



# OSC Staff Notice 11-784 Burden Reduction

The OSC is seeking suggestions on ways to further reduce unnecessary regulatory burden, as provided in OSC Staff Notice 11-784.

We invite your comments on the Staff Notice through the survey below. Please note that each question has a 4000 character response limit.

Closing date: March 1, 2019

Thank you for sharing your thoughts with the OSC Burden Reduction Task Force.

**\* Required**

1. Please provide your name. \*

Anil Aggarwal, Francois Brais, Stephen Erlichman, Garth Foster, Daniel Fuke, Jonathan Halwagi, Tracy Hooey, John Kruk, Elise Renaud, John Sabetti, Munier Saloojee

2. What is the name of your firm or company, if applicable?

Fasken Martineau DuMoulin LLP

3. What is your role in the capital markets? \*

Law firm

4. Do you have any general comments on the topic of regulatory burden reduction related to securities regulation? If so, please enter only the legislative reference for your suggestions in the box below (for example 31-103 1.1)

See below

5. Please use the space below to provide your general comments.

We are providing extensive comments in response to OSC Staff Notice 11-784. Please see our letter dated February 22, 2019 which has been e-mailed to the OSC. Our responses in this questionnaire are only a brief introduction of those comments.

6. Are there operational or procedural changes that would make market participants' day-to-day interaction with the OSC easier or less costly? If so, please enter only the legislative reference for your suggestions in the box below.

NI 81-101, sections 2.3(2)(b)(i), (ii) and (ii.1) and equivalent provisions elsewhere in securities legislation.

7. Please use the space below to provide your suggestions for operational or procedural changes.

We request that OSC staff allocate additional resources to reviewing blacklined fund facts in order to be able to accommodate a wider variety of blacklining formats for fund facts. We also recommend that the OSC find a means for granting industry-wide exemptive relief, such as by blanket ruling, and the OSC develop a practice of codifying recurring exemptive relief more quickly than currently is the case.

8. Are there ways in which we can provide greater certainty regarding regulatory requirements or outcomes to market participants? If so, please enter only the legislative reference for your suggestions in the box below.

NP 11-202, section 5.1(2); CP 81-101, section 2.7(2); CP 81-102, section 7.3(2); NI 81-102, section 5.6(1)(b), NI 81-106, section 11.2(c)

9. Please use the space below to provide your suggestions regarding how the OSC could provide greater certainty regarding regulatory requirements or outcomes.

We recommend that OSC staff adopt an approach whereby changes to expectations regarding prospectus disclosure are made after public consultation and notice to the industry, rather than ad hoc during the course of reviewing prospectus filings. For "dual" prospectus filings under NP 11-202, we recommend that OSC staff find a means for permitting industry participants to communicate directly with OSC staff to resolve their comments. We recommend that OSC staff revisit its position on whether an update to an investment fund's risk rating is a "material change" in light of the ruling of the Supreme Court of Canada in the Danier Leather case. We recommend that OSC staff revisit its position on the materiality of a fund merger to a smaller continuing fund when the merger is not consider material to the larger terminating fund, as well as for taxable mergers where no material capital gains are expected to be realized. We recommend eliminating the requirement for any investment fund to prepare and file a material change report if it is in continuous distribution of its securities.

10. Are there forms and filings that issuers, registrants or other market participants are required to submit that should be streamlined or required less frequently? If so, please enter only the legislative reference for your suggestions in the box below.

NI 41,101; NI 81-101

11. Please use the space below to provide your suggestions regarding forms and filings.

We recommend that the OSC work toward developing a prospectus system for mutual funds that is equivalent to the shelf prospectus system for public companies.

12. Are there particular filings with the OSC that are unnecessary or unduly burdensome? If so, please enter only the legislative reference for your suggestions in the box below.

NI 81-101, section 2.3(1)(b)(ii) and equivalent provisions elsewhere in securities legislation

13. Please use the space below to provide your comments regarding burdensome filings.

We recommend the elimination of the requirement to submit Personal Information Forms for the directors and executive officers of registered investment fund managers.

14. Is there information that the OSC provides to market participants that could be provided more efficiently?

15. Are there requirements under the OSC rules that are inconsistent with the rules of other jurisdictions and that could be harmonized? If so, please enter only the legislative reference for your suggestions in the box below.

16. Please use the space below to provide your comments and suggestions around harmonization of rules.

17. Are there specific requirements that no longer serve a valid purpose? If so, please enter only the legislative reference for your suggestions in the box below.

81-101F1, Part A, Item 9.2; 81-101F1, Part B, Items 7(5), 9(1.1)(a), 9(6), 9.1, and 13(2); 81-101F2, Items 10.3(3), 11 and 15(2); 81-106F1, Part B, Items 2.1 and 2.5; NI 81-106, Part 6

18. Please use the space below to provide your comments and suggestions around requirements that may no longer serve a valid purpose.

We recommend that Forms 81-101F1 and 81-101F2 be amended to remove various time-sensitive information which is of little use to investors such as: dealer compensation from management fees; securityholders holding more than 10% of the mutual fund; investments exceeding 10% of net asset value; high portfolio turnover; suitability and risk rating; fund expenses indirectly borne by investors; principal securityholders; ownership of securities by management and IRC members; IRC compensation; and the names of individual portfolio managers. We also recommend removing or replacing in Form 81-106F1 the requirements to disclose investment objectives and strategies, and transactions with related parties. We recommend eliminating quarterly portfolio disclosure.

19. Are there ways to enhance and improve how investors experience disclosure provided: (i) before they invest; (ii) as part of ongoing public disclosure; and (iii) by registrants?

NI 81-102, Part 15; NI 31-103, section 14.12; NI 81-101, section 3.2.03

20. Please use the space below to provide your suggestions for modernizing information provided to investors because of regulatory requirements. For example, specific areas where we could promote the use of plain language?

We recommend that OSC staff work toward replacing the myriad of prescribed warnings and disclaimers in sales communications with a single, brief warning that is included in all sales communications and refers the investor to a more detailed explanation of sales communications in a sales literature guide. We also recommend that the elimination of the requirements to pre-deliver fund facts and deliver trade confirmations for all forms of trades in investment fund securities implemented pursuant to any type of arrangement that does not require a further trading instruction from the investor. We further recommend that OSC staff work toward permitting investment funds to use a "notice and access" approach for all documents required to be delivered to securityholders, other than fund facts, ETF facts, and documents containing personal information.

21. Do you have any other comments for the OSC Burden Reduction Task Force?

We encourage the OSC to adopt a robust approach to the cost-benefit analysis of future rules to reduce that risk that new regulatory requirements will create unnecessary regulatory burdens. We specifically request that the OSC revisit the relative costs and benefits of imposing new derivatives adviser registration

requirements and related derivatives business conduct rules on market participants already registered as portfolio managers.

22. If you don't have enough space for your response to any question above, please use the space below to continue your comments. Please indicate which question these comments relate to.

Please see our introductory comment that these response are only a brief introduction, and OSC staff are asked to review our more detailed comments in our letter dated February 22, 2019 which has been e-mailed to the OSC.