
B. Ontario Securities Commission

B.1 Notices

B.1.1 CSA Notice of Publication – Amendments to National Instrument 81-102 Investment Funds and Changes to Companion Policy 81-102CP to National Instrument 81-102 Investment Funds to Accommodate a Range of Settlement Cycles for Mutual Funds



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA NOTICE OF PUBLICATION

AMENDMENTS TO NATIONAL INSTRUMENT 81-102 INVESTMENT FUNDS AND CHANGES TO COMPANION POLICY 81-102CP TO NATIONAL INSTRUMENT 81-102 INVESTMENT FUNDS TO ACCOMMODATE A RANGE OF SETTLEMENT CYCLES FOR MUTUAL FUNDS

May 23, 2024

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are adopting amendments (the **Final Amendments**) to National Instrument 81-102 *Investment Funds* (**NI 81-102**) and changes (the **Final Changes**) to Companion Policy 81-102CP to National Instrument 81-102 *Investment Funds* (**81-102CP**).

Provided all necessary regulatory and ministerial approvals are obtained, the Final Amendments will come into force on August 31, 2024.

The text of the Final Amendments and the Final Changes is contained in Annexes B and C of this notice and will also be available on the websites of the following CSA jurisdictions:

www.lautorite.qc.ca
www.asc.ca
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Summary, Substance and Purpose

The purpose of the Final Amendments and the Final Changes is to accommodate a range of settlement cycles and particularly for those mutual funds that voluntarily decide to shorten the settlement cycle for purchases and redemptions of their securities from T+2 to T+1 when the underlying assets held by the fund move to a T+1 settlement cycle.

The Final Amendments introduce changes to clarify that payments must be made no later than the reference settlement date of the purchase order. The reference settlement date of the purchase order is the business day determined by the mutual fund and made available in writing to the principal distributor, the participating dealer, or the person or company providing services to the principal distributor or participating dealer, which must be on or before the second business day after the pricing date.

The Final Amendments also introduce a change to paragraph 9.4(4)(a) of NI 81-102 to require a mutual fund that voluntarily decides to shorten the settlement cycle for purchase or redemption of its securities from T+2 to T+1 to redeem its securities for non-payment on the next business day after the reference settlement date of the purchase order, which would be on T+2 rather than T+3 as currently required.

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The Final Changes provide guidance clarifying that examples that could satisfy the requirement for a mutual fund to make available in writing the business day it determines as the reference settlement date under subsection 9.4(0.1)(a) of NI 81-102 include (a) providing the mutual fund's settlement cycle via a clearing agency or a clearing house recognized by a securities regulatory authority in a jurisdiction, which includes Fundserv Inc., or a successor, through an electronic file or otherwise, and (b) posting the mutual fund's settlement cycle on the mutual fund's designated website.

Background

On October 19, 2023, we published for a 90-day comment period proposed amendments to NI 81-102 to facilitate a voluntary decision by a mutual fund to shorten the settlement cycle for purchases and redemptions of its securities from two days after the date of a trade to one day after the date of a trade in anticipation of the settlement cycle for equity and long-term debt market trades in Canada to T+1.

We received two comments. Both comments support the Final Amendments. After considering the comments, we made the Final Changes. We also changed the requirement that the reference settlement date be "disclosed" in the version of paragraph 9.4(0.1)(a) published for comment to a requirement that the reference settlement date be "made available" in the Final Amendments to better align these amendments with the Final Changes.

Content of Annexes

This Notice contains the following annexes:

- Annex A: List of Commenters and Summary of Comments and CSA Responses
- Annex B: Final Amendments to National Instrument 81-102 *Investment Funds*
- Annex C: Final Changes to Companion Policy 81-102CP to National Instrument 81-102 *Investment Funds*
- Annex D: Local Matters

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission
James Leong
Senior Legal Counsel, Corporate Finance
Tel : 604-899-6681
Email: jleong@bcsc.bc.ca

Alberta Securities Commission
Chad Conrad
Senior Legal Counsel, Investment Funds
Tel: 403-297-4295
Email: Chad.Conrad@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan
Heather Kuchuran
Director, Corporate Finance
Tel: 306-787-1009
Email: heather.kuchuran@gov.sk.ca

Manitoba Securities Commission
Patrick Weeks
Deputy Director – Corporate Finance
Tel: 204-945-3326
Email: Patrick.weeks@gov.mb.ca

Ontario Securities Commission
Michael Tang
Senior Legal Counsel, Investment Management Division
Tel: 416-593-2330
Email: mtang@osc.gov.on.ca

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Autorité des marchés financiers

Philippe Lessard
Investment Funds Analyst, Investment Products Oversight
Tel: 514-395-0337 # 4364
Email: Philippe.Lessard@lautorite.qc.ca

Financial and Consumer Services Commission (New Brunswick)

Clayton Mitchell, Registration and Compliance Manager
Tel: 506-658-5476
Email: clayton.mitchell@fcnb.ca

Nova Scotia Securities Commission

Abel Lazarus
Director, Corporate Finance Branch
Tel: 902-424-6859
Email: abel.lazarus@novascotia.ca

Peter Lamey
Legal Analyst, Corporate Finance Branch
Tel: 902-424-7630
Email: peter.lamey@novascotia.ca

ANNEX A

**AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 INVESTMENT FUNDS
AND CHANGES TO
COMPANION POLICY 81-102CP TO NATIONAL INSTRUMENT 81-102
INVESTMENT FUNDS TO ACCOMMODATE A RANGE OF SETTLEMENT CYCLES FOR MUTUAL FUNDS**

LIST OF COMMENTERS AND SUMMARY OF COMMENTS AND CSA RESPONSES

No.	Commenter	Date
1.	Borden Ladner Gervais (Whitney Wakeling, Roma Lotay, Donna Spagnolo, Melissa Ghislanzoni)	January 16, 2024
2.	The Investment Funds Institute of Canada (Andy Mitchell, President & CEO)	January 17, 2024

No.	Subject	Summarized Comment	Response
GENERAL COMMENTS			
1	General Support	Two commenters are supportive of the Final Amendments.	We thank the commenters for their support.
SPECIFIC COMMENTS			
2	The Final Changes	<p>Two commenters recommend that guidance be added to 81-102CP to provide examples of what constitutes “in writing” to facilitate compliance.</p> <p>Two commenters recommend that the CSA provide examples that would satisfy the requirement under subsection 9.4(0.1) of NI 81-102.</p>	<p>We are adding subsection 10.2(4) to 81-102CP to clarify that examples that could satisfy the requirement for a mutual fund to make available in writing the business day it determines as the reference settlement date under subsection 9.4(0.1) of NI 81-102 include (a) providing the mutual fund’s settlement cycle via a clearing agency or clearing house recognized by a securities regulatory authority in a jurisdiction, which includes Fundserv Inc., or a successor, through an electronic file or otherwise, and (b) posting the mutual fund’s settlement cycle on the mutual fund’s designated website.</p> <p>To better align the Final Amendments with the addition of subsection 10.2(4) to 81-102CP, the requirement to “disclose” the reference settlement date in the version of paragraph 9.4(0.1)(a) published for comment has been changed to “made available” in the Final Amendments.</p>
3	Other Comments	<p>One commenter asked the CSA to affirm the continued applicability of certain exemptive relief decisions, which permit certain exchange-traded funds (ETFs) that invest in securities that settle three days after the trade date to continue to settle primary trades of ETF securities three days after the trade date.</p> <p>The commenter notes that these ETFs will technically be unable to satisfy a condition of the decisions, which require these ETFs to disclose that primary market trades of their securities settle two days after the trade</p>	The rulemaking process is not an appropriate forum to provide the affirmation requested by the commenter.

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No.	Subject	Summarized Comment	Response
		date because primary market trades of their securities will settle one day after the trade date following the transition to a T+1 settlement cycle.	

ANNEX B

AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

1. ***National Instrument 81-102 Investment Funds is amended by this Instrument.***
2. ***Section 9.4 is amended***
 - (a) ***by adding the following subsection:***
 - (0.1) In subsections (1), (2) and (4), “reference settlement date” means the earlier of
 - (a) the business day determined by the mutual fund and made available in writing to the principal distributor or participating dealer referred to in subsection (1), or to the person or company referred to in subsection (1) providing services to the principal distributor or participating dealer, and
 - (b) the second business day after the pricing date.,
 - (b) ***in subsections (1), (2) and (4), by replacing “second business day after the pricing date” with “reference settlement date”, and***
 - (c) ***in paragraph 4(a), by replacing “third business day after the pricing date” with “next business day after the reference settlement date”.***

Effective Date

3. (1) This Instrument comes into force on August 31, 2024.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after August 31, 2024, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX C

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

1. ***Companion Policy 81-102CP to National Instrument 81-102 Investment Funds is changed by this Document.***
2. ***Section 10.2 is changed by adding the following subsection:***
 - (4) Examples that could satisfy the requirement for a mutual fund to make available in writing the business day it determines as the reference settlement date under subsection 9.4(0.1) of the Instrument include
 - (a) providing the mutual fund's settlement cycle via a clearing agency or a clearing house recognized by a securities regulatory authority in a jurisdiction, which includes Fundserv Inc., or a successor, through an electronic file or otherwise, and
 - (b) posting the mutual fund's settlement cycle on the mutual fund's designated website..
3. These changes become effective on August 31, 2024.

ANNEX D

LOCAL MATTERS

1. Introduction

The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice of Publication (the **CSA Notice**) and to set out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**).

The CSA have made amendments and changes to existing rules and policies to accommodate a range of settlement cycles for mutual funds. Specifically, the CSA has made amendments (the **Final Amendments**) to National Instrument 81-102 *Investment Funds*, and changes (the **Final Changes**) to Companion Policy 81-102CP to National Instrument 81-102 *Investment Funds*.

Please refer to the CSA Notice for a discussion of the substance and purpose of the Final Amendments.

Please refer to Annex A of the CSA Notice for a summary of comments received during the comment period and corresponding responses of the CSA.

2. Ministerial Approval

The Final Amendments, the Final Changes and other required materials were delivered to the Minister of Finance on May 22, 2024. The Minister may approve or reject the Final Amendments or return them to the Commission for further consideration. If the Minister approves the Final Amendments or does not take any further action by July 21, 2024, they will come into force on August 31, 2024.