

Regulations and other Acts

M.D., 2012-06

Order number V-1.1-2012-06 of the Minister for Finance, April 12, 2012

Securities Act
(R.S.Q., c. V-1.1)

CONCERNING Regulation to amend Regulation 81-102 respecting mutual funds

WHEREAS subparagraphs 1, 3, 8, 11, 16, 17 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1) provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act provide that a draft regulation shall be published in the *Bulletin de l'Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section provide that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation;

WHEREAS Order in Council no. 930-2011 of September 14, 2011 concerning the Minister for Finance provides that the Minister for Finance exercises, under the supervision of the Minister of Finance, the functions for the application of the Securities Act;

WHEREAS Regulation 81-102 respecting mutual funds has been made on May 22, 2001 pursuant to decision no. 2001-C-0209 (Bulletin of the *Commission des valeurs mobilières du Québec*, Vol. 32, no. 22, dated June 1, 2001);

WHEREAS there is cause to amend this regulation;

WHEREAS the draft Regulation to amend Regulation 81-102 respecting mutual funds was published in the *Bulletin de l'Autorité des marchés financiers*, volume 7, no. 25 of June 25, 2010;

WHEREAS the *Autorité des marchés financiers* made, on March 20, 2012, by the decision no. 2012-PDG-0055, Regulation to amend Regulation 81-102 respecting mutual funds;

WHEREAS there is cause to approve this regulation without amendment;

CONSEQUENTLY, the Minister for Finance approves without amendment Regulation to amend Regulation 81-102 respecting mutual funds appended hereto.

April 12, 2012

ALAIN PAQUET,
Minister for Finance

Regulation to amend Regulation 81-102 respecting mutual funds

Securities Act
(R.S.Q., c. V-1.1, s. 331.1, par. (1), (3), (8), (11), (16), (17) and (34))

1. Section 1.1 of Regulation 81-102 respecting Mutual Funds (R.R.Q., c. V-1.1, r. 39) is amended:

(1) by inserting, after the definition of “book-based system”, the following:

““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 a mutual fund;

(b) a qualified dealer from whom a mutual fund borrows securities in order to sell them short;”;

(2) by replacing the definition of “cash cover” with the following:

““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 an approved credit 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;”;
- (3) by inserting, after the definition of “clearing corporation option”, the following:
- ““clone fund” means a mutual fund that has adopted a fundamental investment objective to track the performance of another mutual fund;”;
- (4) by inserting, after the definition of “equivalent debt”, the following:
- ““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;”;
- (5) by inserting, after the definition of “equivalent debt”, the following:

““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 an approved credit rating;

(b) if the evidence of indebtedness was issued by a government or a permitted supranational agency, it has its principal and interest fully and unconditionally guaranteed 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 an approved credit rating;”;

(6) by inserting, after the definition of “hedging”, the following:

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

(7) by inserting, after the definition of “manager”, the following:

““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;”;

(8) by inserting, after the definition of “member of the organization”, the following:

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

(9) by replacing the definition of “money market fund” with the following:

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

(10) by inserting, after the definition of “mutual fund conflict of interest reporting requirements”, the following:

“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;”;

(11) by inserting, after the definition of “order receipt office”, the following:

““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;”;

(12) by replacing the definition of “permitted supranational agency” with the following:

““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;”;

(13) by inserting, after the definition of “qualified security”, the following:

““redemption payment date” means, in relation to an exchange-traded mutual fund that is not in continuous distribution, a date specified in the prospectus or annual information form of the exchange-traded mutual fund on which redemption proceeds are paid;”;

(14) by deleting the definition of “RSP clone fund”;

(15) in the definition of “sales communication”, by deleting, wherever it occurs in subparagraph 1 of paragraph (b), the word “simplified”.

2. Section 1.3 of the Regulation is amended by deleting paragraph (3).

3. Section 2.1 of the Regulation is replaced with the following:

“2.1. Concentration Restriction

(1) A mutual fund shall 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% 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 shall, 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 shall 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% 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.”.

4. Section 2.2 of the Regulation is amended:

(1) by replacing, in the French text of subparagraph (ii) of subparagraph (a) of paragraph (1), the words “titres de participation” with the words “titres de capitaux propres”;

(2) by replacing paragraph (1.1) with the following:

“(1.1) Subsection (1) does not apply to the purchase of any of the following:

(a) a security issued by a mutual fund if the purchase is made in accordance with section 2.5;

(b) an index participation unit that is a security of a mutual fund.”.

5. Section 2.3 of the Regulation is amended:

(1) by replacing, in paragraph (c), the words “the net assets of the mutual fund, taken at market value at the time of the purchase, would consist” with the words “its net asset value would be made up”;

(2) by replacing, in paragraph (e), the words “the net assets of the mutual fund, taken at market value at the time of the purchase, would consist” with the words “its net asset value would be made up”;

(3) by deleting, wherever it occurs in the French text of paragraphs (g) and (h), the word “instrument”.

6. Sections 2.4 to 2.6 of the Regulation are replaced with the following:

“2.4. Restrictions Concerning Illiquid Assets

(1) A mutual fund shall not purchase an illiquid asset if, immediately after the purchase, more than 10% of its net asset value would be made up of illiquid assets.

(2) A mutual fund shall not have invested, for a period of 90 days or more, more than 15% of its net asset value in illiquid assets.

(3) If more than 15% of the net asset value of a mutual fund is made up of illiquid assets, the mutual fund shall, 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% or less.

“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 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 that wishes to purchase and hold securities of another mutual fund may do so only if

(a) the other mutual fund is subject to this Regulation and offers or has offered securities under a simplified prospectus in accordance with Regulation 81-101 respecting 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.

(3) Paragraphs (2)(a) and (c) do not apply if the security is

(a) an index participation unit issued by a mutual fund; or

(b) 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 an clone fund; or

(b) purchases or holds securities

(i) of a money market fund; or

(ii) that are index participation units issued by a mutual 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 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 transaction is made in accordance with this section.

“2.6. Investment Practices

A mutual fund shall not

(a) 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 5% 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) purchase securities on margin, unless permitted by section 2.7 or 2.8;

(c) 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 mutual 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

(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.”

7. Section 2.7 of the Regulation is amended:

(1) by replacing the title and paragraph (1) with the following:

“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 an approved credit 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 an approved credit rating.”;

(2) by deleting, in the French text of paragraph (3), the word “instrument”;

(3) in paragraph (4), by deleting, in the French text, the word “instruments”, and by replacing the words “net assets” with the words “net asset value”;

(4) by deleting, wherever it occurs in the French text of paragraph (5), the word “instruments”.

8. Section 2.8 of the Regulation is amended, in subparagraph (a) of paragraph (1), by replacing the words “the net assets of the mutual fund, taken at market value at the time of the purchase, would consist” with the words “its net asset value would be made up”.

9. Section 2.9 of the Regulation is replaced, in the French text, with the following:

“2.9. Les opérations sur dérivés visés dans un but de couverture

Les articles 2.1, 2.2, 2.4 et 2.8 ne s’appliquent pas à l’utilisation, par un OPC, de dérivés visés dans un but de couverture.”.

10. Section 2.11 of the Regulation is replaced with the following:

“2.11. Commencement of Use of Specified Derivatives and Short Selling by a Mutual Fund

(1) A mutual fund that has not used specified derivatives must not begin using specified derivatives, and a mutual fund that has not sold a security short in accordance with section 2.6.1 must not sell a security short unless

(a) its prospectus contains the disclosure required for a mutual fund intending to engage in the activity; and

(b) the mutual 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 required for mutual funds intending to engage in the activity.

(2) A mutual fund 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).”.

11. The Regulation is amended by inserting, after section 2.17, the following:

“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 an approved credit rating;

(iv) a floating rate evidence of indebtedness if

(A) the floating interest rate 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 Regulation, a mutual fund that describes itself as a “money market fund” must not use a specified derivative or sell securities short.”.

12. Section 3.3 of the Regulation is replaced with the following:

“3.3. Prohibition Against Reimbursement of Organization Costs

(1) None of 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, initial prospectus or annual information form of the mutual fund shall 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.”.

13. Section 4.1 of the Regulation is amended:

(1) by inserting, after paragraph (4), the following:

“(4.1) In paragraph (4)(b), “approved rating” has the meaning ascribed to it in Regulation 44-101 respecting Short Form Prospectus Distributions (c. V-1.1, r. 16).”;

(2) by replacing, in paragraph 5, the word “corresponbding” with the word “corresponding”;

14. Section 5.3 of the Regulation is amended:

(1) by replacing paragraph (1) with the following:

“(1) Despite section 5.1, the approval of securityholders of a mutual fund is not required to be obtained for a change referred to in paragraphs 5.1(a) and (a.1)

(a) if

(i) the mutual fund is at arm’s length to the person charging the fee or expense to the mutual fund referred to in paragraphs 5.1(a) and (a.1),

(ii) the prospectus of the mutual 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 mutual fund, and

(iii) the notice referred to in subparagraph (ii) is actually sent 60 days before the effective date of the change; or

(b) if

(i) the mutual fund is permitted by this Regulation 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 60 days before the effective date of the change.”;

(2) by deleting, in subparagraph (d) of paragraph (2), the word “simplified”;

15. Section 5.4 of the Regulation is amended by replacing, in subparagraph (a) of paragraph (2), the words “paragraph 5.1(a)” with the words “paragraphs 5.1(a) or (a.1)”.

16. Section 5.6 of the Regulation is amended, in paragraph (1):

(1) by deleting, in subparagraph (iv) of subparagraph (a), the word “simplified”;

(2) by replacing subparagraph (i) of subparagraph (e) with the following:

“(i) by the securityholders of the mutual fund in accordance with paragraph 5.1(f), unless subsection 5.3(2) applies, and;”;

(3) by deleting, in subparagraphs (f)(ii) and (iii), the word “simplified”.

17. Section 6.1 of the Regulation is amended by replacing, in paragraphs (1) and (2), “sections 6.8 and 6.9” with “sections 6.8, 6.8.1 and 6.9”.

18. Section 6.5 of the Regulation is amended:

(1) by replacing, in paragraph (1), “sections 6.8 and 6.9” with “sections 6.8, 6.8.1 and 6.9”;

(2) by replacing the French text of paragraph (4) with the following:

“4) Le dépositaire ou le sous-dépositaire qui se prévaut du paragraphe 3 doit veiller à ce que les dossiers de n’importe quel participant au système de gestion en compte courant ou ceux du dépositaire contiennent un numéro de compte ou une autre désignation qui suffise à montrer que l’actif du portefeuille est la propriété véritable de l’OPC.”.

19. Section 6.6 of the Regulation is amended by replacing, in the French text of paragraph (3), the words “seulement ces frais, créances et sommes n’ont pas été engagés par suite d’un manquement à la norme de diligence précisée au paragraphe 1” with the words “si ces frais, créances et sommes n’ont pas été engagés par suite d’un manquement à la norme de diligence précisée au paragraphe 1”.

20. Section 6.8 of the Regulation is amended:

(1) by deleting, in the French text of the title, the word “instruments”;

(2) by replacing, in paragraph (1) and subparagraph (c) of paragraph (2), “net assets of the mutual fund, taken at market value” with the words “net asset value of the mutual fund”;

(3) by deleting, in the French text of paragraph (3), the word “instruments”.

21. The Regulation is amended by inserting, after section 6.8, the following:

“6.8.1. Custodial Provisions relating to Short Sales

(1) Except where the borrowing agent is the mutual fund’s custodian or sub-custodian, if a mutual 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 mutual fund, exceed 10% of the net asset value of the mutual fund at the time of deposit.

(2) A mutual 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) A mutual 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.”.

22. The Regulation is amended by inserting, after the title of Part 9, the following section:

“9.0.1. Application

This Part does not apply to an exchange-traded mutual fund unless the fund is in continuous distribution.”.

23. Section 9.1 of the Regulation is amended by inserting, after the title, the following paragraph:

“(0.1) This section does not apply to an exchange-traded mutual fund.”.

24. Section 9.4 of the Regulation is amended:

(1) by inserting, in paragraph (1), the words “or securities” after the words “shall forward any cash” and replacing the word “arrives” with the words “or securities arrive”;

(2) by replacing paragraph (2) with the following:

“(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.”.

25. Section 10.2 of the Regulation is amended by inserting, after the title, the following paragraph:

“(0.1) This section does not apply to an exchange-traded mutual fund.”.

26. Section 10.3 of the Regulation is replaced with the following:

“10.3. Redemption Price of Securities

(1) The redemption price of a security of a mutual fund to which a redemption order pertains shall 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.”.

27. Section 10.4 of the Regulation is amended:

(1) by replacing the title with the following:

“10.4. Payment of Redemption Proceeds”;

(2) in paragraph (1):

(a) by replacing, in the portion of the text before subparagraph (a), the words “shall pay the redemption price” with the words “must pay the redemption proceeds”;

(b) by replacing, in subparagraph (b), the words “redemption price” with the words “redemption proceeds”;

(3) by inserting, after paragraph (1), the following:

“(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 the redemption payment date that next follows the valuation date on which the redemption price was established.”;

(4) by replacing, in paragraph (2), the words “redemption price” with the words “redemption proceeds”;

(5) by replacing paragraph (3) with the following:

“(3) A mutual 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.”;

(6) by replacing, in paragraph (5), the words “redemption price of a security is” with the words “redemption proceeds for a redeemed security are”.

28. Section 10.6 of the Regulation is amended:

(1) by replacing paragraph (1) with the following:

“(1) A mutual fund may suspend the right of securityholders to request that the mutual 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 mutual 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 mutual fund;

(b) in the case of a clone fund, the mutual fund whose performance it tracks has suspended redemptions.”;

(2) by replacing, in paragraph (2), the words “redemption price” with the words “redemption proceeds”.

29. Section 11.2 of the Regulation is amended:

(1) by replacing, in the French text of subparagraph (b) of paragraph (1), the word “prestataire” with the word “fournisseur”;

(2) by inserting, in paragraph (2), the word “in” after the words “referred to”.

30. Section 11.4 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “members of the Investment Dealers Association of Canada” with the words “a member of IIROC”;

(2) by inserting, after paragraph (1), the following:

“(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.”;

(3) by replacing paragraph (2) with the following:

“(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, shall 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.”.

31. Section 12.1 of the Regulation is amended:

(1) by inserting, in paragraph (1) and after the words “A mutual fund”, the words “, other than an exchange-traded mutual fund that is not in continuous distribution,”;

(2) by replacing paragraph (4) with the following:

“(4) Subsections (2) and (3) do not apply to a member of IIROC.”

(3) by inserting, after paragraph (4), the following:

“(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.”.

32. The Regulation is amended by adding, after the title of Part 14, the following section:

“14.0.1. Application

This Part does not apply to an exchange-traded mutual fund.”.

33. Section 15.3 of the Regulation is amended:

(1) by replacing, wherever they occur in the French text of paragraphs (1) to (3), the words “repère” or “le repère” with, respectively, the words “indice de référence” or “l’indice de référence”;

(2) by replacing paragraph (4) with the following:

“(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.

(3) by inserting, after paragraph (4), the following:

“(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).”;

(4) in the French text of paragraph (5):

(a) by replacing, in the introductory part, the words “qui reflète la qualité de l’actif du portefeuille” with the words “des titres”;

(b) by replacing, in subparagraph (c), the words “au titre ou à l’instrument” with the words “aux titres”.

34. Section 15.4 of the Regulation is amended by deleting, wherever it occurs in paragraph (9), the word “simplified”.

35. Section 15.13 of the Regulation is amended by replacing, in the French text of paragraph (2), the word “prestataire” with the word “fournisseur” and by deleting the word “instruments”.

36. Section 20.4 of the Regulation is replaced with the following:

“20.4. Mortgage Funds

Paragraphs 2.3(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 Regulation No. 29 respecting Mutual Funds Investing in Mortgages (c. V-1.1, r. 45) if

(a) a Regulation replacing Regulation No. 29 respecting Mutual Funds Investing in Mortgages has not come into force;

(b) the mutual fund was established, and has a simplified prospectus for which a receipt was issued, before the date that this Regulation came into force; and

(c) the mutual fund complies with Regulation No. 29 respecting Mutual Funds Investing in Mortgages.”.

37. Appendix A of the Regulation is amended by replacing, in the French text of the title, the words “Les limites sur l’exposition à une contrepartie en matière d’instruments dérivés” with the words “Les limites sur l’exposition à une contrepartie en matière de dérivés”.

38. The Regulation is amended by replacing, wherever they occur in sections 1.2, 2.17, 3.1, 3.2, 5.3.1, 5.7, 7.1, 8.1, 9.2, 15.2, 15.5, 15.6, 15.8, 15.12 and 19.2, the words “simplified prospectus” with the word “prospectus”.

39. The Regulation is amended by replacing, wherever it occurs in the French text, the word “liquidités” with the word “espèces”, except in the expression “liquidités synthétiques”.

40. The Regulation is amended by replacing, wherever they occur in the French text of sections 2.12 to 2.14, the words “valeur au marché” with the words “valeur marchande”.

41. The Regulation is amended by replacing, wherever they occur in the French text of sections 4.4, 7.1, 11.1 and 11.5, the words “prestataire” and “prestataires” with, respectively, the words “fournisseur” and “fournisseurs”.

42. The Regulation is amended by replacing, wherever it occurs in the French text, the word “repère” with the words “indice de référence”.

43. This Regulation comes into force on April 30, 2012, except for the definition of “money market fund”, in section 1, and section 11, which come into force 6 months after this Regulation comes into force.

2019

M.D., 2012-07

Order number V-1.1-2012-07 of the Minister for Finance dated April 12, 2012

Securities Act
(R.S.Q., c. V-1.1)

CONCERNING concordant regulations to Regulation 81-102 respecting mutual funds

WHEREAS subparagraphs 1, 6, 8, 9, 16, 19 and 34 of section 331.1 of the Securities Act (R.S.Q., c. V-1.1) provide that the *Autorité des marchés financiers* may make regulations concerning the matters referred to in those paragraphs;

WHEREAS the third and fourth paragraphs of section 331.2 of the said Act provide that a draft regulation shall be published in the *Bulletin de l’Autorité des marchés financiers*, accompanied with the notice required under section 10 of the Regulations Act (R.S.Q., c. R-18.1) and may not be submitted for approval or be made before 30 days have elapsed since its publication;

WHEREAS the first and fifth paragraphs of the said section provide that every regulation made under section 331.1 must be approved, with or without amendment, by the Minister of Finance and comes into force on the date of its publication in the *Gazette officielle du Québec* or on any later date specified in the regulation;

WHEREAS Order in Council no. 930-2011 of September 14, 2011 concerning the Minister for Finance provides that the Minister for Finance exercises, under the supervision of the Minister of Finance, the functions for the application of the Securities Act;