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The text boxes in this document are for explanatory purposes only and are not part of the Instrument or the Companion Policy.

**NATIONAL INSTRUMENT 81-102**  
***INVESTMENT FUNDS***

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**NATIONAL INSTRUMENT 81-102  
INVESTMENT FUNDS**

**PART 1        DEFINITIONS AND APPLICATION**

**1.1        Definitions - In this Instrument**

“acceptable clearing corporation” means a clearing corporation that is an acceptable clearing corporation under the Joint Regulatory Financial Questionnaire and Report;

“advertisement” means a sales communication that is published or designed for use on or through a public medium;

“asset allocation service” means an administrative service under which the investment of a person or company is allocated, in whole or in part, among mutual funds to which this Instrument applies and reallocated among those mutual funds and, if applicable, other assets according to an asset allocation strategy;

“book-based system” means a system for the central handling of securities or equivalent book-based entries under which all securities of a class or series deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery;

“borrowing agent” means any of the following:

- (a) a custodian or sub-custodian that holds assets in connection with a short sale of securities by an investment fund;
- (b) a qualified dealer from whom an investment fund borrows securities in order to sell them short;

“cash cover” means any of the following assets of a mutual fund that are held by the mutual fund, have not been allocated for specific purposes and are available to satisfy all or part of the obligations arising from a position in specified derivatives held by the mutual fund or from a short sale of securities made by the mutual fund:

- (a) cash;
- (b) cash equivalents;
- (c) synthetic cash;
- (d) receivables of the mutual fund arising from the disposition of portfolio assets, net of payables arising from the acquisition of portfolio assets;
- (e) securities purchased by the mutual fund in a reverse repurchase transaction under section 2.14, to the extent of the cash paid for those securities by the mutual fund;
- (f) each evidence of indebtedness that has a remaining term to maturity of 365 days or less and a designated rating;

- (g) each floating rate evidence of indebtedness if
  - (i) the floating interest rate of the indebtedness is reset no later than every 185 days, and
  - (ii) the principal amount of the indebtedness will continue to have a market value of approximately par at the time of each change in the rate to be paid to the holders of the evidence of indebtedness;
- (h) securities issued by a money market fund;

“cash equivalent” means an evidence of indebtedness that has a remaining term to maturity of 365 days or less and that is issued, or fully and unconditionally guaranteed as to principal and interest, by

- (a) the government of Canada or the government of a jurisdiction,
- (b) 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, or
- (c) a Canadian financial institution, or a financial institution that is not incorporated or organized under the laws of Canada or of a jurisdiction if, in either case, evidences of indebtedness of that issuer or guarantor that are rated as short term debt by a designated rating organization or its DRO affiliate have a designated rating;

“clearing corporation” means an organization through which trades in options or standardized futures are cleared and settled;

“clearing corporation option” means an option, other than an option on futures, issued by a clearing corporation;

“clone fund” means an investment fund that has adopted a fundamental investment objective to track the performance of another investment fund;

“conventional convertible security” means a security of an issuer that is, according to its terms, convertible into, or exchangeable for, other securities of the issuer, or of an affiliate of the issuer;

“conventional floating rate debt instrument” means an evidence of indebtedness of which the interest obligations are based upon a benchmark commonly used in commercial lending arrangements;

“conventional warrant or right” means a security of an issuer, other than a clearing corporation, that gives the holder the right to purchase securities of the issuer or of an affiliate of the issuer;

“currency cross hedge” means the substitution by an investment fund of a risk to one currency for a risk to another currency, if neither currency is a currency in which the investment fund determines its net asset value per security and the aggregate amount of currency risk to which the investment fund is exposed is not increased by the substitution;

“custodian” means the institution appointed by an investment fund to hold portfolio assets of the investment fund;

“dealer managed investment fund” means an investment fund the portfolio adviser of which is a dealer manager;

“dealer managed mutual fund” [Repealed]

“dealer manager” means

- (a) a specified dealer that acts as a portfolio adviser,
- (b) a portfolio adviser in which a specified dealer, or a partner, director, officer, salesperson or principal shareholder of a specified dealer, directly or indirectly owns of record or beneficially, or exercises control or direction over, securities carrying more than 10 percent of the total votes attaching to securities of the portfolio adviser, or
- (c) a partner, director or officer of a portfolio adviser referred to in paragraph (b);

“debt-like security” means a security purchased by a mutual fund, other than a conventional convertible security or a conventional floating rate debt instrument, that evidences an indebtedness of the issuer if

- (a) either
  - (i) the amount of principal, interest or principal and interest to be paid to the holder is linked in whole or in part by a formula to the appreciation or depreciation in the market price, value or level of one or more underlying interests on a predetermined date or dates, or
  - (ii) the security provides the holder with a right to convert or exchange the security into or for the underlying interest or to purchase the underlying interest, and
- (b) on the date of acquisition by the mutual fund, the percentage of the purchase price attributable to the component of the security that is not linked to an underlying interest is less than 80 percent of the purchase price paid by the mutual fund;

“delta” means the positive or negative number that is a measure of the change in market value of an option relative to changes in the value of the underlying interest of the option;

“designated rating” means, for a security or instrument, a rating issued by a designated rating organization, or its DRO affiliate, that is at or above one of the following rating categories, or that is at or above a category that replaces one of the following rating categories, if

- (a) there has been no announcement by the designated rating organization or its DRO affiliate of which the investment fund or its manager is or reasonably should be aware that the rating of the security or instrument to which the designated rating was given may be down-graded to a rating category that would not be a designated rating, and

- (b) no designated rating organization or any of its DRO affiliates has rated the security or instrument in a rating category that is not a designated rating:

<b>Designated Rating Organization</b>	<b>Commercial Paper/ Short Term Debt</b>	<b>Long Term Debt</b>
DBRS Limited	R-1 (low)	A
Fitch, Inc.	F1	A
Moody's Canada Inc.	P-1	A2
Standard & Poor's Ratings Services (Canada)	A-1 (Low)	A

“designated rating organization” means

- (a) each of DBRS Limited, Fitch, Inc., Moody's Canada Inc., Standard & Poor's Ratings Services (Canada), including their DRO affiliates; or
- (b) any other credit rating organization that has been designated under securities legislation;

“DRO affiliate” has the same meaning as in section 1 of National Instrument 25-101 Designated Rating Organizations;

“equivalent debt” means, in relation to an option, swap, forward contract or debt-like security, an evidence of indebtedness of approximately the same term as, or a longer term than, the remaining term to maturity of the option, swap, contract or debt-like security and that ranks equally with, or subordinate to, the claim for payment that may arise under the option, swap, contract or debt-like security;

“fixed portfolio ETF” means an exchange-traded mutual fund not in continuous distribution that

- (a) has fundamental investment objectives which include holding and maintaining a fixed portfolio of publicly traded equity securities of one or more issuers the names of which are disclosed in its prospectus, and
- (b) trades the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus;

“floating rate evidence of indebtedness” means an evidence of indebtedness that has a floating rate of interest determined over the term of the obligation by reference to a commonly used benchmark interest rate and that satisfies any of the following:

- (a) if the evidence of indebtedness was issued by a person or company other than a government or a permitted supranational agency, it has a designated rating;



- (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;

“forward contract” means an agreement, not entered into with, or traded on, a stock exchange or futures exchange or cleared by a clearing corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time in the future established by or determinable by reference to the agreement:

1. Make or take delivery of the underlying interest of the agreement.
2. Settle in cash instead of delivery;

“fundamental investment objectives” means the investment objectives of an investment fund that define both the fundamental nature of the investment fund and the fundamental investment features of the investment fund that distinguish it from other investment funds;

“futures exchange” means an association or organization operated to provide the facilities necessary for the trading of standardized futures;

“government security” means an evidence of indebtedness 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;

“guaranteed mortgage” means a mortgage fully and unconditionally guaranteed, or insured, by the government of Canada, by the government of a jurisdiction or by an agency of any of those governments or by a corporation approved by the Office of the Superintendent of Financial Institutions to offer its services to the public in Canada as an insurer of mortgages;

“hedging” means the entering into of a transaction, or a series of transactions, and the maintaining of the position or positions resulting from the transaction or series of transactions

- (a) if
  - (i) the intended effect of the transaction, or the intended cumulative effect of the series of transactions, is to offset or reduce a specific risk associated with all or a portion of an existing investment or position or group of investments or positions,
  - (ii) the transaction or series of transactions results 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, and

- (iii) there are reasonable grounds to believe that the transaction or series of transactions no more than offset the effect of price changes in the investment or position, or group of investments or positions, being hedged, or
- (b) if the transaction, or series of transactions, is a currency cross hedge;

“IIROC” means the Investment Industry Regulatory Organization of Canada;

“illiquid asset” means

- (a) a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the mutual fund, or
- (b) a restricted security held by a mutual fund, the resale of which is prohibited by a representation, undertaking or agreement by the mutual fund or by the predecessor in title of the mutual fund;

“independent review committee” means the independent review committee of the investment fund established under National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“index mutual fund” means a mutual fund that has adopted fundamental investment objectives that require the mutual fund 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 those 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;

“index participation unit” means a security traded on a stock exchange in Canada or the United States and issued by an issuer the only purpose of which is to

- (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index, or
- (b) invest in a manner that causes the issuer to replicate the performance of that index;

“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;

“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;

“Joint Regulatory Financial Questionnaire and Report” means the Joint Regulatory Financial Questionnaire and Report of various Canadian SROs on the date that this Instrument comes into force and every successor to the form that does not materially lessen the criteria for an entity to be recognized as an “acceptable clearing corporation”;

“long position” means a position held by an investment fund that, for

- (a) an option, entitles the investment fund to elect to purchase, sell, receive or deliver the underlying interest or, instead, pay or receive cash,
- (b) a standardized future or forward contract, obliges the investment fund to accept delivery of the underlying interest or, instead, pay or receive cash,
- (c) a call option on futures, entitles the investment fund to elect to assume a long position in standardized futures,
- (d) a put option on futures, entitles the investment fund to elect to assume a short position in standardized futures, and
- (e) a swap, obliges the investment fund to accept delivery of the underlying interest or receive cash;

“management expense ratio” means the ratio, expressed as a percentage, of the expenses of an investment fund to its average net asset value, calculated in accordance with Part 15 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“manager” means an investment fund manager;

“manager-prescribed number of units” means, in relation to an exchange-traded mutual fund that is in continuous distribution, the number of units determined by the manager from time to time for the purposes of subscription orders, exchanges, redemptions or for other purposes;

“material change” has the meaning ascribed to that term in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“member of the organization” has the meaning ascribed to that term in National Instrument 81-105 *Mutual Fund Sales Practices*;

“MFDA” means the Mutual Fund Dealers Association of Canada;

“money market fund” means a mutual fund that invests its assets in accordance with section 2.18;

“mortgage” includes a hypothec or security that creates a charge on real property in order to secure a debt;

“mutual fund conflict of interest investment restrictions” [Repealed]

“mutual fund conflict of interest reporting requirements” [Repealed]

“mutual fund rating entity” means an entity

- (a) that rates or ranks the performance of mutual funds or asset allocation services through an objective methodology that is
  - (i) based on quantitative performance measurements,
  - (ii) applied consistently to all mutual funds or asset allocation services rated or ranked by it, and
  - (iii) disclosed on the entity's website,
- (b) that is not a member of the organization of any mutual fund, and
- (c) whose services to assign a rating or ranking to any mutual fund or asset allocation service are not procured by the promoter, manager, portfolio adviser, principal distributor or participating dealer of any mutual fund or asset allocation service, or any of their affiliates;

“net asset value” means the value of the total assets of the investment fund less the value of the total liabilities, other than net assets attributable to securityholders, of the investment fund, as at a specific date, determined in accordance with Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“NI 81-107” means National Instrument 81-107 *Independent Review Committee for Investment Funds*;

“non-resident sub-adviser” means a person or company providing portfolio management advice

- (a) whose principal place of business is outside of Canada,
- (b) that advises a portfolio adviser to an investment fund, and
- (c) that is not registered under securities legislation in the jurisdiction in which the portfolio adviser that it advises is located;

“option” means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement at or by a time established by the agreement:

1. Receive an amount of cash determinable by reference to a specified quantity of the underlying interest of the option.
2. Purchase a specified quantity of the underlying interest of the option.
3. Sell a specified quantity of the underlying interest of the option;

“option on futures” means an option the underlying interest of which is a standardized future;

“order receipt office” means, for a mutual fund

- (a) the principal office of the mutual fund,
- (b) the principal office of the principal distributor of the mutual fund, or
- (c) a location to which a purchase order or redemption order for securities of the mutual fund is required or permitted by the mutual fund to be delivered by participating dealers or the principal distributor of the mutual fund;

“overall rating or ranking” means a rating or ranking of a mutual fund or asset allocation service that is calculated from standard performance data for one or more performance measurement periods, which includes the longest period for which the mutual fund or asset allocation service is required under securities legislation to calculate standard performance data, other than the period since the inception of the mutual fund;

“participating dealer” means a dealer other than the principal distributor that distributes securities of a mutual fund;

“participating fund” means a mutual fund in which an asset allocation service permits investment;

“performance data” means a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund, an asset allocation service, a security, an index or a benchmark;

“permitted gold certificate” means a certificate representing gold if the gold is

- (a) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate,
- (b) of a minimum fineness of 995 parts per 1,000,
- (c) held in Canada,
- (d) in the form of either bars or wafers, and
- (e) if not purchased from a bank listed in Schedule I, II or III of the *Bank Act (Canada)*, fully insured against loss and bankruptcy by an insurance company licensed under the laws of Canada or a jurisdiction;

“permitted index” means, in relation to a mutual fund, a market index that is

- (a) both
  - (i) administered by an organization that is not affiliated with any of the mutual fund, its manager, its portfolio adviser or its principal distributor, and
  - (ii) available to persons or companies other than the mutual fund, or
- (b) widely recognized and used;

“permitted supranational agency” means the African Development Bank, the Asian Development Bank, the Caribbean Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the Inter-American Development Bank, the International Bank for Reconstruction and Development and the International Finance Corporation;

“physical commodity”, means, in an original or processed state, an agricultural product, forest product, product of the sea, mineral, metal, hydrocarbon fuel product, precious stone or other gem;

“portfolio adviser” means a person or company that provides investment advice or portfolio management services under a contract with the investment fund or with the manager of the investment fund;

“portfolio asset” means an asset of an investment fund;

“pricing date” means, for the sale of a security of a mutual fund, the date on which the net asset value per security of the mutual fund is calculated for the purpose of determining the price at which that security is to be issued;

“principal distributor” means a person or company through whom securities of a mutual fund are distributed under an arrangement with the mutual fund or its manager that provides

- (a) an exclusive right to distribute the securities of the mutual fund in a particular area, or
- (b) a feature that gives or is intended to give the person or company a material competitive advantage over others in the distribution of the securities of the mutual fund;

“public quotation” includes, for the purposes of calculating the amount of illiquid assets held by a mutual fund, any quotation of a price for a fixed income security made through the inter-dealer bond market;

“purchase” means, in connection with an acquisition of a portfolio asset by an investment fund, an acquisition that is the result of a decision made and action taken by the investment fund;

“qualified security” means

- (a) an evidence of indebtedness that is issued, or fully and unconditionally guaranteed as to principal and interest, by
  - (i) the government of Canada or the government of a jurisdiction,
  - (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, or
  - (iii) a Canadian financial institution or a financial institution that is not incorporated or organized under the laws of Canada or of a jurisdiction if, in either case, evidences of indebtedness of that issuer or guarantor that are rated as short term debt by a designated rating organization or its DRO affiliate have a designated rating, or

- (b) commercial paper that has a term to maturity of 365 days or less and a designated rating and that was issued by a person or company other than a government or permitted supranational agency;

“redemption payment date” [Repealed]

“report to securityholders” means a report that includes annual financial statements or interim financial reports, or an annual or interim management report of fund performance, and that is delivered to securityholders of an investment fund;

“restricted security” means a security, other than a specified derivative, the resale of which is restricted or limited by a representation, undertaking or agreement by the mutual fund or by the mutual fund’s predecessor in title, or by law;

“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;

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

“short position” means a position held by an investment fund that, for

- (a) an option, obliges the investment fund, at the election of another, to purchase, sell, receive or deliver the underlying interest, or, instead, pay or receive cash,
- (b) a standardized future or forward contract, obliges the investment fund, at the election of another, to deliver the underlying interest or, instead, pay or receive cash,
- (c) a call option on futures, obliges the investment fund, at the election of another, to assume a short position in standardized futures, and
- (d) a put option on futures, obliges the investment fund, at the election of another, to assume a long position in standardized futures;

“special warrant” means a security that, by its terms or the terms of an accompanying contractual obligation, entitles or requires the holder to acquire another security without payment of material additional consideration and obliges the issuer of the special warrant or the other security to undertake efforts to file a prospectus to qualify the distribution of the other security;

“specified asset-backed security” means a security that

- (a) is primarily serviced by the cash flows of a discrete pool of receivables or other financial assets, either fixed or revolving, that by their terms convert into cash within a finite time, and any rights or assets designed to assure the servicing or timely distribution of proceeds to securityholders, and
- (b) by its terms entitles an investor in that security to a return of the investment of that investor at or by a time established by or determinable by reference to an agreement, except as a result of losses incurred on, or the non-performance of, the financial assets;

“specified dealer” means a dealer other than a dealer whose activities as a dealer are restricted by the terms of its registration to one or both of

- (a) acting solely in respect of mutual fund securities;
- (b) acting solely in respect of transactions in which a person or company registered in the category of exempt market dealer in a jurisdiction is permitted to engage;

“specified derivative” means 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, other than

- (a) a conventional convertible security,
- (b) a specified asset-backed security,
- (c) an index participation unit,
- (d) a government or corporate strip bond,
- (e) a capital, equity dividend or income share of a subdivided equity or fixed income security,



- (f) a conventional warrant or right, or
- (g) a special warrant;

“standardized future” means an agreement traded on a futures exchange pursuant to standardized conditions contained in the by-laws, rules or regulations of the futures exchange, and cleared by a clearing corporation, to do one or more of the following at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

1. Make or take delivery of the underlying interest of the agreement.
2. Settle the obligation in cash instead of delivery of the underlying interest;

“sub-custodian” means, for an investment fund, an entity that has been appointed to hold portfolio assets of the investment fund in accordance with section 6.1 by either the custodian or a sub-custodian of the investment fund;

“swap” means an agreement that provides for

- (a) an exchange of principal amounts,
- (b) the obligation to make, and the right to receive, cash payments based upon the value, level or price, or on relative changes or movements of the value, level or price, of one or more underlying interests, which payments may be netted against each other, or
- (c) the right or obligation to make, and the right or obligation to receive, physical delivery of an underlying interest instead of the cash payments referred to in paragraph (b);

“synthetic cash” means a position that in aggregate provides the holder with the economic equivalent of the return on a banker’s acceptance accepted by a bank listed in Schedule I of the *Bank Act* (Canada) and that consists of

- (a) a long position in a portfolio of shares and a short position in a standardized future of which the underlying interest consists of a stock index, if
  - (i) there is a high degree of positive correlation between changes in the value of the portfolio of shares and changes in the value of the stock index, and
  - (ii) the ratio between the value of the portfolio of shares and the standardized future is such that, for any change in the value of one, a change of similar magnitude occurs in the value of the other,
- (b) a long position in the evidences of indebtedness issued, or fully and unconditionally guaranteed as to principal and interest, by any of the government of Canada or the government of a jurisdiction and a short position in a standardized future of which the underlying interest consists of evidences of indebtedness of the same issuer and same term to maturity, if

- (i) there is a high degree of positive correlation between changes in the value of the portfolio of evidences of indebtedness and changes in the value of the standardized future, and
- (ii) the ratio between the value of the evidences of indebtedness and the standardized future is such that, for any change in the value of one, a change of similar magnitude occurs in the value of the other; or
- (c) a long position in securities of an issuer and a short position in a standardized future of which the underlying interest is securities of that issuer, if the ratio between the value of the securities of that issuer and the position in the standardized future is such that, for any change in the value of one, a change of similar magnitude occurs in the value of the other;

“underlying interest” means, for a specified derivative, the security, commodity, financial instrument, currency, interest rate, foreign exchange rate, economic indicator, index, basket, agreement, benchmark or any other reference, interest or variable, and, if applicable, the relationship between any of the foregoing, from, to or on which the market price, value or payment obligation of the specified derivative is derived, referenced or based; and

“underlying market exposure” means, for a position of an investment fund in an option, the quantity of the underlying interest of the option position multiplied by the market value of one unit of the underlying interest, multiplied, in turn, by the delta of the option,

- (a) a standardized future or forward contract, the quantity of the underlying interest of the position multiplied by the current market value of one unit of the underlying interest; or
- (b) a swap, the underlying market exposure, as calculated under paragraph (b), for the long position of the investment fund in the swap.

**1.2 Application** – (1) This Instrument applies only to

- (a) a mutual fund that offers or has offered securities under a prospectus for so long as the mutual fund remains a reporting issuer,
  - (a.1) a non-redeemable investment fund that is a reporting issuer, and
  - (b) a person or company in respect of activities pertaining to an investment fund referred to in paragraphs (a) and (a.1) or pertaining to the filing of a prospectus to which subsection 3.1(1) applies.
- (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 *Fondation, 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.

**1.3 Interpretation** – (1) Each section, part, class or series of a class of securities of an investment fund that is referable to a separate portfolio of assets is considered to be a separate investment fund for purposes of this Instrument.

- (2) An investment fund that renews or extends a securities lending, repurchase or reverse repurchase transaction is entering into a securities lending, repurchase or reverse repurchase agreement for the purposes of section 2.12, 2.13 or 2.14.
- (3) [Repealed]

## **PART 2 INVESTMENTS**

**2.1 Concentration Restriction** – (1) A mutual fund must not purchase a security of an issuer, enter into a specified derivatives transaction or purchase index participation units if, immediately after the transaction, more than 10 percent of its net asset value would be invested in securities of any issuer.

- (2) Subsection (1) does not apply to the purchase of any of the following:
  - (a) a government security;
  - (b) a security issued by a clearing corporation;
  - (c) a security issued by a mutual fund if the purchase is made in accordance with the requirements of section 2.5;
  - (d) an index participation unit that is a security of a mutual fund;
  - (e) an equity security if the purchase is made by a fixed portfolio ETF in accordance with its investment objectives.
- (3) In determining a mutual fund's compliance with the restrictions contained in this section, the mutual fund must, for each long position in a specified derivative that is held by the mutual fund for purposes other than hedging and for each index participation unit held by the mutual fund, consider that it holds directly the underlying interest of that specified derivative or its proportionate share of the securities held by the issuer of the index participation unit.
- (4) Despite subsection (3), the mutual fund must not include in the determination referred to in subsection (3) a security or instrument that is a component of, but that represents less than 10 percent of

- (a) a stock or bond index that is the underlying interest of a specified derivative; or
  - (b) the securities held by the issuer of an index participation unit.
- (5) Despite subsection (1), an index mutual fund, the name of which includes the word “index”, may, in order to satisfy its fundamental investment objectives, purchase a security, enter into a specified derivatives transaction or purchase index participation units if its prospectus contains the disclosure referred to in subsection (5) of Item 6 and subsection (5) of Item 9 of Part B of Form 81-101F1 *Contents of Simplified Prospectus*.

**2.2 Control Restrictions** – (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.
- (1.1) Subsection (1) does not apply to the purchase of any of the following:
- (a) a security issued by an investment fund if the purchase is made in accordance with section 2.5;
  - (b) an index participation unit that is a security of an investment fund.
- (2) If an investment fund acquires a security of an issuer other than as the result of a purchase, and the acquisition results in the investment fund exceeding the limits described in paragraph (1)(a), the investment fund must as quickly as is commercially reasonable, and in any event no later than 90 days after the acquisition, reduce its holdings of those securities so that it does not hold securities exceeding those limits.
- (3) In determining its compliance with the restrictions contained in this section, an investment fund must
- (a) assume the conversion of special warrants held by it; and
  - (b) consider that it holds directly the underlying securities represented by any American depositary receipts held by it.

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.2 does not apply to the non-redeemable investment fund until March 21, 2016.

**2.3 Restrictions Concerning Types of Investments** – (1) A mutual fund must not

- (a) purchase real property;
- (b) purchase a mortgage, other than a guaranteed mortgage;

- (c) purchase a guaranteed mortgage if, immediately after the purchase, more than 10 percent of its net asset value would be made up of guaranteed mortgages;
  - (d) purchase a gold certificate, other than a permitted gold certificate;
  - (e) purchase gold or a permitted gold certificate if, immediately after the purchase, more than 10 percent of its net asset value would be made up of gold and permitted gold certificates;
  - (f) except to the extent permitted by paragraphs (d) and (e), purchase a physical commodity;
  - (g) purchase, sell or use a specified derivative other than in compliance with sections 2.7 to 2.11;
  - (h) purchase, sell or use a specified derivative the underlying interest of which is
    - (i) a physical commodity other than gold, or
    - (ii) a specified derivative of which the underlying interest is a physical commodity other than gold; or
  - (i) purchase an interest in a loan syndication or loan participation if the purchase would require the mutual fund to assume any responsibilities in administering the loan in relation to the borrower.
- (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.

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.3 does not apply to the non-redeemable investment fund until March 21, 2016.

**2.4 Restrictions Concerning Illiquid Assets** – (1) A mutual fund must not purchase an illiquid asset if, immediately after the purchase, more than 10 percent of its net asset value would be made up of illiquid assets.

- (2) A mutual fund must not have invested, for a period of 90 days or more, more than 15 percent of its net asset value in illiquid assets.
- (3) If more than 15 percent of the net asset value of a mutual fund is made up of illiquid assets, the mutual fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the percentage of its net asset value made up of illiquid assets to 15 percent or less.

**2.5 Investments in Other Investment Funds** – (1) For the purposes of this section, an investment fund is considered to be holding a security of another investment fund if

- (a) it holds securities issued by the other investment fund, or
  - (b) it is maintaining a position in a specified derivative for which the underlying interest is a security of the other investment fund.
- (2) An investment fund must not purchase or hold a security of another investment fund unless,
- (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,
    - (b) at the time of the purchase of that security, the other investment fund holds no more than 10% of its net asset value in securities of other investment funds,
    - (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,
    - (d) no management fees or incentive fees are payable by the investment fund that, to a reasonable person, would duplicate a fee payable by the other investment fund for the same service,
    - (e) no sales fees or redemption fees are payable by the investment fund in relation to its purchases or redemptions of the securities of the other investment fund if the other investment fund is managed by the manager or an affiliate or associate of the manager of the investment fund, and
    - (f) no sales fees or redemption fees are payable by the investment fund in relation to its purchases or redemptions of securities of the other investment fund that, to a reasonable person, would duplicate a fee payable by an investor in the investment fund.
- (3) Paragraphs (2)(a), (a.1), (c), and (c.1) do not apply if the security
- (a) is an index participation unit issued by an investment fund, or
  - (b) is issued by another investment fund established with the approval of the government of a foreign jurisdiction and the only means by which the foreign jurisdiction permits

investment in the securities of issuers of that foreign jurisdiction is through that type of investment fund.

- (4) Paragraph (2)(b) does not apply if the other investment fund
  - (a) is a clone fund, or
  - (b) in accordance with this section purchases or holds securities
    - (i) of a money market fund, or
    - (ii) that are index participation units issued by an investment fund.
  
- (5) Paragraphs (2)(e) and (f) do not apply to brokerage fees incurred for the purchase or sale of an index participation unit issued by an investment fund.
  
- (6) An investment fund that holds securities of another investment fund that is managed by the same manager or an affiliate or associate of the manager
  - (a) must not vote any of those securities, and
  - (b) may, if the manager so chooses, arrange for all of the securities it holds of the other investment fund to be voted by the beneficial holders of securities of the investment fund.
  
- (7) The investment fund conflict of interest investment restrictions and the investment fund conflict of interest reporting requirements do not apply to an investment fund which purchases or holds securities of another investment fund if the purchase or holding is made in accordance with this section.

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.5 does not apply to the non-redeemable investment fund until March 21, 2016.

If a mutual fund filed a prospectus on or before September 22, 2014, until March 21, 2016, the mutual fund may comply with subsection 2.5(2) of National Instrument 81-102 *Mutual Funds* as it was in force on September 21, 2014. The text of subsection 2.5(2) as it was in force on September 21, 2014 follows:

- 2.5(2) A mutual fund shall not purchase or hold a security of another mutual fund unless,
- (a) the other mutual fund 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*,
  - (b) at the time of the purchase of that security, the other mutual fund holds no more than 10% of its net asset value in securities of other mutual funds,
  - (c) the mutual fund and the other mutual fund are reporting issuers in the local jurisdiction,
  - (d) no management fees or incentive fees are payable by the mutual fund that, to a reasonable

person, would duplicate a fee payable by the other mutual fund for the same service,

(e) no sales fees or redemption fees are payable by the mutual fund in relation to its purchases or redemptions of the securities of the other mutual fund if the other mutual fund is managed by the manager or an affiliate or associate of the manager of the mutual fund, and

(f) no sales fees or redemption fees are payable by the mutual fund in relation to its purchases or redemptions of securities of the other mutual fund that, to a reasonable person, would duplicate a fee payable by an investor in the mutual fund.

## **2.6 Investment Practices** – An investment fund must not,

- (a) in the case of a mutual fund, borrow cash or provide a security interest over any of its portfolio assets unless
  - (i) the transaction is a temporary measure to accommodate requests for the redemption of securities of the mutual fund while the mutual fund effects an orderly liquidation of portfolio assets, or to permit the mutual fund to settle portfolio transactions and, after giving effect to all transactions undertaken under this subparagraph, the outstanding amount of all borrowings of the mutual fund does not exceed five percent of its net asset value at the time of the borrowing,
  - (ii) the security interest is required to enable the mutual fund to effect a specified derivative transaction or short sale of securities under this Instrument, is made in accordance with industry practice for that type of transaction and relates only to obligations arising under the particular specified derivatives transaction or short sale,
  - (iii) the security interest secures a claim for the fees and expenses of the custodian or a sub-custodian of the mutual fund for services rendered in that capacity as permitted by subsection 6.4(3), or
  - (iv) in the case of an exchange-traded mutual fund that is not in continuous distribution, the transaction is to finance the acquisition of its portfolio securities and the outstanding amount of all borrowings is repaid on the closing of its initial public offering;
- (b) in the case of a mutual fund, purchase securities on margin, unless permitted by section 2.7 or 2.8;
- (c) in the case of a mutual fund, sell securities short other than in compliance with section 2.6.1, unless permitted by section 2.7 or 2.8;
- (d) purchase a security, other than a specified derivative, that by its terms may require the investment fund to make a contribution in addition to the payment of the purchase price;
- (e) engage in the business of underwriting, or marketing to the public, securities of any other issuer;



- (f) lend cash or portfolio assets other than cash;
- (g) guarantee securities or obligations of a person or company; or
- (h) purchase securities other than through market facilities through which these securities are normally bought and sold unless the purchase price approximates the prevailing market price or the parties are at arm's length in connection with the transaction.

**2.6.1 Short Sales** – (1) A mutual fund may sell a security short if

- (a) the security sold short is sold for cash;
  - (b) the security sold short is not any of the following:
    - (i) a security that the mutual fund is otherwise not permitted by securities legislation to purchase at the time of the short sale transaction;
    - (ii) an illiquid asset;
    - (iii) a security of an investment fund other than an index participation unit; and
  - (c) at the time the mutual fund sells the security short
    - (i) the mutual fund has borrowed or arranged to borrow from a borrowing agent the security that is to be sold under the short sale;
    - (ii) the aggregate market value of all securities of the issuer of the securities sold short by the mutual fund does not exceed 5% of the net asset value of the mutual fund; and
    - (iii) the aggregate market value of all securities sold short by the mutual fund does not exceed 20% of the net asset value of the mutual fund.
- (2) A mutual fund that sells securities short must hold cash cover in an amount that, together with portfolio assets deposited with borrowing agents as security in connection with short sales of securities by the mutual fund, is at least 150% of the aggregate market value of all securities sold short by the mutual fund on a daily mark-to-market basis.
- (3) A mutual fund must not use the cash from a short sale to enter into a long position in a security, other than a security that qualifies as cash cover.

**2.7 Transactions in Specified Derivatives for Hedging and Non-hedging Purposes** – (1) A mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, any of the following apply:

- (a) in the case of an option, the option is a clearing corporation option;
- (b) the option, debt-like security, swap or contract, has a designated rating;

- (c) the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating.
- (2) If the credit rating of an option that is not a clearing corporation option, the credit rating of a debt-like security, swap or forward contract, or the credit rating of the equivalent debt of the writer or guarantor of the option, debt-like security, swap or contract, falls below the level of designated rating while the option, debt-like security, swap or contract is held by a mutual fund, the mutual fund must take the steps that are reasonably required to close out its position in the option, debt-like security, swap or contract in an orderly and timely fashion.
  - (3) Despite any other provisions contained in this Part, a mutual fund may enter into a trade to close out all or part of a position in a specified derivative, in which case the cash cover held to cover the underlying market exposure of the part of the position that is closed out may be released.
  - (4) The mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A, calculated in accordance with subsection (5), must not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund.
  - (5) The mark-to-market value of specified derivatives positions of a mutual fund with any one counterparty must be, for the purposes of subsection (4),
    - (a) if the mutual fund has an agreement with the counterparty that provides for netting or the right of set-off, the net mark-to-market value of the specified derivatives positions of the mutual fund; and
    - (b) in all other cases, the aggregated mark-to-market value of the specified derivative positions of the mutual fund.

**2.8 Transactions in Specified Derivatives for Purposes Other than Hedging** – (1) A mutual fund must not

- (a) purchase a debt-like security that has an options component or an option, unless, immediately after the purchase, not more than 10 percent of its net asset value would be made up of those instruments held for purposes other than hedging;
- (b) write a call option, or have outstanding a written call option, that is not an option on futures unless, as long as the position remains open, the mutual fund holds
  - (i) an equivalent quantity of the underlying interest of the option,
  - (ii) a right or obligation, exercisable at any time that the option is exercisable, to acquire an equivalent quantity of the underlying interest of the option, and cash cover that, together with margin on account for the position, is not less than the amount, if any, by which the strike price of the right or obligation to acquire the underlying interest exceeds the strike price of the option, or

- (iii) a combination of the positions referred to in subparagraphs (i) and (ii) that is sufficient, without recourse to other assets of the mutual fund, to enable the mutual fund to satisfy its obligations to deliver the underlying interest of the option;
- (c) write a put option, or have outstanding a written put option, that is not an option on futures, unless, as long as the position remains open, the mutual fund holds
  - (i) a right or obligation, exercisable at any time that the option is exercisable, to sell an equivalent quantity of the underlying interest of the option, and cash cover in an amount that, together with margin on account for the position, is not less than the amount, if any, by which the strike price of the option exceeds the strike price of the right or obligation to sell the underlying interest,
  - (ii) cash cover that, together with margin on account for the option position, is not less than the strike price of the option, or
  - (iii) a combination of the positions referred to in subparagraphs (i) and (ii) that is sufficient, without recourse to other assets of the mutual fund, to enable the mutual fund to acquire the underlying interest of the option;
- (d) open or maintain a long position in a debt-like security that has a component that is a long position in a forward contract, or in a standardized future or forward contract, unless the mutual fund holds cash cover in an amount that, together with margin on account for the specified derivative and the market value of the specified derivative, is not less than, on a daily mark-to-market basis, the underlying market exposure of the specified derivative;
- (e) open or maintain a short position in a standardized future or forward contract, unless the mutual fund holds
  - (i) an equivalent quantity of the underlying interest of the future or contract,
  - (ii) a right or obligation to acquire an equivalent quantity of the underlying interest of the future or contract and cash cover that together with margin on account for the position is not less than the amount, if any, by which the strike price of the right or obligation to acquire the underlying interest exceeds the forward price of the contract, or
  - (iii) a combination of the positions referred to in subparagraphs (i) and (ii) that is sufficient, without recourse to other assets of the mutual fund, to enable the mutual fund to deliver the underlying interest of the future or contract; or
- (f) enter into, or maintain, a swap position unless
  - (i) for periods when the mutual fund would be entitled to receive payments under the swap, the mutual fund holds cash cover in an amount that, together with margin on account for the swap and the market value of the swap, is not less than, on a daily mark-to-market basis, the underlying market exposure of the swap; and

- (ii) for periods when the mutual fund would be required to make payments under the swap, the mutual fund holds
  - (A) an equivalent quantity of the underlying interest of the swap,
  - (B) a right or obligation to acquire an equivalent quantity of the underlying interest of the swap and cash cover that, together with margin on account for the position, is not less than the aggregate amount of the obligations of the mutual fund under the swap, or
  - (C) a combination of the positions referred to in clauses (A) and (B) that is sufficient, without recourse to other assets of the mutual fund, to enable the mutual fund to satisfy its obligations under the swap.
- (2) A mutual fund must treat any synthetic cash position on any date as providing the cash cover equal to the notional principal value of a banker's acceptance then being accepted by a bank listed in Schedule I of the *Bank Act* (Canada) that would produce the same annualized return as the synthetic cash position is then producing.

**2.9 Transactions in Specified Derivatives for Hedging Purposes** – (1) Sections 2.1, 2.2, 2.4 and 2.8 do not apply to the use of specified derivatives by a mutual fund for hedging purposes.

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

**2.10 Adviser Requirements** – (1) If a portfolio adviser of an investment fund receives advice from a non-resident sub-adviser concerning the use of options or standardized futures by the investment fund, the investment fund must not invest in or use options or standardized futures unless

- (a) the obligations and duties of the non-resident sub-adviser are set out in a written agreement with the portfolio adviser; and
- (b) the portfolio adviser contractually agrees with the investment fund to be responsible for any loss that arises out of the failure of the non-resident sub-adviser
  - (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, and
  - (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
- (2) An investment fund must not relieve a portfolio adviser of the investment fund from liability for loss for which the portfolio adviser has assumed responsibility under paragraph (1)(b) that arises out of the failure of the relevant non-resident sub-adviser
  - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, or
  - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

- (3) Despite subsection 4.4(3), an investment fund may indemnify a portfolio adviser against legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by that person or company in connection with services provided by a non-resident sub-adviser for which the portfolio adviser has assumed responsibility under paragraph (1)(b), only if
  - (a) those fees, judgments and amounts were not incurred as a result of a breach of the standard of care described in subsection (1) or (2); and
  - (b) the investment fund has reasonable grounds to believe that the action or inaction that caused the payment of the fees, judgments and amounts paid in settlement was in the best interests of the investment fund.
- (4) An investment fund must not incur the cost of any portion of liability insurance that insures a person or company for a liability except to the extent that the person or company may be indemnified for that liability under this section.

**2.11 Commencement of Use of Specified Derivatives and Short Selling by an Investment Fund – (1)**

An investment fund that has not used specified derivatives must not begin using specified derivatives, and an investment fund that has not sold a security short in accordance with section 2.6.1 must not sell a security short, 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 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
- (b) the investment fund has provided to its securityholders, not less than 60 days before it begins the intended activity, written notice that discloses its intent to engage in the activity and the disclosure referred to in paragraph (a) or (a.1), as applicable.
- (2) A mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, is not required to provide the notice referred to in paragraph (1)(b) if each prospectus of the mutual fund since its inception has contained the disclosure referred to in paragraph (1)(a).
- (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).

**2.12 Securities Loans – (1)** Despite any other provision of this Instrument, an investment fund may enter into a securities lending transaction as lender if the following conditions are satisfied for the transaction:

- 1. The transaction is administered and supervised in the manner required by sections 2.15

and 2.16.

2. The transaction is made under a written agreement that implements the requirements of this section.
3. Securities are loaned by the investment fund in exchange for collateral.
4. The securities transferred, either by the investment fund or to the investment fund as collateral, as part of the transaction are immediately available for good delivery under applicable legislation.
5. The collateral to be delivered to the investment fund at the beginning of the transaction
  - (a) is received by the investment fund either before or at the same time as it delivers the loaned securities; and
  - (b) has a market value equal to at least 102 percent of the market value of the loaned securities.
6. The collateral to be delivered to the investment fund is one or more of
  - (a) cash;
  - (b) qualified securities;
  - (c) securities that are immediately convertible into, or exchangeable for, securities of the same issuer, class or type, and the same term, if applicable, as the securities that are being loaned by the investment fund, and in at least the same number as those loaned by the investment fund; or
  - (d) irrevocable letters of credit issued by a Canadian financial institution that is not the counterparty, or an affiliate of the counterparty, of the investment fund in the transaction, if evidences of indebtedness of the Canadian financial institution that are rated as short term debt by a designated rating organization or its DRO affiliate have a designated rating.
7. The collateral and loaned securities are marked to market on each business day, and the amount of collateral in the possession of the investment fund is adjusted on each business day to ensure that the market value of collateral maintained by the investment fund in connection with the transaction is at least 102 percent of the market value of the loaned securities.
8. If an event of default by a borrower occurs, the investment fund, in addition to any other remedy available under the agreement or applicable law, has the right under the agreement to retain and dispose of the collateral to the extent necessary to satisfy its claims under the agreement.
9. The borrower is required to pay promptly to the investment fund amounts equal to and as compensation for all dividends and interest paid, and all distributions made, on the loaned securities during the term of the transaction.

10. The transaction is a “securities lending arrangement” under section 260 of the ITA.
  11. The investment fund is entitled to terminate the transaction at any time and recall the loaned securities within the normal and customary settlement period for securities lending transactions in the market in which the securities are lent.
  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.
- (2) An investment fund may hold all cash delivered to it as the collateral in a securities lending transaction or may use the cash to purchase
- (a) qualified securities having a remaining term to maturity no longer than 90 days;
  - (b) securities under a reverse repurchase agreement permitted by section 2.14; or
  - (c) a combination of the securities referred to in paragraphs (a) and (b).
- (3) An investment fund, during the term of a securities lending transaction, must hold all, and must not invest or dispose of any, non-cash collateral delivered to it as collateral in the transaction.

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.12 does not apply to the non-redeemable investment fund until September 21, 2015.

**2.13 Repurchase Transactions** – (1) Despite any other provision of this Instrument, an investment fund may enter into a repurchase transaction if the following conditions are satisfied for the transaction:

1. The transaction is administered and supervised in the manner required by sections 2.15 and 2.16.
2. The transaction is made under a written agreement that implements the requirements of this section.
3. Securities are sold for cash by the investment fund, with the investment fund assuming an obligation to repurchase the securities for cash.
4. The securities transferred by the investment fund as part of the transaction are immediately available for good delivery under applicable legislation.
5. The cash to be delivered to the investment fund at the beginning of the transaction
  - (a) is received by the investment fund either before or at the same time as it delivers the sold securities; and
  - (b) is in an amount equal to at least 102 percent of the market value of the sold securities.

6. The sold securities are marked to market on each business day, and the amount of sale proceeds in the possession of the investment fund is adjusted on each business day to ensure that the amount of cash maintained by the investment fund in connection with the transaction is at least 102 percent of the market value of the sold securities.
  7. If an event of default by a purchaser occurs, the investment fund, in addition to any other remedy available under the agreement or applicable law, has the right under the agreement to retain or dispose of the sale proceeds delivered to it by the purchaser to the extent necessary to satisfy its claims under the agreement.
  8. The purchaser of the securities is required to pay promptly to the investment fund amounts equal to and as compensation for all dividends and interest paid, and all distributions made, on the sold securities during the term of the transaction.
  9. The transaction is a “securities lending arrangement” under section 260 of the ITA.
  10. The term of the repurchase agreement, before any extension or renewal that requires the consent of both the investment fund and the purchaser, is not more than 30 days.
  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.
- (2) An investment fund may hold cash delivered to it as consideration for sold securities in a repurchase transaction or may use the cash to purchase
- (a) qualified securities having a remaining term to maturity no longer than 30 days;
  - (b) securities under a reverse repurchase agreement permitted by section 2.14; or
  - (c) a combination of the securities referred to in paragraphs (a) and (b).

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.13 does not apply to the non-redeemable investment fund until September 21, 2015.

**2.14 Reverse Repurchase Transactions** – (1) Despite any other provision of this Instrument, an investment fund may enter into a reverse repurchase transaction if the following conditions are satisfied for the transaction:

1. The transaction is administered and supervised in the manner required by sections 2.15 and 2.16.
2. The transaction is made under a written agreement that implements the requirements of this section.
3. Qualified securities are purchased for cash by the investment fund, with the investment fund assuming the obligation to resell them for cash.



4. The securities transferred as part of the transaction are immediately available for good delivery under applicable legislation.
5. The securities to be delivered to the investment fund at the beginning of the transaction
  - (a) are received by the investment fund either before or at the same time as it delivers the cash used by it to purchase those securities; and
  - (b) have a market value equal to at least 102 percent of the cash paid for the securities by the investment fund.
6. The purchased securities are marked to market on each business day, and either the amount of cash paid for the purchased securities or the amount of purchased securities in the possession of the seller or the investment fund is adjusted on each business day to ensure that the market value of purchased securities held by the investment fund in connection with the transaction is not less than 102 percent of the cash paid by the investment fund.
7. If an event of default by a seller occurs, the investment fund, in addition to any other remedy available in the agreement or applicable law, has the right under the agreement to retain or dispose of the purchased securities delivered to it by the seller to the extent necessary to satisfy its claims under the agreement.
8. The transaction is a “securities lending arrangement” under section 260 of the ITA.
9. The term of the reverse repurchase agreement, before any extension or renewal that requires the consent of both the seller and the investment fund, is not more than 30 days.

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.14 does not apply to the non-redeemable investment fund until September 21, 2015.

**2.15 Agent for Securities Lending, Repurchase and Reverse Repurchase Transactions** – (1) The manager of an investment fund must appoint an agent or agents to act on behalf of the investment fund to administer the securities lending and repurchase transactions entered into by the investment fund.

- (2) The manager of an investment fund may appoint an agent or agents to act on behalf of the investment fund to administer the reverse repurchase transactions entered into by the investment fund.
- (3) The custodian or a sub-custodian of the investment fund must be the agent appointed under subsection (1) or (2).
- (4) The manager of an investment fund must not authorize an agent to enter into a securities lending, repurchase or, if applicable, reverse repurchase transactions on behalf of the investment fund until the agent enters into a written agreement with the manager and the investment fund in which
  - (a) the investment fund and the manager provide instructions to the agent on the parameters to be followed in entering into the type of transactions to which the agreement pertains;

- (b) the agent agrees to comply with this Instrument, accepts the standard of care referred to in subsection (5) and agrees to ensure that all transactions entered into by it on behalf of the investment fund will comply with this Instrument; and
  - (c) the agent agrees to provide to the investment fund and the manager regular, comprehensive and timely reports summarizing the investment fund's securities lending, repurchase and reverse repurchase transactions, as applicable.
- (5) An agent appointed under this section, in administering the securities lending, repurchase and, if applicable, reverse repurchase transactions of the investment fund must exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.15 does not apply to the non-redeemable investment fund until September 21, 2015.

**2.16 Controls and Records** – (1) An investment fund must not enter into transactions under sections 2.12, 2.13 or 2.14 unless,

- (a) for transactions to be entered into through an agent appointed under section 2.15, the manager has reasonable grounds to believe that the agent has established and maintains appropriate internal controls and procedures and records; and
  - (b) for reverse repurchase transactions directly entered into by the investment fund without an agent, the manager has established and maintains appropriate internal controls, procedures and records.
- (2) The internal controls, procedures and records referred to in subsection (1) must include
- (a) a list of approved borrowers, purchasers and sellers based on generally accepted creditworthiness standards;
  - (b) as applicable, transaction and credit limits for each counterparty; and
  - (c) collateral diversification standards.
- (3) The manager of an investment fund must, on a periodic basis not less frequently than annually,
- (a) review the agreements with any agent appointed under section 2.15 to determine if the agreements are in compliance with this Instrument;
  - (b) review the internal controls described in subsection (2) to ensure their continued adequacy and appropriateness;
  - (c) make reasonable enquiries as to whether the agent is administering the securities lending, repurchase or reverse repurchase transactions of the investment fund in a competent and responsible manner, in conformity with the requirements of this Instrument and in conformity with the agreement between the agent, the manager and the investment fund entered into under subsection 2.15(4);

- (d) review the terms of any agreement between the investment fund and an agent entered into under subsection 2.15(4) in order to determine if the instructions provided to the agent in connection with the securities lending, repurchase or reverse repurchase transactions of the investment fund continue to be appropriate; and
- (e) make or cause to be made any changes that may be necessary to ensure that
  - (i) the agreements with agents are in compliance with this Instrument,
  - (ii) the internal controls described in subsection (2) are adequate and appropriate,
  - (iii) the securities lending, repurchase or reverse repurchase transactions of the investment fund are administered in the manner described in paragraph (c), and
  - (iv) the terms of each agreement between the investment fund and an agent entered into under subsection 2.15(4) are appropriate.

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.16 does not apply to the non-redeemable investment fund until September 21, 2015.

**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).

**Note:** If a non-redeemable investment fund filed a prospectus on or before September 22, 2014, section 2.17 does not apply to the non-redeemable investment fund until September 21, 2015.

**2.18 Money Market Fund** – (1) A mutual fund must not describe itself as a “money market fund” in its prospectus, a continuous disclosure document or a sales communication unless

- (a) it has all of its assets invested in one or more of the following:
  - (i) cash,
  - (ii) cash equivalents,
  - (iii) an evidence of indebtedness that has a remaining term to maturity of 365 days or less and a designated rating,
  - (iv) a floating rate evidence of indebtedness if
    - (A) the floating interest rate of the indebtedness is reset no later than every 185 days, and
    - (B) the principal amount of the indebtedness will continue to have a market value of approximately par at the time of each change in the rate to be paid to the holders of the evidence of indebtedness, or
  - (v) securities issued by one or more money market funds,
- (b) it has a portfolio of assets, excluding a security described in subparagraph (a)(v), with a dollar-weighted average term to maturity not exceeding
  - (i) 180 days, and
  - (ii) 90 days when calculated on the basis that the term of a floating rate obligation is the period remaining to the date of the next rate setting,
- (c) not less than 95% of its assets invested in accordance with paragraph (a) are denominated in a currency in which the net asset value per security of the mutual fund is calculated, and
- (d) it has not less than
  - (i) 5% of its assets invested in cash or readily convertible into cash within one day, and

- (ii) 15% of its assets invested in cash or readily convertible into cash within one week.
- (2) Despite any other provision of this Instrument, a mutual fund that describes itself as a “money market fund” must not use a specified derivative or sell securities short.
- (3) A non-redeemable investment fund must not describe itself as a “money market fund”.

### **PART 3 NEW MUTUAL FUNDS**

**3.1 Initial Investment in a New Mutual Fund** – (1) A person or company must not file a prospectus for a newly established mutual fund unless

- (a) an investment of at least \$150,000 in securities of the mutual fund has been made, and those securities are beneficially owned, before the time of filing by
    - (i) the manager, a portfolio adviser, a promoter or a sponsor of the mutual fund,
    - (ii) the partners, directors, officers or securityholders of any of the manager, a portfolio adviser, a promoter or a sponsor of the mutual fund, or
    - (iii) a combination of the persons or companies referred to subparagraphs (i) and (ii); or
  - (b) the prospectus of the mutual fund states that the mutual fund will not issue securities other than those referred to in paragraph (a) unless subscriptions aggregating not less than \$500,000 have been received by the mutual fund from investors other than the persons and companies referred to in paragraph (a) and accepted by the mutual fund.
- (2) A mutual fund must not redeem a security issued upon an investment in the mutual fund referred to in paragraph (1)(a) until \$500,000 has been received from persons or companies other than the persons and companies referred to in paragraph (1)(a).

**3.2 Prohibition Against Distribution** – If a prospectus of a mutual fund contains the disclosure described in paragraph 3.1(1)(b), the mutual fund must not distribute any securities unless the subscriptions described in that disclosure, together with payment for the securities subscribed for, have been received.

**3.3 Prohibition Against Reimbursement of Organization Costs** – (1) The costs of incorporation, formation or initial organization of a mutual fund, or of the preparation and filing of any of the preliminary prospectus, preliminary annual information form, preliminary fund facts document, initial prospectus, annual information form or fund facts document of the mutual fund must not be borne by the mutual fund or its securityholders.

- (2) Subsection (1) does not apply to an exchange-traded mutual fund unless the fund is in continuous distribution.

### **PART 4 CONFLICTS OF INTEREST**

**4.1 Prohibited Investments** – (1) A dealer managed investment fund must not knowingly make an investment in a class of securities of an issuer during, or for 60 days after, the period in which the dealer manager of the investment fund, or an associate or affiliate of the dealer manager of the investment fund,

acts as an underwriter in the distribution of securities of that class of securities, except as a member of the selling group distributing five percent or less of the securities underwritten.

- (2) A dealer managed investment fund must not knowingly make an investment in a class of securities of an issuer of which a partner, director, officer or employee of the dealer manager of the investment fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer, unless the partner, director, officer or employee
  - (a) does not participate in the formulation of investment decisions made on behalf of the dealer managed investment fund;
  - (b) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed investment fund; and
  - (c) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed investment fund.
- (3) Subsections (1) and (2) do not apply to an investment in a class of securities issued or fully and unconditionally guaranteed by the government of Canada or the government of a jurisdiction.
- (4) Subsection (1) does not apply to an investment in a class of securities of an issuer if, at the time of each investment
  - (a) the independent review committee of the dealer managed investment fund has approved the transaction under subsection 5.2(2) of NI 81-107;
  - (b) in a class of debt securities of an issuer other than a class of securities referred to in subsection (3), the security has been given, and continues to have, a designated rating by a designated rating organization or its DRO affiliate;
  - (c) in any other class of securities of an issuer,
    - (i) the distribution of the class of equity securities is made by prospectus filed with one or more securities regulatory authorities or regulators in Canada, and
    - (ii) during the 60 day period referred to in subsection (1) the investment is made on an exchange on which the class of equity securities of the issuer is listed and traded; and
  - (d) no later than the time the dealer managed investment fund files its annual financial statements, the manager of the dealer managed investment fund files the particulars of each investment made by the dealer managed investment fund during its most recently completed financial year.
- (4.1) In paragraph (4)(b), “designated rating” has the meaning ascribed to it in National Instrument 44-101 – *Short Form Prospectus Distributions*.
- (5) The provisions of securities legislation that are referred to in Appendix C do not apply with respect to an investment in a class of securities of an issuer referred to in subsection (4) if the investment is made in accordance with that subsection.

**4.2 Self-Dealing** – (1) An investment fund must not purchase a security from, sell a security to, or enter into a securities lending, repurchase or reverse repurchase transaction under section 2.12, 2.13 or 2.14 with, any of the following persons or companies:

1. The manager, portfolio adviser or trustee of the investment fund.
  2. A partner, director or officer of the investment fund or of the manager, portfolio adviser or trustee of the investment fund.
  3. An associate or affiliate of a person or company referred to in paragraph 1 or 2.
  4. A person or company, having fewer than 100 securityholders of record, of which a partner, director or officer of the investment fund or a partner, director or officer of the manager or portfolio adviser of the investment fund is a partner, director, officer or securityholder.
- (2) Subsection (1) applies in the case of a sale of a security to, or a purchase of a security from, an investment fund only if the person or company that would be selling to, or purchasing from, the investment fund would be doing so as principal.

**4.3 Exception** – (1) Section 4.2 does not apply to a purchase or sale of a security by an investment fund if the price payable for the security is:

- (a) not more than the ask price of the security as reported by any available public quotation in common use, in the case of a purchase by the investment fund; or
  - (b) not less than the bid price of the security as reported by any available public quotation in common use, in the case of a sale by the investment fund.
- (2) Section 4.2 does not apply to a purchase or sale of a class of debt securities by an investment fund from, or to, another investment fund managed by the same manager or an affiliate of the manager, if, at the time of the transaction
- (a) the investment fund is purchasing from, or selling to, another investment fund to which NI 81-107 applies;
  - (b) the independent review committee of the investment fund has approved the transaction under subsection 5.2(2) of NI 81-107; and
  - (c) the transaction complies with subsection 6.1(2) of NI 81-107.

**4.4 Liability and Indemnification** – (1) An agreement or declaration of trust by which a person or company acts as manager of an investment fund must provide that the manager is responsible for any loss that arises out of the failure of the manager, or of any person or company retained by the manager or the investment fund to discharge any of the manager’s responsibilities to the investment fund,

- (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, and
- (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.

- (2) An investment fund must not relieve the manager of the investment fund from liability for loss that arises out of the failure of the manager, or of any person retained by the manager or the investment fund to discharge any of the manager’s responsibilities to the investment fund,
  - (a) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the investment fund, or
  - (b) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances.
- (3) An investment fund may indemnify a person or company providing services to it against legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by that person or company in connection with services provided by that person or company to the investment fund, if
  - (a) those fees, judgments and amounts were not incurred as a result of a breach of the standard of care described in subsection (1) or (2); and
  - (b) the investment fund has reasonable grounds to believe that the action or inaction that caused the payment of the fees, judgments and amounts paid in settlement was in the best interests of the investment fund.
- (4) An investment fund must not incur the cost of any portion of liability insurance that insures a person or company for a liability except to the extent that the person or company may be indemnified for that liability under this section.
- (5) This section does not apply to any losses to an investment fund or securityholder arising out of an action or inaction by any of the following:
  - (a) a director of the investment fund;
  - (b) a custodian or sub-custodian of the investment fund, except as set out in subsection (6).
- (6) This section applies to any losses to an investment fund or securityholder arising out of an action or inaction by a custodian or sub-custodian acting as agent of the investment fund in administering the securities lending, repurchase or reverse repurchase transactions of the investment fund.

**PART 5      FUNDAMENTAL CHANGES**

**5.1 Matters Requiring Securityholder Approval** – (1) The prior approval of the securityholders of an investment fund, given as provided in section 5.2, is required before the occurrence of each of the following:

- (a) the basis of the calculation of a fee or expense that is charged to the investment fund or directly to its securityholders by the investment fund or its manager in connection with the holding of securities of the investment fund is changed in a way that could result in an increase in charges to the investment fund or to its securityholders;
- (a.1) a fee or expense, to be charged to the investment fund or directly to its securityholders by the investment fund or its manager in connection with the holding of securities of the



investment fund that could result in an increase in charges to the investment fund or to its securityholders, is introduced;

- (b) the manager of the investment fund is changed, unless the new manager is an affiliate of the current manager;
  - (c) the fundamental investment objectives of the investment fund are changed;
  - (d) [Repealed]
  - (e) the investment fund decreases the frequency of the calculation of its net asset value per security;
  - (f) the investment fund undertakes a reorganization with, or transfers its assets to, another issuer, if
    - (i) the investment fund ceases to continue after the reorganization or transfer of assets, and
    - (ii) the transaction results in the securityholders of the investment fund becoming securityholders in the other issuer;
  - (g) the investment fund undertakes a reorganization with, or acquires assets from, another issuer, if
    - (i) the investment fund continues after the reorganization or acquisition of assets,
    - (ii) the transaction results in the securityholders of the other issuer becoming securityholders in the investment fund, and
    - (iii) the transaction would be a material change to the investment fund;
  - (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) An investment fund must not bear any of the costs or expenses associated with a restructuring referred to in paragraph (1)(h).

**5.2 Approval of Securityholders** – (1) Unless a greater majority is required by the constating documents of the investment fund, the laws applicable to the investment fund or an applicable agreement, the approval of the securityholders of the investment fund to a matter referred to in subsection 5.1(1) must be given by a resolution passed by at least a majority of the votes cast at a meeting of the securityholders of the investment fund duly called and held to consider the matter.

- (2) Despite subsection (1), the holders of securities of a class or series of a class of securities of an investment fund must vote separately as a class or series of a class on a matter referred to in subsection 5.1(1) if that class or series of a class is affected by the action referred to in subsection 5.1(1) in a manner different from holders of securities of other classes or series of a class.
- (3) Despite subsection 5.1(1) and subsections (1) and (2), if the constating documents of the investment fund so provide, the holders of securities of a class or series of a class of securities of an investment fund must not be entitled to vote on a matter referred to in subsection 5.1(1) if they, as holders of the class or series of a class, are not affected by the action referred to in subsection 5.1(1).

**5.3 Circumstances in Which Approval of Securityholders Not Required** – (1) 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 paragraphs 5.1(1)(a) and (a.1)

- (a) if
    - (i) the investment fund is at arm’s length to the person or company charging the fee or expense to the investment fund referred to in paragraphs 5.1(1)(a) and (a.1),
    - (ii) the prospectus of the investment fund discloses that, although the approval of securityholders will not be obtained before making the changes, securityholders will be sent a written notice at least 60 days before the effective date of the change that is to be made that could result in an increase in charges to the investment fund, and
    - (iii) the notice referred to in subparagraph (ii) is actually sent at least 60 days before the effective date of the change; or
  - (b) if, in the case of a mutual fund,
    - (i) the mutual fund is permitted by this Instrument to be described as a “no-load” fund,
    - (ii) the prospectus of the mutual fund discloses that securityholders will be sent a written notice at least 60 days before the effective date of a change that is to be made that could result in an increase in charges to the mutual fund, and
    - (iii) the notice referred to in subparagraph (ii) is actually sent at least 60 days before the effective date of the change.
- (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).

**5.3.1 Change of Auditor of an Investment Fund** – The auditor of an investment fund must not be changed unless

- (a) the independent review committee of the investment fund has approved the change of auditor under subsection 5.2(2) of NI 81-107;
- (b) the prospectus of the investment fund discloses that, although the approval of securityholders will 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, and
- (c) the notice referred to in paragraph (b) to securityholders is sent 60 days before the effective date of the change.

**5.4 Formalities Concerning Meetings of Securityholders** – (1) A meeting of securityholders of an investment fund called to consider any matter referred to in subsection 5.1(1) must be called on written notice sent at least 21 days before the date of the meeting.

- (2) The notice referred to in subsection (1) must contain or be accompanied by a statement that includes
  - (a) a description of the change or transaction proposed to be made or entered into and, if the matter is one referred to in paragraphs 5.1(1)(a) or (a.1), the effect that the change would have had on the management expense ratio of the investment fund had the change been in force throughout the investment fund's last completed financial year;
  - (b) the date of the proposed implementation of the change or transaction; and
  - (c) all other information and documents necessary to comply with the applicable proxy solicitation requirements of securities legislation for the meeting.

**5.5 Approval of Securities Regulatory Authority** – (1) The approval of the securities regulatory authority or regulator is required before

- (a) the manager of an investment fund is changed, unless the new manager is an affiliate of the current manager;
- (a.1) a change of control of the manager of an investment fund occurs;

- (b) a reorganization or transfer of assets of an investment fund is implemented, if the transaction will result in the securityholders of the investment fund becoming securityholders in another issuer;
  - (c) a change of the custodian of an investment fund is implemented, if there has been or will be, in connection with the proposed change, a change of the type referred to in paragraph (a); or
  - (d) an investment fund suspends, other than under section 10.6, the rights of securityholders to request that the investment fund redeem their securities.
- (2) [Repealed]
- (3) Despite subsection (1), in Ontario only the regulator may grant an approval referred to in subsection (1).

**5.6 Pre-Approved Reorganizations and Transfers** – (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) An investment fund that has continued after a transaction described in paragraph 5.5(1)(b) must, if the audit report accompanying its audited financial statements for its first completed financial year after the transaction contains a modified opinion in respect of the value of the portfolio assets acquired by the investment fund in the transaction, send a copy of those financial statements to each person or company that was a securityholder of an investment fund that was terminated as a result of the transaction and that is not a securityholder of the investment fund.

**5.7 Applications** – (1) An application for an approval required under section 5.5 must contain,

- (a) if the application is required by paragraph 5.5(1)(a) or (a.1),
  - (i) details of the proposed transaction,
  - (ii) details of the proposed new manager or the person or company proposing to acquire control of the manager,
  - (iii) as applicable, the names, residence addresses and birthdates of
    - (A) all proposed new partners, directors or officers of the manager,
    - (B) all partners, directors or officers of the person or company proposing to acquire control of the manager,

- (C) any proposed new individual trustee of the investment fund, and
  - (D) any new directors or officers of the investment fund,
  - (iv) all information necessary to permit the securities regulatory authority or regulator to conduct security checks on the individuals referred to in subparagraph (iii),
  - (v) sufficient information to establish the integrity and experience of the persons or companies referred to in subparagraphs (ii) and (iii), and
  - (vi) details of how the proposed transaction will affect the management and administration of the investment fund;
- (b) if the application is required by paragraph 5.5(1)(b),
- (i) details of the proposed transaction,
  - (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,
  - (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
  - (iv) a description of those elements of the proposed transaction that make section 5.6 inapplicable;
- (c) if the application is required by paragraph 5.5(1)(c), sufficient information to establish that the proposed custodial arrangements will be in compliance with Part 6;
- (d) if the application relates to a matter that would constitute a material change for the investment fund, a draft amendment to the prospectus and, if applicable, to the fund facts document of the investment fund reflecting the change; and
- (e) if the matter is one that requires the approval of securityholders, confirmation that the approval has been obtained or will be obtained before the change is implemented.
- (2) An investment fund that applies for an approval under paragraph 5.5(1)(d) must
- (a) make that application to the securities regulatory authority or regulator in the jurisdiction in which the head office or registered office of the investment fund is situated; and
  - (b) concurrently file a copy of the application so made with the securities regulatory authority or the regulator in the local jurisdiction if the head office or registered office of the investment fund is not situated in the local jurisdiction.
- (3) An investment fund that has complied with subsection (2) in the local jurisdiction may suspend the right of securityholders to request that the investment fund redeem their securities if



- (a) the securities regulatory authority or regulator in the jurisdiction in which the head office or registered office of the investment fund is situated has granted approval to the application made under paragraph (2)(a); and
- (b) the securities regulatory authority or regulator in the local jurisdiction has not notified the investment fund, by the close of business on the business day immediately following the day on which the copy of the application referred to in paragraph (2)(b) was received, either that
  - (i) the securities regulatory authority or regulator has refused to grant approval to the application, or
  - (ii) this subsection may not be relied upon by the investment fund in the local jurisdiction.

**5.8 Matters Requiring Notice** – (1) A person or company must not continue to act as manager of an investment fund following a direct or indirect change of control of the person or company unless

- (a) notice of the change of control was given to all securityholders of the investment fund at least 60 days before the change; and
  - (b) the notice referred to in paragraph (a) contains the information that would be required by law to be provided to securityholders if securityholder approval of the change were required to be obtained.
- (2) A mutual fund must not terminate unless notice of the termination is given to all securityholders of the mutual fund at least 60 days before termination.
- (3) The manager of a mutual fund that has terminated must give notice of the termination to the securities regulatory authority within 30 days of the termination.

**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).

**5.9 Relief from Certain Regulatory Requirements** – (1) The investment fund conflict of interest investment restrictions and the investment fund conflict of interest reporting requirements do not apply to a transaction referred to in paragraph 5.5(1)(b) if the approval of the securities regulatory authority or regulator has been given to the transaction.

- (2) The investment fund conflict of interest investment restrictions and the investment fund conflict of interest reporting requirements do not apply to a transaction described in section 5.6.

**5.10 [Repealed]**

## PART 6 CUSTODIANSHIP OF PORTFOLIO ASSETS

**6.1 General** – (1) Except as provided in sections 6.8, 6.8.1 and 6.9, all portfolio assets of an investment fund must be held under the custodianship of one custodian that satisfies the requirements of section 6.2.

- (2) Except as provided in subsection 6.5(3) and sections 6.8, 6.8.1 and 6.9, portfolio assets of an investment fund must be held
  - (a) in Canada by the custodian or a sub-custodian of the investment fund; or
  - (b) outside Canada by the custodian or a sub-custodian of the investment fund, if appropriate to facilitate portfolio transactions of the investment fund outside Canada.
- (3) The custodian or a sub-custodian of an investment fund may appoint one or more sub-custodians to hold portfolio assets of the investment fund, if
  - (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,
  - (b) the sub-custodian that is to be appointed is an entity described in section 6.2 or 6.3, as applicable,
  - (c) the arrangements under which a sub-custodian is appointed are such that the investment fund may enforce rights directly, or require the custodian or a sub-custodian to enforce rights on behalf of the investment fund, to the portfolio assets held by the appointed sub-custodian, and
  - (d) the appointment is otherwise in compliance with this Instrument.
- (4) The written consent referred to in paragraphs (3)(a) and (a.1) may be in the form of a general consent, contained in the agreement governing the relationship between the investment fund and the custodian, or the custodian and the sub-custodian, to the appointment of entities that are part of an international network of sub-custodians within the organization of the appointed custodian or sub-custodian.
- (5) A custodian or sub-custodian must provide to the investment fund a list of all entities that are appointed sub-custodians under a general consent referred to in subsection (4).
- (6) Despite any other provisions of this Part, the manager of an investment fund must not act as custodian or sub-custodian of the investment fund.

**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.

**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.

**6.4 Contents of Custodian and Sub-Custodian Agreements** – (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.
- (2) A sub-custodian agreement concerning the portfolio assets of an investment fund must provide for the safekeeping of portfolio assets on terms consistent with the custodian agreement of the investment fund.
- (2.1) An agreement referred to under subsections (1) and (2) must comply with the requirements of this Part.
- (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.

**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.

**6.6 Standard of Care** – (1) The custodian and each sub-custodian of an investment fund, in carrying out their duties concerning the safekeeping of, and dealing with, the portfolio assets of the investment fund, must exercise

- (a) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances; or
  - (b) at least the same degree of care as they exercise with respect to their own property of a similar kind, if this is a higher degree of care than the degree of care referred to in paragraph (a).
- (2) An investment fund must not relieve the custodian or a sub-custodian of the investment fund from liability to the investment fund or to a securityholder of the investment fund for loss that arises out of the failure of the custodian or sub-custodian to exercise the standard of care imposed by subsection (1).
- (3) An investment fund may indemnify the custodian or a sub-custodian against legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by that entity in connection with custodial or sub-custodial services provided by that entity to the investment fund, if those fees, judgments and amounts were not incurred as a result of a breach of the standard of care imposed by subsection (1).
- (4) An investment fund must not incur the cost of any portion of liability insurance that insures the custodian or a sub-custodian for a liability, except to the extent that the custodian or sub-custodian may be indemnified for that liability under this section.

**6.7 Review and Compliance Reports** – (1) The custodian of an investment fund must, on a periodic basis not less frequently than annually,

- (a) review the custodian agreement and all sub-custodian agreements of the investment fund to determine if those agreements are in compliance with this Part;
  - (b) make reasonable enquiries as to whether each sub-custodian satisfies the applicable requirements of section 6.2 or 6.3; and
  - (c) make or cause to be made any changes that may be necessary to ensure that
    - (i) the custodian and sub-custodian agreements are in compliance with this Part; and
    - (ii) all sub-custodians of the investment fund satisfy the applicable requirements of section 6.2 or 6.3.
- (2) The custodian of an investment fund must, within 60 days after the end of each financial year of the investment fund, advise the investment fund in writing
- (a) of the names and addresses of all sub-custodians of the investment fund;
  - (b) whether the custodian and sub-custodian agreements are in compliance with this Part; and
  - (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.

- (3) A copy of the report referred to in subsection (2) must be delivered by or on behalf of the investment fund to the securities regulatory authority within 30 days after the filing of the annual financial statements of the investment fund.

**6.8 Custodial Provisions relating to Derivatives and Securities Lending, Repurchase and Reverse Repurchase Agreements**

– (1) An investment fund may deposit portfolio assets as margin for transactions in Canada involving clearing corporation options, options on futures or standardized futures with a dealer that is a member of an SRO that is a participating member of CIPF if the amount of margin deposited does not, when aggregated with the amount of margin already held by the dealer on behalf of the investment fund, exceed 10 percent of the net asset value of the investment fund as at the time of deposit.

- (2) An investment fund may deposit portfolio assets with a dealer as margin for transactions outside Canada involving clearing corporation options, options on futures or standardized futures if
- (a) in the case of standardized futures and options on futures, the dealer is a member of a futures exchange or, in the case of clearing corporation options, is a member of a stock exchange, and, as a result in either case, is subject to a regulatory audit;
  - (b) the dealer has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of \$50 million; and
  - (c) the amount of margin deposited does not, when aggregated with the amount of margin already held by the dealer on behalf of the investment fund, exceed 10 percent of the net asset value of the investment fund as at the time of deposit.
- (3) An investment fund may deposit with its counterparty portfolio assets over which it has granted a security interest in connection with a particular specified derivatives transaction.
- (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.
- (5) An investment fund may deliver portfolio assets to a person or company in satisfaction of its obligations under a securities lending, repurchase or reverse purchase agreement that complies with this Instrument if the collateral, cash proceeds or purchased securities that are delivered to the investment fund in connection with the transaction are held under the custodianship of the custodian or a sub-custodian of the investment fund in compliance with this Part.

**6.8.1 Custodial Provisions relating to Short Sales** – (1) Except where the borrowing agent is the investment fund's custodian or sub-custodian, if an investment fund deposits portfolio assets with a borrowing agent as security in connection with a short sale of securities, the market value of portfolio assets deposited with the borrowing agent must not, when aggregated with the market value of portfolio assets already held by the borrowing agent as security for outstanding short sales of securities by the investment fund, exceed 10% of the net asset value of the investment fund at the time of deposit.

- (2) An investment fund must not deposit portfolio assets as security in connection with a short sale of securities with a dealer in Canada unless the dealer is a registered dealer and is a member of IIROC.

- (3) An investment fund must not deposit portfolio assets as security in connection with a short sale of securities with a dealer outside of Canada unless that dealer
- (a) is a member of a stock exchange and is subject to a regulatory audit; and
  - (b) has a net worth, determined from its most recent audited financial statements that have been made public, in excess of the equivalent of \$50 million.

**6.9 Separate Account for Paying Expenses** – An investment fund may deposit cash in Canada with an entity referred to in paragraph 1 or 2 of section 6.2 to facilitate the payment of regular operating expenses of the investment fund.

## **PART 7 INCENTIVE FEES**

**7.1 Incentive Fees** - A mutual fund must not pay, or enter into arrangements that would require it to pay, and securities of a mutual fund must not be sold on the basis that an investor would be required to pay, a fee that is determined by the performance of the mutual fund, unless

- (a) the fee is calculated with reference to a benchmark or index that
  - (i) reflects the market sectors in which the mutual fund invests according to its fundamental investment objectives,
  - (ii) is available to persons or companies other than the mutual fund and persons providing services to it, and
  - (iii) is a total return benchmark or index;
- (b) the payment of the fee is based upon a comparison of the cumulative total return of the mutual fund against the cumulative total percentage increase or decrease of the benchmark or index for the period that began immediately after the last period for which the performance fee was paid; and
- (c) the method of calculation of the fee and details of the composition of the benchmark or index are described in the prospectus of the mutual fund.

**7.2 Multiple Portfolio Advisers** - Section 7.1 applies to fees payable to a portfolio adviser of a mutual fund that has more than one portfolio adviser, if the fees are calculated on the basis of the performance of the portfolio assets under management by that portfolio adviser, as if those portfolio assets were a separate mutual fund.

## **PART 8 CONTRACTUAL PLANS**

**8.1 Contractual Plans** – A person or company must not sell securities of a mutual fund by way of a contractual plan unless

- (a) the contractual plan was established, and its terms described in a prospectus that was filed with the securities regulatory authority, before the date that this Instrument came into force;
- (b) there have been no changes made to the contractual plan or the rights of securityholders under the contractual plan since the date that this Instrument came into force; and

- (c) the contractual plan has continued to be operated in the same manner after the date that this Instrument came into force as it was on that date.

**PART 9 SALE OF SECURITIES OF AN INVESTMENT FUND**

**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.

**9.1 Transmission and Receipt of Purchase Orders** – (0.1) This section does not apply to an exchange-traded mutual fund.

- (1) Each purchase order for securities of a mutual fund received by a participating dealer at a location that is not its principal office must, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without charge to the person or company placing the order or to the mutual fund, to the principal office of the participating dealer or a person or company providing services to the participating dealer.
- (2) Each purchase order for securities of a mutual fund received by a participating dealer at its principal office, a person or company providing services to the participating dealer, or by the principal distributor of the mutual fund at a location that is not an order receipt office of the mutual fund must, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without charge to the person or company placing the order or to the mutual fund, to an order receipt office of the mutual fund.
- (3) Despite subsections (1) and (2), a purchase order for securities of a mutual fund received at a location referred to in those subsections after normal business hours on a business day, or on a day that is not a business day, may be sent, in the manner and to the place required by those subsections, on the next business day.
- (4) A participating dealer, a principal distributor or a person or company providing services to the participating dealer or principal distributor, that sends purchase orders electronically may
  - (a) specify a time on a business day by which a purchase order must be received in order that it be sent electronically on that business day; and
  - (b) despite subsections (1) and (2), send electronically on the next business day a purchase order received after the time specified under paragraph (a).
- (5) A mutual fund is deemed to have received a purchase order for securities of the mutual fund when the order is received at an order receipt office of the mutual fund.
- (6) Despite subsection (5), a mutual fund may provide that a purchase order for securities of the mutual fund received at an order receipt office of the mutual fund after a specified time on a business day, or on a day that is not a business day, will be considered to be received by the mutual fund on the next business day following the day of actual receipt.
- (7) A principal distributor or participating dealer must ensure that a copy of each purchase order received in a jurisdiction is sent, by the time it is sent to the order receipt office of the mutual fund under subsection (2), to a person responsible for the supervision of trades made on behalf of clients for the principal distributor or participating dealer in the jurisdiction.



**9.2 Acceptance of Purchase Orders** – A mutual fund may reject a purchase order for the purchase of securities of the mutual fund if

- (a) the rejection of the order is made no later than one business day after receipt by the mutual fund of the order;
- (b) on rejection of the order, all cash received with the order is refunded immediately; and
- (c) the prospectus of the mutual fund states that the right to reject a purchase order for securities of the mutual fund is reserved and reflects the requirements of paragraphs (a) and (b).

**9.3 Issue Price of Securities** – (1) The issue price of a security of a mutual fund to which a purchase order pertains must be the net asset value per security of that class, or series of a class, next determined after the receipt by the mutual fund of the order.

- (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.

**9.4 Delivery of Funds and Settlement** – (1) A principal distributor, a participating dealer, or a person or company providing services to the principal distributor or participating dealer must forward any cash or securities received for payment of the issue price of securities of a mutual fund to an order receipt office of the mutual fund so that the cash or securities arrive at the order receipt office as soon as practicable and in any event no later than the third business day after the pricing date.

- (2) Payment of the issue price of securities of a mutual fund must be made to the mutual fund on or before the third business day after the pricing date for the securities by using any or a combination of the following methods of payment:
  - (a) by paying cash in a currency in which the net asset value per security of the mutual fund is calculated;
  - (b) by making good delivery of securities if
    - (i) the mutual fund would at the time of payment be permitted to purchase those securities,
    - (ii) the securities are acceptable to the portfolio adviser of the mutual fund and consistent with the mutual fund's investment objectives, and
    - (iii) the value of the securities is at least equal to the issue price of the securities of the mutual fund for which they are payment, valued as if the securities were portfolio assets of the mutual fund.

- (3) [Repealed]

- (4) If payment of the issue price of the securities of a mutual fund to which a purchase order pertains is not made on or before the third business day after the pricing date or if the mutual fund has been paid the issue price by a cheque or method of payment that is subsequently not honoured,
  - (a) the mutual fund must redeem the securities to which the purchase order pertains as if it had received an order for the redemption of the securities on the fourth business day after the pricing date or on the day on which the mutual fund first knows that the method of payment will not be honoured; and
  - (b) the amount of the redemption proceeds derived from the redemption must be applied to reduce the amount owing to the mutual fund on the purchase of the securities and any banking costs incurred by the mutual fund in connection with the dishonoured cheque.
- (5) If the amount of the redemption proceeds referred to in subsection (4) exceeds the aggregate of issue price of the securities and any banking costs incurred by the mutual fund in connection with the dishonoured cheque, the difference must belong to the mutual fund.
- (6) If the amount of the redemption proceeds referred to in subsection (4) is less than the issue price of the securities and any banking costs incurred by the mutual fund in connection with the dishonoured cheque,
  - (a) if the mutual fund has a principal distributor, the principal distributor must pay, immediately upon notification by the mutual fund, to the mutual fund the amount of the deficiency; or
  - (b) if the mutual fund does not have a principal distributor, the participating dealer that delivered the relevant purchase order to the mutual fund must pay immediately, upon notification by the mutual fund, to the mutual fund the amount of the deficiency.

## **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.

## **PART 10 REDEMPTION OF SECURITIES OF AN INVESTMENT FUND**

### **10.1 Requirements for Redemptions – (1) An investment fund must not pay redemption proceeds unless**

- (a) if the security of the investment fund to be redeemed is represented by a certificate, the investment fund has received the certificate or appropriate indemnities in connection with a lost certificate; and
- (b) either

- (i) the investment fund has received a written redemption order, duly completed and executed by or on behalf of the securityholder, or
  - (ii) the investment fund permits the making of redemption orders by telephone or electronic means by, or on behalf of, a securityholder who has made prior arrangements with the investment fund in that regard and the relevant redemption order is made in compliance with those arrangements.
- (2) An investment fund may establish reasonable requirements applicable to securityholders who wish to have the investment fund redeem securities, not contrary to this Instrument, as to procedures to be followed and documents to be delivered by the following times:
- (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;
  - (b) by the time of payment of redemption proceeds.
- (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.
- (4) The statement referred to in subsection (3) is not required to be separately provided, in any year, if the requirements are described in any document that is sent to all securityholders in that year.

<p><b>Note:</b> Subsection 10.1(3) does not apply to non-redeemable investment funds until January 1, 2015.</p>
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**10.2 Transmission and Receipt of Redemption Orders – (0.1)** This section does not apply to an exchange-traded mutual fund.

- (1) Each redemption order for securities of a mutual fund received by a participating dealer at a location that is not its principal office must, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without

charge to the relevant securityholder or to the mutual fund, to the principal office of the participating dealer or a person or company providing services to the participating dealer.

- (2) Each redemption order for securities of a mutual fund received by a participating dealer at its principal office, by the principal distributor of the mutual fund at a location that is not an order receipt office of the mutual fund, or a person or company providing services to the participating dealer or principal distributor must, on the day the order is received, be sent by same day or next day courier, same day or next day priority post, telephone or electronic means, without charge to the relevant securityholder or to the mutual fund, to an order receipt office of the mutual fund.
- (3) Despite subsections (1) and (2), a redemption order for securities of a mutual fund received at a location referred to in those subsections after normal business hours on a business day, or on a day that is not a business day, may be sent, in the manner and to the place required by those subsections, on the next business day.
- (4) A participating dealer, a principal distributor, or a person or company providing services to the participating dealer or principal distributor, that sends redemption orders electronically may
  - (a) specify a time on a business day by which a redemption order must be received in order that it be sent electronically on that business day; and
  - (b) despite subsections (1) and (2), send electronically on the next business day a redemption order received after the time specified under paragraph (a).
- (5) A mutual fund is deemed to have received a redemption order for securities of the mutual fund when the order is received at an order receipt office of the mutual fund or all requirements of the mutual fund established under paragraph 10.1(2)(a) have been satisfied, whichever is later.
- (6) If a mutual fund determines that its requirements established under paragraph 10.1(2)(a) have not been satisfied, the mutual fund must notify the securityholder making the redemption order, by the close of business on the business day after the date of the delivery to the mutual fund of the incomplete redemption order, that its requirements established under paragraph 10.1(2)(a) have not been satisfied and must specify procedures still to be followed or the documents still to be delivered by that securityholder.
- (7) Despite subsection (5), a mutual fund may provide that orders for the redemption of securities that are received at an order receipt office of the mutual fund after a specified time on a business day, or on a day that is not a business day, will be considered to be received by the mutual fund on the next business day following the day of actual receipt.

**10.3 Redemption Price of Securities** – (1) The redemption price of a security of a mutual fund to which a redemption order pertains must be the net asset value per security of that class, or series of a class, next determined after the receipt by the mutual fund of the order.

- (2) Despite subsection (1), the redemption price of a security of an exchange-traded mutual fund that is not in continuous distribution may be a price that is less than the net asset value of the security and that is determined on a date specified in the exchange-traded mutual fund's prospectus or annual information form.

- (3) Despite subsection (1), the redemption price of a security of an exchange-traded mutual fund that is in continuous distribution may, if a securityholder redeems fewer than the manager-prescribed number of units, be a price that is calculated by reference to the closing price of the security on the stock exchange on which the security is listed and posted for trading, next determined after the receipt by the exchange-traded mutual fund of the redemption order.
- (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.

**10.4 Payment of Redemption Proceeds** – (1) Subject to subsection 10.1(1) and to compliance with any requirements established by the mutual fund under paragraph 10.1(2)(b), a mutual fund must pay the redemption proceeds for securities that are the subject of a redemption order

- (a) within three business days after the date of calculation of the net asset value per security used in establishing the redemption price; or
  - (b) if payment of the redemption proceeds was not made at the time referred to in paragraph (a) because a requirement established under paragraph 10.1(2)(b) or a requirement of subsection 10.1(1) had not been satisfied, within three business days of
    - (i) the satisfaction of the relevant requirement, or
    - (ii) the decision by the mutual fund to waive the requirement, if the requirement was a requirement established under paragraph 10.1(2)(b).
- (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.
  - (2) The redemption proceeds for a redeemed security, less any applicable investor fees, must be paid to or to the order of the securityholder of the security.
  - (3) An investment fund must pay the redemption proceeds for a redeemed security by using any or a combination of the following methods of payment:
    - (a) by paying cash in the currency in which the net asset value per security of the redeemed security was calculated;
    - (b) with the prior written consent of the securityholder for a redemption other than an exchange of a manager-prescribed number of units, by making good delivery to the securityholder of portfolio assets, the value of which is equal to the amount at which those portfolio assets were valued in calculating the net asset value per security used to establish the redemption price.
  - (4) [Repealed]

- (5) If the redemption proceeds for a redeemed security are paid in currency, an investment fund is deemed to have made payment
  - (a) when the investment fund, its manager or principal distributor mails a cheque or transmits funds in the required amount to or to the order of the securityholder of the securities; or
  - (b) if the securityholder has requested that redemption proceeds be delivered in a currency other than that permitted in subsection (3), when the investment fund delivers the redemption proceeds to the manager or principal distributor of the investment fund for conversion into that currency and delivery forthwith to the securityholder.

**10.5 Failure to Complete Redemption Order** – (1) If a requirement of a mutual fund referred to in subsection 10.1(1) or established under paragraph 10.1(2)(b) has not been satisfied on or before the close of business on the tenth business day after the date of the redemption of the relevant securities, and, in the case of a requirement established under paragraph 10.1(2)(b), the mutual fund does not waive satisfaction of the requirement, the mutual fund must

- (a) issue, to the person or company that immediately before the redemption held the securities that were redeemed, a number of securities equal to the number of securities that were redeemed, as if the mutual fund had received from the person or company on the tenth business day after the redemption, and accepted immediately before the close of business on the tenth business day after the redemption, an order for the purchase of that number of securities; and
  - (b) apply the amount of the redemption proceeds to the payment of the issue price of the securities.
- (2) If the amount of the issue price of the securities referred to in subsection (1) is less than the redemption proceeds, the difference must belong to the mutual fund.
  - (3) If the amount of the issue price of the securities referred to in subsection (1) exceeds the redemption proceeds
    - (a) if the mutual fund has a principal distributor, the principal distributor must pay immediately to the mutual fund the amount of the deficiency;
    - (b) if the mutual fund does not have a principal distributor, the participating dealer that delivered the relevant redemption order to the mutual fund must pay immediately to the mutual fund the amount of the deficiency; or
    - (c) if the mutual fund has no principal distributor and no dealer delivered the relevant redemption order to the mutual fund, the manager of the mutual fund must pay immediately to the mutual fund the amount of the deficiency.

**10.6 Suspension of Redemptions** – (1) An investment fund may suspend the right of securityholders to request that the investment fund redeem its securities for the whole or any part of a period during which either of the following occurs:

- (a) normal trading is suspended on a stock exchange, options exchange or futures exchange within or outside Canada on which securities are listed and posted for trading, or on

which specified derivatives are traded, if those securities or specified derivatives represent more than 50% by value, or underlying market exposure, of the total assets of the investment fund without allowance for liabilities and if those securities or specified derivatives are not traded on any other exchange that represents a reasonably practical alternative for the investment fund;

- (b) in the case of a clone fund, the investment fund whose performance it tracks has suspended redemptions.
- (2) An investment fund that has an obligation to pay the redemption proceeds for securities that have been redeemed in accordance with subsection 10.4(1), (1.1) or (1.2) may postpone payment during a period in which the right of securityholders to request redemption of their securities is suspended, whether that suspension was made under subsection (1) or pursuant to an approval of the securities regulatory authority or regulator.
  - (3) An investment fund must not accept a purchase order for securities of the investment fund during a period in which it is exercising rights under subsection (1) or at a time in which it is relying on an approval of the securities regulatory authority or regulator contemplated by paragraph 5.5(1)(d).

## **PART 11 COMMINGLING OF CASH**

**11.1 Principal Distributors and Service Providers** – (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) Except as permitted by subsection (3), the principal distributor, a person or company providing services to the mutual fund or principal distributor, or a person or company providing services to the non-redeemable investment fund, must not use any of the cash referred to in subsection (1) to finance its own or any other operations in any way.
  - (3) The principal distributor or person or company providing services to an investment fund or principal distributor may withdraw cash from a trust account referred to in paragraph (1)(a) for any of the following purposes:
    - (a) remitting to the investment fund the amount or, if subsection (5) applies, the net amount, to be invested in the securities of the investment fund;
    - (b) remitting to the relevant persons or companies redemption or distribution proceeds being paid on behalf of the investment fund;

- (c) paying fees, charges and expenses that are payable by an investor in connection with the purchase, conversion, holding, transfer or redemption of securities of the investment fund.
- (4) All interest earned on cash held in a trust account referred to in paragraph (1)(a) must be paid to securityholders or to each of the investment funds to which the trust account pertains, pro rata based on cash flow,
- (a) no less frequently than monthly if the amount owing to an investment fund or to a securityholder is \$10 or more; and
  - (b) no less frequently than once a year.
- (5) When making payments to an investment fund, the principal distributor or service provider may offset the proceeds of redemption of securities of the investment fund or amounts held for distributions to be paid on behalf of the investment fund held in the trust account against amounts held in the trust account for investment in the investment fund.

**11.2 Participating Dealers** – (1) Cash received by a participating dealer, or by a person or company providing services to a participating dealer, for investment in, or on the redemption of, securities of a mutual fund, or on the distribution of assets of a mutual fund, until disbursed as permitted by subsection (3)

- (a) must be accounted for separately and must be deposited in a trust account or trust accounts established and maintained in accordance with section 11.3; and
  - (b) may be commingled only with cash received by the participating dealer or service provider for the sale or on the redemption of other mutual fund securities.
- (2) Except as permitted by subsection (3), the participating dealer or person or company providing services to the participating dealer must not use any of the cash referred to in subsection (1) to finance its own or any other operations in any way.
- (3) A participating dealer or person or company providing services to the participating dealer may withdraw cash from a trust account referred to in paragraph (1)(a) for the purpose of
- (a) remitting to the mutual fund or the principal distributor of the mutual fund the amount or, if subsection (5) applies, the net amount, to be invested in the securities of the mutual fund;
  - (b) remitting to the relevant persons or companies redemption or distribution proceeds being paid on behalf of the mutual fund; or
  - (c) paying fees, charges and expenses that are payable by an investor in connection with the purchase, conversion, holding, transfer or redemption of securities of the mutual fund.
- (4) All interest earned on cash held in a trust account referred to in paragraph (1)(a) must be paid to securityholders or to each of the mutual funds to which the trust account pertains, pro rata based on cash flow,



- (a) no less frequently than monthly if the amount owing to a mutual fund or to a securityholder is \$10 or more; and
  - (b) no less frequently than once a year.
- (5) When making payments to a mutual fund, a participating dealer or service provider may offset the proceeds of redemption of securities of the mutual fund and amounts held for distributions to be paid on behalf of a mutual fund held in the trust account against amounts held in the trust account for investment in the mutual fund.
- (6) A participating dealer or person providing services to the participating dealer must permit the mutual fund and the principal distributor, through their respective auditors or other designated representatives, to examine the books and records of the participating dealer to verify the compliance with this section of the participating dealer or person providing services.

**11.3 Trust Accounts** – A principal distributor or participating dealer, a person or company providing services to the principal distributor or participating dealer, or a person or company providing services to an investment fund, that deposits cash into a trust account in accordance with section 11.1 or 11.2 must

- (a) advise, in writing, the financial institution with which the account is opened at the time of the opening of the account and annually thereafter, that
  - (i) the account is established for the purpose of holding client funds in trust,
  - (ii) the account is to be labelled by the financial institution as a “trust account”,
  - (iii) the account is not to be accessed by any person other than authorized representatives of the principal distributor or participating dealer, of a person or company providing services to the principal distributor or participating dealer, or of a person or company providing services to the investment fund, and
  - (iv) the cash in the trust account may not be used to cover shortfalls in any accounts of the principal distributor or participating dealer, of a person or company providing services to the principal distributor or participating dealer, or of a person or company providing services to the investment fund;
- (b) ensure that the trust account bears interest at rates equivalent to comparable accounts of the financial institution; and
- (c) ensure that any charges against the trust account are not paid or reimbursed out of the trust account.

**11.4 Exemption** – (1) Sections 11.1 and 11.2 do not apply to a member of IIROC.

- (1.1) Except in Québec, sections 11.1 and 11.2 do not apply to a member of the MFDA.
- (1.2) In Québec, sections 11.1 and 11.2 do not apply to a mutual fund dealer.
- (1.3) Section 11.1 does not apply to CDS Clearing and Depository Services Inc.

- (2) A participating dealer that is a member of an SRO referred to in subsection (1) or (1.1) or, in Québec, that is a mutual fund dealer, must permit the mutual fund and the principal distributor, through their respective auditors or other designated representatives, to examine the books and records of the participating dealer to verify the participating dealer's compliance with the requirements of its association or exchange, or the requirements applicable to the mutual fund dealer under the regulations in Québec, that relate to the commingling of cash.

**11.5 Right of Inspection** – The investment fund, its trustee, manager and principal distributor must ensure that all contractual arrangements made between any of them and any person or company providing services to the investment fund permit the representatives of the investment fund, its manager and trustee to examine the books and records of those persons or companies in order to monitor compliance with this Instrument.

## **PART 12 COMPLIANCE REPORTS**

**12.1 Compliance Reports** – (1) A mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, that does not have a principal distributor must complete and file, within 140 days after the financial year end of the mutual fund

- (a) a report in the form contained in Appendix B-1 describing compliance by the mutual fund during that financial year with the applicable requirements of Parts 9, 10 and 11; and
  - (b) a report by the auditor of the mutual fund, in the form contained in Appendix B-1, concerning the report referred to in paragraph (a).
- (2) The principal distributor of a mutual fund must complete and file, within 90 days after the financial year end of the principal distributor
- (a) a report in the form contained in Appendix B-2 describing compliance by the principal distributor during that financial year with the applicable requirements of Parts 9, 10 and 11; and
  - (b) a report by the auditor of the principal distributor or by the auditor of the mutual fund, in the form contained in Appendix B-2, concerning the report referred to in paragraph (a).
- (3) Each participating dealer that distributes securities of a mutual fund in a financial year of the participating dealer must complete and file, within 90 days after the end of that financial year
- (a) a report in the form contained in Appendix B-3 describing compliance by the participating dealer during that financial year with the applicable requirements of Parts 9, 10 and 11 in connection with its distribution of securities of all mutual funds in that financial year; and
  - (b) a report by the auditor of the participating dealer, in the form contained in Appendix B-3, concerning the report referred to in paragraph (a).
- (4) Subsections (2) and (3) do not apply to a member of IIROC.
- (4.1) Except in Québec, subsections (2) and (3) do not apply to a member of the MFDA.

(4.2) In Québec, subsections (2) and (3) do not apply to a mutual fund dealer.

**PART 13 [Repealed]**

**PART 14 RECORD DATE**

**14.0.1 Application** – This Part does not apply to an exchange-traded mutual fund.

**14.1 Record Date** – The record date for determining the right of securityholders of a mutual fund to receive a dividend or distribution by the mutual fund must be one of

- (a) the day on which the net asset value per security is determined for the purpose of calculating the amount of the payment of the dividend or distribution;
- (b) the last day on which the net asset value per security of the mutual fund was calculated before the day referred to in paragraph (a); or
- (c) if the day referred to in paragraph (b) is not a business day, the last day on which the net asset value per security of the mutual fund was calculated before the day referred to in paragraph (b).

**PART 15 SALES COMMUNICATIONS AND PROHIBITED REPRESENTATIONS**

**15.1 Ability to Make Sales Communications** - Sales communications pertaining to an investment fund must be made by a person or company in accordance with this Part.

**15.2 Sales Communications - General Requirements** – (1) Despite any other provision of this Part, a sales communication must not

- (a) be untrue or misleading; or
  - (b) include a statement that conflicts with information that is contained in the preliminary prospectus, the preliminary annual information form, the preliminary fund facts document, the prospectus, the annual information form or the fund facts document, as applicable,
    - (i) of an investment fund, or
    - (ii) in which an asset allocation service is described.
- (2) All performance data or disclosure specifically required by this Instrument and contained in a written sales communication must be at least as large as 10-point type.

**15.3 Prohibited Disclosure in Sales Communications** – (1) A sales communication must not compare the performance of an investment fund or asset allocation service with the performance or change of any benchmark or investment unless

- (a) it includes all facts that, if disclosed, would be likely to alter materially the conclusions reasonably drawn or implied by the comparison;

- (b) it presents data for each subject of the comparison for the same period or periods;
  - (c) it explains clearly any factors necessary to make the comparison fair and not misleading; and
  - (d) in the case of a comparison with a benchmark
    - (i) the benchmark existed and was widely recognized and available during the period for which the comparison is made, or
    - (ii) the benchmark did not exist for all or part of the period, but a reconstruction or calculation of what the benchmark would have been during that period, calculated on a basis consistent with its current basis of calculation, is widely recognized and available.
- (2) A sales communication for a mutual fund or asset allocation service that is prohibited by paragraph 15.6(1)(a) from disclosing performance data must not provide performance data for any benchmark or investment other than a mutual fund or asset allocation service under common management with the mutual fund or asset allocation service to which the sales communication pertains.
- (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.
- (3) Despite subsection (2), a sales communication for an index mutual fund may provide performance data for the index on which the investments of the mutual fund are based if the index complies with the requirements for benchmarks contained in paragraph (1)(d).
- (4) A sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless
- (a) the rating or ranking is prepared by a mutual fund rating entity;
  - (b) standard performance data is provided for any mutual fund or asset allocation service for which a performance rating or ranking is given;
  - (c) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund;
  - (d) the rating or ranking is based on a published category of mutual funds that
    - (i) provides a reasonable basis for evaluating the performance of the mutual fund or asset allocation service, and
    - (ii) is not established or maintained by a member of the organization of the mutual fund or asset allocation service;
  - (e) the sales communication contains the following disclosure:

- (i) the name of the category within which the mutual fund or asset allocation service is rated or ranked, including the name of the organization that maintains the category,
  - (ii) the number of mutual funds in the applicable category for each period of standard performance data required under paragraph (c),
  - (iii) the name of the mutual fund rating entity that provided the rating or ranking,
  - (iv) the length of the period or the first day of the period on which the rating or ranking is based, and its ending date,
  - (v) a statement that the rating or ranking is subject to change every month,
  - (vi) the criteria on which the rating or ranking is based, and
  - (vii) if the rating or ranking consists of a symbol rather than a number, the meaning of the symbol, and
- (f) the rating or ranking is to the same calendar month end that is
- (i) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and
  - (ii) not more than three months before the date of first publication of any other sales communication in which it is included.
- (4.1) Despite paragraph (4)(c), a sales communication may refer to an overall rating or ranking of a mutual fund or asset allocation service in addition to each rating or ranking required under paragraph (4)(c) if the sales communication otherwise complies with the requirements of subsection (4).
- (5) A sales communication must not refer to a credit rating of securities of an investment fund unless
- (a) the rating is current and was prepared by a designated rating organization or its DRO affiliate;
  - (b) there has been no announcement by the designated rating organization or any of its DRO affiliates of which the investment fund or its manager is or ought to be aware that the credit rating of the securities may be down-graded; and
  - (c) no designated rating organization or any of its DRO affiliates is currently rating the securities at a lower level.
- (6) A sales communication must not refer to a mutual fund as, or imply that it is, a money fund, cash fund or money market fund unless, at the time the sales communication is used and for each period for which money market fund standard performance data is provided, the mutual fund is and was a money market fund under this Instrument.
- (7) A sales communication must not state or imply that a registered retirement savings plan,

registered retirement income fund or registered education savings plan in itself, rather than the investment fund to which the sales communication relates, is an investment.

**15.4 Required Disclosure and Warnings in Sales Communications** – (1) A written sales communication must

- (a) bear the name of the dealer that distributed the sales communication; and
- (b) if the sales communication is not an advertisement, contain the date of first publication of the sales communication.

- (2) A sales communication that includes a rate of return or a mathematical table illustrating the potential effect of a compound rate of return must contain a statement in substantially the following words:

“[The rate of return or mathematical table shown] is used only to illustrate the effects of the compound growth rate and is not intended to reflect future values of [the investment fund or asset allocation service] or returns on investment [in the investment fund or from the use of the asset allocation service].”.

- (3) A sales communication, other than a report to securityholders, of a mutual fund that is not a money market fund and that does not contain performance data must contain a warning in substantially the following words:

“Commissions, trailing commissions, management fees and expenses all may be associated with mutual fund investments. Please read the prospectus before investing. Mutual funds are not guaranteed, their values change frequently and past performance may not be repeated.”.

- (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.”.

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

“Commissions, trailing commissions, management fees and expenses all may be associated with mutual fund investments. Please read the prospectus before investing. Mutual fund securities are not covered by the Canada Deposit Insurance Corporation or by any other government deposit insurer. There can be no assurances that the fund will be able to maintain its net asset value per security at a constant amount or that the full amount of your investment in the fund will be returned to you. Past performance may not be repeated.”

- (5) A sales communication for an asset allocation service that does not contain performance data must contain a warning in substantially the following words:

“Commissions, trailing commissions, management fees and expenses all may be associated with mutual fund investments and the use of an asset allocation service. Please read the prospectus of the mutual funds in which investment may be made under the asset allocation service before investing. Mutual funds are not guaranteed, their values change frequently and past performance may not be repeated.”

- (6) A sales communication, other than a report to securityholders, of a mutual fund that is not a money market fund and that contains performance data must contain a warning in substantially the following words:

“Commissions, trailing commissions, management fees and expenses all may be associated with mutual fund investments. Please read the prospectus before investing. 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 sales, redemption, distribution or optional charges or income taxes payable by any securityholder that would have reduced returns. Mutual funds are not guaranteed, their values change frequently and past performance may not be repeated.”

- (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) A sales communication, other than a report to securityholders, of a money market fund that contains performance data must contain

(a) a warning in substantially the following words:

“Commissions, trailing commissions, management fees and expenses all may be associated with mutual fund investments. Please read the prospectus before investing. The performance data provided assumes reinvestment of distributions only and does not take into account sales, redemption, distribution or optional charges or income taxes payable by any securityholder that would have reduced returns. Mutual fund securities are not covered by the Canada Deposit Insurance Corporation or by any other government deposit insurer. There can be no assurances that the fund will be able to maintain its net asset value per security at a constant amount or that the full amount of your investment in the fund will be returned to you. Past performance may not be repeated.”; and

(b) a statement in substantially the following words, immediately following the performance data:

“This is an annualized historical yield based on the seven day period ended on [date] [annualized in the case of effective yield by compounding the seven day return] and does not represent an actual one year return.”.

(8) A sales communication for an asset allocation service that contains performance data must contain a warning in substantially the following words:

“Commissions, trailing commissions, management fees and expenses all may be associated with mutual fund investments and the use of an asset allocation service. Please read the prospectus of the mutual funds in which investment may be made under the asset allocation service before investing. The indicated rate[s] of return is [are] the historical annual compounded total return[s] assuming the investment strategy recommended by the asset allocation service is used and after deduction of the fees and charges in respect of the service. The return[s] is [are] based on the historical annual compounded total returns of the participating funds including changes in [share] [unit] value and reinvestment of all [dividends or distributions] and does [do] not take into account sales, redemption, distribution or optional charges or income taxes payable by any securityholder in respect of a participating fund that would have reduced returns. Mutual funds are not guaranteed, their values change frequently and past performance may not be repeated.”.

(9) A sales communication distributed after the issue of a receipt for a preliminary prospectus of the mutual fund described in the sales communication but before the issue of a receipt for its prospectus must contain a warning in substantially the following words:

“A preliminary prospectus relating to the fund has been filed with certain Canadian securities commissions or similar authorities. You cannot buy [units] [shares] of the fund until the relevant securities commissions or similar authorities issue receipts for the prospectus of the fund.”.



- (10) A sales communication for an investment fund or asset allocation service that purports to arrange a guarantee or insurance in order to protect all or some of the principal amount of an investment in the investment fund or asset allocation service must
- (a) identify the person or company providing the guarantee or insurance;
  - (b) provide the material terms of the guarantee or insurance, including the maturity date of the guarantee or insurance;
  - (c) if applicable, state that the guarantee or insurance does not apply to the amount of any redemptions before the maturity date of the guarantee or before the death of the securityholder and that redemptions before that date would be based on the net asset value per security of the investment fund at the time; and
  - (d) modify any other disclosure required by this section appropriately.
- (11) The warnings referred to in this section must be communicated in a manner that a reasonable person would consider clear and easily understood at the same time as, and through the medium by which, the related sales communication is communicated.

**15.5 Disclosure Regarding Distribution Fees** – (1) A person or company must not describe a mutual fund in a sales communication as a “no-load fund” or use words of like effect if on a purchase or redemption of securities of the mutual fund investor fees are payable by an investor or if any fees, charges or expenses are payable by an investor to a participating dealer of the mutual fund named in the sales communication, other than

- (a) fees and charges related to specific optional services;
  - (b) for a mutual fund that is not a money market fund, redemption fees on the redemption of securities of the mutual fund that are redeemed within 90 days after the purchase of the securities, if the existence of the fees is disclosed in the sales communication, or in the prospectus of the mutual fund; or
  - (c) costs that are payable only on the set-up or closing of a securityholder’s account and that reflect the administrative costs of establishing or closing the account, if the existence of the costs is disclosed in the sales communication, or in the prospectus of the mutual fund.
- (2) If a sales communication describes a mutual fund as “no-load” or uses words to like effect, the sales communication must
- (a) indicate the principal distributor or a participating dealer through which an investor may purchase the mutual fund on a no-load basis;
  - (b) disclose that management fees and operating expenses are paid by the mutual fund; and
  - (c) disclose the existence of any trailing commissions paid by a member of the organization of the mutual fund.
- (3) A sales communication containing a reference to the existence or absence of fees or charges,

other than the disclosure required by section 15.4 or a reference to the term “no-load”, must disclose the types of fees and charges that exist.

- (4) The rate of sales charges or commissions for the sale of securities of a mutual fund or the use of an asset allocation service must be expressed in a sales communication as a percentage of the amount paid by the purchaser and as a percentage of the net amount invested if a reference is made to sales charges or commissions.

**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.

**15.7 Advertisements** – An advertisement for a mutual fund or asset allocation service must not compare the performance of the mutual fund or asset allocation service with any benchmark or investment other than

- (a) one or more mutual funds or asset allocation services that are under common management or administration with the mutual fund or asset allocation service to which the advertisement pertains;
- (b) one or more mutual funds or asset allocation services that have fundamental investment objectives that a reasonable person would consider similar to the mutual fund or asset allocation service to which the advertisement pertains; or
- (c) an index.

**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.

**15.8 Performance Measurement Periods Covered by Performance Data** – (1) A sales communication, other than a report to securityholders, that relates to a money market fund may provide standard performance data only if

- (a) the standard performance data has been calculated for the most recent seven day period for which it is practicable to calculate, taking into account publication deadlines; and

- (b) the seven day period does not start more than 45 days before the date of the appearance, use or publication of the sales communication.
- (2) A sales communication, other than a report to securityholders, that relates to an asset allocation service, or to an investment fund other than a money market fund, must not provide standard performance data unless,
- (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
  - (b) the periods referred to in paragraphs (a), (a.1) and (a.2) end on the same calendar month end that is
    - (i) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and
    - (ii) not more than three months before the date of first publication of any other sales communication in which it is included.
- (3) A report to securityholders must not contain standard performance data unless,
- (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
  - (b) the periods referred to in paragraphs (a), (a.1) and (a.2) end on the day as of which the statement of financial position of the financial statements contained in the report to securityholders was prepared.
- (4) A sales communication must clearly identify the periods for which performance data is calculated.

**15.9 Changes affecting Performance Data** – (1) If, during or after a performance measurement period of performance data contained in a sales communication, there have been changes in the business, operations or affairs of the investment fund or asset allocation service to which the sales communication pertains that

could have materially affected the performance of the investment fund or asset allocation service, the sales communication must contain

- (a) summary disclosure of the changes, and of how those changes could have affected the performance had those changes been in effect throughout the performance measurement period; and
  - (b) for a money market fund that during the performance measurement period did not pay or accrue the full amount of any fees and charges of the type described under paragraph 15.11(1)1, disclosure of the difference between the full amounts and the amounts actually charged, expressed as an annualized percentage on a basis comparable to current yield.
- (2) If an investment fund has, in the last 10 years, undertaken a reorganization with, or acquired assets from, another investment fund in a transaction that was a material change for the investment fund or would have been a material change for the investment fund had this Instrument been in force at the time of the transaction, then, in any sales communication of the investment fund,
- (a) the investment fund must provide summary disclosure of the transaction;
  - (b) the investment fund may include its performance data covering any part of a period before the transaction only if it also includes the performance data for the other fund for the same periods;
  - (c) the investment fund must not include its performance data for any part of a period after the transaction unless
    - (i) 12 months have passed since the transaction, or
    - (ii) the investment fund includes in the sales communication the performance data for itself and the other investment fund referred to in paragraph (b); and
  - (d) the investment fund must not include any performance data for any period that is composed of both time before and after the transaction.

**15.10 Formula for Calculating Standard Performance Data** – (1) The standard performance data of an investment fund must be calculated in accordance with this Part.

(2) In this Part

“current yield” means the yield of a money market fund expressed as a percentage and determined by applying the following formula:

$$\text{current yield} = [\text{seven day return} \times 365/7] \times 100;$$

“effective yield” means the yield of a money market fund expressed as a percentage and determined by applying the following formula:

$$\text{effective yield} = [(\text{seven day return} + 1)^{365/7} - 1] \times 100;$$

“seven day return” means the income yield of an account of a securityholder in a money market fund that is calculated by

- (a) determining the net change, exclusive of new subscriptions other than from the reinvestment of distributions or proceeds of redemption of securities of the money market fund, in the value of the account,
- (b) subtracting all fees and charges of the type referred to in paragraph 15.11(1)3 for the seven day period, and
- (c) dividing the result by the value of the account at the beginning of the seven day period;

“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

“total return” means the annual compounded rate of return for an investment fund for a period that would equate the initial value to the redeemable value at the end of the period, expressed as a percentage, and determined by applying the following formula:

$$\text{total return} = [(\text{redeemable value}/\text{initial value})^{(1/N)} - 1] \times 100$$

where N = the length of the performance measurement period in years, with a minimum value of 1.

- (3) If there are fees and charges of the type described in paragraph 15.11(1)1 relevant to the calculation of redeemable value and initial value of the securities of an investment fund, the redeemable value and initial value of securities of an investment fund must be the net asset value of one unit or share of the investment fund at the beginning or at the end of the performance measurement period, minus the amount of those fees and charges calculated by applying the assumptions referred to in that paragraph to a hypothetical securityholder account.
- (4) If there are no fees and charges of the type described in paragraph 15.11(1)1 relevant to a calculation of total return, the calculation of total return for an investment fund may assume a hypothetical investment of one security of the investment fund and be calculated as follows:
  - (a) “initial value” means the net asset value of one unit or share of an investment fund at the beginning of the performance measurement period; and
  - (b) “redeemable value” =

$$R \times (1 + D_1/P_1) \times (1 + D_2/P_2) \times (1 + D_3/P_3) \dots \times (1 + D_n/P_n)$$

where  $R$  = the net asset value of one unit or security of the investment fund at the end of the performance measurement period,

$D$  = the dividend or distribution amount per security of the investment fund at the time of each distribution,

$P$  = the dividend or distribution reinvestment price per security of the investment fund at the time of each distribution, and

$n$  = the number of dividends or distributions during the performance measurement period.

- (5) Standard performance data of an asset allocation service must be based upon the standard performance data of its participating funds.
- (6) Performance data
  - (a) for an investment fund other than a money market fund must be calculated to the nearest one-tenth of one percent; and
  - (b) for a money market fund must be calculated to the nearest one-hundredth of one percent.

**15.11 Assumptions for Calculating Standard Performance Data** – (1) The following assumptions must be made in the calculation of standard performance data of an investment fund:

- 1. Recurring fees and charges that are payable by all securityholders
  - (a) are accrued or paid in proportion to the length of the performance measurement period;
  - (b) if structured in a manner that would result in the performance information being dependent on the size of an investment, are calculated on the basis of an investment equal to the greater of \$10,000 or the minimum amount that may be invested; and
  - (c) if fully negotiable, are calculated on the basis of the average fees paid by accounts of the size referred to in paragraph (b).
- 2. There are no fees and charges related to specific optional services.
- 3. All fees and charges payable by the investment fund are accrued or paid.
- 4. Dividends or distributions by the investment fund are reinvested in the investment fund at the net asset value per security of the investment fund on the reinvestment dates during the performance measurement period.
- 5. There are 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.

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.
- (2) The following assumptions must be made in the calculation of standard performance data of an asset allocation service:
1. Fees and charges that are payable by participants in the asset allocation service
    - (a) are accrued or paid in proportion to the length of the performance measurement period;
    - (b) if structured in a manner that would result in the performance information being dependent on the size of an investment, are calculated on the basis of an investment equal to the greater of \$10,000 or the minimum amount that may be invested; and
    - (c) if fully negotiable, are calculated on the basis of the average fees paid by accounts of the size referred to in paragraph (b).
  2. There are no fees and charges related to specific optional services.
  3. The investment strategy recommended by the asset allocation service is utilized for the performance measurement period.
  4. Transfer fees are
    - (a) accrued or paid;
    - (b) if structured in a manner that would result in the performance information being dependent on the size of an investment, calculated on the basis of an account equal to the greater of \$10,000 or the minimum amount that may be invested; and
    - (c) if the fees and charges are fully negotiable, calculated on the basis of the average fees paid by an account of the size referred to in paragraph (b).
  5. 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.
- (3) The calculation of standard performance data must be based on actual historical performance and the fees and charges payable by the investment fund and securityholders, or the asset allocation service and participants, in effect during the performance measurement period.



**15.12 Sales Communications During the Waiting Period** – If a sales communication is used after the issue of a receipt for a preliminary prospectus of the mutual fund described in the sales communication but before the issue of a receipt for its prospectus, the sales communication must state only

- (a) whether the security represents a share in a corporation or an interest in a non-corporate entity;
- (b) the name of the mutual fund and its manager;
- (c) the fundamental investment objectives of the mutual fund;
- (d) without giving details, whether the security is or will be a qualified investment for a registered retirement savings plan, registered retirement income fund or registered education savings plan or qualifies or will qualify the holder for special tax treatment; and
- (e) any additional information permitted by securities legislation.

**15.13 Prohibited Representations** – (1) Securities issued by an unincorporated investment fund must be described by a term that is not and does not include the word “shares”.

- (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.

**15.14 Sales Communication - Multi-Class Investment Funds** – A sales communication for an investment fund that distributes different classes or series of securities that are referable to the same portfolio must not contain performance data unless the sales communication complies with the following requirements:

- 1. The sales communication clearly specifies the class or series of security to which any performance data contained in the sales communication relates.
- 2. If the sales communication refers to more than one class or series of security and provides performance data for any one class or series, the sales communication must provide performance data for each class or series of security referred to in the sales communication and must clearly explain the reasons for different performance data among the classes or series.
- 3. A sales communication for a new class or series of security and an existing class or series of security must not contain performance data for the existing class or series unless the sales communication clearly explains any differences between the new class or series and the existing class or series that could affect performance.

**Note:** If a sales communication, other than an advertisement, pertaining to a non-redeemable investment fund was printed before September 22, 2014, the sales communication may be used until March 23, 2015.

**PART 16 [Repealed]**

**PART 17 [Repealed]**

**PART 18 SECURITYHOLDER RECORDS**

**18.1 Maintenance of Records** – An investment fund that is not a corporation must maintain, or cause to be maintained, up to date records of

- (a) the names and latest known addresses of each securityholder of the investment fund;
- (b) the number and class or series of a class of securities held by each securityholder of the investment fund; and
- (c) the date and details of each issue and redemption of securities, and each distribution, of the investment fund.

**18.2 Availability of Records** – (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.
- (2) An investment fund must, upon written request by a securityholder of the investment fund, provide, or cause to be provided, to the securityholder a copy of the records referred to in paragraphs 18.1(a) and (b) if the securityholder
- (a) has agreed in writing that the information contained in the register will not be used by the securityholder for any purpose other than attempting to influence the voting of securityholders of the investment fund or a matter relating to the administration of the investment fund; and
  - (b) has paid a reasonable fee to the investment fund that does not exceed the reasonable costs to the investment fund of providing the copy of the register.

**PART 19 EXEMPTIONS AND APPROVALS**

**19.1 Exemption** – (1) The regulator or securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

- (2) Despite subsection (1), in Ontario only the regulator may grant such an exemption.

**19.2 Exemption or Approval under Prior Policy** – (1) A mutual fund that has obtained, from the regulator or securities regulatory authority, an exemption or waiver from, or approval under, a provision of National Policy Statement No. 39 before this Instrument came into force is exempt from any substantially similar provision of this Instrument, if any, on the same conditions, if any, as are contained in the earlier exemption or approval, unless the regulator or securities regulatory authority has revoked that exemption or waiver under authority provided to it in securities legislation.

- (2) Despite Part 7, a mutual fund that has obtained, from the regulator or securities regulatory authority, approval under National Policy Statement No. 39 to pay incentive fees may continue to pay incentive fees on the terms of that approval if disclosure of the method of calculation of the fees and details of the composition of the benchmark or index used in calculating the fees are described in the prospectus of the mutual fund.
- (3) A mutual fund that intends to rely upon subsection (1) must, at the time of the first filing of its *pro forma* prospectus after this Instrument comes into force, send to the regulator a letter or memorandum containing
- (a) a brief description of the nature of the exemption from, or approval under, National Policy Statement No. 39 previously obtained; and
  - (b) the provision in the Instrument that is substantially similar to the provision in National Policy Statement No. 39 from or under which the exemption or approval was previously obtained.

**19.3 Revocation of Exemptions** – (1) A mutual fund that has obtained an exemption or waiver from, or approval under, National Policy Statement No. 39 or this Instrument before December 31, 2003, that relates to a mutual fund investing in other mutual funds, may no longer rely on the exemption, waiver or approval as of December 31, 2004.

- (2) In British Columbia, subsection (1) does not apply.

## **PART 20 TRANSITIONAL**

**20.1 Effective Date** - This Instrument comes into force on February 1, 2000.

**20.2 Sales Communications** - Sales communications, other than advertisements, that were printed before December 31, 1999 may be used until August 1, 2000, despite any requirements in this Instrument.

**20.3 Reports to Securityholders** - This Instrument does not apply to reports to securityholders

- (a) printed before February 1, 2000; or
- (b) that include only financial statements that relate to financial periods that ended before February 1, 2000.

**20.4 Mortgage Funds**

- (1) Paragraphs 2.3(1)(b) and (c) do not apply to a mutual fund that has adopted fundamental investment objectives to permit it to invest in mortgages in accordance with National Policy Statement No. 29 if
  - (a) a National Instrument replacing National Policy Statement No. 29 has not come into force;
  - (b) the mutual fund was established, and has a prospectus for which a receipt was issued, before the date that this Instrument came into force; and
  - (c) the mutual fund complies with National Policy Statement No. 29.
- (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.

**20.5 Delayed Coming into Force**

- (1) Despite section 20.1, subsection 4.4(1) does not come into force until August 1, 2000.
- (2) Despite section 20.1, the following provisions of this Instrument do not come into force until February 1, 2001:
  1. Subsection 2.4(2).
  2. Subsection 2.7(4).
  3. Subsection 6.4(1).
  4. Subsection 6.8(4).

**National Instrument 81-102 Appendix A**

**Futures Exchanges for the Purpose of  
Subsection 2.7(4) - Derivative Counterparty Exposure Limits**

**Futures Exchanges**

**Australia**

Sydney Futures Exchange  
Australian Financial Futures Market

**Austria**

Osterreichische Termin-und Option Borse (OTOB - The Austrian Options and Futures Exchange)

**Belgium**

Belfox CV (Belgium Futures and Options Exchange)

**Brazil**

Bolsa Brasileira de Futuros  
Bolsa de Mercadorias &  
Futuros Bolsa de  
Valores de Rio de  
Janeiro

**Canada**

The Winnipeg Commodity  
Exchange The Toronto  
Futures Exchange The  
Montreal Exchange

**Denmark**

Kobenhavus Fondsbors (Copenhagen Stock Exchange)  
Garenti fonden for Dankse Optioner og Futures (Guarantee Fund for Danish Options and Futures) Futop (Copenhagen Stock Exchange)

**Finland**

Helsinki Stock Exchange  
Oy Suomen Optiopörssi (Finnish Options  
Exchange) Suomen Optionmeklarit Oy  
(Finnish Options Market)

**France**

Marché à terme international de France S.A. (MATIF S.A.)  
Marché des option négociables à Paris (MUNCP)

**Germany**

DTB Deutsche Terminbörse GmbH  
EUREX

**Hong Kong**

Hong Kong Futures Exchange Limited

**Ireland**

Irish Futures and Options Exchange

**Italy**

Milan Italiano Futures Exchange

**Japan**

Osaka Shoken Torihikisho (Osaka Securities Exchange)

The Tokyo Commodity Exchange for Industry

The Tokyo International Financial Futures Exchange Tokyo Grain Exchange

Tokyo Stock Exchange

**Netherlands**

AEX Options & Futures Exchange

EOE-Optiebeurs (European Options Exchange) Financiële Termijnmarkt

Amsterdam N.V.

**New Zealand**

New Zealand Futures and Options Exchange

**Norway**

Oslo Stock Exchange

**Philippines**

Manila International Futures Exchange

**Portugal**

Borsa de Derivatives de Porto

**Singapore**

Singapore Commodity Exchange (SICOM)

Singapore International Monetary Exchange Limited (SIMEX)

**Spain**

Meff Renta Fija Meff

Renta Variable

**Sweden**

OM Stockholm Fondkommission AB

**Switzerland**

EUREX

**United Kingdom**

International Petroleum Exchange (IPE)

London International Financial Futures and Options Exchange (LIFFE)

London Metal Exchange (LME)

OM London

**United States**

Chicago Board of Options Exchange (CBOE)

Chicago Board of Trade (CBOT)

Chicago Mercantile Exchange (CME)

Commodity Exchange, Inc. (COMEX)

Financial Instrument Exchange (Finex) a division of the New York Cotton Exchange

Board of Trade of Kansas City, Missouri, Inc.

Mid-America Commodity Exchange

Minneapolis Grain Exchange (MGE)

New York Futures Exchange, Inc. (NYFE)

New York Mercantile Exchange (NYMEX)

New York Board of Trade (NYBOT)

Pacific Stock Exchange

Philadelphia Board of Trade (PBOT)

Twin Cities Board of Trade

**National Instrument 81-102**

**Appendix B-1**

**Compliance Report**

TO: [The appropriate securities regulatory authorities]

FROM: [Name of mutual fund]

RE: Compliance Report on National Instrument 81-102 For the year ended [insert date]

We hereby confirm that we have complied with the applicable requirements of Parts 9, 10 and 11 of National Instrument 81-102 for the year ended [insert date]  
[except as follows:] [list exceptions, if any].

[NAME of mutual fund]

.....Signature

.....Name and office of the person executing this report

.....Date



**National Instrument 81-102**

**Appendix B-1**

**Audit Report**

TO: [The appropriate securities regulatory authorities]

RE: Compliance Report on National Instrument 81-102 For the year ended [insert date]

We have audited [name of mutual fund]'s report made under section 12.1 of National Instrument 81-102 regarding its compliance for the year ended [insert date] with the applicable requirements of Parts 9, 10 and 11 of that National Instrument. Compliance with these requirements is the responsibility of the management of [name of mutual fund] (the "Fund"). Our responsibility is to express an opinion on management's compliance report based on our audit.

We conducted our audit in accordance with standards for assurance engagements set out in the CICA Handbook – Assurance. Those standards require that we plan and perform an audit to obtain reasonable assurance as a basis for our opinion. Such an audit includes examining, on a test basis, evidence supporting the assertions in management's compliance report.

In our opinion, the Fund's statement of compliance for the year ended [insert date] complies, in all material respects, with the applicable requirements of Parts 9, 10 and 11 of National Instrument 81102.

This report is provided solely for the purpose of assisting the securities regulatory authority [ies] to which it is addressed in discharging its [their] responsibilities and should not be used for any other purpose.

City  
Date  
Chartered Accountants

**National Instrument 81-102**

**Appendix B-2**

**Compliance Report**

TO: [The appropriate securities regulatory authorities]

FROM: [Name of principal distributor] (the “Distributor”)

RE: Compliance Report on National Instrument 81-102 For the year ended [insert date]

FOR: [Name(s) of the mutual fund (the “Fund[s]”)]

We hereby confirm that we have complied with the applicable requirements of Parts 9, 10 and 11 of National Instrument 81-102 in respect of the Fund[s] for the year ended [insert date] [except as follows:] [list exceptions, if any].

[NAME of the Distributor]

.....Signature

.....Name and office of the person executing this report

.....Date

**National Instrument 81-102**

**Appendix B-2**

**Audit Report**

TO: [The appropriate securities regulatory authorities]

RE: Compliance Report on National Instrument 81-102  
For the year ended [insert date]

We have audited [name of principal distributor]’s report made under section 12.1 of National Instrument 81-102 regarding its compliance for the year ended [insert date] with the applicable requirements of Parts 9, 10 and 11 of that National Instrument in respect of the [name of mutual funds] (the “Funds”). Compliance with these requirements is the responsibility of the management of [name of principal distributor] (the “Company”). Our responsibility is to express an opinion on management’s compliance report based on our audit.

We conducted our audit in accordance with standards for assurance engagements set out in the CICA Handbook – Assurance. Those standards require that we plan and perform an audit to obtain reasonable assurance as a basis for our opinion. Such an audit includes examining, on a test basis, evidence supporting the assertions in management’s compliance report.

In our opinion, the Company's statement of compliance for the year ended [insert date] complies, in all material respects, with the applicable requirements of Parts 9, 10 and 11 of National Instrument 81-102 in respect of the Funds.

This report is provided solely for the purpose of assisting the securities regulatory authority [ies] to which it is addressed in discharging its [their] responsibilities and should not be used for any other purpose.

City  
Date  
Chartered Accountants

**National Instrument 81-102**

**Appendix B-3**

**Compliance Report**

TO: [The appropriate securities regulatory authorities]

FROM: [Name of participating dealer] (the “Distributor”)

RE: Compliance Report on National Instrument 81-102 For the year ended [insert date]

We hereby confirm that we have sold mutual fund securities to which National Instrument 81-102 is applicable. In connection with our activities in distributing these securities, we have complied with the applicable requirements of Parts 9, 10 and 11 of National Instrument 81-102 for the year ended [insert date] [except as follows:] [list exceptions, if any].

[NAME of the Distributor]

.....Signature  
.....Name and office of the person executing this report  
.....Date

**National Instrument 81-102**

**Appendix B-3**

**Audit Report**

TO: [The appropriate securities regulatory authorities]

RE: Compliance Report on National Instrument 81-102  
For the year ended [insert date]

We have audited [name of participating dealer]'s report made under section 12.1 of National Instrument 81-102 regarding its compliance for the year ended [insert date] with the applicable requirements of Parts 9, 10 and 11 of that National Instrument in respect of sales of mutual fund securities. Compliance with these requirements is the responsibility of the management of [name of participating dealer] (the "Company"). Our responsibility is to express an opinion on management's compliance report based on our audit.

We conducted our audit in accordance with standards for assurance engagements set out in the CICA Handbook – Assurance. Those standards require that we plan and perform an audit to obtain reasonable assurance as a basis for our opinion. Such an audit includes examining, on a test basis, evidence supporting the assertions in management's compliance report.

In our opinion, the Company's statement of compliance for the year ended [insert date] complies, in all material respects, with the applicable requirements of Parts 9, 10 and 11 of National Instrument 81-102 in respect of sales of mutual fund securities.

This report is provided solely for the purpose of assisting the securities regulatory authority [ies] to which it is addressed in discharging its [their] responsibilities and should not be used for any other purpose.

City  
Date  
Chartered Accountants

**National Instrument 81-102**

**Appendix C**

**Provisions Contained in Securities Legislation for the Purpose of Subsection 4.1(5) –  
Prohibited Investments**

**Jurisdiction**

**Securities Legislation Reference**

All Jurisdictions

s. 13.6 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Newfoundland and Labrador

s. 191 of Reg 805/96

**Appendix D**  
**Investment Fund Conflict of Interest Investment Restrictions**

<b>Jurisdiction</b>	<b>Securities Legislation Reference</b>
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 Self-Dealing
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**

<b>Jurisdiction</b>	<b>Securities Legislation Reference</b>
Alberta	s. 191(1)(a) of the <i>Securities Act</i> (Alberta)
British Columbia	s. 9(a) of BC Instrument 81-513 Self-Dealing
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).



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

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## **Companion Policy 81-102CP to National Instrument 81-102 *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 *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 investment funds subject to the Instrument, or persons performing services for 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% 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 “designated rating” and “designated rating organization”** – 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 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 an investment fund be obtained before any change is made to the fundamental investment objectives of the investment fund. The fundamental investment objectives of an investment fund are required to be disclosed in a 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 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 the applicable form concerning “Fundamental Investment Objectives”. Accordingly, any change to the 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 set out, among other things, the obligation that an investment fund disclose in a prospectus both its fundamental investment objectives and its investment strategies. The matters required to be disclosed under the Item of the applicable form relating to “Investment Strategies” are not “fundamental investment objectives” under the Instrument.
- (3) Generally speaking, the “fundamental investment objectives” of an investment fund are those attributes that define its fundamental nature. For example, 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 an investment fund is marketed will provide evidence as to its fundamental nature; 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 an investment fund from other investment funds. This component does not imply that the fundamental investment objectives for each investment fund must be unique. Two or more 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 an investment fund to ensure that a transaction continues to offset specific risks of the 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 an investment fund, then that position is no longer a hedging position under the Instrument, and can be held by the 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 an 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 investment fund determines its net asset value per security and the aggregate amount of currency risk to which the 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 investment funds, would involve replacing the investment fund's exposure to a “non-net asset value” currency with exposure to a currency in which the 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 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 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 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, 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 an investment fund, means an acquisition that is the result of a decision made and action taken by the investment fund.

- (2) The Canadian securities regulatory authorities consider that the following types of transactions would generally be purchases of a security by an investment fund under the definition:
1. The 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 investment fund receives the security as consideration for a security tendered by the investment fund into a take-over bid.
  3. The investment fund receives the security as the result of a merger, amalgamation, plan of arrangement or other reorganization for which the investment fund voted in favour.
  4. The 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 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 investment fund.
  5. (a) The 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 investment fund under the transaction, and
    - (b) sufficient time has passed after the event described in paragraph (a) to enable the 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 investment fund.

- (3) The Canadian securities regulatory authorities consider that the following types of transactions would generally not be purchases of a security by an investment fund under the definition:
1. The 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 investment fund receives the security as a result of a merger, amalgamation, plan of arrangement or other reorganization that the investment fund voted against.
  3. The investment fund receives the security as the result of the exercise of an exchange or conversion right attached to a security held by the investment fund made at the discretion of the issuer of the security held by the investment fund.
  4. The 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 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” includes a communication by an investment fund to (i) a securityholder of the investment fund and (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 investment fund. A sales communication therefore does not include a communication solely between 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 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 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 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 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 an investment fund manager fall outside the definition of “sales communication”. However, an advertisement or other communication that refers to a specific 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) 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 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 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 % 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 % 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 % 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 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 % rule” contained in subsection 2.1(1) of the Instrument, because they are not “index mutual funds”. The 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 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** – 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 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 investment funds made in accordance with section 2.5 of the Instrument. In some cases, an investment fund's investments in other 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 investment fund complies with the terms of the exemption, its investments in other 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 an investment fund's investments in other investment funds, and not for any other investment or transaction.

**3.5 Instalments of Purchase Price** – Paragraph 2.6(d) of the Instrument prohibits an investment fund from purchasing a security, other than a specified derivative, that by its terms may require the 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 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 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 investment fund, in co-ordination with an agent, will ensure that the documentation evidencing these types of transactions contains customary provisions to protect the 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 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 an investment fund that has entered into a securities lending, repurchase or reverse repurchase transaction hold cash or securities of at least 102 % of the market value of the securities or cash held by the investment fund's counterparty under the transaction. It is noted that the 102 % requirement is a minimum requirement, and that it may be appropriate for the manager of an investment fund, or the agent acting on behalf of the investment fund, to negotiate the holding of a greater amount of cash or securities if necessary to protect the interests of the investment fund in a particular transaction, having regard to the level of risk for the 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 %, 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 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) 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 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 an investment fund enters into a securities lending or repurchase transaction include a provision requiring the investment fund's counterparty to promptly pay to the 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) 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 investment fund. The Canadian securities regulatory authorities note that these terms will include the delivery or holding by an agent for 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) 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 investment fund, even if those principles deviate from the principles that are used by the 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 investment fund equal to 102 % 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 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 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 an investment fund to administer its securities lending, repurchase or reverse repurchase transactions shall be a custodian or sub-custodian of the 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(4) of the Instrument provides that the manager of an investment fund must not authorize an agent to enter into securities lending, repurchase or, if applicable, reverse repurchase transactions on behalf of the investment fund unless there is a written agreement between the agent, the manager and the investment fund that deals with certain prescribed matters. Subsection (4) requires that the manager and the 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 investment fund;
  - (b) types of portfolio assets of the 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 investment fund;
  - (f) directions and an outline of responsibilities for the reinvestment of cash collateral received by the 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) 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 an investment fund, or the agent of the investment fund administering a securities lending program on behalf of the investment fund, should monitor corporate developments relating to securities that are loaned by the investment



fund in securities lending transactions, and take all necessary steps to ensure that the 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 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. 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 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 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 the Instrument if the independent review committee of the dealer managed investment fund has approved the transaction under subsection 5.2(2) of 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 an investment fund to purchase a class of debt securities from, or sell a class of debt securities to, another 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 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 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) 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. 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 investment fund under the laws of that jurisdiction; and
  - (b) has satisfied all applicable option proficiency requirements of that jurisdiction.
2. 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 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 an investment fund in Ontario concerning the use of standardized futures by the 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 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 investment fund to discharge any of the manager's responsibilities to the investment fund, to satisfy the standard of care referred to in that section. Subsection 4.4(2) of the Instrument provides that an investment fund must not relieve the manager from that liability.

- (2) The purpose of these provisions is to ensure that the manager remains responsible to the 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 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 an investment fund or securityholder arising out of an action or inaction by a custodian or sub-custodian or by a director of 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 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 investment fund to discharge any of the manager's responsibilities to the 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 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(4) of the Instrument.
- (3) Under subsection 2.15(3) of the Instrument, the custodian or sub-custodian of 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 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 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 an investment fund called for the purpose of considering any of the matters referred to in 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 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 investment funds and that those provisions may require that a longer period of notice be given.

**6.2 Limited Liability** – (1) 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 investment funds.

- (2) Investment funds that are structured as corporations do not raise pressing liability problems because of the limited liability regime of corporate statutes.
- (3) 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 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 subsection 5.1(1) of the Instrument. In addition, in the view of the Canadian securities regulatory authorities, all managers of investment funds that are structured as limited partnerships should include a discussion of this issue 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 an investment fund is changed in a way that could result in an increase in charges to the 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 investment fund.

- (2) The Canadian securities regulatory authorities are of the view that the requirement of 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 investment fund and individual securityholders of the 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 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 an investment fund is changed. Paragraph 5.5(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 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 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% 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% 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 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 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 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 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 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 investment fund, and
  - (ix) a description of the individual's relationships to the proposed manager and other service providers to the 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 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 investment fund after the proposed transaction, indicating for each proposed direct or indirect shareholder of the manager of the investment fund the information about that shareholder referred to in subsection (4);
  - (b) the proposed officers and directors of the manager of the investment fund, of the investment fund and of each of the proposed controlling shareholders of the 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 investment fund, of the investment fund and of each of the proposed controlling shareholders of the 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 investment fund.

**7.2 Mergers of Investment Funds** – Subsection 5.6(1) of the Instrument provides that mergers of 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 of investment funds. Subsection 5.6(1) of the Instrument is designed to facilitate consolidations of 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 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 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 issuers participating in the proposed transaction is given to securityholders of the investment fund that will be merged, reorganized or amalgamated with another issuer.

- (2) If an investment fund is proposed to be merged, amalgamated or reorganized with an investment fund that has a net asset value that is smaller than the net asset value of the terminating investment fund, the Canadian securities regulatory authorities will consider the implications of the proposed transaction on the smaller continuing investment fund. The Canadian securities regulatory authorities believe that this type of transaction generally would constitute a material change for the smaller continuing 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 an investment fund's reorganization with, or transfer of assets to, another issuer may be carried out on the conditions described in paragraph 5.3(2)(a) or (b) without the prior approval of the securityholders of the investment fund.

- (2) If the manager refers the change contemplated in subsection 5.3(2) of the Instrument to the investment fund's independent review committee, and subsequently seeks the approval of the securityholders of the investment fund, the 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 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 investment fund give its prior approval to the manager before the auditor of the investment fund may be changed.

**7.7 Connection to NI 81-107** – There may be matters under subsection 5.1(1) of the Instrument that may also be a conflict of interest matter as defined in NI 81-107. The Canadian securities regulatory authorities expect any matter under 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 investment fund. The 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 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 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 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 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 an investment fund may arrange for the deposit of portfolio assets of the 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 an investment fund is not considered to be a custodian or sub-custodian of the investment fund.

**8.3 Compliance** – Paragraph 6.7(1)(c) of the Instrument requires the custodian of 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 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 include ensuring that

- (a) investors' cash is received by an investment fund promptly;
- (b) the opportunity for loss of an investors' cash before investment in the investment fund is minimized; and
- (c) the 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 investment fund, in the case of the purchase of investment fund securities, or between payment of the cash by the investment fund until receipt by the investor, in the case of redemptions.

### **10.2 Interpretation** – (1) [Deleted]

- (2) The Instrument refers to “securityholders” of an investment fund in several provisions. Investment funds must keep a record of the holders of their securities. 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 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 an investment fund, it is referring to the securityholder registered as a holder of securities on the records of the investment fund. If that registered securityholder is a participating dealer acting for its client, the 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 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** – 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, 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 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 an investment fund client held for a trade which has not yet settled is used to settle a trade for another 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 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 investment fund or securityholder should be paid the amount of interest that the investment fund or securityholder would have received had the cash held in trust for that 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 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 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 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 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 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 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 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 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 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 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 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 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 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 investment fund or asset allocation service; or of a change in the characterization of 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 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 investment funds. Those rules are applicable to 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 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 investment fund. Section 18.1 of the Instrument does not require that these records need be held indefinitely. It is up to the particular 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 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 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 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 the Instrument 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.