
Regulations and other Acts

M.O., 2014-04

Order number V-1.1-2014-04 of the Minister of Finance, September 4, 2014

Securities Act
(chapter V-1.1)

CONCERNING the Regulation to amend Regulation 81-102 respecting mutual funds

WHEREAS subparagraphs 1, 3, 4.1, 6, 8, 11, 13, 16, 17 and 34 of section 331.1 of the Securities Act (chapter V-1.1) stipulate 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 stipulate that a draft regulation shall be published in the Bulletin of the Authority, accompanied with the notice required under section 10 of the Regulations Act (chapter 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 stipulate 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 any later date specified in the regulation;

WHEREAS the Regulation 81-102 respecting mutual funds was made by the decision no. 2001-C-0209 on May 22, 2001 (Bulletin of the *Commission des valeurs mobilières du Québec*, volume 32, no. 22, of 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 10, no. 12 of March 28, 2013;

WHEREAS the Authority made, on August 12, 2014, by the decision no. 2014-PDG-0086, Regulation to amend Regulation 81-102 respecting mutual funds;

WHEREAS there is cause to approve this regulation without amendment;

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

September 4, 2014

CARLOS LEITÃO,
Minister of Finance

REGULATION TO AMEND REGULATION 81-102 RESPECTING MUTUAL FUNDS

Securities Act

(chapter V-1.1, s. 331.1, par. (1), (3), (4.1), (6), (8), (11), (13), (16), (17) and (34))

1. Regulation 81-102 respecting Mutual Funds (chapter V-1.1, r. 39) is amended by replacing the title with the following:

“REGULATION 81-102 RESPECTING INVESTMENT FUNDS”.

2. Section 1.1 of the Regulation is amended:

1) by replacing, wherever they occur in the definitions of the expressions “borrowing agent”, “clone fund” and “currency cross hedge”, the words “mutual fund” with the words “investment fund”, and making the necessary changes;

2) by replacing the definition of the expression “custodian” with the following:

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

3) by inserting, after the definition of the expression “custodian”, the following:

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

4) by deleting the definition of the expression “dealer managed mutual fund”;

5) by replacing, in the definition of “designated rating”, the words “mutual fund” with the words “investment fund”;

6) by replacing, in the French text of the definition of the expression “fixed portfolio ETF”, the words “fonds coté à portefeuille fixe” with the words “FNB à portefeuille fixe” and the words “un OPC coté” with the words “un OPC négocié en bourse”;

7) by replacing paragraph (b) of the definition of the expression “floating rate evidence of indebtedness” with the following:

“(b) the evidence of indebtedness was issued, or is fully and unconditionally guaranteed as to principal and interest, by any of the following:

(i) the government of Canada or the government of a jurisdiction of Canada;

(ii) the government of the United States of America, the government of one of the states of the United States of America, the government of another sovereign state or a permitted supranational agency, if, in each case, the evidence of indebtedness has a designated rating;”;

8) by replacing, wherever they occur in the definition of the expression “fundamental investment objectives”, the words “mutual fund” with the words “investment fund”, and making the necessary changes;

9) by replacing, in the French text of the definition of the expression “guaranteed mortgage”, the words “un assureur autorisé” with the words “une société approuvée par le Bureau du surintendant des institutions financières pour”;

10) by inserting, after the definition of the expression “index participation unit”, the following:

““investment fund conflict of interest investment restrictions” means the provisions of securities legislation that are referred to in Appendix D;

“investment fund conflict of interest reporting requirements” means the provisions of securities legislation that are referred to in Appendix E;”;

11) by replacing the definition of the expression “investor fees” with the following:

““investor fees” means, in connection with the purchase, conversion, holding, transfer or redemption of securities of an investment fund, all fees, charges and expenses that are or may become payable by a securityholder of the investment fund to,

(a) in the case of a mutual fund, a member of the organization of the mutual fund other than a member of the organization acting solely as a participating dealer, and

(b) in the case of a non-redeemable investment fund, the manager of the non-redeemable investment fund;”;

12) by replacing, wherever they occur in the definitions of the expressions “long position” and “management expense ratio”, the words “mutual fund” with the words “investment fund”, and making the necessary changes;

13) by replacing the definition of the expression “manager” with the following:

““manager” means an investment fund manager;”;

14) by deleting the definitions of the expressions “mutual fund conflict of interest investment restrictions” and “mutual fund conflict of interest reporting requirements”;

15) by replacing, wherever they occur in the definitions of the expressions “non-resident sub-adviser”, “performance data”, “portfolio adviser”, “portfolio asset” and “purchase”, the words “mutual fund” with the words “investment fund”, and making the necessary changes;

16) by deleting the definition of “redemption payment date”;

17) by replacing the definition of the expression “report to securityholders” with the following:

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

18) by replacing the definition of the expression “sales communication” with the following:

““sales communication” means a communication relating to, and by, an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, a participating dealer or a person providing services to any of them, that

(a) is made

(i) to a securityholder of the investment fund or participant in the asset allocation service; or

(ii) to a person that is not a securityholder of the investment fund or participant in the asset allocation service, to induce the purchase of securities of the investment fund or the use of the asset allocation service; and

(b) in the case of an investment fund, is not contained in any of the following documents of the investment fund:

1. A prospectus or preliminary or pro forma prospectus.
2. An annual information form or preliminary or pro forma annual information form.

3. A fund facts document or preliminary or pro forma fund facts document.

4. Financial statements, including the notes to the financial statements and the auditor's report on the financial statements.

5. A trade confirmation.

6. A statement of account.

7. Annual or interim management report of fund performance;";

19) by inserting, after the definition of the expression "sales communication", the following:

""scholarship plan" has the meaning ascribed to that term in section 1.1 of Regulation 81-106 respecting Investment Fund Continuous Disclosure;";

20) by replacing, wherever they occur in the definition of the expression "short position", the words "mutual fund" with the words "investment fund", and making the necessary changes;

21) by deleting, at the end of paragraph (a) of the definition of the expression "specified dealer", the word "or";

22) by replacing the definition of the expression "sub-custodian" with the following:

""sub-custodian" means, for an investment fund, an entity that has been appointed to hold portfolio assets of the investment fund by either the custodian or a sub-custodian of the investment fund;";

23) by replacing, wherever they occur in the definition of the expression "underlying market exposure", the words "mutual fund" with the words "investment fund", and making the necessary changes.

3. The Regulation is amended by replacing section 1.2 with the following:

"1.2. Application

(1) This Regulation applies only to

(a) a mutual fund that offers or has offered securities under a prospectus for so long as the mutual fund remains a reporting issuer;

- (a.1) a non-redeemable investment fund that is a reporting issuer; and
 - (b) a person in respect of activities pertaining to an investment fund referred to in paragraphs (a) and (a.1) or pertaining to the filing of a prospectus to which subsection 3.1(1) applies.
- (2) Despite subsection (1), this Regulation does not apply to a scholarship plan.
- (3) Despite subsection (1), in Québec, in respect of investment funds organized under an Act to establish the Fonds de solidarité des travailleurs du Québec (F.T.Q.) (chapter F-3.2.1), an Act to establish Fondation, le Fonds de développement de la Confédération des syndicats nationaux pour la coopération et l'emploi (chapter F-3.1.2), or an Act constituting Capital régional et coopératif Desjardins (chapter C-6.1), the following requirements apply:
- (a) sections 2.12 to 2.17;
 - (b) Part 6;
 - (c) Part 15, except for paragraph 15.8(2)(b);
 - (d) Part 19;
 - (e) Part 20.
- (4) For greater certainty, in British Columbia, if a provision of this Regulation conflicts or is inconsistent with a provision of the Employee Investment Act (British Columbia), (R.S.B.C. 1996 chapter 112) or the Small Business Venture Capital Act (British Columbia), (R.S.B.C. 1996, chapter 429), the provision of the Employee Investment Act or the Small Business Venture Capital Act, as the case may be, prevails.”

4. Section 2.1 of the Regulation is amended:

- (1) by replacing, in paragraph (1), the word “shall” with the word “must”;
- (2) by replacing, in the French text of subparagraph (e) of paragraph (2), the words “fonds coté à portefeuille fixe” with the words “FNB à portefeuille fixe”;
- (3) by replacing, in paragraphs (3) and (4), the word “shall” with the word “must”;

5. Section 2.2 of the Regulation is amended:

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

- “(1) An investment fund must not purchase a security of an issuer
- (a) if, immediately after the purchase, the investment fund would hold securities representing more than 10% of
- (i) the votes attaching to the outstanding voting securities of the issuer; or
- (ii) the outstanding equity securities of the issuer; or
- (b) for the purpose of exercising control over, or management of, the issuer.”;
- (2) in paragraph (1.1):
- (a) by replacing, in subparagraph (a), the words “a mutual fund” with the words “an investment fund”;
- (b) by replacing, in subparagraph (b), the words “a mutual fund” with the words “an investment fund”;
- (3) by replacing paragraph (2) with the following:
- “(2) If an investment fund acquires a security of an issuer other than as the result of a purchase, and the acquisition results in the investment fund exceeding the limits described in paragraph (1)(a), the investment fund must as quickly as is commercially reasonable, and in any event no later than 90 days after the acquisition, reduce its holdings of those securities so that it does not hold securities exceeding those limits.”;
- (4) by replacing, in paragraph (3), the words “a mutual fund shall” with the words “an investment fund must”.

6. Section 2.3 of the Regulation is replaced with the following:

“2.3. Restrictions Concerning Types of Investments

- (1) A mutual fund must not
- (a) purchase real property;
- (b) purchase a mortgage, other than a guaranteed mortgage;

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

(2) A non-redeemable investment fund must not do any of the following:

- (a) purchase real property;
- (b) purchase a mortgage, other than a guaranteed mortgage;
- (c) purchase an interest in a loan syndication, or loan participation, if the purchase would require the non-redeemable investment fund to assume any responsibilities in administering the loan in relation to the borrower.”.

7. Section 2.5 of the Regulation is replaced with the following:

“2.5. Investments in Other Investment Funds

- (1) For the purposes of this section, an investment fund is considered to be holding a security of another investment fund if
 - (a) it holds securities issued by the other investment fund; or

(b) it is maintaining a position in a specified derivative for which the underlying interest is a security of the other investment fund.

(2) An investment fund must not purchase or hold a security of another investment fund unless,

(a) if the investment fund is a mutual fund, the other investment fund is a mutual fund that is subject to this Regulation and offers or has offered securities under a simplified prospectus in accordance with Regulation 81-101 respecting Mutual Fund Prospectus Disclosure (chapter V-1.1, r. 38);

(a.1) if the investment fund is a non-redeemable investment fund, one or both of the following apply:

(i) the other investment fund is subject to this Regulation;

(ii) the other investment fund complies with the provisions of this Regulation applicable to a non-redeemable investment fund;

(b) at the time of the purchase of that security, the other investment fund holds no more than 10% of its net asset value in securities of other investment funds;

(c) if the investment fund is a mutual fund, the investment fund and the other investment fund are reporting issuers in the local jurisdiction;

(c.1) if the investment fund is a non-redeemable investment fund, the other investment fund is a reporting issuer in a jurisdiction in which the investment fund is a reporting issuer;

(d) no management fees or incentive fees are payable by the investment fund that, to a reasonable person, would duplicate a fee payable by the other investment fund for the same service;

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

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

(3) Paragraphs (2)(a), (a.1), (c) and (c.1) do not apply if the security

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

8. Section 2.6 of the Regulation is amended:

- (1) by replacing, in the part preceding paragraph (a), the words “A mutual fund shall not” with “An investment fund must not,”;
- (2) in paragraph (a):
 - (a) by replacing the part preceding subparagraph (i) with the following:

“in the case of a mutual fund, borrow cash or provide a security interest over any of its portfolio assets unless”

(b) by replacing, in the French text of subparagraph (iii), the words “de frais et de dépenses” with the words “d’honoraires et de charges”;

(c) by replacing, in the French text of subparagraph (iv), the words “OPC coté” with the words “OPC négocié en bourse”;

(3) by replacing paragraphs (b) and (c) with the following:

“(b) in the case of a mutual fund, purchase securities on margin, unless permitted by section 2.7 or 2.8;

(c) in the case of a mutual fund, sell securities short other than in compliance with section 2.6.1, unless permitted by section 2.7 or 2.8;”;

(4) by replacing, in paragraph (d), the words “mutual fund” with the words “investment fund”.

9. Section 2.9 is replaced with the following:

“2.9. Transactions in Specified Derivatives for Hedging Purposes

(1) Sections 2.1, 2.2, 2.4 and 2.8 do not apply to the use of specified derivatives by a mutual fund for hedging purposes.

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

10. Section 2.10 of the Regulation is amended by replacing, wherever they occur, the words “mutual fund” with the words “investment fund”, and making the necessary changes, and the word “shall” with the word “must”.

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

“2.11. Commencement of Use of Specified Derivatives and Short Selling by an Investment Fund

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

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for a mutual fund intending to engage in the activity;

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:

(i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, intending to engage in the activity;

(ii) the date on which the activity is intended to begin; and

(b) the investment fund has provided to its securityholders, not less than 60 days before it begins the intended activity, written notice that discloses its intent to engage in the activity and the disclosure referred to in paragraph (a) or (a.1), as applicable.

(2) A mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, is not required to provide the notice referred to in paragraph (1)(b) if each prospectus of the mutual fund since its inception has contained the disclosure referred to in paragraph (1)(a).

(3) Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception has contained the disclosure referred to in paragraph (1)(a.1).”.

12. Section 2.12 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding point 1, the words “a mutual fund” with the words “an investment fund”;

(b) by replacing, in point 3, the words “mutual fund” with the words “investment fund”;

(c) by replacing, in point 4, the words “mutual fund or to the mutual fund” with the words “investment fund or to the investment fund”;

(d) by replacing, wherever they occur in points 5 to 8, the words “mutual fund” with the words “investment fund”;

(e) by replacing, in point 9, the words “mutual fund” with the words “investment fund”;

(f) by replacing, in point 11, the words “mutual fund” with the words “investment fund”;

(g) by replacing point 12 with the following:

“12. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions and not yet returned to it or sold by the investment fund in repurchase transactions under section 2.13 and not yet repurchased does not exceed 50% of the net asset value of the investment fund.”.

(2) by replacing, in paragraph (2), the words “A mutual fund” with the words “An investment fund”;

(3) by replacing, in paragraph (3), the words “A mutual fund” with the words “An investment fund”, and the words “shall hold all, and shall” with the words “must hold all, and must”.

13. Section 2.13 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding point 1, the words “a mutual fund” with the words “an investment fund”;

(b) by replacing, wherever they occur in points 3 to 7, the words “mutual fund” with the words “investment fund”;

(c) by replacing, in point 8, the words “mutual funds” with the words “investment fund”;

(d) by replacing, in point 10, the words “mutual fund” with the words “investment fund”;

(e) by replacing point 11 with the following:

“11. Immediately after the investment fund enters into the transaction, the aggregate market value of all securities loaned by the investment fund in securities lending transactions under section 2.12 and not yet returned to it or sold by the investment fund in repurchase transactions and not yet repurchased does not exceed 50% of the net asset value of the investment fund.”;

(2) by replacing, in paragraph (2), the words “A mutual fund” with the words “An investment fund”.

14. Section 2.14 of the Regulation is amended by replacing, wherever they occur, the words “mutual fund” with the words “investment fund”, and making the necessary changes.

15. Section 2.15 of the Regulation is amended:

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

“(1) The manager of an investment fund must appoint an agent or agents to act on behalf of the investment fund to administer the securities lending and repurchase transactions entered into by the investment fund.”;

(2) by replacing, wherever they occur in paragraph (2), the words “mutual fund” with the words “investment fund”, and making the necessary changes;

(3) by replacing, in paragraph (3), the words “the mutual fund shall” with the words “the investment fund must”;

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

“(4) The manager of an investment fund must not authorize an agent to enter into a securities lending, repurchase or, if applicable, reverse repurchase transactions on behalf of the investment fund until the agent enters into a written agreement with the manager and the investment fund in which

(a) the investment fund and the manager provide instructions to the agent on the parameters to be followed in entering into the type of transactions to which the agreement pertains;

(b) the agent agrees to comply with this Regulation, accepts the standard of care referred to in subsection (5) and agrees to ensure that all transactions entered into by it on behalf of the investment fund will comply with this Regulation; and

(c) the agent agrees to provide to the investment fund and the manager regular, comprehensive and timely reports summarizing the investment fund’s securities lending, repurchase and reverse repurchase transactions, as applicable.”;

(5) by replacing, in paragraph (5), the words “the mutual fund shall” with the words “the investment fund must”.

16. Section 2.16 of the Regulation is amended by replacing, wherever they occur, the words “mutual fund” with the words “investment fund, and making the necessary changes.

17. Section 2.17 of the Regulation is replaced with the following:

“2.17. Commencement of Securities Lending, Repurchase and Reverse Repurchase Transactions by an Investment Fund

(1) An investment fund must not enter into securities lending, repurchase or reverse repurchase transactions unless,

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, its prospectus contains the disclosure required for mutual funds entering into those types of transactions;

(b) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, the investment fund issues a news release that contains both of the following:

(i) the disclosure required in a prospectus for an exchange-traded mutual fund that is not in continuous distribution, or a non-redeemable investment fund, entering into those types of transactions;

(ii) the date on which the investment fund intends to begin entering into those types of transactions; and

(c) the investment fund provides to its securityholders, at least 60 days before it begins entering into those types of transactions, written notice that discloses its intent to begin entering into those types of transactions and the disclosure referred to in paragraph (a) or (b), as applicable.

(2) Paragraph (1)(c) does not apply to a mutual fund that has entered into reverse repurchase agreements as permitted by a decision of the regulator, except in Québec, or the securities regulatory authority.

(3) Paragraph (1)(c) does not apply to a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, if each prospectus of the mutual fund filed since its inception contains the disclosure referred to in paragraph (1)(a).

(4) Subsection (1) does not apply to an exchange-traded mutual fund that is not in continuous distribution, or to a non-redeemable investment fund, if each prospectus of the investment fund filed since its inception contains the disclosure referred to in paragraph (1)(b).”.

18. Section 2.18 of the Regulation is amended:

(1) by inserting, in clause A of subparagraph (iv) of subparagraph (a) of paragraph (1) and after the words “floating interest rate”, the words “of the indebtedness”;

(2) by adding, after paragraph (2), the following:

“(3) A non-redeemable investment fund must not describe itself as a “money market fund”.”.

19. Section 3.1 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “No person shall” with the words “A person must not”;

(2) by replacing, in paragraph (2), the word “shall” with the word “must”.

20. Section 3.3 of the Regulation is amended:

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

“(1) The costs of incorporation, formation or initial organization of a mutual fund, or of the preparation and filing of any of the preliminary prospectus, preliminary annual information form, preliminary fund facts document, initial prospectus, annual information form or fund facts document of the mutual fund must not be borne by the mutual fund or its securityholders.”;

(2) by replacing, in the French text of paragraph (2), the words “l’OPC coté” with the words “l’OPC négocié en bourse”.

21. Section 4.1 of the Regulation is replaced with the following:

“4.1. Prohibited Investments

(1) A dealer managed investment fund must not knowingly make an investment in a class of securities of an issuer during, or for 60 days after, the period in which the dealer manager of the investment fund, or an associate or affiliate of the dealer manager of the investment fund, acts as an underwriter in the distribution of securities of that class of securities, except as a member of the selling group distributing 5% or less of the securities underwritten.

(2) A dealer managed investment fund must not knowingly make an investment in a class of securities of an issuer of which a partner, director, officer or employee of the dealer manager of the investment fund, or a partner, director, officer or employee of an affiliate or associate of the dealer manager, is a partner, director or officer, unless the partner, director, officer or employee

(a) does not participate in the formulation of investment decisions made on behalf of the dealer managed investment fund;

(b) does not have access before implementation to information concerning investment decisions made on behalf of the dealer managed investment fund; and

(c) does not influence, other than through research, statistical and other reports generally available to clients, the investment decisions made on behalf of the dealer managed investment fund.

(3) Subsections (1) and (2) do not apply to an investment in a class of securities issued or fully and unconditionally guaranteed by the government of Canada or the government of a jurisdiction.

(4) Subsection (1) does not apply to an investment in a class of securities of an issuer if, at the time of each investment

(a) the independent review committee of the dealer managed investment fund has approved the transaction under subsection 5.2(2) of Regulation 81-107 respecting Independent Review Committee for Investment Funds (chapter V-1.1, r. 43);

(b) in a class of debt securities of an issuer other than a class of securities referred to in subsection (3), the security has been given, and continues to have, an designated rating by a designated rating organization or its DRO affiliate;

(c) in any other class of securities of an issuer,

(i) the distribution of the class of equity securities is made by prospectus filed with one or more regulators, except in Québec, or securities regulatory authorities in Canada; and

(ii) during the 60 day period referred to in subsection (1) the investment is made on an exchange on which the class of equity securities of the issuer is listed and traded; and

(d) no later than the time the dealer managed investment fund files its annual financial statements, the manager of the dealer managed investment fund files the particulars of each investment made by the dealer managed investment fund during its most recently completed financial year.

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

(5) The provisions of securities legislation that are referred to in Appendix C do not apply with respect to an investment in a class of securities of an issuer referred to in subsection (4) if the investment is made in accordance with that subsection.”.

22. Section 4.3 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing the part preceding subparagraph (a) with the following:

“(1) Section 4.2 does not apply to a purchase or sale of a security by an investment fund if the price payable for the security is:”;

(b) by replacing, in subparagraphs (a) and (b), the words “mutual fund” with the words “investment fund”;

(2) by replacing, wherever they occur in paragraph (2), the words “mutual fund” with the words “investment fund”, and making the necessary changes.

23. Section 4.4 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing the part preceding subparagraph (a) with the following:

“(1) An agreement or declaration of trust by which a person acts as manager of an investment fund must provide that the manager is responsible for any loss that arises out of the failure of the manager, or of any person retained by the manager or the investment fund to discharge any of the manager’s responsibilities to the investment fund,”;

(b) by replacing, in subparagraph (a), the words “mutual fund” with the words “investment fund”;

(2) in paragraph (2):

(a) by replacing the part preceding subparagraph (a) with the following:

“(2) An investment fund must not relieve the manager of the investment fund from liability for loss that arises out of the failure of the manager, or of any person retained by the manager or the investment fund to discharge any of the manager’s responsibilities to the investment fund,”;

(b) by replacing, in subparagraph (a), the words “mutual fund” with the words “investment fund”;

(3) in paragraph (3):

(a) by replacing, in the part preceding subparagraph (a), the words « A mutual fund » with the words “An investment fund” and the words “the mutual fund” with the words “the investment fund”;

(b) by replacing, in subparagraph (b), the words “the mutual fund has” with the words “the investment fund has” and the words “of the mutual fund” with the words “of the investment fund”;

(4) by replacing, in paragraph (4), the words “A mutual fund shall” with the words “An investment fund must”;

(5) in paragraph (5):

(a) by replacing, in the part preceding subparagraph (a), the words “a mutual fund” with the words “an investment fund” and the word “by” with “by any of the following:”;

(b) by replacing subparagraph (a) with the following:

“(a) a director of the investment fund;”;

(c) by replacing, in subparagraph (b), the words “mutual fund” with the words “investment fund”;

(6) by replacing paragraph (6) with the following:

“(6) This section applies to any losses to an investment fund or securityholder arising out of an action or inaction by a custodian or sub-custodian acting as agent of the investment fund in administering the securities lending, repurchase or reverse repurchase transactions of the investment fund.”.

24. Section 5.1, 5.2 and 5.3 of the Regulation are replaced with the following:

“5.1. Matters Requiring Securityholder Approval

(1) The prior approval of the securityholders of an investment fund, given as provided in section 5.2, is required before the occurrence of each of the following:

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

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

(b) the manager of the investment fund is changed, unless the new manager is an affiliate of the current manager;

(c) the fundamental investment objectives of the investment fund are changed;

(d) *(paragraph revoked)*

(e) the investment fund decreases the frequency of the calculation of its net asset value per security;

(f) the investment fund undertakes a reorganization with, or transfers its assets to, another issuer, if

(i) the investment fund ceases to continue after the reorganization or transfer of assets; and

(ii) the transaction results in the securityholders of the investment fund becoming securityholders in the other issuer;

(g) the investment fund undertakes a reorganization with, or acquires assets from, another issuer, if

(i) the investment fund continues after the reorganization or acquisition of assets;

(ii) the transaction results in the securityholders of the other issuer becoming securityholders in the investment fund; and

(iii) the transaction would be a material change to the investment fund;

(h) the investment fund implements any of the following:

(i) in the case of a non-redeemable investment fund, a restructuring into a mutual fund;

(ii) in the case of a mutual fund, a restructuring into a non-redeemable investment fund;

(iii) a restructuring into an issuer that is not an investment fund.

(2) An investment fund must not bear any of the costs or expenses associated with a restructuring referred to in paragraph (1)(h).

“5.2. Approval of Securityholders

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

(2) Despite subsection (1), the holders of securities of a class or series of a class of securities of an investment fund must vote separately as a class or series of a class on a matter referred to in subsection 5.1(1) if that class or series of a class is affected by the action referred to in subsection 5.1(1) in a manner different from holders of securities of other classes or series of a class.

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

“5.3. Circumstances in Which Approval of Securityholders Not Required

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

(a) if

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

(ii) the prospectus of the investment fund discloses that, although the approval of securityholders will not be obtained before making the changes, securityholders will be sent a written notice at least 60 days before the effective date of the change that is to be made that could result in an increase in charges to the investment fund; and

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

(b) if, in the case of a mutual fund,

(i) the mutual fund is permitted by this 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 at least 60 days before the effective date of the change.

(2) Despite subsection 5.1(1), the approval of securityholders of an investment fund is not required to be obtained for a change referred to in paragraph 5.1(1)(f) if either of the following paragraphs apply:

(a) all of the following apply:

(i) the independent review committee of the investment fund has approved the change under subsection 5.2(2) of Regulation 81-107 respecting Independent Review Committee for Investment Funds (chapter V-1.1, r. 43);

(ii) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Regulation and Regulation 81-107 respecting Independent Review Committee for Investment Funds apply and that is managed by the manager, or an affiliate of the manager, of the investment fund;

(iii) the reorganization or transfer of assets of the investment fund complies with the criteria in paragraphs 5.6(1)(a), (b), (c), (d), (g), (h), (i), (j) and (k);

(iv) the prospectus of the investment fund discloses that, although the approval of securityholders may not be obtained before making the change, securityholders will be sent a written notice at least 60 days before the effective date of the change;

(v) the notice referred to in subparagraph (iv) to securityholders is sent at least 60 days before the effective date of the change;

(b) all of the following apply:

(i) the investment fund is a non-redeemable investment fund that is being reorganized with, or its assets are being transferred to, a mutual fund that is

(A) a mutual fund to which this Regulation and Regulation 81-107 respecting Independent Review Committee for Investment Funds apply;

(B) managed by the manager, or an affiliate of the manager, of the investment fund;

(C) not in default of any requirement of securities legislation; and

(D) a reporting issuer in the local jurisdiction and the mutual fund has a current prospectus in the local jurisdiction;

(ii) the transaction is a tax-deferred transaction under subsection 85(1) of the ITA;

(iii) the securities of the investment fund do not give securityholders of the investment fund the right to request that the investment fund redeem the securities;

(iv) since its inception, there has been no market through which securityholders of the investment fund could sell securities of the investment fund;

(v) every prospectus of the investment fund discloses that

(A) securityholders of the investment fund, other than the manager, promoter or an affiliate of the manager or promoter, will cease to be securityholders of the investment fund within 30 months following the completion of the initial public offering by the investment fund; and

(B) the investment fund will, within 30 months following the completion of the initial public offering of the investment fund, undertake a reorganization with, or transfer its assets to, a mutual fund that is managed by the manager of the investment fund or by an affiliate of the manager of the investment fund;

(vi) the mutual fund bears none of the costs and expenses associated with the transaction;

(vii) the reorganization or transfer of assets of the investment fund complies with subparagraphs 5.3(2)(a)(i), (iv) and (v) and paragraphs 5.6(1)(d) and (k).”.

25. Section 5.3.1 of the Regulation is amended:

(1) by replacing, in the title, the words “**the Mutual fund**” with the words “**an Investment Fund**”;

(2) by replacing, in the part preceding subparagraph (a), the words “the mutual fund may” with the words “an investment fund must”;

(3) by replacing, in subparagraph (a), the words “the mutual fund has approved the change” with the words “the investment fund has approved the change of auditor”;

(4) by replacing, in subparagraph (b), the words “mutual funds” with the words “investment funds” and the words “may not” with the words “will not”.

26. Section 5.4 of the Regulation is amended:

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

“(1) A meeting of securityholders of an investment fund called to consider any matter referred to in subsection 5.1(1) must be called on written notice sent at least 21 days before the date of the meeting.”;

(2) in paragraph (2):

(a) by replacing, in the part preceding subparagraph (a), the word “shall” with the word “must”;

(b) by replacing, in subparagraph (a), the words “paragraphs 5.1(a)” with the words “paragraphs 5.1(1)(a)”, the words “the mutual fund had” with the words “the investment fund had” and the words “throughout the mutual fund’s” with the words “throughout the investments fund’s”.

27. Section 5.5 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding subparagraph (a), the words “securities regulatory authority or regulator” with the words “regulator, except in Québec, or the securities regulatory authority”;

(b) by replacing, in subparagraph (a), the words “a mutual fund” with the words “an investment fund”;

(c) by inserting, after subparagraph (a), the following:

“(a.1) a change of control of the manager of an investment fund occurs;”;

(d) by replacing subparagraph (b) with the following:

“(b) a reorganization or transfer of assets of an investment fund is implemented, if the transaction will result in the securityholders of the investment fund becoming securityholders in another issuer;”;

(e) by replacing, in subparagraph (c), the words “a mutual fund” with the words “an investment fund”;

(f) by replacing, in subparagraph (d), the words “a mutual fund” with the words “an investment fund” and the words “the mutual fund” with the words “the investment fund”;

(2) by deleting paragraph (2).

28. Section 5.6 of the Regulation is replaced with the following:

“5.6. Pre-Approved Reorganizations and Transfers

(1) Despite subsection 5.5(1), the approval of the regulator, except in Québec, or the securities regulatory authority is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all of the following paragraphs apply:

(a) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Regulation applies and that

(i) is managed by the manager, or an affiliate of the manager, of the investment fund;

(ii) a reasonable person would consider to have substantially similar fundamental investment objectives, valuation procedures and fee structure as the investment fund;

(iii) is not in default of any requirement of securities legislation;
and

(iv) is a reporting issuer in the local jurisdiction and, if it is a mutual fund, also has a current prospectus in the local jurisdiction;

(b) the transaction is a “qualifying exchange” within the meaning of section 132.2 of the ITA or is a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the ITA;

(c) the transaction contemplates the wind-up of the investment fund as soon as reasonably possible following the transaction;

(d) the portfolio assets of the investment fund to be acquired by the other investment fund as part of the transaction

(i) may be acquired by the other investment fund in compliance with this Regulation; and

(ii) are acceptable to the portfolio adviser of the other investment fund and consistent with the other investment fund's fundamental investment objectives;

(e) the transaction is approved

(i) by the securityholders of the investment fund in accordance with paragraph 5.1(1)(f), unless subsection 5.3(2) applies; and

(ii) if required, by the securityholders of the other investment fund in accordance with paragraph 5.1(1)(g);

(f) the materials sent to securityholders of the investment fund in connection with the approval under paragraph 5.1(1)(f) include

(i) a circular that, in addition to other requirements prescribed by law, describes the proposed transaction, the investment fund into which the investment fund will be reorganized, the income tax considerations for the investment funds participating in the transaction and their securityholders, and, if the investment fund is a corporation and the transaction involves its shareholders becoming securityholders of an investment fund that is established as a trust, a description of the material differences between being a shareholder of a corporation and being a securityholder of a trust;

(ii) if the other investment fund is a mutual fund, the most recently filed fund facts document for the other investment fund; and

(iii) a statement that securityholders may, in respect of the reorganized investment fund;

(A) obtain all of the following documents at no cost by contacting the reorganized investment fund at an address or telephone number specified in the statement:

(I) if the reorganized investment fund is a mutual fund, the current prospectus;

(II) the most recently filed annual information form, if one has been filed;

(III) as applicable, the most recently filed fund facts document;

(IV) the most recently filed annual financial statements and interim financial reports;

(V) the most recently filed annual and interim management reports of fund performance; or

(B) access those documents at a website address specified in the statement;

(g) the investment fund has complied with Part 11 of Regulation 81-106 respecting Investment Fund Continuous Disclosure (chapter V-1.1, r. 42) in connection with the making of the decision to proceed with the transaction by the board of directors of the manager of the investment fund or of the investment fund;

(h) the investment funds participating in the transaction bear none of the costs and expenses associated with the transaction;

(i) if the investment fund is a mutual fund, securityholders of the investment fund continue to have the right to redeem securities of the investment fund up to the close of business on the business day immediately before the effective date of the transaction;

(j) if the investment fund is a non-redeemable investment fund, all of the following apply:

(i) the investment fund issues and files a news release that discloses the transaction;

(ii) securityholders of the investment fund may redeem securities of the investment fund at a date that is after the date of the news release referred to in subparagraph (i) and before the effective date of the transaction;

(iii) the securities submitted for redemption in accordance with subparagraph (ii) are redeemed at a price equal to their net asset value per security on the redemption date;

(k) the consideration offered to securityholders of the investment fund for the transaction has a value that is equal to the net asset value of the investment fund calculated on the date of the transaction.

(1.1) Despite subsection 5.5(1), the approval of the regulator, except in Québec, or the securities regulatory authority is not required to implement a transaction referred to in paragraph 5.5(1)(b) if all the conditions in paragraph 5.3(2)(b) are satisfied and the independent review committee of the mutual fund involved in the transaction has approved the transaction in accordance with subsection 5.2(2) of Regulation 81-107 respecting Independent Review Committee for Investment Funds (chapter V-1.1, r. 43).

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

29. Section 5.7 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding subparagraph (a), the word “shall” with the word “must”;

(b) in subparagraph (a):

(i) by replacing, in the part preceding subparagraph (i), the words “subsection 5.5(2)” with “(a.1)”;

(ii) by replacing, in clauses (C) and (D) of subparagraph (iii), the words “mutual fund” with the words “investment fund”;

(iii) by replacing, in subparagraph (iv), the words “securities regulatory authority”, with the words “the regulator, except in Québec, or the securities regulatory authority”;

(iv) by replacing, in subparagraph (vi), the words “mutual fund” with the words “investment fund”;

(c) by replacing subparagraphs (ii) and (iii) of subparagraph (b) with the following :

“(i) details of the total annual returns of the investment fund and, if the other issuer is an investment fund, the other issuer for each of the previous five years;

(iii) a description of the differences between, as applicable, the fundamental investment objectives, investment strategies, valuation procedures and fee structure of the investment fund and the other issuer and any other material differences between the investment fund and the other issuer; and”;

(d) by replacing, in subparagraph (d), the words “for the mutual fund” with the words “for the investment fund” and the words “of the mutual fund” with the words “of the investment fund”;

(2) in subparagraph (2):

(a) by replacing, in the part preceding subparagraph (a), the words “A mutual fund” with the words “An investment fund” and the word “shall” with the word “must”;

(b) by replacing subparagraph (a) with the following:

“(a) make that application to the regulator, except in Québec, or the securities regulatory authority in the jurisdiction in which the head office or registered office of the investment fund is situated; and”;

(c) by replacing, in subparagraph (b), the words “mutual fund” with the words “investment fund”;

(3) in paragraph (3):

(a) by replacing, in the part preceding subparagraph (a), the words “A mutual fund” with the words “An investment fund” and the words “the mutual fund” with the words “the investment fund”;

(b) by replacing, in subparagraph (a), the words “the securities regulatory authority or regulator in the jurisdiction in which the head office or registered office of the mutual fund is situate” with the words “the regulator, except in Québec, or the securities regulatory authority in the jurisdiction in which the head office or registered office of the investment fund is situated”;

(c) by replacing, wherever they occur in subparagraph (b), the words “mutual fund” with the words “investment fund”.

30. Section 5.8 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding subparagraph (a), the words “No person that is a manager of the mutual fund may continue to act as manager of the mutual fund” with the words “A person must not continue to act as manager of an investment fund”;

(b) by replacing, in subparagraph (a), the words “mutual fund” with the words “investment fund”;

(2) by replacing, in paragraph (2), the words “No mutual fund shall” with the words “A mutual fund must not”;

(3) by replacing, in paragraph (3), the word “shall” with the word “must”.

31. The Regulation is amended by inserting, after section 5.8, the following:

“5.8.1. Termination of a Non-Redeemable Investment Fund

(1) A non-redeemable investment fund must not terminate unless the investment fund first issues and files a news release that discloses the termination.

(2) A non-redeemable investment fund must not terminate earlier than 15 days or later than 90 days after the filing of the news release under subsection (1).

(3) Subsections (1) and (2) do not apply in respect of a transaction referred to in paragraph 5.1(1)(f).”.

32. Section 5.9 of the Regulation is replaced with the following:

“5.9. Relief from Certain Regulatory Requirements

(1) The investment fund conflict of interest investment restrictions and the investment fund conflict of interest reporting requirements do not apply to a transaction referred to in paragraph 5.5(1)(b) if the approval of the regulator, except in Québec, or the securities regulatory authority has been given to the transaction.

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

33. Section 6.1 of the Regulation is replaced with the following:

“6.1. General

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

(2) Except as provided in subsection 6.5(3) and sections 6.8, 6.8.1 and 6.9, portfolio assets of an investment fund must be held

(a) in Canada by the custodian or a sub-custodian of the investment fund; or

(b) outside Canada by the custodian or a sub-custodian of the investment fund, if appropriate to facilitate portfolio transactions of the investment fund outside Canada.

(3) The custodian or a sub-custodian of an investment fund may appoint one or more sub-custodians to hold portfolio assets of the investment fund, if

(a) in the case of an appointment by the custodian, the investment fund consents in writing to the appointment;

(a.1) in the case of an appointment by a sub-custodian, the investment fund and the custodian of the investment fund consent in writing to the appointment;

(b) the sub-custodian that is to be appointed is an entity described in section 6.2 or 6.3, as applicable;

(c) the arrangements under which a sub-custodian is appointed are such that the investment fund may enforce rights directly, or require the custodian or a sub-custodian to enforce rights on behalf of the investment fund, to the portfolio assets held by the appointed sub-custodian; and

(d) the appointment is otherwise in compliance with this Regulation.

(4) The written consent referred to in paragraphs (3)(a) and (a.1) may be in the form of a general consent, contained in the agreement governing the relationship between the investment fund and the custodian, or the custodian and the sub-custodian, to the appointment of entities that are part of an international network of sub-custodians within the organization of the appointed custodian or sub-custodian.

(5) A custodian or sub-custodian must provide to the investment fund a list of all entities that are appointed sub-custodians under a general consent referred to in subsection (4).

(6) Despite any other provisions of this Part, the manager of an investment fund must not act as custodian or sub-custodian of the investment fund.”.

34. Sections 6.2 to 6.5 of the Regulation are replaced with the following:

“6.2. Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada

If portfolio assets are held in Canada by a custodian or sub-custodian, the custodian or sub-custodian must be one of the following:

1. a bank listed in Schedule I, II or III of the Bank Act (S.C. 1991, chapter 46);
2. a trust company that is incorporated under the laws of Canada or a jurisdiction and licensed or registered under the laws of Canada or a jurisdiction, and that has equity, as reported in its most recent audited financial statements, of not less than \$10,000,000;
3. a company that is incorporated under the laws of Canada or of a jurisdiction, and that is an affiliate of a bank or trust company referred to in paragraph 1 or 2, if either of the following applies:
 - (a) the company has equity, as reported in its most recent audited financial statements that have been made public, of not less than \$10,000,000;
 - (b) the bank or trust company has assumed responsibility for all of the custodial obligations of the company for that investment fund.

“6.3. Entities Qualified to Act as Sub-Custodian for Assets Held outside Canada

If portfolio assets are held outside of Canada by a sub-custodian, the sub-custodian must be one of the following:

1. an entity referred to in section 6.2;
2. an entity that
 - (a) is incorporated or organized under the laws of a country, or a political subdivision of a country, other than Canada;
 - (b) is regulated as a banking institution or trust company by the government, or an agency of the government, of the country under the laws of which it is incorporated or organized, or a political subdivision of that country; and

(c) has equity, as reported in its most recent audited financial statements, of not less than the equivalent of \$100,000,000;

3. an affiliate of an entity referred to in paragraph 1 or 2 if either of the following applies:

(a) the affiliate has equity, as reported in its most recent audited financial statements that have been made public, of not less than the equivalent of \$100,000,000;

(b) the entity referred to in paragraph 1 or 2 has assumed responsibility for all of the custodial obligations of the affiliate for that investment fund.

“6.4. Contents of Custodian and Sub-Custodian Agreements

(1) All custodian agreements and sub-custodian agreements of an investment fund must provide for

- (a) the location of portfolio assets;
- (b) any appointment of a sub-custodian;
- (c) requirements concerning lists of sub-custodians;
- (d) the method of holding portfolio assets;
- (e) the standard of care and responsibility for loss; and
- (f) requirements concerning review and compliance reports.

(2) A sub-custodian agreement concerning the portfolio assets of an investment fund must provide for the safekeeping of portfolio assets on terms consistent with the custodian agreement of the investment fund.

(2.1) An agreement referred to under subsections (1) and (2) must comply with the requirements of this Part.

(3) A custodian agreement or sub-custodian agreement concerning the portfolio assets of an investment fund must not

(a) provide for the creation of any security interest on the portfolio assets of the investment fund except for a good faith claim for payment of the fees and expenses of the custodian or a sub-custodian for acting in that capacity or to secure the obligations of the investment fund to repay borrowings by the investment fund from the custodian or a sub-custodian for the purpose of settling portfolio transactions; or

(b) contain a provision that would require the payment of a fee to the custodian or a sub-custodian for the transfer of the beneficial ownership of portfolio assets of the investment fund, other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.

“6.5. Holding of Portfolio Assets and Payment of Fees

(1) Except as provided in subsections (2) and (3) and sections 6.8, 6.8.1 and 6.9, portfolio assets of an investment fund not registered in the name of the investment fund must be registered in the name of the custodian or a sub-custodian of the investment fund, or any of their respective nominees, with an account number or other designation in the records of the custodian sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(2) The custodian or a sub-custodian of an investment fund, or an applicable nominee, must segregate portfolio assets issued in bearer form to show that the beneficial ownership of the property is vested in the investment fund.

(3) The custodian or a sub-custodian of an investment fund may deposit portfolio assets of the investment fund with a depository, or a clearing agency, that operates a book-based system.

(4) The custodian or a sub-custodian of an investment fund arranging for the deposit of portfolio assets of the investment fund with, and their delivery to, a depository, or clearing agency, that operates a book-based system must ensure that the records of any of the applicable participants in that book-based system or of the custodian contain an account number or other designation sufficient to show that the beneficial ownership of the portfolio assets is vested in the investment fund.

(5) An investment fund must not pay a fee to the custodian or a sub-custodian of the investment fund for the transfer of beneficial ownership of portfolio assets of the investment fund other than for safekeeping and administrative services in connection with acting as custodian or sub-custodian.”.

35. Section 6.6 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “a mutual fund” with the words “an investment fund” and the words “the mutual fund, shall” with the words “the investment, must”;

(2) by replacing, in paragraph (2), the words “A mutual fund shall” with the words “An investment fund must”, the words “the mutual fund from liability to the mutual fund” with the words “the investment fund from liability to the investment fund”, and the words “the mutual fund for” with the words “the investment fund for”;

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

“(3) An investment fund may indemnify the custodian or a sub-custodian against legal fees, judgments and amounts paid in settlement, actually and reasonably incurred by that entity in connection with custodial or sub-custodial services provided by that entity to the investment fund, if those fees, judgments and amounts were not incurred as a result of a breach of the standard of care imposed by subsection (1).”;

(4) by replacing, in paragraph (4), the words “A mutual fund shall” with the words “An investment fund must” and the words “a custodian or sub-custodian” with the words “the custodian or a sub-custodian”.

36. Section 6.7 of the Regulation is amended:

- (1) in paragraph (1):

(a) by replacing, in the part preceding subparagraph (a), the words “a mutual fund shall” with the words “an investment fund must”;

(b) by replacing, in subparagraph (a), the words “mutual fund” with the words “investment fund”;

(c) by replacing, in subparagraph (ii) of subparagraph (c), the words “mutual fund” with the words “investment fund”;

- (2) in paragraph (2):

- (a) by replacing the part preceding subparagraph (a) with the following:

“(2) The custodian of an investment fund must, within 60 days after the end of each financial year of the investment fund, advise the investment fund in writing”;

(b) by replacing, in subparagraph (a), the words “mutual fund” with the words “investment fund”;

- (c) by replacing subparagraph (c) with the following:

“(c) whether, to the best of the knowledge and belief of the custodian, each sub-custodian satisfies section 6.2 or 6.3, as applicable.”;

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

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

37. Section 6.8 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “A mutual fund” with the words “An investment fund” and the words “the mutual fund, exceed 10% of the net asset value of the mutual fund” with the words “the investment fund, exceed 10% of the net asset value of the investment fund”;

(2) in paragraph (2):

(a) by replacing, in the part preceding subparagraph (a), the words “A mutual fund” with the words “An investment fund”;

(b) by replacing, in subparagraph (c), the words “the mutual fund, exceed 10% of net asset value of the mutual fund” with the words “the investment fund, exceed 10% of the net asset value of the investment fund”;

(3) by replacing, in paragraph (3), the words “A mutual fund” with the words “An investment fund”;

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

“(4) The agreement by which portfolio assets are deposited in accordance with subsection (1), (2) or (3) must require the person holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.”;

(5) by replacing, in paragraph (5), the words “A mutual fund” with the words “An investment fund”, the words “delivered to the mutual fund” with the words “delivered to the investment fund”, and the words “sub-custodian of the mutual fund” with the words “sub-custodian of the investment fund”.

38. Section 6.9 of the Regulation is replaced with the following:

“6.9. Separate Account for Paying Expenses

An investment fund may deposit cash in Canada with an entity referred to in paragraph 1 or 2 of section 6.2 to facilitate the payment of regular operating expenses of the investment fund.”.

39. Section 7.1 of the Regulation is amended by replacing the part preceding paragraph (a) with the following:

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

40. Section 8.1 of the Regulation is amended by replacing, in the part preceding subparagraph (a), the words “No securities of a mutual fund shall be sold” with the words “A person must not sell securities of a mutual fund”.

41. The title of Part 9 is amended by replacing the words “**A MUTUAL FUND**” with the words “**AN INVESTMENT FUND**”.

42. Section 9.0.1 of the Regulation is replaced with the following:

“9.0.1. Application

This Part, other than subsection 9.3(2), does not apply to an exchange-traded mutual fund that is not in continuous distribution.”.

43. Section 9.1 of the Regulation is amended:

(1) by replacing, in the French text of paragraph (0.1), the words “l’OPC coté” with the words “l’OPC négocié en bourse”;

(2) by replacing, in paragraph (1), the word “shall” with the word “must”;

(3) by replacing, in paragraph (2), the words “by the principal distributor of the mutual fund or by a person providing services to the participating dealer or principal distributor” with the words “a person providing services to the participating dealer, or by the principal distributor of the mutual fund”, and the word “shall” with the word “must”;

(4) by replacing, in paragraph (7), the word “shall” with the word “must”.

44. Section 9.3 of the Regulation is replaced with the following:

“9.3. Issue Price of Securities

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

(2) The issue price of a security of an exchange-traded mutual fund that is not in continuous distribution, or of a non-redeemable investment fund, must not,

(a) as far as reasonably practicable, be a price that causes dilution of the net asset value of other outstanding securities of the investment fund at the time the security is issued; and

(b) be a price that is less than the most recent net asset value per security of that class, or series of a class, calculated prior to the pricing of the offering.”.

45. The Regulation is amended by inserting, after Part 9, the following:

“PART 9.1 WARRANTS AND SPECIFIED DERIVATIVES

“9.1.1. Issuance of Warrants or Specified Derivatives

An investment fund must not

(a) issue a conventional warrant or right; or

(b) enter into a position in a specified derivative the underlying interest of which is a security of the investment fund.”.

46. The Regulation is amended by replacing, in the title of Part 10, the words “**A MUTUAL FUND**” with the words “**AN INVESTMENT FUND**”.

47. Section 10.1 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing the part preceding subparagraph (a) with the following:

“(1) An investment fund must not pay redemption proceeds unless”;

(b) by replacing, in subparagraph (a), the words “the mutual fund to be redeemed is represented by a certificate, the mutual fund” with “the investment fund to be redeemed is represented by a certificate, the investment fund”;

(c) in subparagraph (b):

(i) by replacing, in subparagraph (i), the words “mutual fund” with the word “investment fund”;

(ii) by replacing, in subparagraph (ii), the words “the mutual fund permits” with the words “the investment fund permits” and the words “with the mutual fund” with the words “with the investment fund”;

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

“(2) An investment fund may establish reasonable requirements applicable to securityholders who wish to have the investment fund redeem securities, not contrary to this Regulation, as to procedures to be followed and documents to be delivered by the following times:

(a) in the case of a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, by the time of delivery of a redemption order to an order receipt office of the mutual fund;

(a.1) in the case of an exchange-traded mutual fund that is not in continuous distribution or of a non-redeemable investment fund, by the time of delivery of a redemption order;

(b) by the time of payment of redemption proceeds.”.

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

“(3) A manager of an investment fund must provide to securityholders of the investment fund at least annually a statement containing the following:

(a) a description of the requirements referred to in subsection (1);

(b) a description of the requirements established by the investment fund under subsection (2);

(c) a detailed reference to all documentation required for redemption of securities of the investment fund;

(d) detailed instructions on the manner in which documentation is to be delivered to participating dealers, the investment fund or a person providing services to the investment fund to which a redemption order may be made;

(e) a description of all other procedural or communication requirements;

(f) an explanation of the consequences of failing to meet timing requirements.”;

(4) by replacing, in paragraph (4), the words “a document that is sent to all securityholders” with the words “any document that is sent to all securityholders in that year”.

48. Section 10.2 of the Regulation is amended:

(1) by replacing, in paragraph (1), the word “shall” with the word “must” and the words “or to a person” with the words “or a person”;

(2) by replacing, in paragraph (2), the words “or by a person” with the words “or a person” and the word “shall” with the word “must”;

(3) by replacing, wherever it occurs in paragraph (6), the word “shall” with the word “must”.

49. Section 10.3 of the Regulation is amended:

(1) by replacing, in paragraph (1), the word “shall” with the word “must”;

(2) by replacing, in the French text of paragraphs (2) and (3), the words “OPC coté” with the words “OPC négocié en bourse”;

(3) by adding, after paragraph (3), the following:

“(4) The redemption price of a security of a non-redeemable investment fund must not be a price that is more than the net asset value of the security determined on a redemption date specified in the prospectus or annual information form of the investment fund.”.

50. Section 10.4 of the Regulation is amended:

(1) by replacing paragraph (1.1) with 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 15 business days after the valuation date on which the redemption price was established.

(1.2) A non-redeemable investment fund must pay the redemption proceeds for securities that are the subject of a redemption order no later than 15 business days after the valuation date on which the redemption price was established.”;

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

“(2) The redemption proceeds for a redeemed security, less any applicable investor fees, must be paid to or to the order of the securityholder of the security.”;

(3) by replacing, in the part preceding subparagraph (a) of paragraph (3), the words “A mutual fund” with the words “An investment fund”;

(4) in paragraph (5):

(a) by replacing, in the part preceding subparagraph (a), the words “for redeemed” with the words “for a redeemed” and the words “a mutual fund” with the words “an investment fund”;

(b) by replacing, in subparagraph (a), the words “mutual fund” with the words “investment fund”;

(c) by replacing, in subparagraph (b), the words “the mutual fund delivers” with the words “the investment fund delivers” and the words “mutual fund for” with the words “investment fund for”.

51. Section 10.6 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding subparagraph (a), the words “A mutual fund” with the words “An investment fund” and the words “the mutual fund” with the words “the investment fund”;

(b) by replacing, in subparagraph (a), the words “of the mutual fund” with the words “of the investment fund” and the words “for the mutual fund” with the words “for the investment fund”;

(c) by replacing, in subparagraph (b), the words “mutual fund” with the words “investment fund”;

(2) by replacing paragraphs (2) and (3) with the following:

“(2) An investment fund that has an obligation to pay the redemption proceeds for securities that have been redeemed in accordance with subsection 10.4(1), (1.1) or (1.2) may postpone payment during a period in which the right of securityholders to request redemption of their securities is suspended, whether that suspension was made under subsection (1) or pursuant to an approval of the regulator, except in Québec, or the securities regulatory authority.

“(3) An investment fund must not accept a purchase order for securities of the investment fund during a period in which it is exercising rights under subsection (1) or at a time in which it is relying on an approval of the securities regulatory authority or regulator contemplated by paragraph 5.5(1)(d).

52. Section 11.1 of the Regulation is amended:

(1) by replacing the title with the following:

“11.1. Principal Distributors and Service Providers”;

(2) by replacing paragraphs (1) and (2) with the following:

“(1) Cash received by a principal distributor of a mutual fund, by a person providing services to the mutual fund or the principal distributor, or by a person providing services to a non-redeemable investment fund, for investment in, or on the redemption of, securities of the investment fund, or on the distribution of assets of the investment fund, until disbursed as permitted by subsection (3),

(a) must be accounted for separately and be deposited in a trust account or trust accounts established and maintained in accordance with the requirements of section 11.3; and

(b) may be commingled only with cash received by the principal distributor or service provider for the sale or on the redemption of other investment fund securities.

“(2) Except as permitted by subsection (3), the principal distributor, a person providing services to the mutual fund or principal distributor, or a person providing services to the non-redeemable investment fund, must not use any of the cash referred to in subsection (1) to finance its own or any other operations in any way.”;

(3) in paragraph (3):

(a) by replacing, in the part preceding subparagraph (a), the words “a mutual fund” with the words “an investment fund” and the words “for the purpose of” with the words “for any of the following purposes.”;

(b) by replacing subparagraphs (a) and (b) with the following:

“(a) remitting to the investment fund the amount or, if subsection (5) applies, the net amount, to be invested in the securities of the investment fund;

“(b) remitting to the relevant persons redemption or distribution proceeds being paid on behalf of the investment fund.”;

(c) by replacing, in paragraph (c), the words “mutual fund” with the words “investment fund”;

(4) in paragraph (4):

(a) by replacing, in the part preceding subparagraph (a), the word “shall” with the word “must” and the words “mutual fund” with the words “investment fund”;

(b) by replacing, in subparagraph (a), the words “a mutual fund” with the words “an investment fund”;

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

“(5) When making payments to an investment fund, the principal distributor or service provider may offset the proceeds of redemption of securities of the investment fund or amounts held for distributions to be paid on behalf of the investment fund held in the trust account against amounts held in the trust account for investment in the investment fund.”.

53. Section 11.2 of the Regulation is amended:

(1) by replacing, in subparagraph (a) of paragraph (1), the word “shall” with the word “must”;

(2) by replacing the French text of subparagraph (c) of paragraph (3) with the following:

“c) le paiement des frais qui, au titre de la souscription, de la conversion, de la détention, du transfert ou du rachat de titres sont à la charge des investisseurs.”.

54. Section 11.3 of the Regulation is amended:

(1) by replacing the part preceding subparagraph (a) with the following:

“A principal distributor or participating dealer, a person providing services to the principal distributor or participating dealer, or a person providing services to an investment fund, that deposits cash into a trust account in accordance with section 11.1 or 11.2 must”;

(2) in subparagraph (a):

(a) by replacing, in subparagraph (iii), the words “or of a person providing services to the principal distributor or participating dealer” with “, of a person providing services to the principal distributor or participating dealer, or of a person providing services to the investment fund”;

(b) by replacing, in subparagraph (iv), the words “or of a person providing services to the principal distributor or participating dealer” with the words “of a person providing services to the principal distributor or participating dealer, or of a person providing services to the investment fund”.

55. Section 11.4 of the Regulation is amended:

- (1) by deleting, in paragraph (1), the words “or The Montreal Exchange”;
- (2) by inserting, after paragraph (1.2), the following:

“(1.3) Section 11.1 does not apply to CDS Clearing and Depository Services Inc.”;

- (3) by replacing, in paragraph (2), the word “shall” with the word “must”.

56. Section 12.1 of the Regulation is amended:

(1) by replacing, in the part preceding subparagraph (a) of paragraph (1), the word “shall” with the word “must”;

(2) by replacing, in the part preceding subparagraph (a) of paragraphs (2) and (3), the word “shall” with the word “must”.

57. The title of Part 14 of the Regulation is replaced, in the French text, with the following:

“PARTIE 14 LA DATE DE CLÔTURE DES REGISTRES”.

58. Section 14.0.1 of the French text of the Regulation is amended by replacing the words “l’OPC coté” with the words “l’OPC négocié en bourse”.

59. Section 14.1 of the Regulation is amended:

- (1) by replacing the French text of the title with the following:

“14.1. La date de clôture des registres”;

(2) by replacing, in the part preceding subparagraph (a), the word “shall” with the word “must”.

60. Section 15.1 of the Regulation is replaced with the following:

“15.1. Ability to Make Sales Communications

Sales communications pertaining to an investment fund must be made by a person in accordance with this Part.”.

61. Section 15.2 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding subparagraph (a), the words “no sales communications shall” with the words “a sales communication must not”;

(b) in subparagraph (b):

(i) by inserting, at the end of the part preceding subparagraph (i), “, as applicable,”

(ii) by replacing, in subparagraph (i), the words “a mutual fund” with the words “an investment fund”;

(2) by replacing, in paragraph (2), the word “shall” with the word “must”.

62. Section 15.3 of the Regulation is amended:

(1) by replacing, in paragraph (1), the word “shall” with the word “must” and the words “a mutual fund” with the words “an investment fund”;

(2) by replacing, in paragraph (2), the word “shall” with the word “must”;

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

“(2.1) A sales communication for a non-redeemable investment fund that is restricted by paragraph 15.6(1)(a) from disclosing performance data must not provide performance data for any benchmark or investment, other than a non-redeemable investment fund under common management with the non-redeemable investment fund to which the sales communication pertains.”;

(4) in paragraph (5):

(a) by replacing, in the part preceding subparagraph (a), the word “shall” with the word “must” and the words “a mutual fund” with the words “an investment fund”;

(b) by replacing, in subparagraph (b), the words “mutual fund” with the words “investment fund”;

(5) by replacing, in paragraph (6), the word “shall” with the word “must” and “, either under National Policy Statement No. 39 or under” with the word “under”;

(6) by replacing, in paragraph (7), the word “shall” with the word “must” and the words “mutual fund” with the words “investment fund”.

63. Section 15.4 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding subparagraph (a), the word “shall” with the word “must”;

(b) by deleting, in subparagraph (a), the words “principal distributor or participating”;

(2) by replacing, in paragraph (2), the word “shall” with the word “must”, and “of [the mutual fund]” with “of [the investment fund]” and “in the mutual fund” with “in the investment fund”;

(3) by replacing, in paragraph (3), the word “shall” with the word “must”;

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

“(3.1.) A sales communication, other than a report to securityholders, of a non-redeemable investment fund that does not contain performance data must contain a warning in substantially the following words:

[If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:] “You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on [state the exchange or other market on which the securities of the investment fund are listed or quoted]. If the [units or shares] are purchased or sold on [state the exchange or other market], investors may pay more than the current net asset value when buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them.”

[State the following in all cases:] “There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated.”;

(5) by replacing, in paragraphs (4) to (6), the word “shall” with the word “must”;

- (6) by inserting, after paragraph (6), the following:

“(6.1) A sales communication, other than a report to securityholders, of a non-redeemable investment fund that contains performance data must contain a warning in substantially the following words:

[If the securities of the non-redeemable investment fund are listed or quoted on an exchange or other market, state the following:] “You will usually pay brokerage fees to your dealer if you purchase or sell [units or shares] of the investment fund on [state the exchange or other market on which the securities of the investment fund are listed or quoted]. If the [units or shares] are purchased or sold on [state the exchange or other market], investors may pay more than the current net asset value when buying [units or shares] of the investment fund and may receive less than the current net asset value when selling them.”

[State the following in all cases:] “There are ongoing fees and expenses associated with owning [units or shares] of an investment fund. An investment fund must prepare disclosure documents that contain key information about the fund. You can find more detailed information about the fund in these documents. The indicated rate[s] of return is [are] the historical annual compounded total return[s] including changes in [share or unit] value and reinvestment of all [dividends or distributions] and does [do] not take into account [state the following, as applicable:] [certain fees such as redemption fees or optional charges or] income taxes payable by any securityholder that would have reduced returns. Investment funds are not guaranteed, their values change frequently and past performance may not be repeated.”

- (7) by replacing, in paragraphs (7) to (9), the word “shall” with the word “must”;

- (8) in paragraph (10):

- (a) by replacing the part preceding subparagraph (a) with the following:

“(10) A sales communication for an investment fund or asset allocation service that purports to arrange a guarantee or insurance in order to protect all or some of the principal amount of an investment in the investment fund or asset allocation service must”;

- (b) by replacing, in subparagraph (c), the words “mutual fund” with the words “investment fund”;

- (9) by replacing, in paragraph (11), the word “shall” with the word “must”.

64. Section 15.5 of the Regulation is amended:

(1) by replacing, in paragraph (1), the words “No person shall” with the words “A person must not”;

(2) in paragraph (2):

(a) by replacing, in the part preceding subparagraph (a), the word “shall” with the word “must”;

(b) by replacing, in the French text of subparagraph (a), the word “épargnants” with the word “investisseurs”;

(3) by replacing, in paragraphs (3) and (4), the word “shall” with the word “must”.

65. Section 15.6 of the Regulation is replaced with the following:

“15.6. Performance Data - General Requirements

(1) A sales communication pertaining to an investment fund or asset allocation service must not contain performance data of the investment fund or asset allocation service unless all of the following paragraphs apply:

(a) one of the following subparagraphs applies:

(i) in the case of a mutual fund, either of the following applies:

(A) the mutual fund has distributed securities under a prospectus in a jurisdiction for a period of at least 12 consecutive months;

(B) the mutual fund previously existed as a non-redeemable investment fund and has been a reporting issuer in a jurisdiction for a period of at least 12 consecutive months;

(ii) in the case of a non-redeemable investment fund, the non-redeemable investment fund has been a reporting issuer in a jurisdiction for at least 12 consecutive months;

(iii) in the case of an asset allocation service, the asset allocation service has been operated for at least 12 consecutive months and has invested only in participating funds each of which has distributed securities under a prospectus in a jurisdiction for at least 12 consecutive months;

(iv) if the sales communication pertains to an investment fund or asset allocation service that does not satisfy subparagraph (i), (ii) or (iii), the sales communication is sent only to one of the following:

(A) securityholders of the investment fund or participants in the asset allocation service;

(B) securityholders of an investment fund or participants in an asset allocation service under common management with the investment fund or asset allocation service;

(b) the sales communication includes standard performance data of the investment fund or asset allocation service and, in the case of a written sales communication, the standard performance data is presented in type size that is equal to or larger than that used to present the other performance data;

(c) the performance data reflects or includes references to all elements of return;

(d) except as permitted by subsection 15.3(3), the sales communication does not contain performance data for a period that is,

(i) in the case of a mutual fund, before the time when the mutual fund offered its securities under a prospectus;

(ii) in the case of a non-redeemable investment fund, before the non-redeemable investment fund was a reporting issuer;

(iii) in the case of an asset allocation service, before the asset allocation service commenced operation.

(2) Despite subparagraph (1)(d)(i), a sales communication pertaining to a mutual fund referred to in clause (1)(a)(i)(B) that contains performance data of the mutual fund must include performance data for the period that the fund existed as a non-redeemable investment fund and was a reporting issuer.”.

66. The Regulation is amended by inserting, after section 15.7, the following:

“15.7.1. Advertisements for Non-Redeemable Investment Funds

An advertisement for a non-redeemable investment fund must not compare the performance of the non-redeemable investment fund with any benchmark or investment other than any of the following:

(a) one or more non-redeemable investment funds that are under common management or administration with the non-redeemable investment fund to which the advertisement pertains;

(b) one or more non-redeemable investment funds that have fundamental investment objectives that a reasonable person would consider similar to the non-redeemable investment fund to which the advertisement pertains;

(c) an index.”.

67. Section 15.8 of the Regulation is amended:

(1) by deleting, in the French text of paragraph (1), the words “de titres”;

(2) by replacing paragraphs (2) and (3) with the following:

“(2) A sales communication, other than a report to securityholders, that relates to an asset allocation service, or to an investment fund other than a money market fund, must not provide standard performance data unless,

(a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods;

(a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the mutual fund;

(a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund; and

(b) the periods referred to in paragraphs (a), (a.1) and (a.2) end on the same calendar month end that is

(i) not more than 45 days before the date of the appearance or use of the advertisement in which it is included; and

(ii) not more than 3 months before the date of first publication of any other sales communication in which it is included.

“(3) A report to securityholders must not contain standard performance data unless,

(a) to the extent applicable, the standard performance data has been calculated for 10, 5, 3 and one year periods;

(a.1) in the case of a mutual fund that has been offering securities by way of prospectus for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the mutual fund;

(a.2) in the case of a non-redeemable investment fund that has been a reporting issuer for more than one and less than 10 years, the standard performance data has been calculated for the period since the inception of the non-redeemable investment fund; and

(b) the periods referred to in paragraphs (a), (a.1) and (a.2) end on the day as of which the balance sheet of the financial statements contained in the report to securityholders was prepared.”;

(3) by replacing, in paragraph (4), the word “shall” with the word “must”.

68. Section 15.9 of the Regulation is amended by replacing, wherever they occur, the words “mutual fund” with the words “investment fund”, and making the necessary changes, and the word “shall” with the word “must”.

69. Section 15.10 of the Regulation is amended:

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

“(1) The standard performance data of an investment fund must be calculated in accordance with this Part.”;

(2) in paragraph (2):

(a) by replacing the definition of the expression “standard performance data” with the following:

“standard performance data” means, as calculated in each case in accordance with this Part,

(a) for a money market fund, either of the following:

(i) the current yield;

(ii) the current yield and effective yield, if the effective yield is reported in a type size that is at least equal to that of the current yield; and

(b) for any investment fund other than a money market fund, the total return; and”;

(b) by replacing, in the definition of the expression “total return”, the words “a mutual fund” with the words “an investment fund”;

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

“(3) If there are fees and charges of the type described in paragraph 15.11(1)1 relevant to the calculation of redeemable value and initial value of the securities of an investment fund, the redeemable value and initial value of securities of an investment fund must be the net asset value of one unit or share of the investment fund at the beginning or at the end of the performance measurement period, minus the amount of those fees and charges calculated by applying the assumptions referred to in that paragraph to a hypothetical securityholder account.”;

(4) in paragraph (4):

(a) by replacing, in the part preceding subparagraph (a), the words “a mutual fund” with the words “an investment fund” and the words “the mutual fund” with the words “the investment fund”;

(b) by replacing, in subparagraph (a), the words “a mutual fund” with the words “an investment fund”;

(c) by replacing subparagraph (b) with the following:

“(b) “redeemable value” =

$$R \times (1 + D1/P1) \times (1 + D2/P2) \times (1 + D3/P3) \dots \times (1 + Dn/Pn)$$

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

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

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

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

(5) by replacing, in paragraph (5), the word “shall” with the word “must”;

(6) in paragraph (6):

(a) by replacing, in subparagraph (a), the words “a mutual fund” with the words “an investment fund” and the word “shall” with the word “must”;

(b) by replacing, in subparagraph (b), the word “shall” with the word “must”.

70. Section 15.11 of the Regulation is amended:

(1) in paragraph (1):

(a) by replacing, in the part preceding point 1, the word “shall” with the word “must” and the words “a mutual fund” with the words “an investment fund”;

(b) by replacing, in point 3, the words “mutual fund” with the words “investment fund”;

(c) by replacing point 4 with the following:

“4. Dividends or distributions by the investment fund are reinvested in the investment fund at the net asset value per security of the investment fund on the reinvestment dates during the performance measurement period.”;

(d) by replacing point 6 with the following:

“6. In the case of a mutual fund, a complete redemption occurs at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders.

“7. In the case of a non-redeemable investment fund, a complete redemption occurs at the net asset value of one security at the end of the performance measurement period so that the ending redeemable value includes elements of return that have been accrued but not yet paid to securityholders.”;

(2) by replacing, in the part preceding point 1 of paragraph (2), the word “shall” with the word “must”;

(3) by replacing, in paragraph (3), the word “shall” with the word “must” and the words “mutual fund” with the words “investment fund”.

71. Section 15.13 of the Regulation is replaced with the following:

“15.13. Prohibited Representations

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

(2) A communication by an investment fund or asset allocation service, its promoter, manager, portfolio adviser, principal distributor, participating dealer or a person providing services to the investment fund or asset allocation service must not describe the investment fund as a commodity pool or as a vehicle for investors to participate in the speculative trading of, or leveraged investment in, derivatives, unless the investment fund is a commodity pool as defined in Regulation 81-104 respecting Commodity Pools (chapter V-1.1, r. 40).”.

72. Section 18.1 of the Regulation is amended:

(1) by replacing, in the part preceding subparagraph (a), the words “A mutual fund that is not a corporation shall” with the words “An investment fund that is not a corporation must”;

(2) by replacing, in subparagraph (a), the words “mutual fund” with the words “investment fund”;

(3) by replacing, in subparagraph (b), the words “mutual fund” with the words “investment fund”;

(4) by replacing, in subparagraph (c), the words “mutual fund” with the words “investment fund”.

73. Section 18.2 of the Regulation is replaced with the following:

“18.2. Availability of Records

(1) An investment fund that is not a corporation must make, or cause to be made, the records referred to in section 18.1 available for inspection, free of charge, during normal business hours at its principal or head office by a securityholder or a representative of a securityholder, if the securityholder has agreed in writing that the information contained in the register will not be used by the securityholder for any purpose other than either of the following:

(a) in the case of a mutual fund, attempting to influence the voting of securityholders of the mutual fund or a matter relating to the relationships among the mutual fund, the members of the organization of the mutual fund, and the securityholders, partners, directors and officers of those entities;

(b) in the case of a non-redeemable investment fund, attempting to influence the voting of securityholders of the non-redeemable investment fund or a matter relating to the relationships among the non-redeemable investment fund, the manager and portfolio adviser of the non-redeemable investment fund and any of their affiliates, and the securityholders, partners, directors and officers of those entities.

(2) An investment fund must, upon written request by a securityholder of the investment fund, provide, or cause to be provided, to the securityholder a copy of the records referred to in paragraphs 18.1(a) and (b) if the securityholder

(a) has agreed in writing that the information contained in the register will not be used by the securityholder for any purpose other than attempting to influence the voting of securityholders of the investment fund or a matter relating to the administration of the investment fund; and

(b) has paid a reasonable fee to the investment fund that does not exceed the reasonable costs to the investment fund of providing the copy of the register.”.

74. Paragraph (1) of section 19.1 of the Regulation is amended by inserting, after the words “the regulator”, “, except in Québec, the”

75. Section 19.2 of the Regulation is amended:

(1) by inserting, in paragraphs (1) and (2) and after the words “the regulator”, “, except in Québec, the”;

(2) by replacing, in paragraph (3), the word “shall” with the word “must” and by deleting the word “simplified”.

76. Section 19.3 of the Regulation is replaced with the following:

“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 Regulation 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.”.

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

“20.4. Mortgage Funds

(1) Paragraphs 2.3(1)(b) and (c) do not apply to a mutual fund that has adopted fundamental investment objectives to permit it to invest in mortgages in accordance with Regulation No. 29 respecting Mutual Funds Investing in Mortgages (chapter 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 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.

(2) If a non-redeemable investment fund has adopted fundamental investment objectives to permit it to invest in mortgages, paragraph 2.3(2)(b) does not apply to the non-redeemable investment fund, if the non-redeemable investment fund was established, and has a prospectus for which a receipt was issued, on or before September 22, 2014.”.

78. The Regulation is amended by replacing, in Appendix A, under “Austria”, the word “borse” with the word “Borse”.

79. The Regulation is amended by replacing Appendix C with the following:

“APPENDIX C PROVISIONS CONTAINED IN SECURITIES LEGISLATION FOR THE PURPOSE OF SUBSECTION 4.1(5) - PROHIBITED INVESTMENTS

| Jurisdiction | Securities Legislation Reference |
|---------------------------|--|
| All Jurisdictions | s. 13.6 of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations |
| Newfoundland and Labrador | s. 191 of Reg 805/96 |

**“APPENDIX D INVESTMENT FUND CONFLICT OF INTEREST
INVESTMENT RESTRICTIONS**

| Jurisdiction | Securities Legislation Reference |
|---------------------------|---|
| All Jurisdictions | ss. 13.5(2)(a) and (b) of Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations |
| Alberta | ss. 185(2) and (3) of the Securities Act (Alberta) |
| British Columbia | s. 6(2) of BC Instrument 81-513 Self-Dealing |
| New Brunswick | s. 137(2) of the Securities Act (New Brunswick) |
| Newfoundland and Labrador | ss. 112(2), 112(3), 119(2)(a) and 119(2)(b) of the Securities Act (Newfoundland and Labrador) |
| Nova Scotia | ss. 119(2) and (3) of the Securities Act (Nova Scotia) |
| Ontario | ss. 111(2) and (3) of the Securities Act (Ontario) |
| Saskatchewan | ss. 120(2) and (3) of The Securities Act, 1988 (Saskatchewan) |

**“APPENDIX E INVESTMENT FUND CONFLICT OF INTEREST
REPORTING REQUIREMENTS**

| Jurisdiction | Securities Legislation Reference |
|---------------------------|--|
| Alberta | s. 191(1)(a) of the Securities Act (Alberta) |
| British Columbia | s. 9(a) of BC Instrument 81-513 Self-Dealing |
| New Brunswick | s. 143(1)(a) of the Securities Act (New Brunswick) |
| Newfoundland and Labrador | s. 118(1)(a) of the Securities Act (Newfoundland and Labrador) |
| Nova Scotia | s. 125(1)(a) of the Securities Act (Nova Scotia) |
| Ontario | s. 117(1)(a) of the Securities Act (Ontario) |
| Saskatchewan | s. 126(1)(a) of The Securities Act, 1988 (Saskatchewan) |

80. The Regulation is amended by replacing, wherever they occur in sections 1.3, 4.2, 6.8.1, 11.5 and 15.14, the words “mutual fund” with the words “investment fund”, and making the necessary changes.

81. The Regulation is amended by replacing, wherever it occur in sections 2.1, 2.4, 2.7, 2.8, 2.10, 3.2, 4.2, 9.4, 10.5, 11.5, 15.7, 15.12, 15.14 and 19.2, the word “shall” with the word “must”.

Transition

82. (1) If a non-redeemable investment fund filed a prospectus on or before September 22, 2014,

(a) until September 21, 2015, sections 2.12 to 2.17 of Regulation 81-102 respecting Mutual Funds do not apply to the non-redeemable investment fund; and

(b) until March 21, 2016, sections 2.2, 2.3 and 2.5 of Regulation 81-102 respecting Mutual Funds do not apply to the non-redeemable investment fund.

(2) If a mutual fund filed a prospectus on or before September 22, 2014, until March 21, 2016, subsection 2.5(2) of Regulation 81-102 respecting Mutual Funds, as amended by subsection 11(2) of this Regulation, does not apply to the mutual fund if the mutual fund complies with subsection 2.5(2) of Regulation 81-102 respecting Mutual Funds as that provision was in force on September 21, 2014.

(3) Despite any amendments to the contrary in this Regulation, if a sales communication, other than an advertisement, was printed before September 22, 2014, the sales communication may be used until March 23, 2015.

Effective Date

83. (1) Subject to subsection (2), this Regulation comes into force on September 22, 2014.

(2) Subsection 47(3) of this Regulation comes into force on January 1, 2015.