

5.1.2 National Instrument 81-102 Mutual Funds Amendment Instrument

**NATIONAL INSTRUMENT 81-102
MUTUAL FUNDS AMENDMENT INSTRUMENT**

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

2. Section 1.1 is amended

(a) by repealing the definition of "approved credit rating" and substituting the following:

"approved credit rating" means, for a security or instrument, a rating at or above one of the following rating categories issued by an approved credit rating organization for that security or instrument or a category that replaces one of the following rating categories if

- (a) there has been no announcement by the approved credit rating organization of which the mutual fund or its manager is or reasonably should be aware that the rating of the security or instrument to which the approved credit rating was given may be down-graded to a rating category that would not be an approved credit rating, and
- (b) no approved credit rating organization has rated the security or instrument in a rating category that is not an approved credit rating:

Approved Credit Rating Organization	Commercial Paper/ Short Term Debt	Long Term Debt
Dominion Bond Rating Service Limited	R-1 (low)	A
Fitch Ratings	F1	A
Moody's Investors Service	P-1	A2
Standard & Poor's	A-1(Low)	A";

(b) by repealing the definition of "approved credit rating organization" and substituting the following:

"approved credit rating organization" means Dominion Bond Rating Service Limited, Fitch Ratings, Moody's Investors Service, Standard & Poor's and any of their respective successors;"

(c) by repealing the definition of "guaranteed mortgage" and substituting the following:

"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;"

(d) by repealing the definition of "mutual fund conflict of interest investment restrictions" and substituting the following:

"mutual fund conflict of interest investment restrictions" means the provisions of securities legislation that

- (a) prohibit a mutual fund from knowingly making or holding an investment in any person or company in which the mutual fund, alone or together with one or more related mutual funds, is a substantial securityholder, as defined in securities legislation,
- (b) prohibit a mutual fund from knowingly making or holding an investment in an issuer in which any person or company who is a substantial securityholder of the mutual fund, its management company or distribution company, has a significant interest, as defined in securities legislation,
- (c) prohibit a portfolio adviser from knowingly causing any investment portfolio managed by it to invest in, or prohibit a mutual fund from investing in, any issuer in which a responsible person or an associate of a responsible person, as defined in securities legislation, is an officer or director unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase, or

- (d) prohibit the portfolio adviser from subscribing to or buying securities on behalf of a mutual fund, where his or her own interest might distort his or her judgment, unless the specific fact is disclosed to the client and the written consent of the client to the investment is obtained before the subscription or purchase;”;
 - (e) by repealing paragraph (e) of the definition of “permitted gold certificate” and substituting the following:
 - “(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;”;
 - (f) by adding the following after the definition of “restricted security”:

“RSP clone fund” means a mutual fund that has adopted fundamental investment objectives to link its performance to the performance of another mutual fund whose securities constitute foreign property for registered plans and to ensure that the securities of the mutual fund will not constitute foreign property under the ITA;”;
 - (g) in the definition of “synthetic cash”
 - (i) by striking out “or” at the end of paragraph (a);
 - (ii) by inserting “or” at the end of (b); and
 - (iii) by adding the following after paragraph (b):
 - “(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;”.
- 3. Section 2.1 is amended
 - (a) by repealing subsection (2) and substituting the following:
 - “(2) Subsection (1) does not apply to a purchase of a government security, a security issued by a clearing corporation, a security issued by a mutual fund to which this Instrument and National Instrument 81-101 apply, or an index participation unit that is a security of a mutual fund.”;
 - (b) by repealing subsection (5) and substituting the following:
 - “(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 simplified 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.”;
 - and
 - (c) by repealing subsections (6) and (7).
- 4. Section 2.2 is amended by adding the following after subsection (1):
 - “(1.1) Subsection (1) does not apply to the purchase of a security issued by a mutual fund to which this Instrument and National Instrument 81-101 apply, or an index participation unit that is a security of a mutual fund.”.
- 5. Section 2.5 is repealed and the following is substituted:
 - “2.5 Investments in Other Mutual Funds
 - (1) For the purposes of this section, a mutual fund is considered to be holding a security of another mutual fund if

- (a) it holds securities issued by the other mutual fund, or
 - (b) it is maintaining a position in a specified derivative for which the underlying interest is a security of the other mutual fund.
 - (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 National Instrument 81-101,
 - (b) at the time of the purchase of that security, the other mutual fund holds no more than 10% of the market value of its net assets in securities of other mutual funds,
 - (c) the securities of the mutual fund and the securities of the other mutual fund are qualified for distribution 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.
 - (3) Paragraphs (2)(a) and (c) do not apply if the security
 - (a) is an index participation unit issued by a mutual fund, or
 - (b) is issued by another mutual 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 mutual fund.
 - (4) Paragraph (2)(b) does not apply if the other mutual fund
 - (a) is a RSP 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 a mutual fund.
 - (5) Paragraph (2)(f) does not apply to brokerage fees incurred for the purchase or sale of an index participation unit issued by a mutual fund.
 - (6) A mutual fund that holds securities of another mutual fund that is managed by the same manager or an affiliate or associate of the manager
 - (a) shall 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 mutual fund to be voted by the beneficial holders of securities of the mutual fund.
 - (7) The mutual fund conflict of interest investment restrictions and the mutual fund conflict of interest reporting requirements do not apply to a mutual fund which purchases or holds securities of another mutual fund if the purchase or holding is made in accordance with this section.”
6. Section 2.17 is amended by adding the following after subsection (2):
- “(3) Paragraph (1)(b) does not apply if each simplified prospectus of the mutual fund since its inception contains the disclosure referred to in paragraph (1)(a).”

7. Subsection 5.1(a) is repealed and the following is substituted:
- “(a) the basis of the calculation of a fee or expense that is charged to the mutual fund or directly to its securityholders by the mutual fund or its manager in connection with the holding of securities of the mutual fund is changed in a way that could result in an increase in charges to the mutual fund or to its securityholders;
 - (a.1) a fee or expense, to be charged to the mutual fund or directly to its securityholders by the mutual fund or its manager in connection with the holding of securities of the mutual fund that could result in an increase in charges to the mutual fund or to its securityholders, is introduced;”.
8. Section 6.2 is amended by repealing item 1 and substituting the following:
- “1. A bank listed in Schedule I, II or III of the *Bank Act* (Canada).”.
9. Section 9.1 is amended
- (a) by repealing subsections (1) and (2) and substituting the following:
 - “(1) Each purchase order for securities of a mutual fund received by a participating dealer at a location that is not its principal office shall, 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 shall, 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.”; and
 - (b) by repealing subsection (4) and substituting the following:
 - “(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).”.
10. Subsection 9.4(1) is repealed and the following is substituted:
- “(1) A principal distributor, a participating dealer, or a person or company providing services to the principal distributor or participating dealer shall forward any cash 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 arrives at the order receipt office as soon as practicable and in any event no later than the third business day after the pricing date.”.
11. Section 10.2 is amended
- (a) by repealing subsections (1) and (2) and substituting the following:
 - “(1) Each redemption order for securities of a mutual fund received by a participating dealer at a location that is not its principal office shall, 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 shall, 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.”; and

(b) by repealing subsection (4) and substituting the following:

“(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).”.

12. Section 11.3 is repealed and the following is substituted:

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

(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 or of a person or company providing services to the principal distributor or participating dealer, 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, or of a person or company providing services to the principal distributor or participating dealer,

(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.”.

13. Subsection 11.4(1) is repealed and the following is substituted:

“(1) Sections 11.1 and 11.2 do not apply to members of the Investment Dealers Association of Canada.”.

14. Subsection 12.1(4) is repealed and the following is substituted:

“(4) Subsection (3) does not apply to members of the Investment Dealers Association of Canada.”.

15. Section 13.1 is amended by adding the following after subsection (1):

“(1.1) A mutual fund that holds securities of other mutual funds must have dates for the calculation of net asset value that are compatible with those of the other mutual funds.”.

16. The following is added after section 19.2:

“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.”.

17. This Instrument comes into force on December 31, 2003.

**COMPANION POLICY 81-102CP
MUTUAL FUNDS AMENDMENT INSTRUMENT**

1. Companion Policy 81-102CP is amended by this Instrument.
2. Section 3.4 is amended by repealing subsection (1) and (2) and substituting the following:

“(1) Paragraph 2.5(2)(c) of the Instrument provides that a mutual fund may not invest in another mutual fund unless the securities of both mutual funds are qualified for distribution in the local jurisdiction. This requirement does not however preclude an investment by a mutual fund in an unqualified class or series of another mutual fund, provided this class or series is referable to the same portfolio of assets of a class or series that is qualified in the local jurisdiction.”
3. Section 6.3 is amended by adding the following at the end of subsection (3):

“The CSA are of the view that the requirement of subsection 5.1(a) would not apply in instances where the change to the basis of the calculation is the result of separate individual agreements between the manager of the mutual fund and individual securityholders of the mutual fund, and the resulting increase in charges is payable directly or indirectly by those individual securityholders only.
4. Section 16.2 is amended by adding the following after subsection (2):

“(3) The CSA 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.”
5. Section 16.3 is amended by adding the following after subsection (1)

“(2) For greater certainty, note that the coming into force of National Instrument 81-102 did not trigger the “sunset” of those waivers and orders. However, the coming into force of section 19.3 of the Instrument will effectively cause those waivers and orders to expire one year after its coming into force.”
6. This amendment comes into force on December 31, 2003.