

Nova Scotia Securities Commission

Rule 81-102 (Amendment)
Investment Funds

-and-

**Consequential Amendments to Rules 81-104, 41-101, 81-101, 81-106, 81-107,
and 11-102**

-and-

**Amendments to National Instrument 81-104 *Commodity Pools*, National Instrument
41-101 *General Prospectus Requirements*, National Instrument 81-101 *Mutual Fund
Prospectus Disclosure*, National Instrument 81-106 *Investment Fund Continuous Disclosure*,
National Instrument 81-107 *Independent Review Committee for Investment Funds*, and
Multilateral Instrument 11-102 *Passport System* and Changes to Commentary National
Instrument 81-107 *Independent Review Committee for Investment Funds*
(collectively, the Rule Amendments)**

-and-

**Withdrawal of Companion Policy 81-104CP to National Instrument 81-104 *Commodity
Pools*
(the Policy Changes)**

WHEREAS:

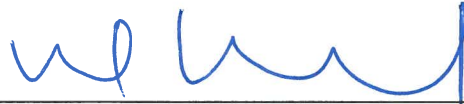
1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the Act), the Nova Scotia Securities Commission (the Commission) has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
2. The Rule Amendments and the Policy Changes, copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
3. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

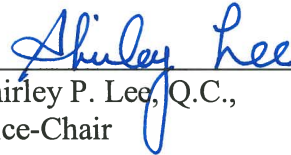
- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule Amendments and makes the same a rule of the Commission;

- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Policy Changes as a policy statement of the Commission; and
- (c) declares that the Rule Amendments approved and made pursuant to clause (a) and the issuance of the Policy Changes pursuant to clause (b) shall both take effect on **January 3, 2019**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and the Vice-Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the 17th day of October, 2018.



Paul Radford, Q.C.,
Chair



Shirley P. Lee, Q.C.,
Vice-Chair

Attachments

**AMENDMENTS TO
NATIONAL INSTRUMENT 81-104 *COMMODITY POOLS***

1. *National Instrument 81-104 Commodity Pools is amended by this Instrument.*
2. *The title is amended by replacing “NATIONAL INSTRUMENT 81-104 *COMMODITY POOLS*” with “NATIONAL INSTRUMENT 81-104 *ALTERNATIVE MUTUAL FUNDS*”.*
3. *Subsection 1.1(1) is amended*
 - (a) *by repealing the definitions of “commodity pool”, “independent review committee”, and “precious metals fund”,*
 - (b) *by adding “and” at the end of the definition of “Derivatives Fundamentals Course”,*
 - (c) *by deleting “and” at the end of the definition of “mutual fund restricted individual”, and*
 - (d) *by adding the following definition:*

“alternative mutual fund” has the same meaning as in section 1.1 of NI 81-102;
4. *Section 1.2 is amended*
 - (a) *in paragraph (a) by replacing “a commodity pool” with “an alternative mutual fund”, and in subparagraph (i) by replacing “commodity pool” with “alternative mutual fund”, and*
 - (b) *in paragraph (b) by replacing “a commodity pool” with “an alternative mutual fund”, and by deleting “or pertaining to the filing of a prospectus to which subsection 3.2(1) applies”.*
5. *Section 1.3 is amended*
 - (a) *in subsection (1) by replacing “a commodity pool” with “an alternative mutual fund”, and by replacing “commodity pool” with “alternative mutual fund”, and*
 - (b) *by repealing subsection (2).*
6. *Part 2 is repealed.*
7. *Part 3 is repealed.*

8. Section 4.1 is amended by replacing “a commodity pool” with “an alternative mutual fund” wherever it occurs, and by replacing “commodity pools” with “alternative mutual funds” wherever it occurs.

9. Part 5 is repealed.

10. Part 6 is repealed.

11. Part 8 is repealed.

12. Section 11.2 is repealed.

13. This Instrument comes into force on January 3, 2019.

**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 definition:*

“alternative mutual fund” has the same meaning as in section 1.1 of NI 81-102;
3. *Form 41-101F2 Information Required in an Investment Fund Prospectus is amended*
 - (a) *by replacing “commodity pool” in Item 1.3(1) with “alternative mutual fund”,*
 - (b) *by adding the following after Item 1.3(3):*
 - (4) If the mutual fund to which the prospectus pertains is an alternative mutual fund, include a statement explaining that the fund is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds and explain how exposure to the asset classes or the adoption of the investment strategies may affect investors’ risk of losing money on their investment in the fund.,
 - (c) *by replacing “commodity pool” in Item 1.11(3) with “alternative mutual fund”,*
 - (d) *by repealing Item 1.12,*
 - (e) *by replacing paragraph (e) of Item 3.3(1) with the following:*
 - (e) the use of leverage, including all of the following:
 - (i) the maximum aggregate exposure to borrowing, short selling and specified derivatives the investment fund is permitted to have, expressed as a percentage calculated in accordance with section 2.9.1 of NI 81-102,
 - (ii) a brief description of any other restrictions on the investment fund’s use of leverage, and
 - (iii) a brief description of any limits that apply to each source of leverage.,
 - (f) *by adding the following after instruction (3) to Item 5:*
 - (4) *If the mutual fund is an alternative mutual fund, describe the features of the*

mutual fund that cause it to fall within the definition of “alternative mutual fund” in NI 81-102. If those features involve the use of leverage, disclose the sources of leverage (i.e., borrowing, short selling, use of derivatives) the alternative mutual fund is permitted to use and the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have, as a percentage calculated in accordance with section 2.9.1 of NI 81-102.,

(g) by replacing paragraph (b) of Item 6.1(1) with the following:

- (b) the use of leverage, including both of the following:
 - (i) a brief description of any restrictions on the investment fund’s use of leverage;
 - (ii) a brief description of any limits that apply to each source of leverage.,

(h) by adding the following after Item 6.1(6):

- (7) In the case of an investment fund that borrows cash in accordance with subsection 2.6 (2) of NI 81-102,
 - (a) state that the investment fund is permitted to borrow cash and the maximum amount the fund is permitted to borrow, and
 - (b) briefly describe how borrowing will be used in conjunction with other strategies of the investment fund to achieve its investment objectives and the material terms of the borrowing arrangements.,

(i) by adding the following after Item 19.11

19.12 Lender

- (1) State the name of each person or company that has entered into an agreement to lend money to the investment fund or provides a line of credit or similar lending arrangement to the investment fund.
- (2) State whether the person or company named in subsection (1) is an affiliate or associate of the manager of the investment fund., **and**

(j) by replacing “a commodity pool” in Item 23.1(f) with “an alternative mutual fund”.

4. Form 41-101F4 Information Required in an ETF Facts Document is amended

(a) by replacing the instructions to Item 1 of Part 1 with the following:

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 an alternative mutual fund. It is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

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 an alternative mutual fund. It is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

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 an alternative mutual fund and Instruction (2) or (3) does not apply, provide textbox disclosure in bold type using wording substantially similar to the following:

This ETF is an alternative mutual fund. It has the ability to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

The specific features that differentiate this fund from other types of mutual funds include: *[list the asset classes the alternative mutual fund invests in and the investment strategies used by the alternative mutual fund that cause it to fall within the definition of “alternative mutual fund”]*

[Explain how the listed features may affect investors’ risk of losing money on their investment in the alternative mutual fund],

(b) by adding the following after Item 3(1) of Part 1:

(1.1) For an alternative mutual fund that uses leverage

- (a) disclose the sources of leverage, and
- (b) disclose the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have., **and**

(c) by adding the following after subsection (3) of the instructions to Item 3 of Part 1:

(3.1) The alternative mutual fund’s aggregate exposure to sources of leverage must be expressed as a percentage calculated in accordance with section 2.9.1 of NI 81-102..

Transition

5. If a commodity pool, as that term was defined in National Instrument 81-104 *Commodity Pools* on January 2, 2019, has filed a prospectus for which a receipt was granted on or before that date, this Instrument does not apply to the commodity pool until July 4, 2019.

Effective Date

6. This Instrument comes into force on January 3, 2019.

**AMENDMENTS TO
NATIONAL INSTRUMENT 81-101 MUTUAL FUND PROSPECTUS DISCLOSURE**

1. *National Instrument 81-101 Mutual Fund Prospectus Disclosure is amended by this Instrument.*
2. *Section 1.1 is amended by repealing the definitions of “commodity pool” and “precious metals fund”.*
3. *Section 1.3 is amended by adding “or” at the end of paragraph (a) and by repealing paragraph (b).*
4. *Section 5.1 is amended by adding the following subsection:*
 - (4) Despite subsection (1), a simplified prospectus for an alternative mutual fund must not be consolidated with a simplified prospectus of another mutual fund if the other mutual fund is not an alternative mutual fund..
5. *Subsection 6.1(3) is amended by adding “Alberta and” before “Ontario”.*
6. *Form 81-101F1 Contents of Simplified Prospectus is amended*
 - (a) *by adding the following under the general instructions:*

(14.1) Subsection 5.1(4) of National Instrument 81-101 states that a simplified prospectus of an alternative mutual fund must not be consolidated with a simplified prospectus of another mutual fund that is not an alternative mutual fund.,
 - (b) *by adding the following after Item 1.1(2) of Part A:*
 - (2.1) If the mutual fund to which the simplified prospectus pertains is an alternative mutual fund, indicate that fact on the front cover.,
 - (c) *by adding the following after Item 1.2(2) of Part A:*
 - (2.1) If the mutual funds to which the document pertains are alternative mutual funds, indicate that fact on the front cover.,
 - (d) *by adding the following after instruction (3) to Item 6 of Part B:*
 - (4) *If the mutual fund is an alternative mutual fund, describe the features of the mutual fund that cause it to fall within the definition of “alternative mutual fund” in National Instrument 81-102 Investment Funds. If those features include*

the use of leverage, disclose the sources of leverage (e.g., cash borrowing, short selling, use of derivatives) that the fund is permitted to use as well as the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have, as a percentage calculated in accordance with section 2.9.1 of National Instrument 81-102 Investment Funds.,

(e) by adding the following after Item 7(10) of Part B:

- (11) In the case of an alternative mutual fund that borrows cash pursuant to subsection 2.6 (2) of National Instrument 81-102 *Investment Funds*
- (a) state that the alternative mutual fund is permitted to borrow cash and the maximum amount the fund is permitted to borrow, and
 - (b) briefly describe how borrowing will be used in conjunction with other strategies of the alternative mutual fund to achieve its investment objectives.,

(f) by adding the following after Item 9(2) of Part B:

- (2.1) In the case of an alternative mutual fund, include disclosure explaining that the alternative mutual fund is permitted to invest in asset classes and use investment strategies that are not permitted for other types of mutual funds and explain how these investment strategies could affect investors' risk of losing money on their investment in the fund.,

(g) by deleting “and” at the end of paragraph (b) of Item 9(7) of Part B,

(h) by replacing “.” at the end of paragraph (c) of Item 9(7) of Part B with “; and”, and

(i) by adding the following after paragraph (c) of Item 9(7) of Part B:

- (d) borrowing arrangements..

7. Form 81-101F2 Contents of Annual Information Form is amended

(a) by adding the following after Item 1.1(2):

- (2.1) If the mutual fund to which the annual information form pertains is an alternative mutual fund, indicate that fact on the front cover., **and**

(b) by adding the following after Item 10.9.1:

10.9.2 Cash Lender

- (1) In the case of an alternative mutual fund, state the name of each person or

company that has entered into an agreement to lend money to the alternative mutual fund or provides a line of credit or similar lending arrangement to the alternative mutual fund.

- (2) State whether any person or company named in subsection (1) is an affiliate or associate of the manager of the alternative mutual fund..

8. Form 81-101F3 Contents of Fund Facts Document is amended

(a) by deleting “and” at the end of paragraph (e) of Item 1 of Part I,

(b) by replacing “risk.” with “risk; and” at the end of paragraph (f) of Item 1 of Part I,

(c) by adding the following after paragraph (f) of Item 1 of Part I:

- (g) if the fund facts document pertains to an alternative mutual fund, textbox disclosure using wording substantially similar to the following:

This mutual fund is an alternative mutual fund. It is permitted to invest in asset classes or use investment strategies that are not permitted for other types of mutual funds.

The specific strategies that differentiate this fund from other types of mutual funds include: *[list the features of the alternative mutual fund that cause it to fall within the definition of “alternative mutual fund” in National Instrument 81-102 Investment Funds].*

[Explain how the listed investment strategies could affect investors’ risk of losing money on their investment in the alternative mutual fund.],

(d) by adding the following after Item 3(1) of Part I:

- (1.1) In the case of an alternative mutual fund that uses leverage,

- (a) disclose the sources of leverage, and
(b) disclose the maximum aggregate exposure to those sources of leverage the alternative mutual fund is permitted to have., **and**

(e) by adding the following after subsection (3) of the instructions to Item 3 of Part I:

- (3.1) *The alternative mutual fund’s aggregate exposure to the sources of*

leverage must be expressed as a percentage calculated in accordance with section 2.9.1 of National Instrument 81-102 Investment Funds..

Transition

9. If a commodity pool, as that term was defined in National Instrument 81-104 *Commodity Pools* on January 2, 2019, has filed a prospectus for which a receipt was granted on or before that date, this Instrument does not apply to that commodity pool until July 4, 2019.

Effective Date

10. This Instrument comes into force on January 3, 2019.

**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. *Subsection 1.3(3) is amended by deleting “National Instrument 81-104 Commodity Pools or” and by replacing “those Instruments” with “that Instrument”.***
- 3. *The Instrument is amended by adding the following section:***

3.12 Disclosure of Use of Leverage - (1) An investment fund that uses leverage must disclose the following information in its financial statements:

- (a) a brief explanation of the sources of leverage including cash borrowing, short selling or use of specified derivatives, used during the reporting period covered by the financial statements,
- (b) the lowest and highest level of the aggregate exposure to those sources of leverage in the period, and
- (c) a brief explanation of the significance to the investment fund of the lowest and highest levels of the aggregate exposure to those sources of leverage.

(2) For the purposes of subsection (1), an investment fund must calculate its aggregate exposure to those sources of leverage in accordance with section 2.9.1 of National Instrument 81-102 *Investment Funds*..

- 4. *Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance is amended***

(a) *in Item 2.3 of Part B by adding the following subsection:*

- (3) An investment fund that uses leverage must disclose,
 - (a) a brief explanation on the sources of leverage including cash borrowing, short selling or use of specified derivatives, used during the reporting period,
 - (b) the lowest and highest level of aggregate exposure to those sources of leverage in the period, and
 - (c) a brief explanation of the significance of the lowest and highest levels of aggregate exposure to those sources of leverage to the investment fund

including the impact of the use of specified derivatives for hedging purposes.,
and

(b) by replacing the Instruction to Item 2.3 of Part B with the following:

INSTRUCTIONS:

(1) Explain the nature of and reasons for changes in the investment fund's performance. Do not only disclose the amount of change in a financial statement item from period to period. Avoid the use of boilerplate wording. Your discussion must be prepared in a manner that will assist a reasonable reader to understand the significant factors that have affected the investment fund's performance.

(2) For the purposes of the disclosure required in Item 2.3(3)(b), an investment fund must calculate its aggregate exposure to sources of leverage in accordance with section 2.9.1 of National Instrument 81-102 Investment Funds.

(3) In discussing the impact of the use of specified derivatives for hedging purposes on the investment fund's calculation of its aggregate exposure to sources of leverage, the fund must discuss by how much the aggregate exposure was reduced by subtracting the notional value of the fund's specified derivatives positions that are hedging transactions as is contemplated in paragraph 2.9.1(2)(c) of National Instrument 81-102 Investment Funds..

5. This Instrument comes into force on January 3, 2019.

**AMENDMENTS TO
NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE
FOR INVESTMENT FUNDS**

1. *National Instrument 81-107 Independent Review Committee for Investment Funds is amended by this Instrument.*
2. *Subsection 5.2(1) is amended*
 - (a) *in paragraph (b) by deleting “or”,*
 - (b) *in paragraph (c) replacing “.” with “; or”, and*
 - (c) *by the adding the following paragraph:*
 - (d) *a transaction in which an investment fund intends to borrow cash from a person or company that is an associate or affiliate of the investment fund manager..*
3. This Instrument comes into force on January 3, 2019.

**CHANGES TO COMMENTARY TO
NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE
FOR INVESTMENT FUNDS**

1. *The Commentary to National Instrument 81-107 Independent Review Committee for Investment Funds is changed by this Document.*
2. *Section 1 of the Commentary to Section 5.2 of the Instrument is changed by adding “Part 2 and” after “Part 6 of this Instrument or”.*
3. This change becomes effective on January 3, 2019.

**AMENDMENTS TO
MULTILATERAL INSTRUMENT 11-102 *PASSPORT SYSTEM***

- 1. *Multilateral Instrument 11-102 Passport System is amended by this Instrument.***
- 2. *Appendix D – Equivalent Provisions is amended by replacing “Commodity Pools – NI 81-104” with “Alternative Mutual Funds – NI 81-104”.***
- 3. This Instrument comes into force on January 3, 2019.**

**WITHDRAWAL OF
COMPANION POLICY 81-104CP TO
NATIONAL INSTRUMENT 81-104 *COMMODITY POOLS***

1. *Companion Policy 81-104CP to National Instrument 81-104 Commodity Pools is withdrawn.*
2. This document becomes effective on January 3, 2019.

