

## Chapter 5

# Rules and Policies

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### 5.1.1 Amendments to National Instrument 81-102 Investment Funds

#### AMENDMENTS TO NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

1. *National Instrument 81-102 Investment Funds is amended by this Instrument.*

2. *Section 1.1 is amended*

- (a) *by repealing the definition of “acceptable clearing corporation”,*
- (b) *in the definition of “cash cover” by replacing “a mutual fund” with “an investment fund”, and by replacing “the mutual fund” with “the investment fund” wherever it occurs,*
- (c) *in the definition of “clearing corporation” by replacing “options or standardized futures” with “specified derivatives”,*
- (d) *by repealing the definition of “fixed portfolio ETF”,*
- (e) *in the definition of “illiquid asset” by replacing “mutual fund” with “investment fund” in paragraph (a) and by replacing “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” with “an investment fund” in paragraph (b),*
- (f) *by repealing the definition of “Joint Regulatory Financial Questionnaire and Report”,*
- (g) *by repealing the definition of “permitted gold certificate”,*
- (h) *in the definition of “physical commodity” by adding “electricity, water, or,” before “in an original or processed state”,*
- (i) *by replacing the definition of “public quotation” with the following:*

“public quotation” includes, for the purposes of calculating the amount of illiquid assets held by an investment fund, any quotation of a price for any of the following:

  - (a) a fixed income security made through the inter-dealer bond market,
  - (b) a foreign currency forward or foreign currency option in the interbank market,
- (j) *in the definition of “restricted security” by replacing “mutual fund or by the mutual fund’s predecessor” with “investment fund or by the investment fund’s predecessor”, and*
- (k) *by adding the following definitions:*

“alternative mutual fund” means a mutual fund, other than a precious metals fund, that has adopted fundamental investment objectives that permit it to invest in physical commodities or specified derivatives, to borrow cash or engage in short selling in a manner not permitted for other mutual funds under this Instrument,;

“cleared specified derivative” means a bilateral specified derivative that is accepted for clearing by a regulated clearing agency,;

“fixed portfolio investment fund” means an exchange traded mutual fund not in continuous distribution or a non-redeemable investment fund that

- (a) has fundamental investment objectives that 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,;

“non-redeemable investment fund” has the meaning ascribed to that term in National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“permitted precious metal” means gold, silver, platinum or palladium,;

“permitted precious metal certificate” means a certificate representing a permitted precious metal if the permitted precious metal is held in Canada in the form of bars or wafers and is

- (a) available for delivery in Canada, free of charge, to or to the order of the holder of the certificate,
- (b) in the case of a certificate representing gold, of a minimum fineness of 995 parts per 1000,
- (c) in the case of a certificate representing silver, platinum or palladium, of a minimum fineness of 999 parts per 1000, and
- (d) 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,;

“precious metals fund” means a mutual fund that has adopted a fundamental investment objective to invest primarily in one or more permitted precious metals,; **and**

“regulated clearing agency” has the meaning ascribed to that term in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*;

**3. Section 1.2 is amended**

(a) **in paragraph 1.2(3)(a) by replacing** “sections 2.12 to 2.17;” **with** “section 2.6.1 and sections 2.7 to 2.17;”,  
**and**

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

- (5) Despite paragraph (1)(a.1), the following provisions do not apply to a non-redeemable investment fund that was established before October 4, 2018, unless the fund has filed a prospectus for which a receipt was issued after that date:
  - (a) sections 2.1 and 2.4,
  - (b) paragraphs 2.6(1)(a), (b) and (c), and subsection 2.6(2), and
  - (c) sections 2.6.1, 2.6.2 and 2.9.1..

**4. Section 2.1 is amended**

(a) **in subsection (1) by replacing** “A mutual fund” **with** “A mutual fund, other than an alternative mutual fund,”,  
**by replacing** “index participation units” **with** “an index participation unit”, **by replacing** “10 percent” **with** “10%”**and by adding** “one” **after** “any”,

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

- (1.1) An alternative mutual fund or a non-redeemable investment fund must not purchase a security of an issuer, enter into a specified derivatives transaction or purchase an index participation unit if, immediately after the transaction, more than 20% of its net asset value would be invested in securities of any one issuer.,

- (c) **in subsection (2) by replacing** “Subsection (1) does” **with** “Subsections (1) and (1.1) do”, **by replacing** “a mutual fund” **with** “an investment fund” **wherever it occurs, and in paragraph (e) by replacing** “fixed portfolio ETF” **with** “fixed portfolio investment fund”,
- (d) **by replacing subsection (3) with the following:**
  - (3) For the purposes of this section, for each long position in a specified derivative that is held by an investment fund for a purpose other than hedging and for each index participation unit held by the investment fund, the investment fund is considered to hold directly the underlying interest of that specified derivative or its proportionate share of the securities held by the issuer of the index participation unit., **and**
- (e) **by replacing subsection (4) with the following:**
  - (4) Despite subsection (3), for the purposes of this section, an investment fund is considered to not hold a security or instrument if that security or instrument is a component of, but represents less than 10% 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. Section 2.3 is amended**

- (a) **in subsection (1) by adding** “do any of the following:” **after** “must not”,
- (b) **in paragraph (1)(c) by replacing** “10 percent” **with** “10%”,
- (c) **by replacing paragraph (1)(d) with the following:**
  - (d) purchase a precious metal certificate, other than a permitted precious metal certificate,;
- (d) **by replacing paragraph (1)(e) with the following:**
  - (e) purchase a permitted precious metal, a permitted precious metal certificate, or a specified derivative of which the underlying interest is a physical commodity if, immediately after the purchase, more than 10% of the mutual fund’s net asset value would be made up of permitted precious metals, permitted precious metal certificates, or specified derivatives of which the underlying interests are physical commodities,;
- (e) **by replacing paragraph (1)(f) with the following:**
  - (f) purchase a physical commodity, except to the extent permitted by paragraph (d) or (e),;
- (f) **by adding** “or” **to the end of paragraph (1)(g),**
- (g) **by repealing paragraph (1)(h),**
- (h) **by adding the following subsections:**
  - (1.1) Paragraphs (1)(d), (e) and (f) do not apply to an alternative mutual fund.
  - (1.2) Paragraph (1)(e) does not apply to a precious metals fund with respect to purchasing a permitted precious metal, a permitted precious metal certificate or a specified derivative of which the underlying interest is one or more permitted precious metals., **and**
- (i) **by adding the following subsections:**
  - (3) For the purposes of this section, for each long position in a specified derivative that is held by an investment fund for a purpose other than hedging and for each index participation unit or underlying investment fund held by the investment fund, the investment fund is considered to hold directly the underlying interest of that specified derivative or its proportionate share of the assets held by the issuer of the index participation unit or underlying investment fund.

- (4) Despite subsection (3), for the purposes of this section, an investment fund is considered to not hold a security or instrument if that security or instrument is a component of, but represents less than 10% 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 or underlying investment fund..

**6. Section 2.4 is amended**

- (a) **by replacing “percent” with “%” wherever it occurs,**
- (b) **in subsection (2) by replacing “must not have invested,” with “must not hold, ”, and**
- (c) **by adding the following subsections:**
  - (4) A non-redeemable investment fund must not purchase an illiquid asset if, immediately after the purchase, more than 20% of its net asset value would be made up of illiquid assets.
  - (5) A non-redeemable investment fund must not hold, for a period of 90 days or more, more than 25% of its net asset value in illiquid assets.
  - (6) If more than 25% of the net asset value of a non-redeemable investment fund is made up of illiquid assets, the non-redeemable investment fund must, as quickly as commercially reasonable, take all necessary steps to reduce the percentage of its net asset value made up of illiquid assets to 25% or less..

**7. Subsection 2.5(2) is amended**

- (a) **by replacing paragraph (a) with the following:**
  - (a) if the investment fund is a mutual fund, other than an alternative mutual fund, either of the following applies:
    - (i) the other investment fund is a mutual fund, other than an alternative mutual fund, that is subject to this Instrument;
    - (ii) the other investment fund is an alternative mutual fund or a non-redeemable investment fund that is subject to this Instrument and, at the time of the purchase of that security, the investment fund holds no more than 10% of its net asset value in securities of alternative mutual funds and non-redeemable investment funds.,
- (b) **in paragraph (a.1) by adding “an alternative mutual fund or” before “a non-redeemable investment fund” wherever it occurs,**
- (c) **by replacing paragraph (c) with the following:**
  - (c) the other investment fund is a reporting issuer in a jurisdiction.,, **and**
- (d) **by repealing paragraph (c.1).**

**8. Subsection 2.5(3) is amended by replacing “(a.1), (c) and (c.1)” with “(a.1) and (c)”.**

**9. Subsection 2.5(5) is replaced with the following:**

- (5) Paragraphs (2)(e) and (f) do not apply to brokerage fees incurred for the purchase or sale of securities issued by an investment fund that are listed for trading on a stock exchange..

**10. Section 2.6 is amended**

- (a) **by adding “Borrowing and Other” before “Investment Practices” in the heading,**
- (b) **by renumbering it as subsection 2.6(1),**

- (c) **in subsection (1) by replacing “not,” with “not”,**
- (d) **in paragraph (1)(a) by deleting “in the case of a mutual fund,”,**
- (e) **in subparagraph (1)(a)(i) replacing “mutual fund” with “investment fund” wherever it occurs, and by replacing “five percent” with “5%”,**
- (f) **in subparagraph (1)(a)(ii) and (iii) by replacing “mutual fund” with “investment fund”,**
- (g) **in subparagraph (1)(a)(iv) by adding “or a non-redeemable investment fund” after “continuous distribution”,**
- (h) **in paragraphs (1)(b) and (c) by deleting “in the case of a mutual fund,”, and**
- (i) **by adding the following subsection:**
  - (2) Despite paragraphs (1)(a) and (b), an alternative mutual fund or a non-redeemable investment fund may borrow cash or provide a security interest over any of its portfolio assets if each of the following apply:
    - (a) any borrowing of cash is
      - (i) from an entity described in section 6.2 or 6.3, and
      - (ii) if the lender is an affiliate or associate of the investment fund manager of the alternative mutual fund or non-redeemable investment fund, under a borrowing agreement approved by the independent review committee as required under section 5.2 of NI 81-107;
    - (b) the borrowing agreement is in accordance with normal industry practice and on standard commercial terms for the type of transaction;
    - (c) the value of cash borrowed, when aggregated with the value of all outstanding borrowing by the alternative mutual fund or non-redeemable investment fund, does not exceed 50% of the alternative mutual fund or non-redeemable investment fund’s net asset value..

**11. Subsection 2.6.1(1) is amended**

- (a) **by replacing “A mutual fund” with “An investment fund”,**
- (b) **in subparagraph (b)(i), by replacing “mutual fund” with “investment fund”, and**
- (c) **by replacing paragraph (c) with the following:**
  - (c) at the time the investment fund sells the security short,
    - (i) the investment fund has borrowed or arranged to borrow from a borrowing agent the security that is to be sold under the short sale,
    - (ii) if the investment fund is a mutual fund, other than an alternative mutual fund, the aggregate market value of the 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,
    - (iii) if the investment fund is a mutual fund, other than an alternative mutual fund, the aggregate market value of the securities sold short by the mutual fund does not exceed 20% of the net asset value of the mutual fund,
    - (iv) if the investment fund is an alternative mutual fund or a non-redeemable investment fund, the aggregate market value of the securities of the issuer of the securities sold short by the investment fund, other than government securities sold short by an alternative mutual fund or non-redeemable investment fund, does not exceed 10% of the net asset value of the investment fund, and

- (v) if the investment fund is an alternative mutual fund or a non-redeemable investment fund, the aggregate market value of the securities sold short by the investment fund does not exceed 50% of the net asset value of the investment fund..

12. **Subsection 2.6.1(2) is amended by replacing “A mutual fund” with “A mutual fund, other than an alternative mutual fund,” and by replacing “all” with “the” after “aggregate market value of”.**

13. **Subsection 2.6.1(3) is amended by replacing “A mutual fund” with “A mutual fund ,other than an alternative mutual fund,”.**

14. **The Instrument is amended by adding the following section:**

**2.6.2 Total Borrowing and Short Sales**

- (1) Despite sections 2.6 and 2.6.1, an investment fund must not borrow cash or sell securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the investment fund would exceed 50% of the investment fund’s net asset value.
- (2) Despite sections 2.6 and 2.6.1, if the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the investment fund exceeds 50% of the investment fund’s net asset value, the investment fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to 50% or less of the investment fund’s net asset value..

15. **Section 2.7 is amended**

(a) **in subsection (1) by replacing “A mutual fund” with “An investment fund”, by adding “forward” before “contract” in paragraphs (1)(b) and (c), by replacing “rating.” with “rating;”, in paragraph (c) and by adding the following paragraph:**

- (d) the option, debt-like security, swap or forward contract is a cleared specified derivative.,

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

- (2) If the credit rating of an option, 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 forward contract, falls below the level of designated rating while the option, debt-like security, swap or forward contract is held by an investment fund , the investment fund must take the steps that are reasonably required to close out its position in the option, debt-like security, swap or forward contract in an orderly and timely fashion, unless either of the following applies:
  - (a) the option is a clearing corporation option;
  - (b) the option, debt-like security, swap or forward contract is a cleared specified derivative.,

(c) **in subsection (3) by replacing “a mutual fund” with “an investment fund”,**

(d) **by replacing subsection (4) with the following:**

- (4) The mark-to-market value of the exposure of an investment fund under its specified derivatives positions with any one counterparty, calculated in accordance with subsection (5), must not exceed, for a period of 30 days or more, 10% of the net asset value of the investment fund unless either of the following applies:
  - (a) the specified derivative is a cleared specified derivative;
  - (b) 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 specified derivative, has a designated rating.,

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

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

- (6) Subsections (1), (2) and (3) do not apply to an alternative mutual fund or a non-redeemable investment fund..

**16. Section 2.8 is amended by adding the following subsection:**

- (0.1) This section does not apply to an alternative mutual fund..

**17. The Instrument is amended by adding the following section:**

**2.9.1 Aggregate Exposure to Borrowing, Short Selling and Specified Derivatives**

- (1) An alternative mutual fund or non-redeemable investment fund's aggregate exposure to cash borrowing, short selling and specified derivatives transactions must not exceed 300% of the fund's net asset value.
- (2) For the purposes of subsection (1), an alternative mutual fund or non-redeemable investment fund's aggregate exposure is the sum of the following:
  - (a) the aggregate value of the alternative mutual fund's or non-redeemable investment fund's outstanding indebtedness under any borrowing agreements to which subsection 2.6(2) applies,
  - (b) the aggregate market value of all securities sold short by the alternative mutual fund or non-redeemable investment fund as permitted by section 2.6.1, and
  - (c) the aggregate notional amount of the alternative mutual fund's or non-redeemable investment's fund's specified derivatives positions, minus the aggregate notional amount of the specified derivative positions that are hedging transactions.
- (3) For the purposes of this section the alternative mutual fund or non-redeemable investment fund must include in its calculation its proportionate share of the assets of any underlying investment fund for which a similar calculation is required.
- (4) An alternative mutual fund or non-redeemable investment fund must determine its aggregate exposure in accordance with subsection (2) as of the close of business of each day on which it calculates a net asset value.
- (5) If the alternative mutual fund or non-redeemable investment fund's aggregate exposure as determined in accordance with subsection (2) exceeds 300% of its net asset value, the alternative mutual fund or non-redeemable investment fund must, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate exposure to 300% its net asset value or less..

**18. Section 2.11 is amended by adding the following subsection:**

- (0.1) This section does not apply to an alternative mutual fund..

**19. Section 6.2 is amended in paragraph 3.(a) by deleting "that have been made public,".**

**20. Section 6.3 is amended in paragraph 3.(a) by deleting "that have been made public,".**

**21. Subsection 6.8(1) is amended**

- (a) **by adding "Borrowing," before "Derivatives" in the heading,**
- (b) **by replacing "futures or" with "futures,"**
- (c) **by adding "or cleared specified derivatives with a member of a regulated clearing agency or" after "standardized futures",**
- (d) **by adding "member or" after "margin already held by the", and**
- (e) **by replacing "10 percent" with "10%".**

**22. Subsection 6.8(2) is amended**

- (a) **by adding** “member of a regulated clearing agency or with a” **after** “portfolio assets with a”, **by replacing** “or” **with** “,” **after** “options on futures” **and by adding** “or cleared specified derivatives” **after** “standardized futures”,
- (b) **in paragraph (a) by replacing** “in the case of standardized futures and options on futures, the” **with** “the member or”, **by adding** “regulated clearing agency,” **before** “futures exchange”, **by deleting** “, in the case of clearing corporation options, is a member of a”, **by replacing** “either case” **with** “any case” **and by replacing** “,” **with** “,”,
- (c) **in paragraph (b) by adding** “member or” **before** “dealer”, **by deleting** “that have been made public” **and by replacing** “,” **with** “,”, **and**
- (d) **in paragraph (c) by adding** “member or” **before** “dealer”, **and by replacing** “10 percent” **with** “10%”.

**23. Section 6.8 is amended by adding the following subsection:**

- (3.1) An investment fund may deposit with its lender, portfolio assets over which it has granted a security interest in connection with a borrowing agreement to which section 2.6 applies..

**24. Subsection 6.8(4) is amended by replacing** “(2) or (3)” **with** “(2), (3) or (3.1)”.

**25. Subsection 6.8(5) is amended by adding** “borrowing,” **before** “securities lending”.

**26. Section 6.8.1 is amended**

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

- (1) Unless 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,
  - (a) in the case of a mutual fund, other than an alternative mutual fund, exceed 10% of the net asset value of the mutual fund at the time of deposit, and
  - (b) in the case of an alternative mutual fund or a non-redeemable investment fund, exceed 25% of the net asset value of the alternative mutual fund or non-redeemable investment fund at the time of deposit., **and**

(b) **in paragraph (3)(b) by deleting** “that have been made public”.

**27. Section 7.1 is amended**

(a) **by renumbering it as subsection 7.1(1),**

(b) **in subsection (1) by replacing** “A mutual fund” **with** “A mutual fund, other than an alternative mutual fund,”, **and by replacing** “, unless” **with** “unless”, **and**

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

- (2) An alternative mutual fund must not pay, or enter into arrangements that would require it to pay, and must not sell securities of an alternative mutual fund on the basis that an investor would be required to pay, a fee that is determined by the performance of the alternative mutual fund unless
  - (a) the payment of the fee is based on the cumulative total return of the alternative mutual fund for the period that began immediately after the last period for which the performance fee was paid, and
  - (b) the method of calculating the fee is described in the alternative mutual fund's prospectus..

28. **Paragraph 9.1.1(b) is amended by adding “short” before “position”.**
29. **Section 10.1 is amended by adding the following subsection:**
- (2.1) If disclosed in its prospectus, an alternative mutual fund may include, as part of the requirements contemplated in subsection (2), a provision that securityholders of the alternative mutual fund may not redeem their securities for a period up to 6 months after the date on which the receipt is issued for the initial prospectus of the alternative mutual fund..
30. **Section 10.3 is amended by adding the following subsection:**
- (5) Despite subsection (1), an alternative mutual fund may redeem securities of the alternative mutual fund at a price that is equal to the net asset value for those securities determined on the first or second business day after the date of receipt by the alternative mutual fund of the redemption order if
- (a) the alternative mutual fund has established a policy providing for the redemption price to be calculated on such a basis, and
- (b) the policy has been disclosed in the alternative mutual fund’s prospectus before the policy’s implementation..
31. **Subsection 10.4(1.1) is amended by adding “or an alternative mutual fund or” after “continuous distribution”.**
32. **Subsection 15.13(2) is amended by replacing “a commodity pool” with “an alternative mutual fund” wherever it occurs and by deleting “as defined in National Instrument 81-104 Commodity Pools”.**
33. **Appendix A – Futures Exchanges for the Purpose of Subsection 2.7(4) – Derivative Counterparty Exposure Limits is repealed.**

**Transition**

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

**Effective Date**

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