Goodbye MRFP, Hello Fund Report: Proposed changes to continuous disclosure rules for investment funds

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On Sept. 19, 2024, the Canadian Securities Administrators (CSA) published a notice proposing amendments to modernize the continuous disclosure regime for investment funds, which aim to enhance the utility of continuous disclosure and reduce the regulatory burden on investment funds (the Proposed Amendments). The Proposed Amendments, particularly changes to the Management Report of Fund Performance (MRFP), have been long-awaited by the industry, given the low number of investors who read the MRFPs, compared to the considerable time and resources needed to produce them.

The Proposed Amendments have the potential to significantly change the disclosure requirements applicable to public investment funds and warrant a careful review by all investment fund managers (IFMs) and other stakeholders. While some requirements have been completely eliminated, others have been streamlined or moved to different documents. The Proposed Amendments also introduce certain new disclosure obligations, including a requirement for IFMs to report on whether a fund is achieving its investment objectives. Although this proposal enhances transparency, it raises questions about the practical implications and risk for IFMs. For instance, IFMs may be hesitant to disclose that a fund is underperforming against its stated objectives, or that it has not met its objectives.

In addition, the Proposed Amendments simplify the current MRFP, replacing it with a more concise fund report (Fund Report). Certain performance data will only be required in respect of the series with the highest fund expense ratio or management fee. This streamlined format could lead to improved investor comprehension while maintaining the essential data necessary for informed decision-making. These changes appear to be a step in the right direction, reducing the compliance burden without sacrificing critical investor information.

Proposed amendments

The CSA have identified the following three areas for review:

- *Workstream One*: Replacing the interim and annual MRFP with a new interim and annual Fund Report.
- *Workstream Two*: Simplifying reporting requirements and removing unnecessary duplication by providing an exemption from certain conflict of interest reporting requirements where other similar requirements are satisfied (and proposing a new standardized form to report related party transactions).
- *Workstream Three*: Eliminating certain class or series-level disclosures from investment fund financial statements.

Workstream One

By replacing MRFPs with the proposed Fund Reports, the CSA have made significant revisions to content that, in their view, are designed to better align with investor needs and preferences, while being less burdensome for investment funds to prepare. The Fund Report was developed in consultation with a third-party consulting firm with expertise in behavioural insights, in an effort to respond to how investors behave and process information. We expect that IFMs will want to carefully review the sample Fund Report.

Key features of proposed Fund Report

Overall, the Fund Report adopts the following approaches that distinguish it from the MRFP:

- **Streamlined disclosure**: A significant streamlining of information to help investors quickly identify what is most relevant to them.
- **Thematic presentation**: Information is grouped into thematic sections.
- **Use of bullet points**: Reliance on bullets, as opposed to narrative format, to help investors process information more effectively.
- **Simplified terminology and explanations**: Definitions are provided for key terms and explanations are provided for key concepts in call-out boxes.
- **Brief summaries:** Summaries of information contained in various sections are provided to help investors review information more quickly.
- **Direction to additional information sources**: Inclusion of sources where investors can find more detailed information beyond what is contained in the Fund Report.

Elimination and reduction of certain reporting requirements

The Fund Report eliminates certain disclosure the CSA have deemed less useful to investors. As a result, the following will not be found in the Fund Report:

- **Results of operations and recent developments**: Several requirements in the “Results of Operations” and “Recent Developments” sections of the MRFP will be eliminated. Instead, the Fund Report will contain a section requiring the IFM to assess the fund’s success in achieving its investment objectives using its investment strategies. It will also briefly outline factors that the IFM believes may affect the fund’s ability to meet its investment objectives and use its investment strategies.

- **Net assets per unit/share:** The Net Assets per Unit/Share table in the "Financial Highlights" section will be removed. Investors seeking these details can refer to the financial statements of a fund or the "Statistics" section of the Fund Report, which will include consolidated information on distributions with specific information on return of capital.
- **Metrics**: Certain metrics will be eliminated, and the Fund Report will require one year's worth of cost-related information instead of five.
- **Management fees**: The removal of the "Management Fees" section will simplify cost-related information presented in the Fund Report.
- **Series or class performance data**: Performance information will focus on the series or class with the highest management fee, simplifying the presentation for investors.
- **Related party transactions**: This information will be moved to different regulatory disclosure documents.
- **Quarterly portfolio disclosure:** The requirement for an investment fund to prepare quarterly portfolio disclosure will remain, except that the fund will be required to prepare it on a standalone basis throughout the year, as opposed to it appearing in the MRFP at two points in the year.

New elements

Of note, the following two new elements, not present in the MRFP, are being proposed for inclusion in the Fund Report:

- **Investment objective success**: The Fund Report must include a summary of the IFM's assessment of the fund's success in respect of achieving its investment objectives and using its investment strategies to achieve those investment objectives during the period covered by the report.

Consistent with the ongoing focus on environmental social and governance (ESG) concerns, the Proposed Amendments include guidance to assist funds that have ESG-related aspects to their investment objectives and strategies. The proposals instruct IFMs to discuss key quantitative metrics used by the IFM to assess whether the fund has satisfied the stated ESG-related aspects of its investment objectives and whether it has satisfied the stated ESG-related criteria for its investment strategies. IFMs are also to discuss how their use of proxy voting, shareholder engagement and issuer engagement (as applicable) as principal investment strategies satisfy the fund's stated ESG-objectives or ESG-related criteria. Finally, IFMs are to discuss how significant changes made to the fund's portfolio align with stated ESG-related investment objectives or ESG-related investment strategy criteria. This new guidance seeks to align with the CSA's updated Staff Notice 81-334 on ESG-Related Investment Fund Disclosure.

- **Liquidity profile**: Consistent with the regulators' ongoing scrutiny of liquidity-related issues, it is proposed that the Fund Report include a section on the liquidity profile of the fund's portfolio, to provide investors with "in-depth yet understandable" disclosure regarding the liquidity of their investments. This information is to be provided in a prescribed pie chart format, illustrating the number of days required to convert the fund's portfolio holdings into cash under normal market conditions as well as narrative disclosure. The disclosure includes

a discussion of any significant liquidity challenges, changes in market condition and/or significant redemptions impacting the fund.

Workstream Two

The Proposed Amendments under Workstream Two seek to exempt IFMs from certain conflict of interest reporting requirements under securities legislation where substantially similar reporting obligations are satisfied under National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107), reducing unnecessary duplication.

Key features

- **Related party transactions**: The Proposed Amendments focus on three types of related party transactions:
    - Purchases or sales of securities between an investment fund and a related person or company.
    - Purchases or sales by a fund through a related party, where the related party receives a fee.
    - Joint participation of an investment fund and related parties in a transaction, excluding insider trading.
- **Existing reporting under NI 81-107**: Transactions under NI 81-107 (subsections 6.2(1), 6.3(1) and 6.4(1)) already require annual reports. The Proposed Amendments will remove the need for additional filings under applicable securities legislation in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Saskatchewan. The securities legislation in Manitoba, Québec and Prince Edward Island already do not require additional filings, so the exemption does not apply in those jurisdictions.
- **Standardized form**: A new, standardized form (Proposed Form 81-107A) will be introduced for related party transaction reports under subsections 6.2(2), 6.3(3) and 6.4(2) of NI 81-107. When the new form is filed, the statutory requirement under Appendix E of National Instrument 81-102 *Investment Funds* will not apply.

Workstream Three

The Proposed Amendments under Workstream Three aim to streamline investment fund financial statements, by eliminating certain class or series-level disclosures that are not required by IFRS and are viewed as overly complex.

Key features

- **Removal of Class/Series-Level Disclosure in Financial Statements**:
    - **Statement of Comprehensive Income**: Elimination of the requirement to disclose class or series-level increases or decreases in equity from operations or net assets attributable to securityholders.
    - **Statement of Changes in Financial Position**: Elimination of the requirement to provide a breakdown of each line item, by each class or series.

- **Notes to Financial Statements**: Elimination of the requirement to disclose differences between classes or series (including sales charges and management fees) which are already available in other regulatory documents such as the prospectus, Fund Facts and ETF Facts.

- **Retained Disclosures**:
  - **Statement of Financial Position**: Disclosure of total equity or net assets per class or series will continue to be required.
  - **Statement of Investment Portfolio**: This comprehensive information on a fund's investment portfolio will remain a key part of annual and interim financial statements to ensure transparency and provide insight into the fund's holdings.

Additional changes

In addition to the Proposed Amendments, the CSA are proposing the following additional changes:

- **Addition of fund expense ratio into Fund Facts and ETF Facts:**
  - Replacing the reference to Management Expense Ratio (MER) with a reference to Fund Expense Ratio (FER), which is the sum of the MER and the trading expense ratio, in the "Quick facts" section.
  - Replacing the reference to "Fund expenses" with a reference to FER in the expenses section.
- **Editorial revisions to Form 81-101F1 *Contents of Simplified Prospectus*:**
  - For a simplified prospectus for multiple funds with separately bound Part A and B sections, providing an option to prepare a Part B Introduction at the end of the Part A section.
  - Removing the requirement to list the mutual funds after the table of contents for a simplified prospectus for multiple funds with separately bound Part A and B sections.
  - Clarifying the requirement to disclose a mutual fund's start date in Part B.

Request for comment

The CSA have posed 20 detailed questions for comment regarding the Proposed Amendments, covering various aspects of the disclosure regime, including additional modernization opportunities and specific implementation timelines. We encourage IFMs to review these questions thoroughly and consider how the proposals align with their operations and investor needs.

Next steps

The comment period for the Proposed Amendments is open until Jan. 17, 2025. BLG intends to submit comments and would be pleased to answer your questions and assist you in preparing submissions.

As a reminder, we are still waiting to hear back from the CSA on their proposal (published on Sept. 27, 2022) to replace the current investment fund delivery requirements for MRFPs and financial statements, with an access instead of delivery

model. The CSA have said that the work on that initiative is ongoing and is not anticipated to impact the Proposed Changes.

Please contact one of the authors below or your usual BLG Investment Management Group lawyer if you would like to discuss the above amendments or would like assistance in understanding how the Proposed Amendments may impact your business.

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