

NOVA SCOTIA SECURITIES COMMISSION

**RULE 81-102 (AMENDMENT)
MUTUAL FUNDS**

-AND-

**AMENDMENTS TO
NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS**

-AND-

**CHANGES TO
COMPANION POLICY 81-102CP TO NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS**

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;
3. Amendments to National Instrument 81-102 *Mutual Funds* and Changes to Companion Policy 81-102CP to National Instrument 81-102 *Mutual Funds*, copies of which are attached hereto and are hereinafter called the "Rule" and "Companion Policy" respectively, have been made a rule by one or more of the Canadian securities regulatory authorities; and
4. 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:

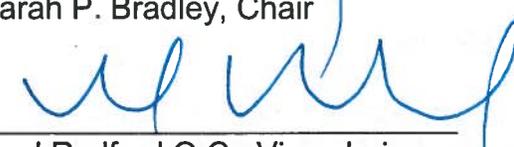
- (a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;

- (b) pursuant to the authority contained in section 19 of the Act and subject to publication on the Commission's website, issues the Companion Policy as a policy statement of the Commission; and
- (c) declares that the rule approved and made pursuant to clause (a) and the issuance of the policy statement pursuant to clause (b) shall both take effect on **September 22, 2014**, 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 and the policy statement shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and 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 25th day of June, 2014.



Sarah P. Bradley, Chair



Paul Radford Q.C., Vice-chair

Attachments

**Amendments to
National Instrument 81-102 *Mutual Funds***

1. *National Instrument 81-102 Mutual Funds is amended by this Instrument.*
2. *The title is amended by replacing “Mutual Funds” with “Investment Funds”.*
3. *Section 1.1 is amended*
 - (a) *in the definition of “borrowing agent” by replacing “a mutual fund” with “an investment fund” wherever it occurs,*
 - (b) *in the definition of “clone fund” by replacing “a mutual fund” with “an investment fund” and by replacing “another mutual fund” with “another investment fund”,*
 - (c) *in the definition of “currency cross hedge” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs,*
 - (d) *by replacing the definition of “custodian” with the following:*

“custodian” means the institution appointed by an investment fund to hold portfolio assets of the investment fund;
 - (e) *by adding the following definition:*

“dealer managed investment fund” means an investment fund the portfolio adviser of which is a dealer manager;
 - (f) *by repealing the definition of “dealer managed mutual fund”,*
 - (g) *in the definition of “designated rating” by replacing “mutual fund” with “investment fund”,*
 - (h) *in the definition of “floating rate evidence of indebtedness” by replacing paragraph (b) with the following:*
 - (b) the evidence of indebtedness was issued, or is fully and unconditionally guaranteed as to principal and interest, by any of the following:
 - (i) the government of Canada or the government of a jurisdiction of Canada;
 - (ii) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has a designated rating;

(i) **in the definition of “fundamental investment objectives” by replacing “a mutual fund” with “an investment fund”, by replacing “the mutual fund” with “the investment fund” wherever it occurs, and by replacing “other mutual funds” with “other investment funds”,**

(j) **by adding the following definitions:**

“investment fund conflict of interest investment restrictions” means the provisions of securities legislation that are referred to in Appendix D;

“investment fund conflict of interest reporting requirements” means the provisions of securities legislation that are referred to in Appendix E;

(k) **by replacing the definition of “investor fees” with the following:**

“investor fees” means, in connection with the purchase, conversion, holding, transfer or redemption of securities of an investment fund, all fees, charges and expenses that are or may become payable by a securityholder of the investment fund to,

(a) in the case of a mutual fund, a member of the organization of the mutual fund other than a member of the organization acting solely as a participating dealer, and

(b) in the case of a non-redeemable investment fund, the manager of the non-redeemable investment fund;

(l) **in the definition of “long position” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs,**

(m) **in the definition of “management expense ratio” by replacing “a mutual fund” with “an investment fund”,**

(n) **by replacing the definition of “manager” with the following:**

“manager” means an investment fund manager;

(o) **by repealing the definitions of “mutual fund conflict of interest investment restrictions” and “mutual fund conflict of interest reporting requirements”,**

(p) **in the following definitions by replacing “a mutual fund” with “an investment fund”:**

(i) “non-resident sub-adviser”;

(ii) “performance data”,

- (q) *in the definition of “portfolio adviser” by replacing “mutual fund” with “investment fund” wherever it occurs,*
- (r) *in the definition of “portfolio asset” by replacing “a mutual fund” with “an investment fund”,*
- (s) *in the definition of “purchase” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund”,*
- (t) *by repealing the definition of “redemption payment date”,*
- (u) *in the definition of “report to securityholders” by replacing “a mutual fund” with “an investment fund”,*
- (v) *by replacing the definition of “sales communication” with the following:*

“sales communication” means a communication relating to, and by, an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, a participating dealer or a person or company providing services to any of them, that

- (a) is made
 - (i) to a securityholder of the investment fund or participant in the asset allocation service, or
 - (ii) to a person or company that is not a securityholder of the investment fund or participant in the asset allocation service, to induce the purchase of securities of the investment fund or the use of the asset allocation service, and
- (b) in the case of an investment fund, is not contained in any of the following documents of the investment fund:
 1. A prospectus or preliminary or *pro forma* prospectus.
 2. An annual information form or preliminary or *pro forma* annual information form.
 3. A fund facts document or preliminary or *pro forma* fund facts document.
 4. Financial statements, including the notes to the financial statements and the auditor’s report on the financial statements.
 5. A trade confirmation.
 6. A statement of account.
 7. Annual or interim management report of fund performance;

(w) by adding the following definition:

“scholarship plan” has the meaning ascribed to that term in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

(x) in the definition of “short position” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs,

(y) in the definition of “specified dealer” by replacing “, or” with “;”,

(z) in the definition of “sub-custodian” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs, and

(aa) in the definition of “underlying market exposure” by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund”.

4. (1) Section 1.2 is amended

(a) by renumbering it as subsection 1.2(1),

(b) by replacing “; and” with “,” at the end of paragraph (a),

(c) by adding the following paragraph immediately after paragraph (a):

(a.1) a non-redeemable investment fund that is a reporting issuer, and, **and**

(d) in paragraph (b) by replacing “a mutual fund” with “an investment fund” and by replacing “paragraph (a)” with “paragraphs (a) and (a.1)”.

(2) Section 1.2, as amended by subsection (1), is amended by adding the following subsections:

(2) Despite subsection (1), this Instrument does not apply to a scholarship plan.

(3) Despite subsection (1), in Québec, in respect of investment funds organized under an Act to establish the *Fonds de solidarité des travailleurs du Québec (F.T.Q.)* (chapter F-3.2.1), an Act to establish *Fondaction, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi* (chapter F-3.1.2), or an Act constituting *Capital régional et coopératif Desjardins* (chapter C-6.1), the following requirements apply :

(a) sections 2.12 to 2.17;

(b) Part 6;

- (c) Part 15, except for paragraph 15.8(2)(b);
- (d) Part 19;
- (e) Part 20.

(4) For greater certainty, in British Columbia, if a provision of this Instrument conflicts or is inconsistent with a provision of the *Employee Investment Act* (British Columbia) or the *Small Business Venture Capital Act* (British Columbia), the provision of the Employee Investment Act or the Small Business Venture Capital Act, as the case may be, prevails..

5. Section 1.3 is amended

- (a) **by replacing** “a mutual fund” **with** “an investment fund”,
- (b) **by replacing** “separate mutual fund” **with** “separate investment fund”, **and**
- (c) **by replacing** “A mutual fund” **with** “An investment fund”.

6. Section 2.1 is amended by replacing “shall” **with** “must” **wherever it occurs.**

7. Section 2.2 is amended

(a) **by replacing subsection (1) with the following:**

(1) An investment fund must not purchase a security of an issuer

(a) if, immediately after the purchase, the investment fund would hold securities representing more than 10% of

- (i) the votes attaching to the outstanding voting securities of the issuer; or
- (ii) the outstanding equity securities of the issuer; or

(b) for the purpose of exercising control over, or management of, the issuer.,

- (b) **by replacing** “a mutual fund” **with** “an investment fund” **wherever it occurs,**
- (c) **by replacing** “the mutual fund” **with** “the investment fund” **wherever it occurs,**
and
- (d) **by replacing** “shall” **with** “must” **wherever it occurs.**

8. (1) Section 2.3 is amended

- (a) **by renumbering it as subsection 2.3(1), and**
- (b) **by replacing** “shall” **with** “must”.

(2) Section 2.3, as amended by subsection (1), is amended by adding the following subsection:

(2) A non-redeemable investment fund must not do any of the following:

- (a) purchase real property;
- (b) purchase a mortgage, other than a guaranteed mortgage;
- (c) purchase an interest in a loan syndication, or loan participation, if the purchase would require the non-redeemable investment fund to assume any responsibilities in administering the loan in relation to the borrower..

9. Section 2.4 is amended by replacing “shall” with “must” wherever it occurs.

10. The heading in section 2.5 is amended by replacing “Mutual Funds” with “Investment Funds”.

11. (1) Subsection 2.5(1) is amended

- (a) **by replacing “a mutual fund” with “an investment fund”,**
- (b) **by replacing “another mutual fund” with “another investment fund”, and**
- (c) **by replacing “other mutual fund” with “other investment fund” wherever it occurs.**

(2) Subsection 2.5(2) is amended

(a) by replacing “A mutual fund shall” with “An investment fund must”,

(b) by replacing “another mutual fund” with “another investment fund”,

(c) by replacing paragraph (a) with the following:

- (a) if the investment fund is a mutual fund, the other investment fund is a mutual fund that is subject to this Instrument and offers or has offered securities under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*,
- (a.1) if the investment fund is a non-redeemable investment fund, one or both of the following apply:
 - (i) the other investment fund is subject to this Instrument;
 - (ii) the other investment fund complies with the provisions of this Instrument applicable to a non-redeemable investment fund,

(d) in paragraph (b) by replacing “other mutual fund” with “other investment fund” and by replacing “other mutual funds” with “other investment funds”,

(e) by replacing paragraph (c) with the following:

(c) if the investment fund is a mutual fund, the investment fund and the other investment fund are reporting issuers in the local jurisdiction,

(c.1) if the investment fund is a non-redeemable investment fund, the other investment fund is a reporting issuer in a jurisdiction in which the investment fund is a reporting issuer., **and**

(f) in paragraphs (d), (e) and (f) by replacing “the mutual fund” with “the investment fund” wherever it occurs and by replacing “other mutual fund” with “other investment fund” wherever it occurs.

(3) Subsection 2.5(3) is amended

(a) by replacing “Paragraphs (2)(a) and (c)” with “Paragraphs (2)(a), (a.1), (c) and (c.1)”;

(b) in paragraph (a) by replacing “a mutual fund” with “an investment fund”, and

(c) in paragraph (b) by replacing “mutual fund” with “investment fund” wherever it occurs.

(4) Subsection 2.5(4) is amended

(a) by replacing “other mutual fund” with “other investment fund”, and

(b) by replacing “a mutual fund” with “an investment fund”.

(5) Subsection 2.5(5) is amended by replacing “a mutual fund” with “an investment fund”.

(6) Subsection 2.5(6) is amended

(a) by replacing “A mutual fund” with “An investment fund”,

(b) by replacing “another mutual fund” with “another investment fund”,

(c) by replacing “shall” with “must”,

(d) by replacing “other mutual fund” with “other investment fund”, and

(e) by replacing “the mutual fund” with “the investment fund”.

(7) Subsection 2.5(7) is amended

- (a) *by replacing* “The mutual fund” *with* “The investment fund”,
- (b) *by replacing* “the mutual fund” *with* “the investment fund”,
- (c) *by replacing* “a mutual fund” *with* “an investment fund”, *and*
- (d) *by replacing* “another mutual fund” *with* “another investment fund”.

12. Section 2.6 is amended

- (a) *by replacing* “A mutual fund shall not” *with* “An investment fund must not,”
- (b) *in paragraph (a) by adding* “in the case of a mutual fund,” *before* “borrow”,
- (c) *in paragraph (b) by adding* “in the case of a mutual fund,” *before* “purchase”,
- (d) *in paragraph (c) by adding* “in the case of a mutual fund,” *before* “sell”, *and*
- (e) *in paragraph (d) by replacing* “mutual fund” *with* “investment fund”.

13. Section 2.7 is amended by replacing “shall” with “must” wherever it occurs.

14. Section 2.8 is amended by replacing “shall” with “must” wherever it occurs.

15. (1) Section 2.9 is amended by renumbering it as subsection 2.9(1).

(2) Section 2.9, as amended by subsection (1), is amended by adding the following subsection:

- (2) Section 2.2 does not apply to the use of specified derivatives by a non-redeemable investment fund for hedging purposes..

16. Section 2.10 is amended

- (a) *by replacing* “a mutual fund” *with* “an investment fund” *wherever it occurs*,
- (b) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs*,
- (c) *by replacing* “shall” *with* “must” *wherever it occurs*, *and*
- (d) *by replacing* “A mutual fund” *with* “An investment fund” *wherever it occurs*.

17. The heading in section 2.11 is amended by replacing “a Mutual Fund” with “an Investment Fund”.

18. (1) Subsection 2.11(1) is amended

- (a) *by replacing* “A mutual fund” *with* “An investment fund”,

- (b) *by replacing* “a mutual fund” *with* “an investment fund”,
 - (c) *by replacing* “unless” *with* “, unless,”,
 - (d) *by replacing paragraph (a) with the following:*
 - (a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for a mutual fund intending to engage in the activity;
 - (a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:
 - (i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, intending to engage in the activity;
 - (ii) the date on which the activity is intended to begin; and, *and*
 - (e) *in paragraph (b) by replacing* “mutual fund” *with* “investment fund”, *and by replacing* “required for mutual funds intending to engage in the activity” *with* “referred to in paragraph (a) or (a.1), as applicable”.
- (2) *Subsection 2.11(2) is amended by adding* “, other than an exchange-traded mutual fund that is not in continuous distribution,” *after* “A mutual fund”.
- (3) *Section 2.11 is amended by adding the following subsection:*
- (3) Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception has contained the disclosure referred to in paragraph (1)(a.1)..

19. Section 2.12 is amended

- (a) *by replacing* “a mutual fund” *with* “an investment fund”,
- (b) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs*,
- (c) *by replacing* “The mutual fund” *with* “The investment fund”,
- (d) *by replacing item 12 of subsection (1) with the following:*
 - 12. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions and not yet returned to it or sold by the investment fund in repurchase transactions under section 2.13 and not yet repurchased does not exceed 50% of the net asset value of the investment fund.,

(e) *by replacing* “A mutual fund” *with* “An investment fund” *wherever it occurs, and*

(f) *by replacing* “shall” *with* “must” *wherever it occurs.*

20. Section 2.13 is amended

(a) *by replacing* “a mutual fund” *with* “an investment fund”,

(b) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs,*

(c) *by replacing item 11 of subsection (1) with the following:*

11. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions under section 2.12 and not yet returned to it or sold by the investment fund in repurchase transactions and not yet repurchased does not exceed 50% of the net asset value of the investment fund., *and*

(d) *by replacing* “A mutual fund” *with* “An investment fund”.

21. Section 2.14 is amended

(a) *by replacing* “a mutual fund” *with* “an investment fund”, *and*

(b) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs.*

22. Section 2.15 is amended

(a) *by replacing* “a mutual fund” *with* “an investment fund” *wherever it occurs,*

(b) *by replacing* “shall” *with* “must” *wherever it occurs,*

(c) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs,*

(d) *in subsection (1) by replacing* “in administering” *with* “to administer”, *and*

(e) *in paragraph (4)(c) by replacing* “the mutual fund’s” *with* “the investment fund’s”.

23. Section 2.16 is amended

(a) *by replacing* “A mutual fund” *with* “An investment fund”,

(b) *by replacing* “shall” *with* “must” *wherever it occurs,*

(c) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs, and*

(d) *by replacing* “a mutual fund” *with* “an investment fund”.

24. Section 2.17 is replaced with the following:

2.17 Commencement of Securities Lending, Repurchase and Reverse Repurchase Transactions by an Investment Fund

- (1) An investment fund must not enter into securities lending, repurchase or reverse repurchase transactions unless,
 - (a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for mutual funds entering into those types of transactions;
 - (b) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:
 - (i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, entering into those types of transactions;
 - (ii) the date on which the investment fund intends to begin entering into those types of transactions; and
 - (c) the investment fund provides to its securityholders, at least 60 days before it begins entering into those types of transactions, written notice that discloses its intent to begin entering into those types of transactions and the disclosure referred to in paragraph (a) or (b), as applicable.
- (2) Paragraph (1)(c) does not apply to a mutual fund that has entered into reverse repurchase agreements as permitted by a decision of the securities regulatory authority or regulator.
- (3) Paragraph (1)(c) does not apply to a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, if each prospectus of the mutual fund filed since its inception contains the disclosure referred to in paragraph (1)(a).
- (4) Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception contains the disclosure referred to in paragraph (1)(b)..

25. Section 2.18 is amended by adding the following subsection:

(3) A non-redeemable investment fund must not describe itself as a “money market fund”..

26. Section 3.1 is amended by replacing “No person or company shall” with “A person or company must not”.

27. The following provisions are amended by replacing “shall” with “must”:

(a) *subsection 3.1(2);*

(b) *section 3.2.*

28. Subsection 3.3(1) is amended

(a) *by replacing “None of the costs” with “The costs”, and*

(b) *by replacing “shall” with “must not”.*

29. Section 4.1 is amended

(a) *by replacing “mutual fund” with “investment fund” wherever it occurs,*

(b) *by replacing “shall” with “must” wherever it occurs, and*

(c) *in subsection (5) by replacing “corresponding provisions contained in securities legislation” with “provisions of securities legislation that are”.*

30. Section 4.2 is amended

(a) *by replacing “A mutual fund shall” with “An investment fund must”,*

(b) *by replacing “the mutual fund” with “the investment fund” wherever it occurs, and*

(c) *by replacing “a mutual fund” with “an investment fund”.*

31. Section 4.3 is amended

(a) *by replacing “a mutual fund” with “an investment fund” wherever it occurs,*

(b) *in subsection (1) by adding “:” after “is”,*

(c) *by replacing “the mutual fund” with “the investment fund” wherever it occurs, and*

(d) *by replacing “another mutual fund” with “another investment fund” wherever it occurs.*

32. Section 4.4 is amended

- (a) *by replacing “a mutual fund” with “an investment fund” wherever it occurs,*
- (b) *by replacing “shall” with “must” wherever it occurs,*
- (c) *by replacing “the mutual fund” with “the investment fund” wherever it occurs,*
- (d) *by replacing “A mutual fund” with “An investment fund” wherever it occurs, and*
- (e) *in subsection (5) by adding “any of the following:” after “by” and by deleting “or” at the end of paragraph (a).*

33. (1) Section 5.1 is amended

- (a) *by renumbering it as subsection 5.1(1),*
- (b) *by replacing “a mutual fund” with “an investment fund”,*
- (c) *by adding “the occurrence of each of the following:” after “before”,*
- (d) *by replacing “the mutual fund” with “the investment fund” wherever it occurs,*
- (e) *by replacing “another mutual fund” with “another issuer” wherever it occurs,*
- (f) *by replacing “other mutual fund” with “other issuer” wherever it occurs,*
- (g) *by deleting “or” at the end of subparagraph (f)(ii),*
- (h) *by replacing “.” with “;” at the end of paragraph (g), and*
- (i) *by adding the following paragraph:*

(h) the investment fund implements any of the following:

- (i) in the case of a non-redeemable investment fund, a restructuring into a mutual fund;
- (ii) in the case of a mutual fund, a restructuring into a non-redeemable investment fund;
- (iii) a restructuring into an issuer that is not an investment fund..

(2) Section 5.1, as amended by subsection (1), is amended by adding the following subsection:

(2) An investment fund must not bear any of the costs or expenses associated with a restructuring referred to in paragraph (1)(h)..

34. Section 5.2 is amended

- (a) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs*,
- (b) *by replacing* “section 5.1” *with* “subsection 5.1(1)” *wherever it occurs*,
- (c) *by replacing* “shall” *with* “must” *wherever it occurs*, *and*
- (d) *by replacing* “a mutual fund” *with* “an investment fund” *wherever it occurs*.

35. (1) Subsection 5.3(1) is amended

- (a) *by replacing* “section 5.1” *with* “subsection 5.1(1)”,
- (b) *by replacing* “a mutual fund” *with* “an investment fund”,
- (c) *by replacing* “paragraphs 5.1(a)” *with* “paragraphs 5.1(1)(a)” *wherever it occurs*,
- (d) *in paragraph (a) by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs*,
- (e) *in subparagraph (a)(iii) by adding* “at least” *after* “sent”,
- (f) *in paragraph (b) by replacing* “if” *with* “if, in the case of a mutual fund,” *and*
- (g) *in subparagraph (b)(iii) by adding* “at least” *after* “sent”.

(2) Subsection 5.3(2) is replaced with the following:

- (2) Despite subsection 5.1(1), the approval of securityholders of an investment fund is not required to be obtained for a change referred to in paragraph 5.1(1)(f) if either of the following paragraphs apply:
 - (a) all of the following apply:
 - (i) the independent review committee of the investment fund has approved the change under subsection 5.2(2) of NI 81-107;
 - (ii) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Instrument and NI 81-107 apply and that is managed by the manager, or an affiliate of the manager, of the investment fund;
 - (iii) the reorganization or transfer of assets of the investment fund complies with the criteria in paragraphs 5.6(1)(a), (b), (c), (d), (g), (h), (i), (j) and (k);
 - (iv) the prospectus of the investment fund discloses that, although the approval of securityholders may not be obtained before making the change, securityholders will be sent a written notice at least 60 days before the effective date of the change;

- (v) the notice referred to in subparagraph (iv) to securityholders is sent at least 60 days before the effective date of the change;
- (b) all of the following apply:
- (i) the investment fund is a non-redeemable investment fund that is being reorganized with, or its assets are being transferred to, a mutual fund that is
 - (A) a mutual fund to which this Instrument and NI 81-107 apply,
 - (B) managed by the manager, or an affiliate of the manager, of the investment fund,
 - (C) not in default of any requirement of securities legislation, and
 - (D) a reporting issuer in the local jurisdiction and the mutual fund has a current prospectus in the local jurisdiction;
 - (ii) the transaction is a tax-deferred transaction under subsection 85(1) of the ITA;
 - (iii) the securities of the investment fund do not give securityholders of the investment fund the right to request that the investment fund redeem the securities;
 - (iv) since its inception, there has been no market through which securityholders of the investment fund could sell securities of the investment fund;
 - (v) every prospectus of the investment fund discloses that
 - (A) securityholders of the investment fund, other than the manager, promoter or an affiliate of the manager or promoter, will cease to be securityholders of the investment fund within 30 months following the completion of the initial public offering by the investment fund, and
 - (B) the investment fund will, within 30 months following the completion of the initial public offering of the investment fund, undertake a reorganization with, or transfer its assets to, a mutual fund that is managed by the manager of the investment fund or by an affiliate of the manager of the investment fund;

- (vi) the mutual fund bears none of the costs and expenses associated with the transaction;
- (vii) the reorganization or transfer of assets of the investment fund complies with subparagraphs 5.3(2)(a)(i), (iv) and (v) and paragraphs 5.6(1)(d) and (k)..

36. The heading in section 5.3.1 is amended by replacing “the Mutual Fund” with “an Investment Fund”.

37. Section 5.3.1 is amended

- (a) **by replacing “the mutual fund may” with “an investment fund must”, and**
- (b) **in paragraphs (a) and (b) by replacing “mutual fund” with “investment fund” wherever it occurs.**

38. Section 5.4 is amended

- (a) **by replacing “a mutual fund” with “an investment fund”,**
- (b) **by replacing “section 5.1” with “subsection 5.1(1)”,**
- (c) **by replacing “shall” with “must” wherever it occurs,**
- (d) **in subsection (1) by replacing “not less than” with “at least”,**
- (e) **by replacing “paragraphs 5.1(a)” with “paragraphs 5.1(1)(a)”,**
- (f) **by replacing “the mutual fund” with “the investment fund”, and**
- (g) **by replacing “the mutual fund’s” with “the investment fund’s”.**

39. Section 5.5 is amended

- (a) **by replacing “a mutual fund” with “an investment fund” wherever it occurs,**
- (b) **in subsection (1) by adding the following paragraph immediately after paragraph (a):**
 - (a.1) a change of control of the manager of an investment fund occurs;
- (c) **by replacing “the mutual fund” with “the investment fund” wherever it occurs,**
- (d) **by replacing “another mutual fund” with “another issuer”, and**
- (e) **by repealing subsection (2).**

40. (1) Subsection 5.6(1) is replaced with the following:

- (1) Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all of the following paragraphs apply:
 - (a) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Instrument applies and that
 - (i) is managed by the manager, or an affiliate of the manager, of the investment fund,
 - (ii) a reasonable person would consider to have substantially similar fundamental investment objectives, valuation procedures and fee structure as the investment fund,
 - (iii) is not in default of any requirement of securities legislation, and
 - (iv) is a reporting issuer in the local jurisdiction and, if it is a mutual fund, also has a current prospectus in the local jurisdiction;
 - (b) the transaction is a “qualifying exchange” within the meaning of section 132.2 of the ITA or is a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA;
 - (c) the transaction contemplates the wind-up of the investment fund as soon as reasonably possible following the transaction;
 - (d) the portfolio assets of the investment fund to be acquired by the other investment fund as part of the transaction
 - (i) may be acquired by the other investment fund in compliance with this Instrument, and
 - (ii) are acceptable to the portfolio adviser of the other investment fund and consistent with the other investment fund’s fundamental investment objectives;
 - (e) the transaction is approved
 - (i) by the securityholders of the investment fund in accordance with paragraph 5.1(1)(f), unless subsection 5.3(2) applies, and
 - (ii) if required, by the securityholders of the other investment fund in accordance with paragraph 5.1(1)(g);
 - (f) the materials sent to securityholders of the investment fund in connection with the approval under paragraph 5.1(1)(f) include

- (i) a circular that, in addition to other requirements prescribed by law, describes the proposed transaction, the investment fund into which the investment fund will be reorganized, the income tax considerations for the investment funds participating in the transaction and their securityholders, and, if the investment fund is a corporation and the transaction involves its shareholders becoming securityholders of an investment fund that is established as a trust, a description of the material differences between being a shareholder of a corporation and being a securityholder of a trust,
- (ii) if the other investment fund is a mutual fund, the most recently filed fund facts document for the other investment fund, and
- (iii) a statement that securityholders may, in respect of the reorganized investment fund,
 - (A) obtain all of the following documents at no cost by contacting the reorganized investment fund at an address or telephone number specified in the statement:
 - (I) if the reorganized investment fund is a mutual fund, the current prospectus;
 - (II) the most recently filed annual information form, if one has been filed;
 - (III) as applicable, the most recently filed fund facts document;
 - (IV) the most recently filed annual financial statements and interim financial reports;
 - (V) the most recently filed annual and interim management reports of fund performance, or
 - (B) access those documents at a website address specified in the statement;
- (g) the investment fund has complied with Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure* in connection with the making of the decision to proceed with the transaction by the board of directors of the manager of the investment fund or of the investment fund;
- (h) the investment funds participating in the transaction bear none of the costs and expenses associated with the transaction;
- (i) if the investment fund is a mutual fund, securityholders of the investment fund continue to have the right to redeem securities of the investment fund

up to the close of business on the business day immediately before the effective date of the transaction;

- (j) if the investment fund is a non-redeemable investment fund, all of the following apply:
 - (i) the investment fund issues and files a news release that discloses the transaction;
 - (ii) securityholders of the investment fund may redeem securities of the investment fund at a date that is after the date of the news release referred to in subparagraph (i) and before the effective date of the transaction;
 - (iii) the securities submitted for redemption in accordance with subparagraph (ii) are redeemed at a price equal to their net asset value per security on the redemption date;
- (k) the consideration offered to securityholders of the investment fund for the transaction has a value that is equal to the net asset value of the investment fund calculated on the date of the transaction.

(1.1) Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all the conditions in paragraph 5.3(2)(b) are satisfied and the independent review committee of the mutual fund involved in the transaction has approved the transaction in accordance with subsection 5.2(2) of NI 81-107..

(2) Subsection 5.6(2) is amended by

- (a) ***by replacing*** “A mutual fund” ***with*** “An investment fund”,
- (b) ***by replacing*** “shall” ***with*** “must”,
- (c) ***by replacing*** “the mutual fund” ***with*** “the investment fund” ***wherever it occurs, and***
- (d) ***by replacing*** “a mutual fund” ***with*** “an investment fund”.

41. (1) Subsection 5.7(1) is amended

- (a) ***by replacing*** “shall” ***with*** “must”,
- (b) ***by replacing*** “subsection 5.5(2)” ***with*** “(a.1)”,
- (c) ***by replacing*** “the mutual fund” ***with*** “the investment fund” ***wherever it occurs,***
- (d) ***in subparagraph(a)(iv) by adding*** “or regulator” ***after*** “authority”,

(e) *by replacing subparagraph (b)(ii) with the following:*

- (ii) details of the total annual returns of the investment fund and, if the other issuer is an investment fund, the other issuer for each of the previous five years., *and*

(f) *by replacing subparagraph (b)(iii) with the following:*

- (iii) a description of the differences between, as applicable, the fundamental investment objectives, investment strategies, valuation procedures and fee structure of the investment fund and the other issuer and any other material differences between the investment fund and the other issuer, and .

(2) Subsection 5.7(2) is amended

(a) *by replacing “A mutual fund” with “An investment fund”,*

(b) *by replacing “shall” with “must”,*

(c) *by replacing “the mutual fund” with “the investment fund” wherever it occurs, and*

(d) *by replacing “situate” with “situated”.*

(3) Subsection 5.7(3) is amended

(a) *by replacing “A mutual fund” with “An investment fund”,*

(b) *by replacing “the mutual fund” with “the investment fund” wherever it occurs, and*

(c) *by replacing “situate” with “situated”.*

42. Section 5.8 is amended

(a) *in subsection (1) by replacing “No person or company that is a manager of a mutual fund may” with “A person or company must not” and by replacing “the mutual fund” with “an investment fund”,*

(b) *in paragraph (1)(a) by replacing “the mutual fund” with “the investment fund”,*

(c) *in subsection (2) by replacing “No mutual fund shall” with “A mutual fund must not”, and*

(d) *in subsection (3) by replacing “shall” with “must”.*

43. The Instrument is amended by adding the following section:

5.8.1 Termination of a Non-Redeemable Investment Fund

- (1) A non-redeemable investment fund must not terminate unless the investment fund first issues and files a news release that discloses the termination.
- (2) A non-redeemable investment fund must not terminate earlier than 15 days or later than 90 days after the filing of the news release under subsection (1).
- (3) Subsections (1) and (2) do not apply in respect of a transaction referred to in paragraph 5.1(1)(f)..

44. Section 5.9 is amended by replacing “mutual fund” with “investment fund” wherever it occurs.

45. Section 6.1 is amended

- (a) *by replacing “a mutual fund” with “an investment fund” wherever it occurs,*
- (b) *by replacing “shall” with “must” wherever it occurs,*
- (c) *by replacing “the mutual fund” with “the investment fund” wherever it occurs,*
- (d) *in subsection (3) by deleting “, for each appointment,”,*
- (e) *by replacing paragraph (3)(a) with the following:*
 - (a) in the case of an appointment by the custodian, the investment fund consents in writing to the appointment,
 - (a.1) in the case of an appointment by a sub-custodian, the investment fund and the custodian of the investment fund consent in writing to the appointment,,
- (f) *in paragraph (3)(b) by replacing “a person or company” with “an entity” and by replacing “;” with “,”,*
- (g) *in paragraph (3)(c) by replacing “;” with “,”,*
- (h) *in subsection (4) by replacing “paragraph (3)(a)” with “paragraphs (3)(a) and (a.1)” and by replacing “persons or companies” with “entities”, and*
- (i) *in subsection (5) by replacing “each person or company that is appointed sub-custodian” with “all entities that are appointed sub-custodians”.*

46. Section 6.2 is replaced with the following:

6.2 Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada – If portfolio assets are held in Canada by a custodian or sub-custodian, the custodian or sub-custodian must be one of the following:

1. a bank listed in Schedule I, II or III of the *Bank Act* (Canada);

2. a trust company that is incorporated under the laws of Canada or a jurisdiction and licensed or registered under the laws of Canada or a jurisdiction, and that has equity, as reported in its most recent audited financial statements, of not less than \$10,000,000;
3. a company that is incorporated under the laws of Canada or of a jurisdiction, and that is an affiliate of a bank or trust company referred to in paragraph 1 or 2, if either of the following applies:
 - (a) the company has equity, as reported in its most recent audited financial statements that have been made public, of not less than \$10,000,000;
 - (b) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund..

47. Section 6.3 is replaced with the following:

6.3 Entities Qualified to Act as Sub-Custodian for Assets Held outside Canada –
 If portfolio assets are held outside of Canada by a sub-custodian, the sub-custodian must be one of the following:

1. an entity referred to in section 6.2;
2. an entity that
 - (a) is incorporated or organized under the laws of a country, or a political subdivision of a country, other than Canada,
 - (b) is regulated as a banking institution or trust company by the government, or an agency of the government, of the country under the laws of which it is incorporated or organized, or a political subdivision of that country, and
 - (c) has equity, as reported in its most recent audited financial statements, of not less than the equivalent of \$100,000,000;
3. an affiliate of an entity referred to in paragraph 1 or 2 if either of the following applies:
 - (a) the affiliate has equity, as reported in its most recent audited financial statements that have been made public, of not less than the equivalent of \$100,000,000;
 - (b) the entity referred to in paragraph 1 or 2 has assumed responsibility for all of the custodial obligations of the affiliate for that investment fund..

48. Section 6.4 is amended

(a) by replacing subsection (1) with the following:

- (1) All custodian agreements and sub-custodian agreements of an investment fund must provide for
 - (a) the location of portfolio assets,
 - (b) any appointment of a sub-custodian,
 - (c) requirements concerning lists of sub-custodians,
 - (d) the method of holding portfolio assets,
 - (e) the standard of care and responsibility for loss, and
 - (f) requirements concerning review and compliance reports.,

(b) in subsection (2) by replacing “a mutual fund shall” with “an investment fund must” and by replacing “the mutual fund” with “the investment fund”,

(c) by adding the following subsection immediately after subsection (2):

- (2.1) An agreement referred to under subsections (1) and (2) must comply with the requirements of this Part., *and*

(d) by replacing subsection (3) with the following:

- (3) A custodian agreement or sub-custodian agreement concerning the portfolio assets of an investment fund must not
 - (a) provide for the creation of any security interest on the portfolio assets of the investment fund except for a good faith claim for payment of the fees and expenses of the custodian or a sub-custodian for acting in that capacity or to secure the obligations of the investment fund to repay borrowings by the investment fund from the custodian or a sub-custodian for the purpose of settling portfolio transactions; or
 - (b) contain a provision that would require the payment of a fee to the custodian or a sub-custodian for the transfer of the beneficial ownership of portfolio assets of the investment fund, other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian..

49. Section 6.5 is replaced with the following:

6.5 Holding of Portfolio Assets and Payment of Fees

- (1) Except as provided in subsections (2) and (3) and sections 6.8, 6.8.1 and 6.9, portfolio assets of an investment fund not registered in the name of the

investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund, or any of their respective nominees, with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

- (2) The custodian or a sub-custodian of an investment fund, or an applicable nominee, must segregate portfolio assets issued in bearer form to show that the beneficial ownership of the property is vested in the investment fund.
- (3) The custodian or a sub-custodian of an investment fund may deposit portfolio assets of the investment fund with a depository, or a clearing agency, that operates a book-based system.
- (4) The custodian or a sub-custodian of an investment fund arranging for the deposit of portfolio assets of the investment fund with, and their delivery to, a depository, or clearing agency, that operates a book-based system must ensure that the records of any of the applicable participants in that book-based system or of the custodian contain an account number or other designation sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.
- (5) An investment fund must not pay a fee to the custodian or a sub-custodian of the investment fund for the transfer of beneficial ownership of portfolio assets of the investment fund other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian..

50. Section 6.6 is amended

- (a) **by replacing** “a mutual fund” **with** “an investment fund”,
- (b) **by replacing** “the mutual fund” **with** “the investment fund” **wherever it occurs**,
- (c) **by replacing** “shall” **with** “must” **wherever it occurs**,
- (d) **by replacing** “A mutual fund” **with** “An investment fund” **wherever it occurs**,
- (e) **in subsection (3) by replacing** “a custodian or sub-custodian” **with** “the custodian or a sub-custodian” **and by replacing** “described in” **with** “imposed by”, **and**
- (f) **in subsection (4) by replacing** “a custodian or sub-custodian” **with** “the custodian or a sub-custodian”.

51. Section 6.7 is amended

- (a) **by replacing** “a mutual fund” **with** “an investment fund” **wherever it occurs**,
- (b) **by replacing** “shall” **with** “must” **wherever it occurs**,
- (c) **by replacing** “the mutual fund” **with** “the investment fund” **wherever it occurs**,

(d) in subsection (2) by replacing “not more than” with “within”, and

(e) by replacing paragraph (2)(c) with the following:

- (c) whether, to the best of the knowledge and belief of the custodian, each sub-custodian satisfies section 6.2 or 6.3, as applicable..

52. Section 6.8 is amended

(a) by replacing “A mutual fund” with “An investment fund” wherever it occurs,

(b) by replacing “the mutual fund” with “the investment fund” wherever it occurs, and

(c) by replacing subsection (4) with the following:

- (4) The agreement by which portfolio assets are deposited in accordance with subsection (1), (2) or (3) must require the person or company holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets..

53. Section 6.8.1 is amended

(a) by replacing “the mutual fund’s” with “the investment fund’s”,

(b) by replacing “a mutual fund” with “an investment fund”,

(c) by replacing “the mutual fund” with “the investment fund” wherever it occurs, and

(d) by replacing “A mutual fund” with “An investment fund” wherever it occurs.

54. Section 6.9 is amended

(a) by replacing “A mutual fund” with “An investment fund”,

(b) by replacing “institution” with “entity”, and

(c) by replacing “the mutual fund” with “the investment fund”.

55. Section 7.1 is amended

(a) by replacing “shall not pay” with “must not pay”, and

(b) by replacing “no securities of a mutual fund shall” with “securities of a mutual fund must not”.

56. Section 8.1 is amended by replacing “No securities of a mutual fund shall be sold” with “A person or company must not sell securities of a mutual fund”.

57. The heading in Part 9 is amended by replacing “a Mutual Fund” with “an Investment Fund”.

58. Section 9.0.1 is replaced with the following:

9.0.1 **Application** – This Part, other than subsection 9.3(2), does not apply to an exchange-traded mutual fund that is not in continuous distribution..

59. Section 9.1 is amended by replacing “shall” with “must” wherever it occurs.

60. (1) Section 9.3 is amended

(a) by renumbering it as subsection 9.3(1), and

(b) by replacing “shall” with “must”.

(2) Section 9.3, as amended by subsection (1), is amended by adding the following subsection:

- (2) The issue price of a security of an exchange-traded mutual fund that is not in continuous distribution, or of a non-redeemable investment fund, must not,
- (a) as far as reasonably practicable, be a price that causes dilution of the net asset value of other outstanding securities of the investment fund at the time the security is issued, and
 - (b) be a price that is less than the most recent net asset value per security of that class, or series of a class, calculated prior to the pricing of the offering..

61. Section 9.4 is amended by replacing “shall” with “must” wherever it occurs.

62. The Instrument is amended by adding the following Part immediately after Part 9:

Part 9.1 WARRANTS AND SPECIFIED DERIVATIVES

9.1.1 Issuance of Warrants or Specified Derivatives – An investment fund must not

- (a) issue a conventional warrant or right, or
- (b) enter into a position in a specified derivative the underlying interest of which is a security of the investment fund..

63. The heading in Part 10 is amended by replacing “a Mutual Fund” with “an Investment Fund”.

64. (1) Subsection 10.1(1) is amended

- (a) by replacing “No mutual fund” with “An investment fund”,*
- (b) by replacing “shall” with “must not”, and*
- (c) by replacing “the mutual fund” with “the investment fund” wherever it occurs.*
- (2) Subsection 10.1(2) is amended*
 - (a) by replacing “A mutual fund” with “An investment fund”,*
 - (b) by replacing “the mutual fund” with “the investment fund”,*
 - (c) by adding “by the following times:” after “delivered”, and*
 - (d) by replacing paragraph (a) with the following:*
 - (a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, by the time of delivery of a redemption order to an order receipt office of the mutual fund;*
 - (a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, by the time of delivery of a redemption order;.*
- (3) Subsection 10.1(3) is replaced with the following:*
 - (3) A manager of an investment fund must provide to securityholders of the investment fund at least annually a statement containing the following:*
 - (a) a description of the requirements referred to in subsection (1);*
 - (b) a description of the requirements established by the investment fund under subsection (2);*
 - (c) a detailed reference to all documentation required for redemption of securities of the investment fund;*
 - (d) detailed instructions on the manner in which documentation is to be delivered to participating dealers, the investment fund or a person or company providing services to the investment fund to which a redemption order may be made;*
 - (e) a description of all other procedural or communication requirements;*
 - (f) an explanation of the consequences of failing to meet timing requirements..*

65. Section 10.2 is amended by replacing “shall” with “must” wherever it occurs.

66. Section 10.3 is amended

(a) **by replacing “shall” with “must”, and**

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

- (4) The redemption price of a security of a non-redeemable investment fund must not be a price that is more than the net asset value of the security determined on a redemption date specified in the prospectus or annual information form of the investment fund..

67. Section 10.4 is amended

(a) **by replacing subsection (1.1) with the following:**

(1.1) Despite subsection (1), an exchange-traded mutual fund that is not in continuous distribution must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.

(1.2) A non-redeemable investment fund must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.,

(b) **in subsection (3) by replacing “A mutual fund” with “An investment fund”, and**

(c) **in subsection (5) by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund” wherever it occurs.**

68. Section 10.5 is amended by replacing “shall” with “must” wherever it occurs.

69. (1) Subsection 10.6(1) is amended

(a) **by replacing “A mutual fund” with “An investment fund”, and**

(b) **by replacing “the mutual fund” with “the investment fund” wherever it occurs.**

(2) Subsection 10.6(2) is amended

(a) **by replacing “A mutual fund” with “An investment fund”,**

(b) **by adding “, (1.1) or (1.2)” after “subsection 10.4(1)”, and**

(c) **by adding “or regulator” after “authority”.**

(3) Subsection 10.6(3) is amended

(a) *by replacing* “A mutual fund shall” *with* “An investment fund must”,

(b) *by replacing* “the mutual fund” *with* “the investment fund”, *and*

(c) *by replacing* “authorities” *with* “authority or regulator”.

70. The heading in section 11.1 is amended by adding “and Service Providers” after “Distributors”.

71. (1) Subsection 11.1(1) is replaced with the following:

(1) Cash received by a principal distributor of a mutual fund, by a person or company providing services to the mutual fund or the principal distributor, or by a person or company providing services to a non-redeemable investment fund, for investment in, or on the redemption of, securities of the investment fund, or on the distribution of assets of the investment fund, until disbursed as permitted by subsection (3),

(a) must be accounted for separately and be deposited in a trust account or trust accounts established and maintained in accordance with the requirements of section 11.3, and

(b) may be commingled only with cash received by the principal distributor or service provider for the sale or on the redemption of other investment fund securities..

(2) Subsection 11.1(2) is amended

(a) *by replacing* “distributor or person” *with* “distributor, a person”, *and*

(b) *by replacing* “shall” *with* “, or a person or company providing services to the non-redeemable investment fund, must”.

(3) Subsection 11.1(3) is amended

(a) *by replacing* “a mutual fund” *with* “an investment fund”,

(b) *by replacing* “for the purpose of” *with* “for any of the following purposes:”,

(c) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs, and*

(d) *by deleting* “or” *at the end of paragraph (b).*

(4) Subsection 11.1(4) is amended

(a) *by replacing* “shall” *with* “must”,

(b) *by replacing* “the mutual funds” *with* “the investment funds”, *and*

(c) *by replacing* “a mutual fund” *with* “an investment fund”.

(5) *Subsection 11.1(5) is amended*

(a) *by replacing* “a mutual fund” *with* “an investment fund”, *and*

(b) *by replacing* “the mutual fund” *with* “the investment fund” *wherever it occurs*.

72. *Section 11.2 is amended by replacing* “shall” *with* “must” *wherever it occurs*.

73. *Section 11.3 is amended*

(a) *by replacing* “dealer, or a person” *with* “dealer, a person”,

(b) *by adding* “or a person or company providing services to an investment fund,” *before* “that deposits cash”,

(c) *by replacing* “shall” *with* “must”,

(d) *in subparagraph (a)(iii) by replacing* “dealer or of a person” *with* “dealer, of a person” *and by adding* “or of a person or company providing services to the investment fund,” *before* “and”, *and*

(e) *in subparagraph (a)(iv) by replacing* “dealer, or of a person” *with* “dealer, of a person” *and by adding* “or of a person or company providing services to the investment fund;” *at the end of the subparagraph*.

74. *Section 11.4 is amended*

(a) *by adding the following subsection immediately after subsection (1.2):*

(1.3) Section 11.1 does not apply to CDS Clearing and Depository Services Inc.,
and

(b) *by replacing* “shall” *with* “must”.

75. *Section 11.5 is amended*

(a) *by replacing* “mutual fund” *with* “investment fund” *wherever it occurs, and*

(b) *by replacing* “shall” *with* “must”.

76. *Section 12.1 is amended by replacing* “shall” *with* “must” *wherever it occurs*.

77. *Section 14.1 is amended by replacing* “shall” *with* “must”.

78. *Section 15.1 is amended*

(a) *by replacing* “a mutual fund” *with* “an investment fund”,

(b) by replacing “may” with “must”, and

(c) by deleting “only”.

79. Section 15.2 is amended

(a) in subsection (1) by replacing “no sales communication shall” with “a sales communication must not”,

(b) in paragraph (1)(b) by adding “, as applicable,” after “the fund facts document” and by replacing “a mutual fund” with “an investment fund”, and

(c) in subsection (2) by replacing “shall” with “must”.

80. Section 15.3 is amended

(a) by replacing “shall” with “must” wherever it occurs,

(b) in subsection (1) by replacing “a mutual fund” with “an investment fund”,

(c) in subsection (2) by replacing “15.6(a)” with “15.6(1)(a)”,

(d) by adding the following subsection immediately after subsection (2):

(2.1) A sales communication for a non-redeemable investment fund that is restricted by paragraph 15.6(1)(a) from disclosing performance data must not provide performance data for any benchmark or investment, other than a non-redeemable investment fund under common management with the non-redeemable investment fund to which the sales communication pertains.,

(e) in subsection (5) by replacing “a mutual fund” with “an investment fund” and by replacing “the mutual fund” with “the investment fund”,

(f) in subsection (6) by deleting “, either under National Policy Statement No. 39 or”, and

(g) in subsection (7) by replacing “mutual fund” with “investment fund”.

81. (1) Subsection 15.4(1) is amended

(a) by replacing “shall” with “must”, and

(b) by deleting “principal distributor or participating”.

(2) Subsection 15.4(2) is amended

(a) by replacing “shall” with “must”, and

(b) by replacing “mutual fund” with “investment fund” wherever it occurs.

(3) Subsection 15.4(3) is amended by replacing “shall” with “must”.

(4) Section 15.4 is amended by adding the following subsection immediately after subsection (3):

(3.1) A sales communication, other than a report to securityholders, of a non-redeemable investment fund that does not contain performance data must contain a warning in substantially the following words:

[If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:] “You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on *[state the exchange or other market on which the securities of the investment fund are listed or quoted]*. If the [units or shares] are purchased or sold on *[state the exchange or other market]*, investors may pay more than the current net asset value when buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them.”

[State the following in all cases:] “There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated.”..

(5) The following subsections are amended by replacing “shall” with “must”:

(a) subsection 15.4(4);

(b) subsection 15.4(5);

(c) subsection 15.4(6).

(6) Section 15.4 is amended by adding the following subsection immediately after subsection (6):

(6.1) A sales communication, other than a report to securityholders, of a non-redeemable investment fund that contains performance data must contain a warning in substantially the following words:

[If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:] “You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on *[state the exchange or other market on which the securities of the investment fund are listed or quoted]*. If the [units or shares] are purchased or sold on *[state the exchange or other market]*, investors may pay more than the current net asset value when

buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them.”

[*State the following in all cases:*] “There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. The indicated rate[s] of return is [are] the historical annual compounded total return[s] including changes in [share or unit] value and reinvestment of all [dividends or distributions] and does [do] not take into account [*state the following, as applicable:*] [certain fees such as redemption fees or optional charges or] income taxes payable by any securityholder that would have reduced returns. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated.”. .

(7) The following subsections are amended by replacing “shall” with “must”:

(a) subsection 15.4(7);

(b) subsection 15.4(8);

(c) subsection 15.4(9).

(8) Subsection 15.4(10) is amended

(a) by replacing “a mutual fund” with “an investment fund”,

(b) by replacing “the mutual fund” with “the investment fund” wherever it occurs, and

(c) by replacing “shall” with “must”.

(9) Subsection 15.4(11) is amended by replacing “shall” with “must”.

82. Section 15.5 is amended

(a) in subsection (1) by replacing “No person or company shall” with “A person or company must not”, and

(b) by replacing “shall” with “must” wherever it occurs.

83. Section 15.6 is replaced with the following:

15.6 Performance Data - General Requirements

(1) A sales communication pertaining to an investment fund or asset allocation service must not contain performance data of the investment fund or asset allocation service unless all of the following paragraphs apply:

- (a) one of the following subparagraphs applies:
 - (i) in the case of a mutual fund, either of the following applies:
 - (A) the mutual fund has distributed securities under a prospectus in a jurisdiction for a period of at least 12 consecutive months;
 - (B) the mutual fund previously existed as a non-redeemable investment fund and has been a reporting issuer in a jurisdiction for a period of at least 12 consecutive months;
 - (ii) in the case of a non-redeemable investment fund, the non-redeemable investment fund has been a reporting issuer in a jurisdiction for at least 12 consecutive months;
 - (iii) in the case of an asset allocation service, the asset allocation service has been operated for at least 12 consecutive months and has invested only in participating funds each of which has distributed securities under a prospectus in a jurisdiction for at least 12 consecutive months;
 - (iv) if the sales communication pertains to an investment fund or asset allocation service that does not satisfy subparagraph (i), (ii) or (iii), the sales communication is sent only to one of the following:
 - (A) securityholders of the investment fund or participants in the asset allocation service;
 - (B) securityholders of an investment fund or participants in an asset allocation service under common management with the investment fund or asset allocation service;
- (b) the sales communication includes standard performance data of the investment fund or asset allocation service and, in the case of a written sales communication, the standard performance data is presented in type size that is equal to or larger than that used to present the other performance data;
- (c) the performance data reflects or includes references to all elements of return;
- (d) except as permitted by subsection 15.3(3), the sales communication does not contain performance data for a period that is,
 - (i) in the case of a mutual fund, before the time when the mutual fund offered its securities under a prospectus;

- (ii) in the case of a non-redeemable investment fund, before the non-redeemable investment fund was a reporting issuer;
 - (iii) in the case of an asset allocation service, before the asset allocation service commenced operation.
- (2) Despite subparagraph (1)(d)(i), a sales communication pertaining to a mutual fund referred to in clause (1)(a)(i)(B) that contains performance data of the mutual fund must include performance data for the period that the fund existed as a non-redeemable investment fund and was a reporting issuer..

84. Section 15.7 is amended by replacing “shall” with “must”.

85. The Instrument is amended by adding the following section immediately after section 15.7:

- 15.7.1 Advertisements for Non-Redeemable Investment Funds – An** advertisement for a non-redeemable investment fund must not compare the performance of the non-redeemable investment fund with any benchmark or investment other than any of the following:
- (a) one or more non-redeemable investment funds that are under common management or administration with the non-redeemable investment fund to which the advertisement pertains;
 - (b) one or more non-redeemable investment funds that have fundamental investment objectives that a reasonable person would consider similar to the non-redeemable investment fund to which the advertisement pertains;
 - (c) an index..

86. (1) Subsection 15.8(2) is amended

- (a) by replacing “asset allocation service or to a mutual fund” with “asset allocation service, or to an investment fund”,**
- (b) by replacing “may” with “, must not”,**
- (c) by replacing “only if” with “unless,”,**
- (d) by replacing paragraph (a) with the following:**
 - (a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods,
 - (a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard

performance data has been calculated for the period since the inception of the mutual fund,

- (a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund, and, **and**

(e) in paragraph (b) by replacing “paragraph (a)” with “paragraphs (a), (a.1) and (a.2)”.

(2) Subsection 15.8(3) is amended

(a) by replacing “may” with “must not”,

(b) by replacing “only if” with “unless,”,

(c) by replacing paragraph (a) with the following:

- (a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods,

- (a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the mutual fund,

- (a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund, and, **and**

(d) in paragraph (b) by replacing “paragraph (a)” with “paragraphs (a), (a.1) and (a.2)”.

(3) Subsection 15.8(4) is amended by replacing “shall” with “must”.

87. Section 15.9 is amended

(a) by replacing “the mutual fund” with “the investment fund” wherever it occurs,

(b) by replacing “shall” with “must” wherever it occurs,

(c) by replacing “a mutual fund” with “an investment fund”,

(d) by replacing “another mutual fund” with “another investment fund”, and

(e) by replacing “other mutual fund” with “other investment fund”.

88. Section 15.10 is amended

- (a) by replacing “a mutual fund” with “an investment fund” wherever it occurs,**
- (b) by replacing “shall” with “must” wherever it occurs,**
- (c) in subsection (1) by replacing “section” with “Part”,**
- (d) in subsection (2) by replacing the definition of “standard performance data” with the following:**

“standard performance data” means, as calculated in each case in accordance with this Part,

- (a) for a money market fund, either of the following:
 - (i) the current yield;
 - (ii) the current yield and effective yield, if the effective yield is reported in a type size that is at least equal to that of the current yield, and
- (b) for any investment fund other than a money market fund, the total return;, **and**

- (e) by replacing “the mutual fund” with “the investment fund” wherever it occurs.**

89. Section 15.11 is amended

- (a) by replacing “shall” with “must” wherever it occurs,**
- (b) by replacing “a mutual fund” with “an investment fund”,**
- (c) by replacing “the mutual fund” with “the investment fund” wherever it occurs, and**
- (d) by replacing item 6 of subsection (1) with the following:**

- 6. In the case of a mutual fund, a complete redemption occurs at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders.
- 7. In the case of a non-redeemable investment fund, a complete redemption occurs at the net asset value of one security at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders..

90. Section 15.12 is amended by replacing “shall” with “must”.

91. Section 15.13 is amended

(a) in subsection (1) by replacing “mutual fund shall” with “investment fund must”, and

(b) by replacing subsection (2) with the following:

- (2) A communication by an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, participating dealer or a person providing services to the investment fund or asset allocation service must not describe the investment fund as a commodity pool or as a vehicle for investors to participate in the speculative trading of, or leveraged investment in, derivatives, unless the investment fund is a commodity pool as defined in National Instrument 81-104 *Commodity Pools*.

92. The heading in section 15.14 is amended by replacing “Mutual Funds” with “Investment Funds”.

93. Section 15.14 is amended

(a) by replacing “a mutual fund” with “an investment fund”, and

(b) by replacing “shall” with “must” wherever it occurs.

94. Section 18.1 is amended

(a) by replacing “A mutual fund” with “An investment fund”,

(b) by replacing “shall” with “must”, and

(c) by replacing “the mutual fund” with “the investment fund” wherever it occurs.

95. Section 18.2 is amended

(a) by replacing subsection (1) with the following:

- (1) An investment fund that is not a corporation must make, or cause to be made, the records referred to in section 18.1 available for inspection, free of charge, during normal business hours at its principal or head office by a securityholder or a representative of a securityholder, if the securityholder has agreed in writing that the information contained in the register will not be used by the securityholder for any purpose other than either of the following:
- (a) in the case of a mutual fund, attempting to influence the voting of securityholders of the mutual fund or a matter relating to the relationships among the mutual fund, the members of the organization

of the mutual fund, and the securityholders, partners, directors and officers of those entities;

- (b) in the case of a non-redeemable investment fund, attempting to influence the voting of securityholders of the non-redeemable investment fund or a matter relating to the relationships among the non-redeemable investment fund, the manager and portfolio adviser of the non-redeemable investment fund and any of their affiliates, and the securityholders, partners, directors and officers of those entities., **and**

(b) in subsection (2) by replacing “A mutual fund shall” with “An investment fund must” and by replacing “the mutual fund” with “the investment fund” wherever it occurs.

96. Subsection 19.2(3) is amended by replacing “shall” with “must”.

97. Subsection 19.3(1) is amended by replacing “;” with “.”.

98. (1) Section 20.4 is amended

(a) by renumbering it as subsection 20.4(1), and

(b) by replacing “2.3(b)” with “2.3(1)(b)”.

(2) Section 20.4, as amended by subsection (1), is amended by adding the following subsection:

- (2) If a non-redeemable investment fund has adopted fundamental investment objectives to permit it to invest in mortgages, paragraph 2.3(2)(b) does not apply to the non-redeemable investment fund if the non-redeemable investment fund was established, and has a prospectus for which a receipt was issued, on or before September 22, 2014..

99. Appendix C is amended

(a) by replacing “British Columbia” with “All Jurisdictions”,

(b) by replacing “s. 81 of the Securities Rules (British Columbia)” with “s. 13.6 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations”,

(c) by deleting “New Brunswick” and “s. 13.2 of Local Rule 31-501 Registration Requirements”, and

(d) by deleting “Nova Scotia” and “s. 67 of the General Securities Rules”.

100. The Instrument is amended by adding the following appendices after Appendix C:

Appendix D

Investment Fund Conflict of Interest Investment Restrictions

Jurisdiction	Securities Legislation Reference
All Jurisdictions	ss. 13.5(2)(a) and (b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>
Alberta	ss. 185(2) and (3) of the <i>Securities Act</i> (Alberta)
British Columbia	s. 6(2) of BC Instrument 81-513 <i>Self-Dealing</i>
New Brunswick	s. 137(2) of the <i>Securities Act</i> (New Brunswick)
Newfoundland and Labrador	ss. 112(2), 112(3), 119(2)(a) and 119(2)(b) of the <i>Securities Act</i> (Newfoundland and Labrador)
Nova Scotia	ss. 119(2) and (3) of the <i>Securities Act</i> (Nova Scotia)
Ontario	ss. 111(2) and (3) of the <i>Securities Act</i> (Ontario)
Saskatchewan	ss. 120(2) and (3) of the <i>The Securities Act, 1988</i> (Saskatchewan)

Appendix E

Investment Fund Conflict of Interest Reporting Requirements

Jurisdiction	Securities Legislation Reference
Alberta	s. 191(1)(a) of the <i>Securities Act</i> (Alberta)
British Columbia	s. 9(a) of BC Instrument 81-513 <i>Self-Dealing</i>
New Brunswick	s. 143(1)(a) of the <i>Securities Act</i> (New Brunswick)
Newfoundland and Labrador	s. 118(1)(a) of the <i>Securities Act</i> (Newfoundland and Labrador)
Nova Scotia	s. 125(1)(a) of the <i>Securities Act</i> (Nova Scotia)
Ontario	s. 117(1)(a) of the <i>Securities Act</i> (Ontario)
Saskatchewan	s. 126(1)(a) of the <i>The Securities Act, 1988</i>

(Saskatchewan).

Transition

101. (1) If a non-redeemable investment fund filed a prospectus on or before September 22, 2014,
- (a) until September 21, 2015, sections 2.12 to 2.17 of National Instrument 81-102 *Mutual Funds* do not apply to the non-redeemable investment fund, and
 - (b) until March 21, 2016, sections 2.2, 2.3 and 2.5 of National Instrument 81-102 *Mutual Funds* do not apply to the non-redeemable investment fund.
- (2) If a mutual fund filed a prospectus on or before September 22, 2014, until March 21, 2016, subsection 2.5(2) of National Instrument 81-102 *Mutual Funds*, as amended by subsection 11(2) of this Instrument, does not apply to the mutual fund if the mutual fund complies with subsection 2.5(2) of National Instrument 81-102 *Mutual Funds* as that provision was in force on September 21, 2014.
- (3) Despite any amendments to the contrary in this Instrument, if a sales communication, other than an advertisement, was printed before September 22, 2014, the sales communication may be used until March 23, 2015.

Effective date

102. (1) Subject to subsection (2), this Instrument comes into force on September 22, 2014.
- (2) Subsection 64(3) of this Instrument comes into force on January 1, 2015.

**CHANGES TO
COMPANION POLICY 81-102CP TO NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS**

This Schedule shows, by way of blackline, changes to Companion Policy 81-102CP. These changes become effective on September 22, 2014.

**Companion Policy 81-102CP to
National Instrument 81-102 ~~Mutual~~Investment Funds**

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Companion Policy 81-102CP
to
National Instrument 81-102 ~~Mutual~~Investment Funds

PART 1 PURPOSE

- 1.1 Purpose** - The purpose of this Policy is to state the views of the Canadian securities regulatory authorities on various matters relating to National Instrument 81-102 ~~Mutual~~Investment Funds (the “Instrument”), including
- (a) the interpretation of various terms used in the Instrument;
 - (b) recommendations concerning the operating procedures that the Canadian securities regulatory authorities suggest that ~~mutual~~investment funds subject to the Instrument, or persons performing services for ~~mutual~~the investment funds, adopt to ensure compliance with the Instrument;
 - (c) discussions of circumstances in which the Canadian securities regulatory authorities have granted relief from particular requirements of National Policy Statement No. 39 (“NP39”), the predecessor to the Instrument, and the conditions that those authorities imposed in granting that relief; and
 - (d) recommendations concerning applications for approvals required under, or relief from, provisions of the Instrument.

PART 2 COMMENTS ON DEFINITIONS CONTAINED IN THE INSTRUMENT

- 2.1 “asset allocation service”** - The definition of “asset allocation service” in the Instrument includes only specific administrative services in which an investment in mutual funds subject to the Instrument is an integral part. The Canadian securities regulatory authorities do not view this definition as including general investment services such as discretionary portfolio management that may, but are not required to, invest in mutual funds subject to this Instrument.
- 2.2 “cash equivalent”** - The definition of “cash equivalent” in the Instrument includes certain evidences of indebtedness of Canadian financial institutions. This includes banker’s acceptances.
- 2.3 “clearing corporation”** - The definition of “clearing corporation” in the Instrument includes both incorporated and unincorporated organizations, which may, but need not, be part of an options or futures exchange.
- 2.4 “debt-like security”** - Paragraph (b) of the definition of “debt-like security” in the Instrument provides that the value of the component of an instrument that is not linked to the underlying interest of the instrument must account for less than 80-~~percent~~% of the aggregate value of the instrument in order that the instrument be considered a debt-like security. The Canadian securities regulatory authorities have structured this provision in this manner to emphasize what they consider the most appropriate manner to value these instruments. That is, one should first value the component of the instrument that is not linked to the underlying interest, as this is often much easier to value than the component

that is linked to the underlying interest. The Canadian securities regulatory authorities recognize the valuation difficulties that can arise if one attempts to value, by itself, the component of an instrument that is linked to the underlying interest.

- 2.4.1 ~~Predecessor terms~~ **“designated rating” and “designated rating organization”** – ~~We~~The Canadian securities regulatory authorities recognize there are existing contracts that use the predecessor terms “approved credit rating”, “approved rating” and “approved credit rating organization”. The content of the new definitions “designated rating” and “designated rating organization” is substantially the same as the content of their respective predecessor terms, only the terminology has changed. Therefore, it is reasonable to interpret the predecessor terms as having the same meaning as the definition of “designated rating” and “designated rating organization” in ~~NI 81-102,~~the Instrument, as applicable.

2.5 **“fundamental investment objectives”**

- (1) The definition of “fundamental investment objectives” is relevant in connection with paragraph 5.1(1)(c) of the Instrument, which requires that the approval of securityholders of ~~a mutual~~an investment fund be obtained before any change is made to the fundamental investment objectives of the ~~mutual~~investment fund. The fundamental investment objectives of ~~a mutual~~an investment fund are required to be disclosed in a ~~simplified~~ prospectus under Part B of Form 81-101F1 *Contents of Simplified Prospectus* ~~or under the requirements of Form 41-101F2~~ *Information Required in an Investment Fund Prospectus*. The definition of “fundamental investment objectives” contained in the Instrument uses the language contained in the disclosure requirements of ~~Part B of~~ Form 81-101F1 ~~and Form 41-101F2~~, and the definition should be read to include the matters that would have to be disclosed under the Item of ~~Part B of~~ the applicable form concerning “Fundamental Investment Objectives”. Accordingly, any change to the ~~mutual~~investment fund requiring a change to that disclosure would trigger the requirement for securityholder approval under paragraph 5.1(1)(c) of the Instrument.
- (2) ~~Form 41-101F2 and~~ Part B of Form 81-101F1 ~~sets~~set out, among other things, the obligation that ~~a mutual~~an investment fund disclose in a ~~simplified~~ prospectus both its fundamental investment objectives and its investment strategies. The matters required to be disclosed under the Item of ~~Part B of~~ the applicable form relating to “Investment Strategies” are not “fundamental investment objectives” under the Instrument.
- (3) Generally speaking, the “fundamental investment objectives” of ~~a mutual~~an investment fund are those attributes that define its fundamental nature. For example, ~~mutual~~investment funds that are guaranteed or insured, or that pursue a highly specific investment approach such as index funds or derivative funds, may be defined by those attributes. Often the manner in which ~~a mutual~~an investment fund is marketed will provide evidence as to its fundamental nature; ~~a mutual~~an investment fund whose advertisements emphasize, for instance, that investments are guaranteed likely will have the existence of a guarantee as a “fundamental investment objective”.
- (4) **[Deleted]**
- (5) One component of the definition of “fundamental investment objectives” is that those objectives distinguish ~~a mutual~~an investment fund from other ~~mutual~~investment funds. This component does not imply that the fundamental investment objectives for each

[mutual investment](#) fund must be unique. Two or more [mutual investment](#) funds can have identical fundamental investment objectives.

2.6 “**guaranteed mortgage**” - A mortgage insured under the *National Housing Act* (Canada) or similar provincial statutes is a “guaranteed mortgage” for the purposes of the Instrument.

2.7 “**hedging**”

- (1) One component of the definition of “hedging” is the requirement that hedging transactions result in a “high degree of negative correlation between changes in the value of the investment or position, or group of investments or positions, being hedged and changes in the value of the instrument or instruments with which the investment or position is hedged”. The Canadian securities regulatory authorities are of the view that there need not be complete congruence between the hedging instrument or instruments and the position or positions being hedged if it is reasonable to regard the one as a hedging instrument for the other, taking into account the closeness of the relationship between fluctuations in the price of the two and the availability and pricing of hedging instruments.
- (2) The definition of “hedging” includes a reference to the “maintaining” of the position resulting from a hedging transaction or series of hedging transactions. The inclusion of this component in the definition requires ~~a~~ [mutual investment](#) fund to ensure that a transaction continues to offset specific risks of the [mutual investment](#) fund in order that the transaction be considered a “hedging” transaction under the Instrument; if the “hedging” position ceases to provide an offset to an existing risk of ~~a~~ [mutual investment](#) fund, then that position is no longer a hedging position under the Instrument, and can be held by the [mutual investment](#) fund only in compliance with the specified derivatives rules of the Instrument that apply to non-hedging positions. The component of the definition that requires the “maintaining” of a hedge position does not mean that ~~a~~ [mutual investment](#) fund is locked into a specified derivatives position; it simply means that the specified derivatives position must continue to satisfy the definition of “hedging” in order to receive hedging treatment under the Instrument.
- (3) Paragraph (b) of the definition of “hedging” has been included to ensure that currency cross hedging continues to be permitted under the Instrument. Currency cross hedging is the substitution of currency risk associated with one currency for currency risk associated with another currency, if neither currency is a currency in which the [mutual investment](#) fund determines its net asset value per security and the aggregate amount of currency risk to which the [mutual investment](#) fund is exposed is not increased by the substitution. Currency cross hedging is to be distinguished from currency hedging, as that term is ordinarily used. Ordinary currency hedging, in the context of [mutual investment](#) funds, would involve replacing the [mutual investment](#) fund’s exposure to a “non-net asset value” currency with exposure to a currency in which the [mutual investment](#) fund calculates its net asset value per security. That type of currency hedging is subject to paragraph (a) of the definition of “hedging”.

2.8 “**illiquid asset**” - A portfolio asset of a mutual fund that meets the definition of “illiquid asset” will be an illiquid asset even if a person or company, including the manager or the portfolio adviser of a mutual fund or a partner, director or officer of the manager or portfolio adviser of a mutual fund or any of their respective associates or affiliates, has agreed to purchase the asset from the mutual fund. That type of agreement does not affect

the words of the definition, which defines “illiquid asset” in terms of whether that asset cannot be readily disposed of through market facilities on which public quotations in common use are widely available.

- 2.9 “manager”** - The definition of “manager” under the Instrument only applies to the person or company that actually directs the business of the ~~mutual~~investment fund, and does not apply to others, such as trustees, that do not actually carry out this function. Also, a “manager” would not include a person or company whose duties are limited to acting as a service provider to the ~~mutual~~investment fund, such as a portfolio adviser.
- 2.10 “option”** - The definition of “option” includes warrants, whether or not the warrants are listed on a stock exchange or quoted on an over-the-counter market.
- 2.11 “performance data”** - The term “performance data” includes data on an aspect of the investment performance of ~~a mutual~~an investment fund, an asset allocation service, security, index or benchmark. This could include data concerning return, volatility or yield. The Canadian securities regulatory authorities note that the term “performance data” would not include a rating prepared by an independent organization reflecting the credit quality, rather than the performance, of, for instance, ~~a mutual~~an investment fund’s portfolio or the participating funds of an asset allocation service.
- 2.12 “public medium”** - An “advertisement” is defined in the Instrument to mean a sales communication that is published or designed for use on or through a “public medium”. The Canadian securities regulatory authorities interpret the term “public medium” to include print, television, radio, tape recordings, video tapes, computer disks, the Internet, displays, signs, billboards, motion pictures and telephones.
- 2.13 “purchase”**
- (1) The definition of a “purchase”, in connection with the acquisition of a portfolio asset by ~~a mutual~~an investment fund, means an acquisition that is the result of a decision made and action taken by the ~~mutual~~investment fund.
- (2) The Canadian securities regulatory authorities consider that the following types of transactions would generally be purchases of a security by ~~a mutual~~an investment fund under the definition:
1. The ~~mutual~~investment fund effects an ordinary purchase of the security, or, at its option, exercises, converts or exchanges a convertible security held by it.
 2. The ~~mutual~~investment fund receives the security as consideration for a security tendered by the ~~mutual~~investment fund into a take-over bid.
 3. The ~~mutual~~investment fund receives the security as the result of a merger, amalgamation, plan of arrangement or other reorganization for which the ~~mutual~~investment fund voted in favour.
 4. The ~~mutual~~investment fund receives the security as a result of the automatic exercise of an exchange or conversion right attached to another security held by the ~~mutual~~investment fund in accordance with the terms of that other security or

the exercise of that exchange or conversion right at the option of the ~~mutual~~investment fund.

5. (a) The ~~mutual~~investment fund has become legally entitled to dispose of the collateral held by it under a securities loan or repurchase agreement and to apply proceeds of realization to satisfy the obligations of the counterparty of the ~~mutual~~investment fund under the transaction, and
 - (b) sufficient time has passed after the event described in paragraph (a) to enable the ~~mutual~~investment fund to sell the collateral in a manner that maintains an orderly market and that permits the preservation of the best value for the ~~mutual~~investment fund.
- (3) The Canadian securities regulatory authorities consider that the following types of transactions would generally not be purchases of a security by ~~a mutual~~an investment fund under the definition:
1. The ~~mutual~~investment fund receives the security as a result of a compulsory acquisition by an issuer following completion of a successful take-over bid.
 2. The ~~mutual~~investment fund receives the security as a result of a merger, amalgamation, plan of arrangement or other reorganization that the ~~mutual~~investment fund voted against.
 3. The ~~mutual~~investment fund receives the security as the result of the exercise of an exchange or conversion right attached to a security held by the ~~mutual~~investment fund made at the discretion of the issuer of the security held by the ~~mutual~~investment fund.
 4. The ~~mutual~~investment fund declines to tender into an issuer bid, even though its decision is likely to result in an increase in its percentage holdings of a security beyond what the ~~mutual~~investment fund would be permitted under the Instrument to purchase.

2.14 “restricted security” - A special warrant is a form of restricted security and, accordingly, the provisions of the Instrument applying to restricted securities apply to special warrants.

2.15 “sales communication”

- (1) The term “sales communication” ~~refers to~~includes a communication ~~to~~by an investment fund to (i) a securityholder of ~~a mutual~~the investment fund and ~~to (ii)~~ a person or company that is not a securityholder if the purpose of the communication is to induce the purchase of securities of the ~~mutual~~investment fund. A sales communication therefore does not include a communication solely between ~~a mutual~~an investment fund or its promoter, manager, principal distributor or portfolio adviser and a participating dealer, or between the principal distributor or a participating dealer and its registered salespersons, that is indicated to be internal or confidential and that is not designed to be passed on by any principal distributor, participating dealer or registered salesperson to any securityholder of, or potential investor in, the ~~mutual~~investment fund. In the view of the Canadian securities regulatory authorities, if a communication of that type were so passed on by the principal distributor, participating dealer or registered salesperson, the communication would be a sales communication made

- by the party passing on the communication if the recipient of the communication were a securityholder of the mutual investment fund or if the intent of the principal distributor, participating dealer or registered salesperson in passing on the communication were to induce the purchase of securities of the mutual investment fund.
- (2) The term “sales communication” is defined in the Instrument such that the communication need not be in writing and includes any oral communication. The Canadian securities regulatory authorities are of the view that the requirements in the Instrument pertaining to sales communications would apply to statements made at an investor conference to securityholders or to others to induce the purchase of securities of the mutual investment fund.
 - (3) The Canadian securities regulatory authorities are of the view that image advertisements that are intended to promote a corporate identity or the expertise of ~~a mutual~~ an investment fund manager fall outside the definition of “sales communication”. However, an advertisement or other communication that refers to a specific mutual investment fund or funds or promotes any particular investment portfolio or strategy would be a sales communication and therefore be required to include warnings of the type now described in section 15.4 of the Instrument.
 - (4) ~~Paragraph~~ In the case of an investment fund, paragraph (b) of the definition of a “sales communication” in the Instrument excludes sales communications contained in certain documents that the mutual investment fund is required to prepare, including audited or unaudited financial statements, statements of account and confirmations of trade. The Canadian securities regulatory authorities are of the view that if information is contained in these types of documents that is not required to be included by securities legislation, any such additional material is not excluded by paragraph (b) of the definition of sales communication and may, therefore, constitute a sales communication if the additional material otherwise falls within the definition of that term in the Instrument.

2.16 “specified derivative”

- (1) The term “specified derivative” is defined to mean an instrument, agreement or security, the market price, value or payment obligations of which are derived from, referenced to or based on an underlying interest. Certain instruments, agreements or securities that would otherwise be specified derivatives within the meaning of the definition are then excluded from the definition for purposes of the Instrument.
- (2) Because of the broad ambit of the lead-in language to the definition, it is impossible to list every instrument, agreement or security that might be caught by that lead-in language but that is not considered to be a derivative in any normal commercial sense of that term. The Canadian securities regulatory authorities consider conventional floating rate debt instruments, ~~securities of a mutual fund or commodity pool, non redeemable~~ securities of an investment fund, American depository receipts and instalment receipts generally to be within this category, and generally will not treat those instruments as specified derivatives in administering the Instrument.
- (3) However, the Canadian securities regulatory authorities note that these general exclusions may not be applicable in cases in which a mutual fund invests in one of the vehicles described in subsection (2) with the result that the mutual fund obtains or increases exposure to a particular underlying interest in excess of the limit set out in section 2.1 of the

Instrument. In such circumstances, the Canadian securities regulatory authorities are likely to consider that instrument a specified derivative under the Instrument.

- 2.17 “standardized future”** - The definition of “standardized future” refers to an agreement traded on a futures exchange. This type of agreement is called a “futures contract” in the legislation of some jurisdictions, and an “exchange contract” in the legislation of some other jurisdictions (such as British Columbia and Alberta). The term “standardized future” is used in the Instrument to refer to these types of contracts, to avoid conflict with existing local definitions.
- 2.18 “swap”** - The Canadian securities regulatory authorities are of the view that the definition of a swap in the Instrument would include conventional interest rate and currency swaps, as well as equity swaps.

PART 3 INVESTMENTS

3.1 Evidences of Indebtedness of Foreign Governments and Supranational Agencies

- (1) Section 2.1 of the Instrument prohibits mutual funds from purchasing a security of an issuer, other than a government security or a security issued by a clearing corporation if, immediately after the purchase, more than 10~~percent~~% of their net asset value would be invested in securities of that issuer. The term “government security” is defined in the Instrument as an evidence of indebtedness that is issued, or fully and unconditionally guaranteed as to principal and interest, by any of the government of Canada, the government of a jurisdiction or the government of the United States of America.
- (2) Before the Instrument came into force, the Canadian securities regulatory authorities granted relief from the predecessor provision of NP39 to a number of international bond funds in order to permit those mutual funds to pursue their fundamental investment objectives with greater flexibility.
- (3) The Canadian securities regulatory authorities will continue to consider applications for relief from section 2.1 of the Instrument if the mutual fund making the application demonstrates that the relief will better enable the mutual fund to meet its fundamental investment objectives. This relief will ordinarily be restricted to international bond funds.
- (4) The relief from paragraph 2.04(1)(a) of NP39, which is replaced by section 2.1 of the Instrument, that has been provided to a mutual fund has generally been limited to the following circumstances:
 1. The mutual fund has been permitted to invest up to 20~~percent~~% of its net asset value in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or guaranteed fully as to principal and interest, by supranational agencies or governments other than the government of Canada, the government of a jurisdiction or the government of the United States of America and are rated “AA” by Standard & Poor’s Rating Services (Canada) or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.
 2. The mutual fund has been permitted to invest up to 35~~percent~~% of its net asset value in evidences of indebtedness of any one issuer, if those securities are

issued by issuers described in paragraph 1 and are rated “AAA” by Standard & Poor’s Rating Services (Canada) or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.

- (5) It is noted that the relief described in paragraphs 3.1(4)1 and 2 cannot be combined for one issuer.
- (6) **[Deleted]**
- (7) The relief from paragraph 2.04(1)(a) of NP39, which is replaced by section 2.1 of the Instrument, has generally been provided only if
 - (a) the securities that may be purchased under the relief referred to in subsection (4) are traded on a mature and liquid market;
 - (b) the acquisition of the evidences of indebtedness by the mutual fund is consistent with its fundamental investment objectives;
 - (c) the prospectus or simplified prospectus of the mutual fund disclosed the additional risks associated with the concentration of the net asset value of the mutual fund in securities of fewer issuers, such as the potential additional exposure to the risk of default of the issuer in which the fund has so invested and the risks, including foreign exchange risks, of investing in the country in which that issuer is located; and
 - (d) the prospectus or simplified prospectus of the mutual fund gave details of the relief provided by the Canadian securities regulatory authorities, including the conditions imposed and the type of securities covered by the exemption.

3.2 Index Mutual Funds

- (1) An “index mutual fund” is defined in section 1.1 of the Instrument as a mutual fund that has adopted fundamental investment objectives that require it to
 - (a) hold the securities that are included in a permitted index or permitted indices of the mutual fund in substantially the same proportion as those securities are reflected in that permitted index or permitted indices; or
 - (b) invest in a manner that causes the mutual fund to replicate the performance of that permitted index or those permitted indices.
- (2) This definition includes only mutual funds whose entire portfolio is invested in accordance with one or more permitted indices. The ~~CSA recognizes~~[Canadian securities regulatory authorities recognize](#) that there may be mutual funds that invest part of their portfolio in accordance with a permitted index or indices, with a remaining part of the portfolio being actively managed. Those mutual funds cannot avail themselves of the relief provided by subsection 2.1(5) of the Instrument, which provides relief from the “10~~percent~~% rule” contained in subsection 2.1(1) of the Instrument, because they are not “index mutual funds”. The ~~CSA~~[Canadian securities regulatory authorities](#) acknowledge that there may be

circumstances in which the principles behind the relief contained in subsection 2.1(5) of the Instrument is also applicable to “partially-indexed” mutual funds. Therefore, the ~~CSA~~[Canadian securities regulatory authorities](#) will consider applications from those types of mutual funds for relief analogous to that provided by subsection 2.1(5) of the Instrument.

- (3) It is noted that the manager of an index mutual fund may make a decision to base all or some of the investments of the mutual fund on a different permitted index than a permitted index previously used. This decision might be made for investment reasons or because that index no longer satisfies the definition of “permitted index” in the Instrument. It is noted that this decision by the manager will be considered by the Canadian securities regulatory authorities generally to constitute a change of fundamental investment objectives, thereby requiring securityholder approval under paragraph 5.1(1)(c) of the Instrument. In addition, this decision would also constitute a material change for the mutual fund, thereby requiring an amendment to the prospectus of the mutual fund and the issuing of a press release under Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

3.2.1 Control Restrictions – An investment fund generally holds a passive stake in the businesses in which it invests; that is, an investment fund generally does not seek to obtain control of, or become involved in, the management of investee companies. This key restriction on the type of investment activities that may be undertaken by an investment fund is codified in section 2.2 of the Instrument. Exceptions to this are labour sponsored or venture capital funds, where some degree of involvement in the management of the investees is generally an integral part of the investment strategy.

In determining whether an investment fund exercises control over, or is involved in the management of, an investee company, for the purposes of compliance with section 2.2 of the Instrument, the Canadian securities regulatory authorities will generally consider indicators, including the following:

- (a) any right of the investment fund to appoint directors, or observers, of the board of the investee company;
- (b) any right of the investment fund to restrict the management of the investee company, or to approve or veto decisions made by the management of the investee company;
- (c) any right of the investment fund to restrict the transfer of securities by other securityholders of the investee company.

The Canadian securities regulatory authorities will take the above factors into consideration when considering the nature of an investment fund’s investment in an issuer to determine whether the investment fund is in compliance with section 2.2 of the Instrument. The Canadian securities regulatory authorities will also refer to the applicable accounting standards in determining whether an investment fund is exercising control over an issuer.

- 3.3 Special Warrants** – ~~A mutual~~ An investment fund is required by subsection 2.2(3) of the Instrument to assume the conversion of each special warrant it holds. This requirement is imposed because the nature of a special warrant is such that there is a high degree of likelihood that its conversion feature will be exercised shortly after its issuance, once a prospectus relating to the underlying security has been filed.

3.3.1 Illiquid assets

- (1) Although section 2.4 of the Instrument does not apply to non-redeemable investment funds, the Canadian securities regulatory authorities expect the manager of an investment fund (whether a mutual fund or a non-redeemable investment fund) to establish an effective liquidity risk management policy that considers the liquidity of the types of assets in which the investment fund will be invested, and the fund's obligations and other liabilities (for example, meeting redemption requests, or margin calls from derivative counterparties). Appropriate internal limits for the investment fund's liquidity needs, in line with its investment strategies, should be established.
- (2) As portfolio assets may become illiquid when market conditions change, the Canadian securities regulatory authorities are of the view that the manager should regularly measure, monitor and manage the liquidity of the investment fund's portfolio assets, keeping in mind the time to liquidate each portfolio asset, the price the asset may be sold at and the pattern of redemption requests.
- (3) Furthermore, the Canadian securities regulatory authorities are of the view that illiquid assets are generally more difficult to value, for the purposes of calculating an investment fund's net asset value, than assets which are liquid. As a result, where a non-redeemable investment fund has a large proportion of its assets invested in illiquid assets, this raises concerns about the accuracy of the fund's net asset value and the amount of any fees calculated with reference to net asset value. Accordingly, staff of the Canadian securities regulatory authorities may raise comments or questions in the course of their reviews of the prospectuses or continuous disclosure documents of non-redeemable investment funds where such funds have a significant proportion of their assets invested in illiquid assets.

3.4 Investment in Other ~~Mutual~~Investment Funds

- (1) **[Deleted]**
- (2) Subsection 2.5(7) of the Instrument provides that certain investment restrictions and reporting requirements do not apply to investments in other ~~mutual~~investment funds made in accordance with section 2.5 of the Instrument. In some cases, ~~a mutual~~an investment fund's investments in other ~~mutual~~investment funds will be exempt from the requirements of section 2.5 of the Instrument because of an exemption granted by the regulator or securities regulatory authority. In these cases, assuming the ~~mutual~~investment fund complies with the terms of the exemption, its investments in other ~~mutual~~investment funds would be considered to have been made in accordance with section 2.5 of the Instrument. It is also noted that subsection 2.5(7) of the Instrument applies only with respect to ~~a mutual~~an investment fund's investments in other ~~mutual~~investment funds, and not for any other investment or transaction.

- 3.5 Instalments of Purchase Price** - Paragraph 2.6(d) of the Instrument prohibits ~~a mutual~~an investment fund from purchasing a security, other than a specified derivative, that by its terms may require the ~~mutual~~investment fund to make a contribution in addition to the payment of the purchase price. This prohibition does not extend to the purchase of securities that are paid for on an instalment basis in which the total purchase price and the amounts of all instalments are fixed at the time the first instalment is made.

3.6 Purchase of Evidences of Indebtedness - Paragraph 2.6(f) of the Instrument prohibits a ~~mutual~~an investment fund from lending either cash or a portfolio asset other than cash. The Canadian securities regulatory authorities are of the view that the purchase of an evidence of indebtedness, such as a bond or debenture, a loan participation or loan syndication as permitted by paragraph 2.3(1)(i) or (2)(c) of the Instrument, or the purchase of a preferred share that is treated as debt for accounting purposes, does not constitute the lending of cash or a portfolio asset.

3.7 Securities Lending, Repurchase and Reverse Repurchase Transactions

- (1) Section 2.12, 2.13 and 2.14 of the Instrument each contains a number of conditions that must be satisfied in order that a ~~mutual~~an investment fund may enter into a securities lending, repurchase or reverse repurchase transaction in compliance with the Instrument. It is expected that, in addition to satisfying these conditions, the manager on behalf of the ~~mutual~~investment fund, in co-ordination with an agent, will ensure that the documentation evidencing these types of transactions contains customary provisions to protect the ~~mutual~~investment fund and to document the transaction properly. Among other things, these provisions would normally include
 - (a) a definition of an “event of default” under the agreement, which would include failure to deliver cash or securities, or to promptly pay to the ~~mutual~~investment fund amounts equal to dividends and interest paid, and distributions made, on loaned or sold securities, as required by the agreement;
 - (b) provisions giving non-defaulting parties rights of termination, rights to sell the collateral, rights to purchase identical securities to replace the loaned securities and legal rights of set-off in connection with their obligations if an event of default occurs; and
 - (c) provisions that deal with, if an event of default occurs, how the value of collateral or securities held by the non-defaulting party that is in excess of the amount owed by the defaulting party will be treated.
- (2) Section 2.12, 2.13 and 2.14 of the Instrument each imposes a requirement that a ~~mutual~~an investment fund that has entered into a securities lending, repurchase or reverse repurchase transaction hold cash or securities of at least 102-~~percent~~% of the market value of the securities or cash held by the ~~mutual~~investment fund’s counterparty under the transaction. It is noted that the 102-~~percent~~% requirement is a minimum requirement, and that it may be appropriate for the manager of a ~~mutual~~an investment fund, or the agent acting on behalf of the ~~mutual~~investment fund, to negotiate the holding of a greater amount of cash or securities if necessary to protect the interests of the ~~mutual~~investment fund in a particular transaction, having regard to the level of risk for the ~~mutual~~investment fund in the transaction. In addition, if the recognized best practices for a particular type of transaction in a particular market calls for a higher level of collateralization than 102-~~percent~~%, it is expected that, absent special circumstances, the manager or the agent would ensure that its arrangements reflect the relevant best practices for that transaction.
- (3) Paragraph 3 of subsection 2.12(1) of the Instrument refers to securities lending transactions in terms of securities that are “loaned” by a ~~mutual~~an investment fund in exchange for collateral. Some securities lending transactions are documented so that title to the “loaned” securities is transferred from the “lender” to the “borrower”. The Canadian securities

- regulatory authorities do not consider this fact as sufficient to disqualify those transactions as securities loan transactions within the meaning of the Instrument, so long as the transaction is in fact substantively a loan. References throughout the Instrument to “loaned” securities, and similar references, should be read to include securities “transferred” under a securities lending transaction.
- (4) ~~Paragraph~~Subparagraph 6(d) of subsection 2.12(1) permits the use of irrevocable letters of credit as collateral in securities lending transactions. The Canadian securities regulatory authorities believe that, at a minimum, the prudent use of letters of credit will involve the following arrangements:
- (a) the ~~mutual~~investment fund should be allowed to draw down any amount of the letter of credit at any time by presenting its sight draft and certifying that the borrower is in default of its obligations under the securities lending agreement, and the amount capable of being drawn down would represent the current market value of the outstanding loaned securities or the amount required to cure any other borrower default; and
 - (b) the letter of credit should be structured so that the lender may draw down, on the date immediately preceding its expiration date, an amount equal to the current market value of all outstanding loaned securities on that date.
- (5) Paragraph 9 of subsection 2.12(1) and paragraph 8 of subsection 2.13(1) of the Instrument each provides that the agreement under which ~~a mutual~~an investment fund enters into a securities lending or repurchase transaction include a provision requiring the ~~mutual~~investment fund’s counterparty to promptly pay to the ~~mutual~~investment fund, among other things, distributions made on the securities loaned or sold in the transaction. In this context, the term “distributions” should be read broadly to include all payments or distributions of any type made on the underlying securities, including, without limitation, distributions of property, stock dividends, securities received as the result of splits, all rights to purchase additional securities and full or partial redemption proceeds. This extended meaning conforms to the meaning given the term “distributions” in several standard forms of securities loan agreements widely used in the securities lending and repurchase markets.
- (6) ~~Section~~Sections 2.12, 2.13 and 2.14 of the Instrument each make reference to the “delivery” and “holding” of securities or collateral by the ~~mutual~~investment fund. The Canadian securities regulatory authorities note that these terms will include the delivery or holding by an agent for ~~a mutual~~an investment fund. In addition, the Canadian securities regulatory authorities recognize that under ordinary market practice, agents pool collateral for securities lending/repurchase clients; this pooling of itself is not considered a violation of the Instrument.
- (7) ~~Section~~Sections 2.12, 2.13 and 2.14 of the Instrument each require that the securities involved in a securities lending, repurchase or reverse repurchase transaction be marked to market daily and adjusted as required daily. It is recognized that market practice often involves an agent marking to market a portfolio at the end of a business day, and effecting the necessary adjustments to a portfolio on the next business day. So long as each action occurs on each business day, as required by the Instrument, this market practice is not a breach of the Instrument.

- (8) As noted in subsection (7), the Instrument requires the daily marking to market of the securities involved in a securities lending, repurchase or reverse repurchase transaction. The valuation principles used in this marking to market may be those generally used by the agent acting for the ~~mutual~~investment fund, even if those principles deviate from the principles that are used by the ~~mutual~~investment fund in valuing its portfolio assets for the purposes of calculating net asset value.
- (9) Paragraph 6 of subsection 2.13(1) of the Instrument imposes a requirement concerning the delivery of sales proceeds to the ~~mutual~~investment fund equal to 102-~~per cent~~% of the market value of the securities sold in the transaction. It is noted that accrued interest on the sold securities should be included in the calculation of the market value of those securities.
- (10) Section 2.15 of the Instrument imposes the obligation on a manager of ~~a mutual~~an investment fund to appoint an agent or agents to administer its securities lending and repurchase transactions, and makes optional the ability of a manager to appoint an agent or agents to administer its reverse repurchase transactions. A manager that appoints more than one agent to carry out these functions may allocate responsibility as it considers best. For instance, it may be appropriate that one agent be responsible for domestic transactions, with one or more agents responsible for offshore transactions. Managers should ensure that the various requirements of sections 2.15 and 2.16 of the Instrument are satisfied for all agents.
- (11) It is noted that the responsibilities of an agent appointed under section 2.15 of the Instrument include all aspects of acting on behalf of ~~a mutual~~an investment fund in connection with securities lending, repurchase or reverse repurchase agreements. This includes acting in connection with the reinvestment of collateral or securities held during the life of a transaction.
- (12) Subsection 2.15(3) of the Instrument requires that an agent appointed by ~~a mutual~~an investment fund to administer its securities lending, repurchase or reverse repurchase transactions shall be a custodian or sub-custodian of the ~~mutual~~investment fund. It is noted that the provisions of Part 6 of the Instrument generally apply to the agent in connection with its activities relating to securities lending, repurchase or reverse repurchase transactions. The agent must have been appointed as custodian or sub-custodian in accordance with section 6.1, and must satisfy the other requirements of Part 6 in carrying out its responsibilities.
- (13) Subsection 2.15(~~54~~) of the Instrument provides that the manager of ~~a mutual~~an investment fund ~~shall~~must not authorize an agent to enter into securities lending, repurchase or, if applicable, reverse repurchase transactions on behalf of the ~~mutual~~investment fund unless there is a written agreement between the agent, the manager and the ~~mutual~~investment fund that deals with certain prescribed matters. Subsection (~~54~~) requires that the manager and the ~~mutual~~investment fund, in the agreement, provide instructions to the agent on the parameters to be followed in entering into the type of transaction to which the agreement pertains. The parameters would normally include
- (a) details on the types of transactions that may be entered into by the ~~mutual~~investment fund;
 - (b) types of portfolio assets of the ~~mutual~~investment fund to be used in the transaction;

- (c) specification of maximum transaction size, or aggregate amount of assets that may be committed to transactions at any one time;
 - (d) specification of permitted counterparties;
 - (e) any specific requirements regarding collateralization, including minimum requirements as to amount and diversification of collateralization, and details on the nature of the collateral that may be accepted by the ~~mutual~~investment fund;
 - (f) directions and an outline of responsibilities for the reinvestment of cash collateral received by the ~~mutual~~investment fund under the program to ensure that proper levels of liquidity are maintained at all times; and
 - (g) duties and obligations on the agent to take action to obtain payment by a borrower of any amounts owed by the borrower.
- (14) The definition of “cash cover” contained in section 1.1 of the Instrument requires that the portfolio assets used for cash cover not be “allocated for specific purposes”. Securities loaned by a mutual fund in a securities lending transaction have been allocated for specific purposes and therefore cannot be used as cash cover by the mutual fund for its specified derivatives obligations.
- (15) ~~A mutual~~An investment fund sometimes needs to vote securities held by it in order to protect its interests in connection with corporate transactions or developments relating to the issuers of the securities. The manager and the portfolio adviser of ~~a mutual~~an investment fund, or the agent of the ~~mutual~~investment fund administering a securities lending program on behalf of the ~~mutual~~investment fund, should monitor corporate developments relating to securities that are loaned by the ~~mutual~~investment fund in securities lending transactions, and take all necessary steps to ensure that the ~~mutual~~investment fund can exercise a right to vote the securities when necessary. This may be done by way of a termination of a securities lending transaction and recall of loaned securities, as described in paragraph 11 of subsection 2.12(1) of the Instrument.
- (16) As part of the prudent management of a securities lending, repurchase or reverse repurchase program, managers of ~~mutual~~investment funds, together with their agents, should ensure that transfers of securities in connection with those programs are effected in a secure manner over an organized market or settlement system. For foreign securities, this may entail ensuring that securities are cleared through central depositories. ~~Mutual~~Investment funds and their agents should pay close attention to settlement arrangements when entering into securities lending, repurchase and reverse repurchase transactions.

3.7.1 Money Market Funds - Section 2.18 of the Instrument imposes daily and weekly liquidity requirements on money market funds. Specifically, money market funds must keep 5% of their assets invested in cash or readily convertible into cash within one day, and 15% of their assets invested in cash or readily convertible into cash within one week. Assets that are “readily convertible to cash” would generally be short-term, highly liquid investments that are readily convertible to known amounts of cash and which are subject to an insignificant risk of changes in value. Such assets can be sold in the ordinary course of business within one business day (in the case of the daily liquidity requirement) or within five business days (in the case of the weekly liquidity requirement) at approximately the value ascribed to them

by the money market fund. The [CSA Canadian securities regulatory authorities](#) note that the securities do not have to mature within the one and five business day periods. For example, direct obligations of the Canadian or U.S. government, or of a provincial government, that mature after one or five business days but that can be readily converted to cash within one or five business days, would likely be eligible for the 5% and 15% liquidity requirements.

3.8 Prohibited Investments

- (1) Subsection 4.1(4) [of the Instrument](#) permits a dealer managed ~~mutual~~[investment](#) fund to make an investment otherwise prohibited by subsection 4.1(1) [of the Instrument](#) and the corresponding provisions in securities legislation referred to in Appendix C to ~~NI 81-102~~[the Instrument](#) if the independent review committee of the dealer managed ~~mutual~~[investment](#) fund has approved the transaction under subsection 5.2(2) of ~~NI 81-107~~. [The CSA National Instrument 81-107 Independent Review Committee for Investment Funds \(“NI 81-107”\)](#). [The Canadian securities regulatory authorities](#) expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.
- (2) Subsection 4.3(2) [of the Instrument](#) permits ~~a mutual~~[an investment](#) fund to purchase a class of debt securities from, or sell a class of debt securities to, another ~~mutual~~[investment](#) fund managed by the same manager or an affiliate of the manager where the price payable for the security is not publicly available, if the independent review committee of the ~~mutual~~[investment](#) fund has approved the transaction under subsection 5.2(2) of NI 81-107 and the requirements in section 6.1 of NI 81-107 have been met. [The CSA Canadian securities regulatory authorities](#) expect the independent review committee may contemplate giving its approval as a standing instruction, as contemplated in section 5.4 of NI 81-107.
- (3) In providing its approval under paragraph 4.3(2), ~~the CSA~~ [of the Instrument, the Canadian securities regulatory authorities](#) expect the independent review committee to have satisfied itself that the price of the security is fair. It may do this by considering the price quoted on a marketplace (e.g., CanPx or TRACE), or by obtaining a quote from an independent, arm’s-length purchaser or seller, immediately before the purchase or sale.

PART 4 USE OF SPECIFIED DERIVATIVES

4.1 Exercising Options on Futures - Paragraphs 2.8(1)(d) and (e) of the Instrument prohibit a mutual fund from, among other things, opening and maintaining a position in a standardized future except under the conditions referred to in those paragraphs. Opening and maintaining a position in a standardized future could be effected through the exercise by a mutual fund of an option on futures. Therefore, it should be noted that a mutual fund cannot exercise an option on futures and assume a position in a standardized future unless the applicable provisions of paragraphs 2.8(1)(d) or (e) are satisfied.

4.2 Registration Matters - The Canadian securities regulatory authorities remind industry participants of the following requirements contained in securities legislation:

1. ~~A mutual~~[An investment](#) fund may only invest in or use clearing corporation options and over-the-counter options if the portfolio adviser advising with respect to these investments

- (a) is permitted, either by virtue of registration as an adviser under the securities legislation or commodity futures legislation of the jurisdiction in which the portfolio adviser is providing the advice or an exemption from the requirement to be registered, to provide that advice to the ~~mutual~~investment fund under the laws of that jurisdiction; and
 - (b) has satisfied all applicable option proficiency requirements of that jurisdiction ~~which, ordinarily, will involve completion of the Canadian Options Course.~~
- 2. ~~A mutual~~An investment fund may invest in or use futures and options on futures only if the portfolio adviser advising with respect to these investments or uses is registered as an adviser under the securities or commodity futures legislation of the jurisdiction in which the portfolio adviser is providing the advice, if this registration is required in that jurisdiction, and meets the proficiency requirements for advising with respect to futures and options on futures in the jurisdiction.
 - 3. A portfolio adviser of ~~a mutual~~an investment fund that receives advice from a non-resident sub-adviser as contemplated by section 2.10 of the Instrument is not relieved from the registration requirements described in paragraphs 1 and 2.
 - 4. In Ontario, a non-resident sub-adviser is required, under the commodity futures legislation of Ontario, to be registered in Ontario if it provides advice to another portfolio adviser of ~~a mutual~~an investment fund in Ontario concerning the use of standardized futures by the ~~mutual~~investment fund. Section 2.10 of the Instrument does not exempt the non-resident sub-adviser from this requirement. A non-resident sub-adviser should apply for an exemption in Ontario if it wishes to carry out the arrangements contemplated by section 2.10 without being registered in Ontario under that legislation.

4.3 Leveraging - The Instrument is designed to prevent the use of specified derivatives for the purpose of leveraging the assets of the mutual fund. The definition of “hedging” prohibits leveraging with specified derivatives used for hedging purposes. The provisions of subsection 2.8(1) of the Instrument restrict leveraging with specified derivatives used for non-hedging purposes.

4.4 Cash Cover - The definition of “cash cover” in the Instrument prescribes the securities or other portfolio assets that may be used to satisfy the cash cover requirements relating to specified derivatives positions of mutual funds required by Part 2 of the Instrument. The definition of “cash cover” includes various interest-bearing securities; the definition includes interest accrued on those securities, and so mutual funds are able to include accrued interest for purposes of cash cover calculations.

PART 5 LIABILITY AND INDEMNIFICATION

5.1 Liability and Indemnification

- (1) Subsection 4.4(1) of the Instrument contains provisions that require that any agreement or declaration of trust under which a person or company acts as manager of ~~a mutual~~an investment fund provide that the manager is responsible for any loss that arises out of the failure of it, and of any person or company retained by it or the ~~mutual~~investment fund to

discharge any of the manager's responsibilities to the ~~mutual~~investment fund, to satisfy the standard of care referred to in that section. Subsection 4.4(2) of the Instrument provides that ~~a mutual~~an investment fund ~~shall~~must not relieve the manager from that liability.

- (2) The purpose of these provisions is to ensure that the manager remains responsible to the ~~mutual~~investment fund and therefore indirectly to its securityholders for the duty of care that is imposed by the securities legislation of most jurisdictions, and to clarify that the manager is responsible ~~to ensure~~for ensuring that service providers perform to the level of that standard of care. The Instrument does not regulate the contractual relationships between the manager and service providers; whether a manager can seek indemnification from a service provider that fails to satisfy that standard of care is a contractual issue between those parties.
- (3) Subsection 4.4(5) of the Instrument provides that section 4.4 does not apply to any losses to ~~a mutual~~an investment fund or securityholder arising out of an action or inaction by a custodian or ~~subcustodian~~sub-custodian or by a director of ~~a mutual~~an investment fund. A separate liability regime is imposed, on custodians or sub-custodians by section 6.6 of the Instrument. Directors are subject to the liability regime imposed by the relevant corporate legislation.

5.2 Securities Lending, Repurchase and Reverse Repurchase Transactions

- (1) As described in section 5.1, section 4.4 of the Instrument is designed to ensure that the manager of ~~a mutual~~an investment fund is responsible for any loss that arises out of the failure of it, and of any person or company retained by it or the ~~mutual~~investment fund to discharge any of the manager's responsibilities to the ~~mutual~~investment fund, to satisfy the standard of care referred to in that section.
- (2) The retention by a manager of an agent under section 2.15 of the Instrument to administer the ~~mutual~~investment fund's securities lending, repurchase or reverse repurchase transactions does not relieve the manager from ultimate responsibility for the administration of those transactions in accordance with the Instrument and in conformity with the standard of care imposed on the manager by statute and required to be imposed on the agent in the relevant agreement by subsection 2.15(~~64~~) of the Instrument.
- (3) ~~Because the agent is required to be a~~Under subsection 2.15(3) of the Instrument, the custodian or sub-custodian of the mutual fund, its an investment fund must be the agent appointed to act on behalf of the investment fund to administer securities lending, repurchase or reverse repurchase transactions of the investment fund. The activities of the agent, as custodian or sub-custodian, are not within the responsibility of the manager of the ~~mutual~~investment fund, as provided for in subsection 4.4(5) of the Instrument. However, the activities of the agent, in its role as administering the ~~mutual~~investment funds' securities lending, repurchase or reverse repurchase transactions, are within the ultimate responsibility of the manager, as provided for in subsection 4.4(6) of the Instrument.

PART 6 SECURITYHOLDER MATTERS

- 6.1 **Meetings of Securityholders** - Subsection 5.4(1) of the Instrument imposes a requirement that a meeting of securityholders of ~~a mutual~~an investment fund called for the purpose of considering any of the matters referred to in ~~section~~subsection 5.1(~~1~~) of the Instrument must be called on notice sent at least 21 days before the date of the meeting. Industry

participants are reminded that the provisions of National ~~Policy Statement No. 41, Instrument 54-101~~ Communication with Beneficial Owners of Securities of a Reporting Issuer, or a successor instrument, may apply to any meetings of securityholders of mutual investment funds and that those provisions may require that a longer period of notice be given.

6.2 Limited Liability

- (1) Mutual Investment funds generally are structured in a manner that ensures that investors are not exposed to the risk of loss of an amount more than their original investment. This is a very important and essential attribute of mutual investment funds.
- (2) Mutual Investment funds that are structured as corporations do not raise pressing liability problems because of the limited liability regime of corporate statutes.
- (3) Mutual Investment funds that are structured as limited partnerships may raise some concerns about the loss of limited liability if limited partners participate in the management or control of the partnership. The Canadian securities regulatory authorities encourage managers of mutual investment funds that are structured as limited partnerships to consider this issue in connection with the holding of meetings of securityholders, even if required under ~~section~~ subsection 5.1(1) of the Instrument. In addition, in the view of the Canadian securities regulatory authorities, all managers of mutual investment funds that are structured as limited partnerships should ~~consider whether disclosure and~~ include a discussion of this issue ~~should be included~~ as a risk factor in prospectuses.

6.3 Calculation of Fees

- (1) Paragraph 5.1(1)(a) of the Instrument requires securityholder approval before the basis of the calculation of a fee or expense that is charged to ~~a mutual investment~~ mutual investment fund is changed in a way that could result in an increase in charges to the mutual investment fund. The Canadian securities regulatory authorities note that the phrase “basis of the calculation” includes any increase in the rate at which a particular fee is charged to the mutual investment fund.
- (2) The ~~CSA~~ Canadian securities regulatory authorities are of the view that the requirement of ~~subsection paragraph~~ subsection paragraph 5.1(1)(a) of the Instrument would not apply in instances where the change to the basis of the calculation is the result of separate individual agreements between the manager of the mutual investment fund and individual securityholders of the mutual investment fund, and the resulting increase in charges is payable directly or indirectly by those individual securityholders only.

6.4. Fund Conversions

- (1) For the purposes of subparagraphs 5.1(1)(h)(i), (ii) and (iii) of the Instrument, the Canadian securities regulatory authorities consider that any change that will restructure an investment fund from its original structure requires the prior approval of the securityholders of the investment fund. For example, a non-redeemable investment fund may be designed to convert into a mutual fund on a specified date, or it may be designed to convert into a mutual fund after a specified date if the securities of the investment fund have traded at a specified discount to their net asset value per security for more than a set period of time. In each case, when the event that triggers the conversion occurs, the

redemption feature of the securities of the non-redeemable investment fund changes and the securities of the non-redeemable investment fund will typically become redeemable at their net asset value per security daily. This change in the redemption feature of the securities of the investment fund may not be implemented unless securityholder approval has been obtained under subparagraph 5.1(1)(h)(i) of the Instrument. Another example of a change requiring securityholder approval is where an investment fund seeks to obtain control, or become involved in the management, of companies in which it invests, which is inconsistent with the nature of an investment fund. In such a situation, the investment fund would be required to obtain securityholder approval under subparagraph 5.1(1)(h)(iii) of the Instrument, in order to convert into a non-investment fund issuer, before it could become involved in the management of, or exercise control over, investees.

- (2) For the purposes of subsection 5.1(2) of the Instrument, the Canadian securities regulatory authorities consider the costs and expenses associated with a change referred to in paragraph 5.1(1)(h) of the Instrument to include costs associated with the securityholder meeting to obtain approval of the change, the costs of preparing and filing a prospectus to commence continuous distribution of securities if the investment fund is converting from a non-redeemable investment fund to a mutual fund in continuous distribution, and brokerage commissions payable as a result of any portfolio realignment necessary to carry out the transaction.

PART 7 CHANGES

7.1 Integrity and Competence of ~~Mutual~~Investment Fund Management Groups

- (1) Paragraph 5.5(1)(a) of the Instrument requires that the approval of the securities regulatory authority be obtained before the manager of ~~a mutual~~an investment fund is changed. ~~Subsection~~Paragraph 5.5(~~2~~1)(a.1) of the Instrument contemplates similar approval to a change in control of a manager.
- (2) In connection with each of these approvals, applicants are required by section 5.7 of the Instrument to provide information to the securities regulatory authority concerning the integrity and experience of the persons or companies that are proposed to be involved in, or control, the management of the ~~mutual~~investment fund after the proposed transaction.
- (3) The Canadian securities regulatory authorities would generally consider it helpful in their assessment of the integrity and experience of the proposed new management group that will manage ~~a mutual~~an investment fund after a change in manager if the application set out, among any other information the applicant wishes to provide
- (a) the name, registered address and principal business activity or the name, residential address and occupation or employment of
- (i) if the proposed manager is not a public company, each beneficial owner of securities of each shareholder, partner or limited partner of the proposed manager, and
- (ii) if the proposed manager is a public company, each beneficial owner of securities of each shareholder of the proposed manager that is the beneficial holder, directly or indirectly, of more than 10-~~percent~~% of the outstanding securities of the proposed manager; and

- (b) information concerning
 - (i) if the proposed manager is not a public company, each shareholder, partner or limited partner of the proposed manager,
 - (ii) if the proposed manager is a public company, each shareholder that is the beneficial holder, directly or indirectly, of more than 10 ~~percent~~% of the outstanding securities of the proposed manager,
 - (iii) each director and officer of the proposed manager, and
 - (iv) each proposed director, officer or individual trustee of the ~~mutual~~investment fund.
- (4) The Canadian securities regulatory authorities would generally consider it helpful if the information relating to the persons and companies referred to in paragraph (3)(b) included
 - (a) for a company
 - (i) its name, registered address and principal business activity,
 - (ii) the number of securities or partnership units of the proposed manager beneficially owned, directly or indirectly, and
 - (iii) particulars of any existing or potential conflicts of interest that may arise as a result of the activities of the company and its relationship with the management group of the ~~mutual~~investment fund; and
 - (b) for an individual
 - (i) his or her name, birthdate and residential address,
 - (ii) his or her principal occupation or employment,
 - (iii) his or her principal occupations or employment during the five years before the date of the application, with a particular emphasis on the individual's experience in the financial services industry,
 - (iv) the individual's educational background, including information regarding courses successfully taken that relate to the financial services industry,
 - (v) his or her position and responsibilities with the proposed manager or the controlling shareholders of the proposed manager or the ~~mutual~~investment fund,
 - (vi) whether he or she is, or within five years before the date of the application has been, a director, officer or promoter of any reporting issuer other than the ~~mutual~~investment fund, and if so, disclosing the names of the reporting issuers and their business purpose, with a particular emphasis on relationships between the individual and other ~~mutual~~investment funds,

- (vii) the number of securities or partnership units of the proposed manager beneficially owned, directly or indirectly,
 - (viii) particulars of any existing or potential conflicts of interest that may arise as a result of the individual's outside business interests and his or her relationship with the management group of the ~~mutual~~investment fund, and
 - (ix) a description of the individual's relationships to the proposed manager and other service providers to the ~~mutual~~investment fund.
- (5) The Canadian securities regulatory authorities would generally consider it helpful in their assessment of the integrity and experience of the persons or companies that are proposed to manage a ~~mutual~~an investment fund after a change of control of the manager, if the application set out, among any other information that applicant wishes to provide, a description of
- (a) the proposed corporate ownership of the manager of the ~~mutual~~investment fund after the proposed transaction, indicating for each proposed direct or indirect shareholder of the manager of the ~~mutual~~investment fund the information about that shareholder referred to in subsection (4);
 - (b) the proposed officers and directors of the manager of the ~~mutual~~investment fund, of the ~~mutual~~investment fund and of each of the proposed controlling shareholders of the ~~mutual~~investment fund, indicating for each individual, the information about that individual referred to in subsection (4);
 - (c) any anticipated changes to be made to the officers and directors of the manager of the ~~mutual~~investment fund, of the ~~mutual~~investment fund and of each of the proposed controlling shareholders of the ~~mutual~~investment fund that are not set out in paragraph (b); and
 - (d) the relationship of the members of the proposed controlling shareholders and the other members of the management group to the manager and any other service provider to the ~~mutual~~investment fund.

7.2 Mergers ~~and Conversions of Mutual~~of Investment Funds - Subsection 5.6(1) of the Instrument provides that mergers ~~or conversions~~ of ~~mutual~~investment funds may be carried out on the conditions described in that subsection without prior approval of the securities regulatory authority. The Canadian securities regulatory authorities consider that the types of transactions contemplated by subsection 5.6(1) of the Instrument when carried out in accordance with the conditions of that subsection address the fundamental regulatory concerns raised by mergers ~~and conversions of mutual~~of investment funds. Subsection 5.6(1) ~~of the Instrument~~ is designed to facilitate consolidations of ~~mutual~~investment funds within fund families that have similar fundamental investment objectives and strategies and that are operated in a consistent and similar fashion. Since subsection 5.6(1) will be unavailable unless the ~~mutual~~investment funds involved in the transaction have substantially similar fundamental investment objectives and strategies and are operated in a substantially similar fashion, the Canadian securities regulatory authorities do not expect that the portfolios of the consolidating funds will be required to be realigned to any great extent before a merger. If realignment is necessary, the Canadian securities regulatory

authorities note that paragraph 5.6(1)(h) of the Instrument provides that none of the costs and expenses associated with the transaction may be borne by the ~~mutual~~investment fund. Brokerage commissions payable as a result of any portfolio realignment necessary to carry out the transaction would, in the view of the Canadian securities regulatory authorities, be costs and expenses associated with the transaction.

7.3 Regulatory Approval for Reorganizations

- (1) Paragraph 5.7(1)(b) of the Instrument requires certain details to be provided in respect of an application for regulatory approval required by paragraph 5.5(1)(b) that is not automatically approved under subsection 5.6(1). The Canadian securities regulatory authorities will be reviewing this type of proposed transaction, among other things, to ensure that adequate disclosure of the differences between the ~~funds~~issuers participating in the proposed transaction is given to securityholders of the ~~mutual~~investment fund that will be merged, reorganized or amalgamated with another ~~mutual fund~~issuer.
- (2) If a ~~mutual~~an investment fund is proposed to be merged, amalgamated or reorganized with a ~~mutual~~an investment fund that has a net asset value that is smaller than the net asset value of the terminating ~~mutual~~investment fund, the Canadian securities regulatory authorities will consider the implications of the proposed transaction on the smaller continuing ~~mutual~~investment fund. The Canadian securities regulatory authorities believe that this type of transaction generally would constitute a material change for the smaller continuing ~~mutual~~investment fund, thereby triggering the requirements of paragraph 5.1(1)(g) of the Instrument and Part 11 of National Instrument 81-106 *Investment Fund Continuous Disclosure*.

7.4 [Deleted]

7.5 Circumstances in Which Approval of Securityholders Not Required

- (1) Subsection 5.3(2) of the Instrument provides that a ~~mutual~~an investment fund's reorganization with, or transfer of assets to, another ~~mutual fund~~issuer may be carried out on the conditions described in ~~the subsection~~paragraph 5.3(2)(a) or (b) without the prior approval of the securityholders of the ~~mutual~~investment fund.
- (2) If the manager refers the change contemplated in subsection 5.3(2) of the Instrument to the ~~mutual~~investment fund's independent review committee, and subsequently seeks the approval of the securityholders of the ~~mutual~~investment fund, the ~~CSA~~Canadian securities regulatory authorities expect the manager to include a description of the independent review committee's determination in the written notice to securityholders referred to in section 5.4 of ~~this~~the Instrument.
- (3) The Canadian securities regulatory authorities expect the written notice referred to in subparagraph 5.3(2)(a)(iv) and (v) of the Instrument to include, at a minimum, the expected date of the reorganization, the name of the other investment fund with which the investment fund will be reorganized, how a securityholder of the investment fund may obtain a copy of the other investment fund's fund facts, simplified prospectus or annual information form, as applicable, and a description of the determination of the investment fund's independent review committee with respect to the reorganization.

- 7.6 Change of Auditor** – Section 5.3.1 of the Instrument requires that the independent review committee of the ~~mutual~~investment fund give its prior approval to the manager before the auditor of the ~~mutual~~investment fund may be changed.
- 7.7 Connection to NI 81-107** – There may be matters under ~~section~~subsection 5.1(1) of the Instrument that may also be a conflict of interest matter as defined in NI 81-107. The ~~CSA~~Canadian securities regulatory authorities expect any matter under ~~section~~subsection 5.1(1) of the Instrument subject to review by the independent review committee to be referred by the manager to the independent review committee before seeking the approval of securityholders of the ~~mutual~~investment fund. The ~~CSA~~Canadian securities regulatory authorities further expect the manager to include a description of the independent review committee’s determination in the written notice to securityholders referred to in subsection 5.4(2) of ~~this~~the Instrument.
- 7.8 Termination of an Investment Fund** – Subsection 5.8(2) of the Instrument requires a mutual fund that is terminating to give notice of the termination to all securityholders of the mutual fund. Section 5.8.1 of the Instrument requires a non-redeemable investment fund that is terminating to issue and file a press release announcing the termination. Investment funds for which the termination is a material change must also comply with the requirements of Part 11 of National Instrument 81-106 Investment Fund Continuous Disclosure.

PART 8 CUSTODIANSHIP OF PORTFOLIO ASSETS

- 8.1 Standard of Care** - The standard of care prescribed by section 6.6 of the Instrument is a minimum standard only. Similarly, the provisions of section 6.5 of the Instrument, designed to protect ~~a mutual~~an investment fund from loss in the event of the insolvency of those holding its portfolio assets, are minimum requirements. The Canadian securities regulatory authorities are of the view that the requirements set out in section 6.5 may require custodians and sub-custodians to take such additional steps as may be necessary or desirable properly to protect the portfolio assets of the ~~mutual~~investment fund in a foreign jurisdiction and to ensure that those portfolio assets are unavailable to satisfy the claims of creditors of the custodian or sub-custodian, having regard to creditor protection and bankruptcy legislation of any foreign jurisdiction in which portfolio assets of ~~a mutual~~an investment fund may be located.
- 8.2 Book-Based System**
- (1) Subsection 6.5(3) of the Instrument provides that a custodian or sub-custodian of ~~a mutual~~an investment fund may arrange for the deposit of portfolio assets of the ~~mutual~~investment fund with a depository, or clearing agency, that operates a book-based system. Such depositories or clearing agencies include The Canadian Depository For Securities Limited, the Depository Trust Company or any other domestic or foreign depository or clearing agency that is incorporated or organized under the laws of a country or a political subdivision of a country and operates a book-based system in that country or political subdivision or operates a transnational book-based system.
 - (2) A depository or clearing agency that operates a book-based system used by ~~a mutual~~an investment fund is not considered to be a custodian or sub-custodian of the ~~mutual~~investment fund.

- 8.3 Compliance** - Paragraph 6.7(1)(c) of the Instrument requires the custodian of ~~a mutual~~an investment fund to make any changes periodically that may be necessary to ensure that the custodian and sub-custodian agreements comply with Part 6, and that there is no sub-custodian of the ~~mutual~~investment fund that does not satisfy the applicable requirements of sections 6.2 or 6.3. The Canadian securities regulatory authorities note that necessary changes to ensure this compliance could include a change of sub-custodian.

PART 9 CONTRACTUAL PLANS

- 9.1 Contractual Plans** - Industry participants are reminded that the term “contractual plan” used in Part 8 of the Instrument is a defined term in the securities legislation of most jurisdictions, and that contractual plans as so defined are not the same as automatic or periodic investment plans. The distinguishing feature of a contractual plan is that sales charges are not deducted at a constant rate as investments in mutual fund securities are made under the plan; rather, proportionately higher sales charges are deducted from the investments made during the first year, or in some plans the first two years.

PART 10 SALES AND REDEMPTIONS OF SECURITIES

- 10.1 General** ~~— The purposes of~~ Parts 9, 10 and 11 of the Instrument ~~are intended to ensure~~include ensuring that
- (a) investors’ cash is received by ~~a mutual~~an investment fund promptly;
 - (b) the opportunity for loss of an investors’ cash before investment in the ~~mutual~~investment fund is minimized; and
 - (c) the ~~mutual~~investment fund or the appropriate investor receives all interest that accrues on cash during the periods between delivery of the cash by an investor until investment in the ~~mutual~~investment fund, in the case of the purchase of ~~mutual~~investment fund securities, or between payment of the cash by the ~~mutual~~investment fund until receipt by the investor, in the case of redemptions.
- 10.2 Interpretation**
- (1) ~~The Instrument refers to “securityholders” of a mutual fund in several provisions, most notably in Parts 9 and 10 when referring to purchase and redemption orders received by a mutual fund or a participating dealer or principal distributor from “securityholders”.~~[Deleted]
 - (2) The Instrument refers to “securityholders” of an investment fund in several provisions. Mutual Investment funds must keep a record of the holders of their securities. ~~A mutual~~An investment fund registers a holder of its securities on this record as requested by the person or company placing a purchase order or as subsequently requested by that registered securityholder. The Canadian securities regulatory authorities are of the view that ~~a mutual~~an investment fund is entitled to rely on its register of holders of securities to determine the names of such holders and in its determination as to whom it is to take instructions from.
 - (3) Accordingly, when the Instrument refers to “securityholder” of ~~a mutual~~an investment fund, it is referring to the securityholder registered as a holder of securities on the records

of the ~~mutual~~[investment](#) fund. If that registered securityholder is a participating dealer acting for its client, the ~~mutual~~[investment](#) fund deals with and takes instructions from that participating dealer. The Instrument does not regulate the relationship between the participating dealer and its client for whom the participating dealer is acting as agent. The Canadian securities regulatory authorities note however, that the participating dealer should, as a matter of prudent business practice, obtain appropriate instructions, in writing, from its client when dealing with the client's beneficial holdings in ~~a mutual~~[an investment](#) fund.

10.3 Receipt of Orders

- (1) A principal distributor or participating dealer of a mutual fund should endeavour, to the extent possible, to receive cash to be invested in the mutual fund at the time the order to which they pertain is placed.
- (2) A dealer receiving an order for redemption should, at the time of receipt of the investor's order, obtain from the investor all relevant documentation required by the mutual fund in respect of the redemption including, without limitation, any written request for redemption that may be required by the mutual fund, duly completed and executed, and any certificates representing the mutual fund securities to be redeemed, so that all required documentation is available at the time the redemption order is transmitted to the mutual fund or to its principal distributor for transmittal to the mutual fund.

10.4 Backward Pricing - ~~Sections~~[Subsections](#) 9.3(1) and 10.3(1) of the Instrument provide that the issue price or the redemption price of a security of a mutual fund to which a purchase order or redemption order pertains shall be the net asset value per security, next determined after the receipt by the mutual fund of the relevant order. For clarification, the Canadian securities regulatory authorities emphasize that the issue price and redemption price cannot be based upon any net asset value per security calculated before receipt by the mutual fund of the relevant order.

10.5 Coverage of Losses

- (1) Subsection 9.4(6) of the Instrument provides that certain participating dealers may be required to compensate a mutual fund for a loss suffered as the result of a failed settlement of a purchase of securities of the mutual fund. Similarly, subsection 10.5(3) of the Instrument provides that certain participating dealers may be required to compensate a mutual fund for a loss suffered as the result of a redemption that could not be completed due to the failure to satisfy the requirements of the mutual fund concerning redemptions.
- (2) The Canadian securities regulatory authorities have not carried forward into the Instrument the provisions contained in NP39 relating to a participating dealer's ability to recover from their clients or other participating dealers any amounts that they were required to pay to a mutual fund. If participating dealers wish to provide for such rights they should make the appropriate provisions in the contractual arrangements that they enter into with their clients or other participating dealers.

10.6 Issue Price of Securities for Non-Redeemable Investment Funds

- (1) Paragraph 9.3(2)(a) of the Instrument provides that the issue price of the securities of a non-redeemable investment fund must not, as far as reasonably practicable, be a price that

causes dilution of the net asset value of the other outstanding securities of the investment fund at the time the security is issued. The Canadian securities regulatory authorities consider that, to satisfy this requirement, the issue price of the securities should generally not be a price that is less than the net asset value per security of that class, or series of a class, determined on the date of issuance. However, the Canadian securities regulatory authorities recognize that the determination of what is “reasonably practicable” is fact-specific and will vary depending on the type of offering or issuance.

- (2) For example, the Canadian securities regulatory authorities generally expect that any issuances of new securities of a non-redeemable investment fund in connection with a merger of the fund, or any issuances of new securities to the manager of the non-redeemable investment fund as payment of management fees, be issued at a price that is not less than the NAV per security on the date of issuance. However, the Canadian securities regulatory authorities have observed when an existing non-redeemable investment fund issues new securities under a prospectus, the issue price typically exceeds the net asset value per security on the day before the date of the prospectus, such that the net proceeds of the offering on a per unit basis is no less than the net asset value per security on the day before the date of the prospectus. The Canadian securities regulatory authorities do not consider this issue price to cause dilution to the net asset value of other outstanding securities of the investment fund.

PART 11 COMMINGLING OF CASH

11.1 Commingling of Cash

- (1) Part 11 of the Instrument requires principal distributors and participating dealers to account separately for cash they may receive for the purchase of, or upon the redemption of, ~~mutual~~investment fund securities. Those principal distributors and participating dealers are prohibited from commingling any cash so received with their other assets or with cash held for the purchase or upon the sale of securities of other types of securities. The Canadian securities regulatory authorities are of the view that this means that dealers may not deposit into the trust accounts established under Part 11 cash obtained from the purchase or sale of other types of securities such as guaranteed investment certificates, government treasury bills, segregated funds or bonds.
- (2) Subsections 11.1(2) and 11.2(2) of the Instrument state that principal distributors and participating dealers, respectively, may not use any cash received for the investment in ~~mutual~~investment fund securities to finance their own operations. The Canadian securities regulatory authorities are of the view that any costs associated with returned client cheques that did not have sufficient funds to cover a trade (“NSF cheques”) are a cost of doing business and should be borne by the applicable principal distributor or participating dealer and should not be offset by interest income earned on the trust accounts established under Part 11 of the Instrument.
- (3) No overdraft positions should arise in these trust accounts.
- (4) Subsections 11.1(3) and 11.2(3) of the Instrument prescribe the circumstances under which a principal distributor or participating dealer, respectively, may withdraw funds from the trust accounts established under Part 11 of the Instrument. This would prevent the practice of “lapping”. Lapping occurs as a result of the timing differences between trade date and settlement date, when cash of ~~a mutual~~an investment fund client held for a trade which has

not yet settled is used to settle a trade for another mutual investment fund client who has not provided adequate cash to cover the settlement of that other trade on the settlement date. The Canadian securities regulatory authorities view this practice as a violation of subsections 11.1(3) and 11.2(3) of the Instrument.

- (5) Subsections 11.1(4) and 11.2(4) of the Instrument require that interest earned on cash held in the trust accounts established under Part 11 of the Instrument be paid to the applicable mutual investment fund or its securityholders “pro rata based on cash flow”. The Canadian securities regulatory authorities are of the view that this requirement means, in effect, that the applicable mutual investment fund or securityholder should be paid the amount of interest that the mutual investment fund or securityholder would have received had the cash held in trust for that mutual investment fund or securityholder been the only cash held in that trust account.
- (6) Paragraph 11.3(b) of the Instrument requires that trust accounts maintained in accordance with sections 11.1 or 11.2 of the Instrument bear interest “at rates equivalent to comparable accounts of the financial institution”. A type of account that ordinarily pays zero interest may be used for trust accounts under sections 11.1 or 11.2 of the Instrument so long as zero interest is the rate of interest paid on that type of account for all depositors other than trust accounts.

PART 12 [Deleted]

PART 13 PROHIBITED REPRESENTATIONS AND SALES COMMUNICATIONS

13.1 Misleading Sales Communications

- (1) Part 15 of the Instrument prohibits misleading sales communications relating to mutual investment funds and asset allocation services. Whether a particular description, representation, illustration or other statement in a sales communication is misleading depends upon an evaluation of the context in which it is made. The following list sets out some of the circumstances, in the view of the Canadian securities regulatory authorities, in which a sales communication would be misleading. No attempt has been made to enumerate all such circumstances since each sales communication must be assessed individually.
 1. A statement would be misleading if it lacks explanations, qualifications, limitations or other statements necessary or appropriate to make the statement not misleading.
 2. A representation about past or future investment performance would be misleading if it is
 - (a) a portrayal of past income, gain or growth of assets that conveys an impression of the net investment results achieved by an actual or hypothetical investment that is not justified under the circumstances;
 - (b) a representation about security of capital or expenses associated with an investment that is not justified under the circumstances or a representation about possible future gains or income; or

- (c) a representation or presentation of past investment performance that implies that future gains or income may be inferred from or predicted based on past investment performance or portrayals of past performance.
 - 3. A statement about the characteristics or attributes of ~~a mutual~~an investment fund or an asset allocation service would be misleading if
 - (a) it concerns possible benefits connected with or resulting from services to be provided or methods of operation and does not give equal prominence to discussion of any risks or associated limitations;
 - (b) it makes exaggerated or unsubstantiated claims about management skill or techniques; characteristics of the ~~mutual~~investment fund or asset allocation service; an investment in securities issued by the fund or recommended by the service; services offered by the fund, the service or their respective manager; or effects of government supervision; or
 - (c) it makes unwarranted or incompletely explained comparisons to other investment vehicles or indices.
 - 4. A sales communication that quoted a third party source would be misleading if the quote were out of context and proper attribution of the source were not given.
- (2) Performance data information may be misleading even if it complies technically with the requirements of the Instrument. For instance, subsections 15.8(1) and (2) of the Instrument contain requirements that the standard performance data for ~~mutual~~investment funds given in sales communications be for prescribed periods falling within prescribed amounts of time before the date of the appearance or use of the advertisement or first date of publication of any other sales communication. That standard performance data may be misleading if it does not adequately reflect intervening events occurring after the prescribed period. An example of such an intervening event would be, in the case of money market funds, a substantial decline in interest rates after the prescribed period.
- (3) An advertisement that presents information in a manner that distorts information contained in the preliminary prospectus or prospectus, or preliminary prospectus, preliminary fund facts document and preliminary annual information form or prospectus, fund facts document and annual information form, as applicable, of ~~a mutual~~an investment fund or that includes a visual image that provides a misleading impression will be considered to be misleading.
- (4) Any discussion of the income tax implications of an investment in ~~a mutual~~an investment fund security should be balanced with a discussion of any other material aspects of the offering.
- (5) Paragraph 15.2(1)(b) of the Instrument provides that sales communications must not include any statement that conflicts with information that is contained in, among other things and as applicable, a prospectus or fund facts document. The Canadian securities regulatory authorities are of the view that a sales communication that provides performance data in compliance with the requirements of Part 15 of the Instrument for time periods that differ from those shown in a prospectus, fund facts document or management

report of fund performance does not violate the requirements of paragraph 15.2(1)(b) of the Instrument.

- (6) Subsection 15.3(1) of the Instrument permits ~~a mutual~~[an investment](#) fund or asset allocation service to compare its performance to, among other things, other types of investments or benchmarks on certain conditions. Examples of such other types of investments or benchmarks to which the performance of ~~a mutual~~[an investment](#) fund or asset allocation service may be compared include consumer price indices; stock, bond or other types of indices; averages; returns payable on guaranteed investment certificates or other certificates of deposit; and returns from an investment in real estate.
- (7) Paragraph 15.3(1)(c) of the Instrument requires that, if the performance of ~~a mutual~~[an investment](#) fund or asset allocation service is compared to that of another investment or benchmark, the comparison sets out clearly any factors necessary to ensure that the comparison is fair and not misleading. Such factors would include an explanation of any relevant differences between the ~~mutual~~[investment](#) fund or asset allocation service and the investment or benchmark to which it is compared. Examples of such differences include any relevant differences in the guarantees of, or insurance on, the principal of or return from the investment or benchmark; fluctuations in principal, income or total return; any differing tax treatment; and, for a comparison to an index or average, any differences between the composition or calculation of the index or average and the investment portfolio of the ~~mutual~~[investment](#) fund or asset allocation service.

13.2 Other Provisions

- (1) Subsection 15.9(1) of the Instrument imposes certain disclosure requirements for sales communications in circumstances in which there was a change in the business, operations or affairs of ~~a mutual~~[an investment](#) fund or asset allocation service during or after a performance measurement period of performance data contained in the sales communication that could have materially affected the performance of the ~~mutual~~[investment](#) fund or asset allocation service. Examples of these changes are changes in the management, investment objectives, portfolio adviser, ownership of the manager, fees and charges, or of policies concerning the waiving or absorbing of fees and charges, of the ~~mutual~~[investment](#) fund or asset allocation service; or of a change in the characterization of ~~the~~[a](#) mutual fund as a money market fund. [A reorganization or restructuring of an investment fund that results in a conversion of a non-redeemable investment fund into a mutual fund, or the conversion of a mutual fund into a non-redeemable investment fund, would also be an example of such a change.](#)

- (1.1) [Subparagraph 15.6\(1\)\(d\)\(i\) of the Instrument prohibits a sales communication pertaining to a mutual fund from including performance data for a period that is before the time when the mutual fund offered its securities under a prospectus. Where the mutual fund has previously existed as a non-redeemable investment fund and has been a reporting issuer in a jurisdiction for a period of at least 12 consecutive months, either as a mutual fund or a non-redeemable investment fund, subsection 15.6\(2\) requires any sales communication that contains performance data of the mutual fund to include performance data for the period that the fund existed as a non-redeemable investment fund. The Canadian securities regulatory authorities are of the view that performance data pertaining to a mutual fund that has converted from a non-redeemable investment fund should include both the periods before and after the converting transaction, similar to the past performance information presented in the mutual fund's management report of fund performance. Performance data](#)

must not be included for any period before the time the non-redeemable investment fund was a reporting issuer.

- (2) Paragraph 15.11(1)5 of the Instrument requires that no non-recurring fees and charges that are payable by some or all securityholders and no recurring fees and charges that are payable by some but not all securityholders be assumed in calculating standard performance data. Examples of non-recurring types of fees and charges are front-end sales commissions and contingent deferred sales charges, and examples of recurring types of fees and charges are the annual fees paid by purchasers who purchased on a contingent deferred charge basis.
- (3) Paragraphs 15.11(1)2 and 15.11(2)2 of the Instrument require that no fees and charges related to optional services be assumed in calculating standard performance data. Examples of these fees and charges include transfer fees, except in the case of an asset allocation service, and fees and charges for registered retirement savings plans, registered retirement income funds, registered education savings plans, pre-authorized investment plans and systematic withdrawal plans.
- (4) The Canadian securities regulatory authorities are of the view that it is inappropriate and misleading for ~~a mutual~~an investment fund that is continuing following a merger to prepare and use *pro forma* performance information or financial statements that purport to show the combined performance of the two funds during a period before their actual merger. The Canadian securities regulatory authorities are of the view that such *pro forma* information is hypothetical, involving the making of many assumptions that could affect the results.
- (5) Subsections 15.8(2) and (3) of the Instrument require disclosure of standard performance data of a mutual fund, in some circumstances, from “the inception of the mutual fund”. It is noted that paragraph 15.6(1)(d) generally prohibits disclosure of performance data for a period that is before the time when the mutual fund offered its securities under a prospectus or before an asset allocation service commenced operation. Also, each of Instruction (1) to Item 5 of Part B of Form 81-101F1 *Contents of Simplified Prospectus* and Instruction (1) to Item 2 of Part I of Form 81-101F3 *Contents of Fund Facts Document* requires disclosure of the date on which a mutual fund's securities first became available to the public as the date on which the mutual fund “started”. Therefore, consistent with these provisions, the words “inception of the mutual fund” in subsections 15.8(2) and (3) of the Instrument should be read as referring to the beginning of the distribution of the securities of the mutual fund under a prospectus of the mutual fund, and not from any previous time in which the mutual fund may have existed but did not offer its securities under a prospectus. If a mutual fund previously existed as a non-redeemable investment fund, the words “inception of the mutual fund” in subsections 15.8(2) and (3) of the Instrument should be read as referring to the date that the non-redeemable investment fund became a reporting issuer.
- (6) Paragraph 15.6(1)(a) of the Instrument contains a prohibition against the inclusion of performance data for a mutual fund that has been distributing securities for less than 12 consecutive months. The creation of a new class or series of security of an existing mutual fund does not constitute the creation of a new mutual fund and therefore does not subject the mutual fund to the restrictions of paragraph 15.6(1)(a) unless the new class or series is referable to a new portfolio of assets.
- (7) Section 15.14 of the Instrument contains the rules relating to sales communications for multi-class ~~mutual~~investment funds. Those rules are applicable to ~~a mutual~~an investment

fund that has more than one class of securities that are referable to the same portfolio of assets. Section 15.14 does not deal directly with asset allocation services. It is possible that asset allocation services could offer multiple “classes”; the Canadian securities regulatory authorities recommend that any sales communications for those services generally respect the principles of section 15.14 in order to ensure that those sales communications not be misleading.

- (8) The Canadian securities regulatory authorities believe that the use of hypothetical or *pro forma* performance data for new classes of securities of a multi-class ~~mutual~~investment fund would generally be misleading.

13.3 Sales Communications of Non-Redeemable Investment Funds During the Waiting Period and the Distribution Period – The Canadian securities regulatory authorities remind non-redeemable investment funds of the restrictions contained in securities legislation relating to the distribution of material and advertising and marketing in connection with a prospectus offering during the waiting period and during the distribution period following the issuance of a receipt for the final prospectus. Part 15 of the Instrument does not vary any of the restrictions imposed during these periods.

PART 14 [Deleted]

PART 15 SECURITYHOLDER RECORDS

15.1 Securityholder Records

(1) Section 18.1 of the Instrument requires the maintenance of securityholder records, including past records, relating to the issue and redemption of securities and distributions of the ~~mutual~~investment fund. Section 18.1 of the Instrument does not require that these records need be held indefinitely. It is up to the particular ~~mutual~~investment fund, having regard to prudent business practice and any applicable statutory limitation periods, to decide how long it wishes to retain old records.

(2) The Canadian securities regulatory authorities are of the view that the requirements in section 18.1 to maintain securityholder records may be satisfied if the investment fund maintains up to date records of registered securityholders. Each investment fund may decide whether it wishes to maintain records of beneficial securityholders.

PART 16 EXEMPTIONS AND APPROVALS

16.1 Need for Multiple or Separate Applications - The Canadian securities regulatory authorities note that a person or company that obtains an exemption from a provision of the Instrument need not apply again for the same exemption at the time of each prospectus or simplified prospectus refiling unless there has been some change in an important fact relating to the granting of the exemption. This also applies to exemptions from NP39 granted before the Instrument; as provided in section 19.2 of the Instrument, it is not necessary to obtain an exemption from the corresponding provision of the Instrument.

16.2 Exemptions under Prior Policies

(1) Subsection 19.2(1) of the Instrument provides that a mutual fund that has obtained, from the regulatory or securities regulatory authority, an exemption from a provision of NP 39

before the Instrument came into force is granted an exemption from any substantially similar provision of the Instrument, if any, on the same conditions, if any, contained in the earlier exemption.

- (2) The Canadian securities regulatory authorities are of the view that the fact that a number of small amendments have been made to many of the provisions of the Instrument from the corresponding provision of NP39 should not lead to the conclusion that the provisions are not “substantially similar”, if the general purpose of the provisions remain the same. For instance, even though some changes have been made in the Instrument, the Canadian securities regulatory authorities consider paragraph 2.2(1)(a) of the Instrument to be substantially similar to paragraph 2.04(1)(b) of NP39, in that the primary purpose of both provisions is to prohibit mutual funds from acquiring securities of an issuer sufficient to permit the mutual fund to control or significantly influence the control of that issuer.
- (3) The ~~CSA~~[Canadian securities regulatory authorities](#) are of the view that the new provisions of the Instrument relating to mutual funds investing in other mutual funds introduced on December 31, 2003 are not “substantially similar” to those of the Instrument which they replace.

16.3 Waivers and Orders concerning “Fund of Funds”

- (1) The ~~CSA~~[Canadian securities regulatory authorities](#) in a number of jurisdictions have provided waivers and orders from NP39 and securities legislation to permit “fund of funds” to exist and carry on investment activities not otherwise permitted by NP39 or securities legislation. Some of those waivers and orders contained “sunset” provisions that provided that they expired when legislation or a ~~CSA~~ policy or rule [of the Canadian securities regulatory authorities](#) came into force that effectively provided for a new “fund of funds” regime. For greater certainty, the Canadian securities regulatory authorities note that the coming into force of the Instrument will not trigger the “sunset” of those waivers and orders.
- (2) For greater certainty, note that the coming into force of ~~National~~[the](#) Instrument ~~81-102~~ did not trigger the “sunset” of those waivers and orders. However, the coming into force of section 19.3 of the Instrument will effectively cause those waivers and orders to expire one year after its coming into force.