

Nova Scotia Securities Commission

Rule 81-105 (Amendment)
Mutual Fund Sales Practices

- and -

Amendments to National Instrument 81-105
Mutual Fund Sales Practices

- and -

Changes to Companion Policy 81-105CP
Mutual Fund Sales Practices

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 81-105 *Mutual Fund Sales Practices* (the Rule) and Changes to Companion Policy 81-105CP *Mutual Fund Sales Practices* (the Policy Changes), copies of which are attached hereto, have been made a rule by one or more of the Canadian securities regulatory authorities; and
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 Policy Changes as a policy of the Commission; and

- (c) declares that the rule approved and made pursuant to clause (a) shall take effect on **December 31, 2020** and the policy issued pursuant to clause (b) shall take effect on **June 1, 2022**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule shall not become effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair of the Commission, being the member 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 14th day of October, 2020.



Paul Radford, Q.C.
Chair

Attachments

**AMENDMENTS TO
NATIONAL INSTRUMENT 81-105 *MUTUAL FUND SALES PRACTICES***

1. National Instrument 81-105 *Mutual Fund Sales Practices* is amended by this Instrument.

2. Section 1.1 is amended by adding the following definition:

"suitability determination" means a determination or other assessment required to be made under any of the following:

- (a) section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- (b) the rules of the Investment Industry Regulatory Organization of Canada named in Appendix G of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that are in effect, as amended from time to time, and that correspond to section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- (c) the rule or policy of the Mutual Fund Dealers Association of Canada named in Appendix H of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* that are in effect, as amended from time to time, and that correspond to section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

3. Section 2.2 is amended by adding the following subsection:

- (3) Despite subsection (2), a participating dealer may not solicit or accept a payment of a trailing commission from a member of the organization of the mutual fund, in connection with securities of the mutual fund held in an account of a client of the participating dealer, if the participating dealer was not required to make a suitability determination in respect of the client in connection with those securities..

4. Section 3.2 is amended

- (a) **in subsection (1) by deleting** "in money that is based upon the aggregate value of securities of the mutual fund held in accounts of clients of the participating dealer as at a particular time or during a particular period,"
- (b) **in paragraph 3.2(1)(a) by replacing** "the trade" **with** "a trade in securities of the mutual fund by a client of the participating dealer",
- (c) **by adding the following paragraph to subsection (1):**
 - (a.1) the amount of the trailing commission is based on the value of securities of the mutual fund held in an account of the client as at a particular time or during a particular period; **and**
- (d) **by adding the following subsection:**
 - (4) Despite subsection (1), no member of the organization of a mutual fund may pay a trailing commission to a participating dealer in connection with securities of the mutual fund held in an account of a client of the participating dealer if the member knows or ought reasonably to know that the participating dealer was not required to make a suitability determination in respect of the client in connection with those securities..

Effective dates

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

Column 1 Provision of this Instrument	Column 2 Date
1, 2	December 31, 2020
3, 4	June 1, 2022

- (2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after the effective dates indicated in column 2, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

**CHANGES TO
COMPANION POLICY 81-105CP MUTUAL FUND SALES PRACTICES**

1. ***Companion Policy 81-105CP Mutual Fund Sales Practices is changed by this Document.***
2. ***Part 5 of the Companion Policy is changed by adding the following section:***

- 5.4 **Restriction on payment and acceptance of trailing commissions where no suitability determination made** – Subsection 3.2(4) prohibits members of the organization of a mutual fund from paying trailing commissions to participating dealers who were not required to make a suitability determination in connection with securities of a mutual fund held in an account of the client. Correspondingly, subsection 2.2(3) of the Instrument prohibits participating dealers from soliciting or accepting payments when they were not required to make a suitability determination in connection with securities of a mutual fund held in an account of the client. Consequently, participating dealers who are not subject to the obligation to make a suitability determination under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* or corresponding SRO rules may not solicit or accept trailing commission payments from members of the organization of a mutual fund. In addition, members of the organization of a mutual fund should make available to participating dealers who are not required to make a suitability determination in respect of a client, a class or series of securities of a mutual fund that does not pay trailing commissions, which the dealer should offer to the client.

We remind members of the organization of a mutual fund and participating dealers of their duty under section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, including the prohibitions in subsections 2.2(3) and 3.2(4).

We expect members of the organization of a mutual fund and participating dealers to be diligent in complying with subsections 2.2(3) and 3.2(4). Participating dealers should be operating in a manner that enables members of the organization of a mutual fund to ascertain whether a suitability determination was required to be made in connection with the securities of the mutual fund held in an account of the dealers' clients and members of the organization of a mutual fund should be aware of the information that a participating dealer makes available to them regarding whether a suitability determination was required to be made..

3. These changes come into effect on June 1, 2022.

