that the ETF's returns may not match the returns of the S&P/TSX 60 Index.

### Year-by-year returns

This chart shows how units of the ETF performed in each of the past 10 years. The ETF dropped in value in 3 of the 10 years.

The range of returns and change from year to year can help you assess how risky the ETF has been in the past. It does not tell you how the ETF will perform in the future.



### Best and worst 3-month returns

This table shows the best and worst returns for units of the ETF in a 3-month period over the past 10 years. The best and worst 3-month returns could be higher or lower in the future. Consider how much of a loss you could afford to take in a short period of time.

	Return	3 months ending	If you invested \$1,000 at the beginning of the period
<b>Best return</b>	32.6%	Apr. 30, 20XX	Your investment would rise to \$1,326.
<b>Worst return</b>	-24.7%	Nov. 30, 20XX	Your investment would drop to \$753.

### Average return

The annual compounded return of the ETF was 6.8% over the past 10 years. A \$1,000 investment in the ETF 10 years ago would now be worth \$1,930.

## How ETFs are priced

ETFs are unique because they hold a basket of investments, like mutual funds, but trade on exchanges like stocks. For this reason, they have two sets of prices: market price and net asset value (NAV).

### Market price

- You buy and sell ETFs at the market price. The market price can change throughout the trading day. Factors like supply, demand and changes in the value of the ETF's investments can affect the market price.
- You can get price quotes any time during the trading day. Quotes have two parts: **bid** and **ask**.
- The bid is the highest price a buyer is willing to pay if you want to sell your units. The ask is the lowest price a seller will accept if you want to buy units. The difference between the two is called the "**bid-ask spread**".
- In general, a smaller bid-ask spread means the ETF is more liquid. That means you are more likely to get the price you expect.

### Net asset value (NAV)

- Like mutual funds, ETFs have a NAV. It is calculated after the close of each trading day and reflects the value of the ETF's investments.
- NAV is used to calculate financial information for reporting purposes – like the returns shown in this document.
- If the market price is lower than the NAV, the ETF is trading at a **discount**. If the market price is higher than the NAV, the ETF is trading at a **premium**. If you sell an ETF at a discount, you may be getting less than its investments are worth. If you buy an ETF at a premium, you may be paying more than its investments are worth.

## Who is this ETF for?

Investors who:

- are looking for a long-term investment
- want to invest in a broad range of stocks of Canadian companies
- can handle the ups and downs of the stock market.

Don't buy this ETF if you need a steady source of income from your investment.

## A word about tax

In general, you'll have to pay income tax on any money you make on an ETF. How much you pay depends on the tax laws where you live and whether or not you hold the ETF in a registered plan, such as a Registered Retirement Savings Plan or a Tax-Free Savings Account.

Keep in mind that if you hold your ETF in a non-registered account, distributions from the ETF are included in your taxable income, whether you get them in cash or have them reinvested.

<sup>1</sup> Returns are calculated using the ETF's net asset value (NAV).

**How much does it cost?**

This section shows the fees and expenses you could pay to buy, own and sell units of the ETF. Fees and expenses – including any trailing commissions – can vary among ETFs.

Higher commissions can influence representatives to recommend one investment over another. Ask about other ETFs and investments that may be suitable for you at a lower cost.

**1. Brokerage commissions**

You may have to pay a commission when you buy and sell units of the ETF.

**2. ETF expenses**

You don't pay these expenses directly. They affect you because they reduce the ETF's returns.

As of March 31, 20XX, the ETF's expenses were 0.21% of its value. This equals \$2.10 for every \$1,000 invested.

	Annual rate (as a % of the ETF's value)
<b>Management expense ratio (MER)</b>	
This is the total of the ETF's management fee and operating expenses. XYZ ETFs waived some of the ETF's expenses. If it had not done so, the MER would have been higher.	0.20%
<b>Trading expense ratio (TER)</b>	
These are the ETF's trading costs.	0.01%
<b>ETF expenses</b>	<b>0.21%</b>

**Trailing commission**

The trailing commission is an ongoing commission. It is paid for as long as you own the ETF. It is for the services and advice that your representative and their firm provide to you.

This ETF doesn't have a trailing commission.

**What if I change my mind?**

Under securities law in some provinces and territories, you have the right to cancel your purchase within 48 hours after you receive confirmation of the purchase.

In some provinces and territories, you also have the right to cancel a purchase, or in some jurisdictions, claim damages, if the prospectus, ETF Facts or financial statements contain a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

**For more information**

Contact XYZ ETFs or your representative for a copy of the ETF's prospectus and other disclosure documents. These documents and the ETF Facts make up the ETF's legal documents.

XYZ ETFs  
456 Asset Allocation St.  
Toronto, ON M1A 2B3

**Phone:** 416.555.5555  
**Toll-free:** 1.800.555.5555  
**Email:** [investing@xyzetfs.com](mailto:investing@xyzetfs.com)  
**Website:** [www.xyzetfs.com](http://www.xyzetfs.com)

This page intentionally left blank

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

ANNEX E

PROPOSED AMENDMENTS TO  
NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

1. *National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.*
2. *Section 11.2 is amended by replacing paragraph (1)(d) with the following:*
  - (d) file an amendment to its prospectus, simplified prospectus, fund facts document or ETF facts document that discloses the material change in accordance with the requirements of securities legislation..
3. *This Instrument comes into force on [•].*

ANNEX F

PROPOSED CHANGES TO  
COMPANION POLICY 81-106 CP  
TO NATIONAL INSTRUMENT 81-106 *INVESTMENT FUND CONTINUOUS DISCLOSURE*

1. *Companion Policy 81-106CP to National Instrument 81-106 Investment Fund Continuous Disclosure is amended by this Instrument.*
2. *Subsection 10.1(1) is amended by replacing it with the following:*
  - 10.1 **Calculation of Management Expense Ratio**
    - (1) Part 15 of the Instrument sets out the method to be used by an investment fund to calculate its management expense ratio (MER). The requirements apply in all circumstances in which an investment fund circulates and discloses an MER. This includes disclosure in a sales communication, a prospectus, a fund facts document, an ETF facts document, an annual information form, financial statements, a management report of fund performance or a report to securityholders..
3. *These changes become effective on [•].*

ANNEX G

ONTARIO RULE-MAKING AUTHORITY

AUTHORITY FOR THE PROPOSED AMENDMENTS

The following provisions of the *Securities Act* (Ontario) (the **Act**) provide the Commission with authority to adopt the Proposed Amendments:

**Subparagraph 143(1)2(i)** of the Act authorizes the Commission to make rules prescribing the standards of practice and business conduct of registrants in dealing with their customers and clients and prospective customers and clients.

**Paragraph 143(1)7** of the Act authorizes the Commission to make rules prescribing requirements in respect of the disclosure or furnishing of information to the public or the Commission by registrants or providing for exemptions from or varying the requirements under this Act in respect of the disclosure or furnishing of information to the public or the Commission by registrants.

**Paragraph 143(1)31** of the Act authorizes the Commission to make rules regulating investment funds and the distribution and trading of the securities of investment funds, including

- making rules varying Part XV (Prospectuses – Distribution) or Part XVIII (Continuous Disclosure) by prescribing additional disclosure requirements in respect of investment funds and requiring or permitting the use of particular forms or types of additional offering or other documents in connection with the funds (**subparagraph (i)**); and
- making rules prescribing procedures applicable to investment funds, registrants and any other person or company in respect of sales and redemptions of investment fund securities (**subparagraph (xi)**).

**Paragraph 143(1)49** of the Act authorizes the Commission to make rules permitting or requiring, or varying this Act to permit or require, methods of filing or delivery, to or by the Commission, issuers, registrants, security holders or others, of documents, information, notices, books, records, things, reports, orders, authorizations or other communications required under or governed by Ontario securities law.

**Paragraph 143(1)53** of the Act authorizes the Commission to make rules providing for exemptions from or varying the requirements of section 71.

**Paragraph 143(1)54.1** of the Act authorizes the Commission to prescribe investment fund securities that are trading on an exchange or an alternative trading system for the purpose of subsection 71(1.2), prescribing the disclosure document that is required in respect of prescribed investment fund securities under subsection 71(1.3), prescribing the time and manner for sending or delivering the disclosure document, and prescribing the circumstances in which a purchase is not binding on a purchaser for the purpose of subsection 71(2.1).

Each of these provisions received Royal Assent on July 24, 2014 as part of the *Building Opportunity and Securing Our Future Act (Budget Measures), 2014* and comes into force on proclamation. The power to make rules authorized by passed but not proclaimed provisions is provided by subsection 10(1) of the *Legislation Act* (Ontario).