

5.1.2 OSC Rule 81-802 Implementing National Instrument 81-107 Independent Review Committee for Investment Funds and Companion Policy 81-802CP

**ONTARIO SECURITIES COMMISSION RULE 81-802
IMPLEMENTING NATIONAL INSTRUMENT 81-107 INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS**

PART 1 – DEFINITIONS AND INTERPRETATION

- 1.1 Definition** - In this Rule, "NI 81-107" means National Instrument 81-107 *Independent Review Committee for Investment Funds*.
- 1.2 Interpretation** - A term used in this Rule that is defined or interpreted in NI 81-107 has the meaning ascribed to it in NI 81-107.

PART 2 – APPLICATION

- 2.1 Application** - This Rule applies to an investment fund that is a reporting issuer.

PART 3 – INTERRELATIONSHIP WITH LEGISLATION

3.1 Designation as market participant

- (1) An independent review committee is designated as a market participant for the purposes of the Act.
- (2) A manager of a non-redeemable investment fund is designated as a market participant for the purposes of the Act.

3.2 Definition of manager – In NI 81-107 "manager" means an "investment fund manager" under the Act.

3.3 Standard of care for manager – In NI 81-107, the standard of care and fiduciary duty required of a manager of a mutual fund in order to meet its obligation under NI 81-107 is the same standard of care and fiduciary duty imposed under section 116 of the Act.

PART 4 – EFFECTIVE DATE

- 4.1 Effective date** – This Rule comes into force on November 1, 2006.

**COMPANION POLICY 81-802CP TO
ONTARIO SECURITIES COMMISSION RULE 81-802
IMPLEMENTING NATIONAL INSTRUMENT 81-107
INDEPENDENT REVIEW COMMITTEE FOR INVESTMENT FUNDS**

1.1 Introduction – The purpose of this Companion Policy is to provide information relating to the manner in which the Ontario Securities Commission (the Commission) interprets or applies certain provisions of Commission Rule 81-802 *Implementing National Instrument 81-107 Independent Review Committee for Investment Funds* (the Implementing Rule) and National Instrument 81-107 *Independent Review Committee for Investment Funds* (NI 81-107).

1.2 Interrelationship between NI 81-107 and the Securities Act (Ontario) (the Act) – NI 81-107 is intended to impose a minimum, consistent standard of governance for all publicly offered investment funds by introducing the requirement for a fully independent advisory body, the independent review committee (the IRC), charged with overseeing all conflict of interest matters faced by the manager in the operation of an investment fund. As a result, NI 81-107 sometimes repeats (without any substantive change) certain requirements that are also dealt with in the Act under Part XXI *Insider Trading and Self Dealing*.

The cumulative effect of NI 81-107 and the Implementing Rule is that the standard of care and fiduciary duty required under section 2.1 of NI 81-107 is the same standard of care and fiduciary duty imposed under section 116 of the Act for a manager of a mutual fund, and sections 6.1 and 6.2 of NI 81-107 provide for exemptions from some of the prohibitions in Part XXI of the Act, as permitted under sections 121.1 and 121.4 of the Act. A manager of a mutual fund that is a reporting issuer can and should therefore refer to section 2.1 of NI 81-107 in place of section 116 of the Act, and investment funds or mutual funds, respectively, should refer to sections 6.1 and 6.2 of NI 81-107 to see if the exemptions from the prohibitions contained in Part XXI of the Act are met.