

**THE MANITOBA SECURITIES COMMISSION**  
**MSC Rule No. 2014-2**  
(Section 149.1, *The Securities Act*)

**AMENDMENTS TO**  
**NATIONAL INSTRUMENT 81-102**  
**MUTUAL FUNDS**

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

2. *The title is amended by replacing "Mutual Funds" with "Investment Funds".*

3. *Section 1.1 is amended*

*(a) in the definition of "**borrowing agent**" by replacing "a mutual fund" with "an investment fund" wherever it occurs,*

*(b) in the definition of "**clone fund**" by replacing "a mutual fund" with "an investment fund" and by replacing "another mutual fund" with "another investment fund",*

*(c) in the definition of "**currency cross hedge**" by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund" wherever it occurs,*

*(d) by replacing the definition of "**custodian**" with the following:*

**"custodian"** means the institution appointed by an investment fund to hold portfolio assets of the investment fund;

*(e) by adding the following definition:*

**"dealer managed investment fund"** means an investment fund the portfolio adviser of which is a dealer manager;

*(f) by repealing the definition of "**dealer managed mutual fund**",*

*(g) in the definition of "**designated rating**" by replacing "mutual fund" with "investment fund",*

*(h) in the definition of "**floating rate evidence of indebtedness**" by replacing paragraph (b) 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;

(i) in the definition of "**fundamental investment objectives**" by replacing "a mutual fund" with "an investment fund", by replacing "the mutual fund" with "the investment fund" wherever it occurs, and by replacing "other mutual funds" with "other investment funds",

(j) by adding the following definitions:

"**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;

(k) by replacing the definition of "**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;

(l) in the definition of "**long position**" by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund" wherever it occurs,

(m) in the definition of "**management expense ratio**" by replacing "a mutual fund" with "an investment fund",

(n) by replacing the definition of "**manager**" with the following:

"**manager**" means an investment fund manager;

(o) by repealing the definitions of "**mutual fund conflict of interest investment restrictions**" and "**mutual fund conflict of interest reporting requirements**",

(p) in the following definitions by replacing "a mutual fund" with "an investment fund":

(i) "**non-resident sub-adviser**";

(ii) "**performance data**",

(q) in the definition of "**portfolio adviser**" by replacing "mutual fund" with "investment fund" wherever it occurs,

(r) in the definition of "**portfolio asset**" by replacing "a mutual fund" with "an investment fund",

(s) in the definition of "**purchase**" by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund",

(t) by repealing the definition of "**redemption payment date**",

(u) in the definition of "**report to securityholders**" by replacing "a mutual fund" with "an investment fund",

(v) by replacing the definition of "**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 or company 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 or company 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;

(w) by adding the following definition:

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

(y) in the definition of "**short position**" by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund" wherever it occurs,

(z) in the definition of "**specified dealer**" by replacing ", or" with ";;",

(aa) in the definition of "**sub-custodian**" by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund" wherever it occurs, and

(bb) in the definition of "**underlying market exposure**" by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund".

4. (1) *Section 1.2 is amended*

(a) *by renumbering it as subsection 1.2(1),*

(b) *by replacing "; and" with ", " at the end of paragraph (a),*

(c) *by adding the following paragraph immediately after paragraph (a):*

(a.1) a non-redeemable investment fund that is a reporting issuer, and, *and*

(d) *in paragraph (b) by replacing "a mutual fund" with "an investment fund" and by replacing "paragraph (a)" with "paragraphs (a) and (a.1)".*

(2) *Section 1.2, as amended by subsection (1), is amended by adding the following subsections:*

**1.2(2)** Despite subsection (1), this Instrument does not apply to a scholarship plan.

**1.2(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.

**1.2(4)** For greater certainty, in British Columbia, if a provision of this Instrument conflicts or is inconsistent with a provision of the *Employee Investment Act* (British Columbia) or the *Small Business Venture Capital Act* (British Columbia), the provision of the Employee Investment Act or the Small Business Venture Capital Act, as the case may be, prevails.

5. *Section 1.3 is amended*

(a) *by replacing "a mutual fund" with "an investment fund",*

(b) *by replacing "separate mutual fund" with "separate investment fund", and*

(c) *by replacing "A mutual fund" with "An investment fund".*

6. *Section 2.1 is amended by replacing "shall" with "must" wherever it occurs.*

7. *Section 2.2 is amended*

(a) *by replacing subsection 2.2(1) with the following:*

**2.2(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.

*(b) by replacing "a mutual fund" with "an investment fund" wherever it occurs,*

*(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*

*(d) by replacing "shall" with "must" wherever it occurs.*

8. *(1) Section 2.3 is amended*

*(a) by renumbering it as subsection 2.3(1), and*

*(b) by replacing "shall" with "must".*

*(2) Section 2.3, as amended by subsection 2.3(1), is amended by adding the following subsection:*

**2.3(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.

9. *Section 2.4 is amended by replacing "shall" with "must" wherever it occurs.*

10. *The heading in section 2.5 is amended by replacing "Mutual Funds" with "Investment Funds".*

11. *(1) Subsection 2.5(1) is amended*

*(a) by replacing "a mutual fund" with "an investment fund",*

*(b) by replacing "another mutual fund" with "another investment fund", and*

*(c) by replacing "other mutual fund" with "other investment fund" wherever it occurs.*

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

*(a) by replacing "A mutual fund shall" with "An investment fund must",*

*(b) by replacing "another mutual fund" with "another investment fund",*

*(c) by replacing paragraph (a) with the following:*

(a) if the investment fund is a mutual fund, the other investment fund is a mutual fund that is subject to this Instrument and offers or has offered securities under a simplified prospectus in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure*,

(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 Instrument;

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

*(d) in paragraph (b) by replacing "other mutual fund" with "other investment fund" and by replacing "other mutual funds" with "other investment funds",*

*(e) by replacing paragraph (c) with the following:*

(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, *and*

*(f) in paragraphs (d), (e) and (f) by replacing "the mutual fund" with "the investment fund" wherever it occurs and by replacing "other mutual fund" with "other investment fund" wherever it occurs.*

*(3) Subsection 2.5(3) is amended*

*(a) by replacing "Paragraphs (2)(a) and (c)" with "Paragraphs (2)(a), (a.1), (c) and (c.1)",*

*(b) in paragraph (a) by replacing "a mutual fund" with "an investment fund", and*

*(c) in paragraph (b) by replacing "mutual fund" with "investment fund" wherever it occurs.*

*(4) Subsection 2.5(4) is amended*

*(a) by replacing "other mutual fund" with "other investment fund", and*

*(b) by replacing "a mutual fund" with "an investment fund".*

*(5) Subsection 2.5(5) is amended by replacing "a mutual fund" with "an investment fund".*

*(6) Subsection 2.5(6) is amended*

*(a) by replacing "A mutual fund" with "An investment fund",*

*(b) by replacing "another mutual fund" with "another investment fund",*

*(c) by replacing "shall" with "must",*

*(d) by replacing "other mutual fund" with "other investment fund", and*

*(e) by replacing "the mutual fund" with "the investment fund".*

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

*(a) by replacing "The mutual fund" with "The investment fund",*

*(b) by replacing "the mutual fund" with "the investment fund",*

*(c) by replacing "a mutual fund" with "an investment fund", and*

*(d) by replacing "another mutual fund" with "another investment fund".*

*12. Section 2.6 is amended*

*(a) by replacing "A mutual fund shall not" with "An investment fund must not,"*

*(b) in paragraph (a) by adding "in the case of a mutual fund," before "borrow",*

*(c) in paragraph (b) by adding "in the case of a mutual fund," before "purchase",*

*(d) in paragraph (c) by adding "in the case of a mutual fund," before "sell", and*

*(e) in paragraph (d) by replacing "mutual fund" with "investment fund".*

*13. Section 2.7 is amended by replacing "shall" with "must" wherever it occurs.*

*14. Section 2.8 is amended by replacing "shall" with "must" wherever it occurs.*

*15. (1) Section 2.9 is amended by renumbering it as subsection 2.9(1).*

*(2) Section 2.9, as amended by subsection (1), is amended by adding the following subsection:*

**2.9(2)** Section 2.2 does not apply to the use of specified derivatives by a non-redeemable investment fund for hedging purposes.

*16. Section 2.10 is amended*

*(a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,*

*(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs,*

*(c) by replacing "shall" with "must" wherever it occurs, and*

*(d) by replacing "A mutual fund" with "An investment fund" wherever it occurs.*

*17. The heading in section 2.11 is amended by replacing "a Mutual Fund" with "an Investment Fund".*

*18.(1) Subsection 2.11(1) is amended*

*(a) by replacing "A mutual fund" with "An investment fund",*

*(b) by replacing "a mutual fund" with "an investment fund",*

(c) by replacing "unless" with ", unless,"

(d) by replacing paragraph (a) with the following:

(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, *and*

(e) in paragraph (b) by replacing "mutual fund" with "investment fund", and by replacing "required for mutual funds intending to engage in the activity" with "referred to in paragraph (a) or (a.1), as applicable".

(2) Subsection 2.11(2) is amended by adding ", other than an exchange-traded mutual fund that is not in continuous distribution," after "A mutual fund".

(3) Section 2.11 is amended by adding the following subsection:

**2.11(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).

19. Section 2.12 is amended

(a) by replacing "a mutual fund" with "an investment fund",

(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs,

(c) by replacing "The mutual fund" with "The investment fund",

(d) by replacing item 12 of subsection (1) 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.,

(e) by replacing "A mutual fund" with "An investment fund" wherever it occurs, and

(f) by replacing "shall" with "must" wherever it occurs.



20. Section 2.13 is amended

(a) by replacing "a mutual fund" with "an investment fund",

(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs,

(c) by replacing item 11 of subsection (1) 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, and

(d) by replacing "A mutual fund" with "An investment fund".

21. Section 2.14 is amended

(a) by replacing "a mutual fund" with "an investment fund", and

(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs.

22. Section 2.15 is amended

(a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,

(b) by replacing "shall" with "must" wherever it occurs,

(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs,

in subsection (1) by replacing "in administering" with "to administer", and

in paragraph (4)(c) by replacing "the mutual fund's" with "the investment fund's".

23. Section 2.16 is amended

(a) by replacing "A mutual fund" with "An investment fund",

(b) by replacing "shall" with "must" wherever it occurs,

(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and

(d) by replacing "a mutual fund" with "an investment fund".

24. Section 2.17 is replaced with the following:

**Commencement of securities lending, repurchase and reverse repurchase transactions by an investment fund**

**2.17(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.

**2.17(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 securities regulatory authority or regulator.

**2.17(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).

**2.17(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).

*25. Section 2.18 is amended by adding the following subsection:*

**2.18(3)** A non-redeemable investment fund must not describe itself as a "money market fund".

*26. Section 3.1 is amended by replacing "No person or company shall" with "A person or company must not".*

*27. The following provisions are amended by replacing "shall" with "must":*

(a) subsection 3.1(2);

(b) section 3.2.

*28. Subsection 3.3(1) is amended*

(a) by replacing "None of the costs" with "The costs", and

(b) by replacing "shall" with "must not".

29. *Section 4.1 is amended*

- (a) by replacing "mutual fund" with "investment fund" wherever it occurs,*
- (b) by replacing "shall" with "must" wherever it occurs, and*
- (c) in subsection (5) by replacing "corresponding provisions contained in securities legislation" with "provisions of securities legislation that are".*

30. *Section 4.2 is amended*

- (a) by replacing "A mutual fund shall" with "An investment fund must",*
- (b) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*
- (c) by replacing "a mutual fund" with "an investment fund".*

31. *Section 4.3 is amended*

- (a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,*
- (b) in subsection (1) by adding ":" after "is",*
- (c) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*
- (d) by replacing "another mutual fund" with "another investment fund" wherever it occurs.*

32. *Section 4.4 is amended*

- (a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,*
- (b) by replacing "shall" with "must" wherever it occurs,*
- (c) by replacing "the mutual fund" with "the investment fund" wherever it occurs,*
- (d) by replacing "A mutual fund" with "An investment fund" wherever it occurs, and*
- (e) in subsection (5) by adding "any of the following:" after "by" and by deleting "or" at the end of paragraph (a).*

33.(1) *Section 5.1 is amended*

- (a) by renumbering it as subsection 5.1(1),*
- (b) by replacing "a mutual fund" with "an investment fund",*
- (c) by adding "the occurrence of each of the following:" after "before",*
- (d) by replacing "the mutual fund" with "the investment fund" wherever it occurs,*
- (e) by replacing "another mutual fund" with "another issuer" wherever it occurs,*

(f) by replacing "other mutual fund" with "other issuer" wherever it occurs,

(g) by deleting "or" at the end of subparagraph (f)(ii),

(h) by replacing "." with ";" at the end of paragraph (g), and

(i) by adding the following paragraph:

(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) Section 5.1, as amended by subsection (1), is amended by adding the following subsection:

5.1(2) An investment fund must not bear any of the costs or expenses associated with a restructuring referred to in paragraph (1)(h)..

34. Section 5.2 is amended

(a) by replacing "the mutual fund" with "the investment fund" wherever it occurs,

(b) by replacing "section 5.1" with "subsection 5.1(1)" wherever it occurs,

(c) by replacing "shall" with "must" wherever it occurs, and

(d) by replacing "a mutual fund" with "an investment fund" wherever it occurs.

35.(1) Subsection 5.3(1) is amended

(a) by replacing "section 5.1" with "subsection 5.1(1)",

(b) by replacing "a mutual fund" with "an investment fund",

(c) by replacing "paragraphs 5.1(a)" with "paragraphs 5.1(1)(a)" wherever it occurs,

(d) in paragraph (a) by replacing "the mutual fund" with "the investment fund" wherever it occurs,

(e) in subparagraph (a)(iii) by adding "at least" after "sent",

(f) in paragraph (b) by replacing "if" with "if, in the case of a mutual fund,", and

(g) in subparagraph (b)(iii) by adding "at least" after "sent".

(2) Subsection 5.3(2) is replaced with the following:

**5.3(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 NI 81-107;

(ii) the investment fund is being reorganized with, or its assets are being transferred to, another investment fund to which this Instrument and NI 81-107 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 Instrument and NI 81-107 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).

36. *The heading in section 5.3.1 is amended by replacing "the Mutual Fund" with "an Investment Fund".*

37. *Section 5.3.1 is amended*

*(a) by replacing "the mutual fund may" with "an investment fund must", and*

*(b) in paragraphs (a) and (b) by replacing "mutual fund" with "investment fund" wherever it occurs.*

38. *Section 5.4 is amended*

*(a) by replacing "a mutual fund" with "an investment fund",*

*(b) by replacing "section 5.1" with "subsection 5.1(1)",*

*(c) by replacing "shall" with "must" wherever it occurs,*

*(d) in subsection (1) by replacing "not less than" with "at least",*

*(e) by replacing "paragraphs 5.1(a)" with "paragraphs 5.1(1)(a)",*

*(f) by replacing "the mutual fund" with "the investment fund", and*

*(g) by replacing "the mutual fund's" with "the investment fund's".*

39. *Section 5.5 is amended*

*(a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,*

*(b) in subsection (1) by adding the following paragraph immediately after paragraph (a):*

*(a.1) a change of control of the manager of an investment fund occurs,;*

*(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs,*

*(d) by replacing "another mutual fund" with "another issuer", and*

*(e) by repealing subsection (2).*

40.(1) *Subsection 5.6(1) is replaced with the following:*

**5.6(1)** Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator 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 Instrument 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 Instrument, 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

(ii) 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 National Instrument 81-106 *Investment Fund Continuous Disclosure* 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.

**5.6(1.1)** Despite subsection 5.5(1), the approval of the securities regulatory authority or regulator 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 NI 81-107.



(2) *Subsection 5.6(2) is amended by*

- (a) *by replacing "A mutual fund" with "An investment fund",*
- (b) *by replacing "shall" with "must",*
- (c) *by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*
- (d) *by replacing "a mutual fund" with "an investment fund".*

41.(1) *Subsection 5.7(1) is amended*

- (a) *by replacing "shall" with "must",*
- (b) *by replacing "subsection 5.5(2)" with "(a.1)",*
- (c) *by replacing "the mutual fund" with "the investment fund" wherever it occurs,*
- (d) *in subparagraph(a)(iv) by adding "or regulator" after "authority",*
- (e) *by replacing subparagraph (b)(ii) with the following*
  - (ii) *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,, and*

*by replacing subparagraph (b)(iii) with the following:*

- (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.*

(2) *Subsection 5.7(2) is amended*

- (a) *by replacing "A mutual fund" with "An investment fund",*
- (b) *by replacing "shall" with "must",*
- (c) *by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*
- (d) *by replacing "situate" with "situated".*

(3) *Subsection 5.7(3) is amended*

- (a) *by replacing "A mutual fund" with "An investment fund",*
- (b) *by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*
- (c) *by replacing "situate" with "situated".*

42. Section 5.8 is amended

(a) in subsection (1) by replacing "No person or company that is a manager of a mutual fund may" with "A person or company must not" and by replacing "the mutual fund" with "an investment fund",

(b) in paragraph (1)(a) by replacing "the mutual fund" with "the investment fund",

(c) in subsection (2) by replacing "No mutual fund shall" with "A mutual fund must not", and

(d) in subsection (3) by replacing "shall" with "must".

43. The Instrument is amended by adding the following section:

**Termination of a non-redeemable investment fund**

**5.8.1(1)** A non-redeemable investment fund must not terminate unless the investment fund first issues and files a news release that discloses the termination.

**5.8.1(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).

**5.8.1(3)** Subsections (1) and (2) do not apply in respect of a transaction referred to in paragraph 5.1(1)(f).

44. Section 5.9 is amended by replacing "mutual fund" with "investment fund" wherever it occurs.

45. Section 6.1 is amended

(a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,

(b) by replacing "shall" with "must" wherever it occurs,

(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs,

(d) in subsection (3) by deleting ", for each appointment,"

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

(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,

(f) in paragraph (3)(b) by replacing "a person or company" with "an entity" and by replacing ";" with ",",

(g) in paragraph (3)(c) by replacing ";" with ",",

(h) in subsection (4) by replacing "paragraph (3)(a)" with "paragraphs (3)(a) and (a.1)" and by replacing "persons or companies" with "entities", and

(i) in subsection (5) by replacing "each person or company that is appointed sub-custodian" with "all entities that are appointed sub-custodians".

46. Section 6.2 is replaced with the following:

**Entities qualified to act as custodian or sub-custodian for assets held in Canada**

**6.2** 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* (Canada);
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.

47. Section 6.3 is replaced with the following:

**Entities qualified to act as sub-custodian for assets held outside Canada**

**6.3** 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.

48. Section 6.4 is amended

(a) by replacing subsection 6.4(1) with the following:

**6.4(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.

(b) in subsection 6.4(2) by replacing "a mutual fund shall" with "an investment fund must" and by replacing "the mutual fund" with "the investment fund",

(c) by adding the following subsection immediately after subsection 6.4(2):

**6.4(2.1)** An agreement referred to under subsections (1) and (2) must comply with the requirements of this Part., and

(d) by replacing subsection (3) with the following:

**6.4(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.

49. Section 6.5 is replaced with the following:

**Holding of portfolio assets and payment of fees**

**6.5(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.

**6.5(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.

**6.5(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.

**6.5(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.

**6.5(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.

*50. Section 6.6 is amended*

*(a) by replacing "a mutual fund" with "an investment fund",*

*(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs,*

*(c) by replacing "shall" with "must" wherever it occurs,*

*(d) by replacing "A mutual fund" with "An investment fund" wherever it occurs,*

*(e) in subsection (3) by replacing "a custodian or sub-custodian" with "the custodian or a sub-custodian" and by replacing "described in" with "imposed by", and*

*(f) in subsection (4) by replacing "a custodian or sub-custodian" with "the custodian or a sub-custodian".*

*51. Section 6.7 is amended*

*(a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,*

*(b) by replacing "shall" with "must" wherever it occurs,*

*(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs,*

*(d) in subsection (2) by replacing "not more than" with "within", and*

*(e) by replacing paragraph (2)(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.*

*52. Section 6.8 is amended*

*(a) by replacing "A mutual fund" with "An investment fund" wherever it occurs,*

*(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*

*(c) by replacing subsection 6.8(4) with the following:*

**6.8(4)** The agreement by which portfolio assets are deposited in accordance with subsection (1), (2) or (3) must require the person or company holding the portfolio assets to ensure that its records show that the investment fund is the beneficial owner of the portfolio assets.

*53. Section 6.8.1 is amended*

*(a) by replacing "the mutual fund's" with "the investment fund's",*

*(b) by replacing "a mutual fund" with "an investment fund",*

*(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*

*(d) by replacing "A mutual fund" with "An investment fund" wherever it occurs.*

*54. Section 6.9 is amended*

*(a) by replacing "A mutual fund" with "An investment fund",*

*(b) by replacing "institution" with "entity", and*

*(c) by replacing "the mutual fund" with "the investment fund".*

*55. Section 7.1 is amended*

*(a) by replacing "shall not pay" with "must not pay", and*

*(b) by replacing "no securities of a mutual fund shall" with "securities of a mutual fund must not".*

*56. Section 8.1 is amended by replacing "No securities of a mutual fund shall be sold" with "A person or company must not sell securities of a mutual fund".*

*57. The heading in Part 9 is amended by replacing "a Mutual Fund" with "an Investment Fund".*

*58. Section 9.0.1 is replaced with the following:*

**Application**

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

*59. Section 9.1 is amended by replacing "shall" with "must" wherever it occurs.*

*60.(1) Section 9.3 is amended*

*(a) by renumbering it as subsection 9.3(1), and*

*(b) by replacing "shall" with "must".*

(2) Section 9.3, as amended by subsection (1), is amended by adding the following subsection:

**9.3(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.

61. Section 9.4 is amended by replacing "shall" with "must" wherever it occurs.

62. The Instrument is amended by adding the following Part immediately after Part 9:

## PART 9.1 – WARRANTS AND SPECIFIED DERIVATIVES

### Issuance of warrants or specified derivatives

**9.1.1** 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..

63. The heading in Part 10 is amended by replacing "a Mutual Fund" with "an Investment Fund".

64. (1) Subsection 10.1(1) is amended

- (a) by replacing "No mutual fund" with "An investment fund",
- (b) by replacing "shall" with "must not", and
- (c) by replacing "the mutual fund" with "the investment fund" wherever it occurs.

(2) Subsection 10.1(2) is amended

- (a) by replacing "A mutual fund" with "An investment fund",
- (b) by replacing "the mutual fund" with "the investment fund",
- (c) by adding "by the following times:" after "delivered", and
- (d) by replacing paragraph (a) with the following:

(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;

(3) *Subsection 10.1(3) is replaced with the following:*

**10.1(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 or company 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.

65. *Section 10.2 is amended by replacing "shall" with "must" wherever it occurs.*

66. *Section 10.3 is amended*

*(a) by replacing "shall" with "must", and*

*(b) by adding the following subsection:*

(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.

67. *Section 10.4 is amended*

*(a) by replacing subsection 10.4(1.1) with the following:*

**10.4(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.

**10.4(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.,

*(b) in subsection 10.4(3) by replacing "A mutual fund" with "An investment fund", and*

*(c) in subsection 10.4(5) by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund" wherever it occurs.*



68. Section 10.5 is amended by replacing "shall" with "must" wherever it occurs.

69. (1) Subsection 10.6(1) is amended

(a) by replacing "A mutual fund" with "An investment fund", and

(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs.

(2) Subsection 10.6(2) is amended

(a) by replacing "A mutual fund" with "An investment fund",

(b) by adding ", (1.1) or (1.2)" after "subsection 10.4(1)", and

(c) by adding "or regulator" after "authority".

(3) Subsection 10.6(3) is amended

(a) by replacing "A mutual fund shall" with "An investment fund must",

(b) by replacing "the mutual fund" with "the investment fund", and

(c) by replacing "authorities" with "authority or regulator".

70. The heading in section 11.1 is amended by adding "and Service Providers" after "Distributors".

71. (1) Subsection 11.1(1) is replaced with the following:

**11.1(1)** Cash received by a principal distributor of a mutual fund, by a person or company providing services to the mutual fund or the principal distributor, or by a person or company 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) Subsection 11.1(2) is amended

(a) by replacing "distributor or person" with "distributor, a person", and

(b) by replacing "shall" with ", or a person or company providing services to the non-redeemable investment fund, must".

(3) Subsection 11.1(3) is amended

(a) by replacing "a mutual fund" with "an investment fund",

(b) by replacing "for the purpose of" with "for any of the following purposes:".

(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and

(d) by deleting "or" at the end of paragraph (b).

(4) Subsection 11.1(4) is amended

(a) by replacing "shall" with "must",

(b) by replacing "the mutual funds" with "the investment funds", and

(c) by replacing "a mutual fund" with "an investment fund".

(5) Subsection 11.1(5) is amended

(a) by replacing "a mutual fund" with "an investment fund", and

(b) by replacing "the mutual fund" with "the investment fund" wherever it occurs.

72. Section 11.2 is amended by replacing "shall" with "must" wherever it occurs.

73. Section 11.3 is amended

(a) by replacing "dealer, or a person" with "dealer, a person",

(b) by adding "or a person or company providing services to an investment fund," before "that deposits cash",

(c) by replacing "shall" with "must",

(d) in subparagraph (a)(iii) by replacing "dealer or of a person" with "dealer, of a person" and by adding "or of a person or company providing services to the investment fund," before "and", and

(e) in subparagraph (a)(iv) by replacing "dealer, or of a person" with "dealer, of a person" and by adding "or of a person or company providing services to the investment fund;" at the end of the subparagraph.

74. Section 11.4 is amended

(a) by adding the following subsection immediately after subsection 11.4(1.2):

**11.4(1.3)** Section 11.1 does not apply to CDS Clearing and Depository Services Inc.,  
and

(b) by replacing "shall" with "must".

75. Section 11.5 is amended

(a) by replacing "mutual fund" with "investment fund" wherever it occurs, and

(b) by replacing "shall" with "must".

76. Section 12.1 is amended by replacing "shall" with "must" wherever it occurs.

77. Section 14.1 is amended by replacing "shall" with "must".

78. Section 15.1 is amended

(a) by replacing "a mutual fund" with "an investment fund",

(b) by replacing "may" with "must", and

(c) by deleting "only".

79. Section 15.2 is amended

(a) in subsection (1) by replacing "no sales communication shall" with "a sales communication must not",

(b) in paragraph (1)(b) by adding ", as applicable," after "the fund facts document" and by replacing "a mutual fund" with "an investment fund", and

(c) in subsection (2) by replacing "shall" with "must".

80. Section 15.3 is amended

(a) by replacing "shall" with "must" wherever it occurs,

(b) in subsection 15.3(1) by replacing "a mutual fund" with "an investment fund",

(c) in subsection 15.3(2) by replacing "15.6(a)" with "15.6(1)(a)",

(d) by adding the following subsection immediately after subsection 15.3(2):

**15.3(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.,

(e) in subsection (5) by replacing "a mutual fund" with "an investment fund" and by replacing "the mutual fund" with "the investment fund",

(f) in subsection (6) by deleting ", either under National Policy Statement No. 39 or", and

(g) in subsection (7) by replacing "mutual fund" with "investment fund".

81. (1) Subsection 15.4(1) is amended

(a) by replacing "shall" with "must", and

(b) by deleting "principal distributor or participating".

(2) *Subsection 15.4(2) is amended*

(a) *by replacing "shall" with "must", and*

(b) *by replacing "mutual fund" with "investment fund" wherever it occurs.*

(3) *Subsection 15.4(3) is amended by replacing "shall" with "must".*

(4) *Section 15.4 is amended by adding the following subsection immediately after subsection 15.4(3):*

**15.4(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) *The following subsections are amended by replacing "shall" with "must":*

(a) *subsection 15.4(4);*

(b) *subsection 15.4(5);*

(c) *subsection 15.4(6).*

(6) *Section 15.4 is amended by adding the following subsection immediately after subsection 15.4(6):*

**15.4(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) *The following subsections are amended by replacing "shall" with "must":*

(a) *subsection 15.4(7);*

(b) *subsection 15.4(8);*

(c) *subsection 15.4(9).*

(8) *Subsection 15.4(10) is amended*

(a) *by replacing "a mutual fund" with "an investment fund",*

(b) *by replacing "the mutual fund" with "the investment fund" wherever it occurs, and*

(c) *by replacing "shall" with "must".*

(9) *Subsection 15.4(11) is amended by replacing "shall" with "must".*

82. *Section 15.5 is amended*

(a) *in subsection 15.5(1) by replacing "No person or company shall" with "A person or company must not", and*

(b) *by replacing "shall" with "must" wherever it occurs.*

83. *Section 15.6 is replaced with the following:*

**Performance data - general requirements**

**15.6(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.

**15.6(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.

*84. Section 15.7 is amended by replacing "shall" with "must".*

*85. The Instrument is amended by adding the following section immediately after section 15.7:*

**Advertisements for non-redeemable investment funds**

**15.7.1** 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.

86. (1) *Subsection 15.8(2) is amended*

(a) *by replacing "asset allocation service or to a mutual fund" with "asset allocation service, or to an investment fund",*

(b) *by replacing "may" with ", must not",*

(c) *by replacing "only if" with "unless,",*

(d) *by replacing paragraph (a) with the following:*

(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, *and*

(e) *in paragraph (b) by replacing "paragraph (a)" with "paragraphs (a), (a.1) and (a.2)".*

(2) *Subsection 15.8(3) is amended*

(a) *by replacing "may" with "must not",*

(b) *by replacing "only if" with "unless,",*

(c) *by replacing paragraph (a) with the following:*

(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, *and*

(d) *in paragraph (b) by replacing "paragraph (a)" with "paragraphs (a), (a.1) and (a.2)".*

(3) *Subsection 15.8(4) is amended by replacing "shall" with "must".*

87. Section 15.9 is amended

- (a) by replacing "the mutual fund" with "the investment fund" wherever it occurs,
- (b) by replacing "shall" with "must" wherever it occurs,
- (c) by replacing "a mutual fund" with "an investment fund",
- (d) by replacing "another mutual fund" with "another investment fund", and
- (e) by replacing "other mutual fund" with "other investment fund".

88. Section 15.10 is amended

- (a) by replacing "a mutual fund" with "an investment fund" wherever it occurs,
- (b) by replacing "shall" with "must" wherever it occurs,
- (c) in subsection (1) by replacing "section" with "Part",
- (d) in subsection (2) by replacing the definition of "**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
- (e) by replacing "the mutual fund" with "the investment fund" wherever it occurs.

89. Section 15.11 is amended

- (a) by replacing "shall" with "must" wherever it occurs,
- (b) by replacing "a mutual fund" with "an investment fund",
- (c) by replacing "the mutual fund" with "the investment fund" wherever it occurs, and
- (d) by replacing item 6 of subsection (1) 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..

90. *Section 15.12 is amended by replacing "shall" with "must".*

91. *Section 15.13 is amended*

*(a) in subsection (1) by replacing "mutual fund shall" with "investment fund must", and*

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

*(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 National Instrument 81-104 *Commodity Pools*..*

92. *The heading in section 15.14 is amended by replacing "Mutual Funds" with "Investment Funds".*

93. *Section 15.14 is amended*

*(a) by replacing "a mutual fund" with "an investment fund", and*

*(b) by replacing "shall" with "must" wherever it occurs.*

94. *Section 18.1 is amended*

*(a) by replacing "A mutual fund" with "An investment fund",*

*(b) by replacing "shall" with "must", and*

*(c) by replacing "the mutual fund" with "the investment fund" wherever it occurs.*

95. *Section 18.2 is amended*

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

*(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., *and*

*(b) in subsection (2) by replacing "A mutual fund shall" with "An investment fund must" and by replacing "the mutual fund" with "the investment fund" wherever it occurs.*

96. *Subsection 19.2(3) is amended by replacing "shall" with "must".*

97. *Subsection 19.3(1) is amended by replacing ";" with ".".*

98. *(1) Section 20.4 is amended*

*(a) by renumbering it as subsection 20.4(1), and*

*(b) by replacing "2.3(b)" with "2.3(1)(b)".*

*(2) Section 20.4, as amended by subsection (1), is amended by adding the following subsection:*

*(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..*

99. *Appendix C is amended*

*(a) by replacing "British Columbia" with "All Jurisdictions",*

*(b) by replacing " s. 81 of the Securities Rules (British Columbia)" with "s. 13.6 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations",*

*(c) by deleting "New Brunswick" and "s. 13.2 of Local Rule 31-501 Registration Requirements", and*

*(d) by deleting "Nova Scotia" and "s. 67 of the General Securities Rules".*

100. *The Instrument is amended by adding the following appendices after Appendix C:*

#### **Appendix D**

##### **Investment Fund Conflict of Interest Investment Restrictions**

<b>Jurisdiction</b>	<b>Securities Legislation Reference</b>
All Jurisdictions	ss. 13.5(2)(a) and (b) of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>
Alberta	ss. 185(2) and (3) of the <i>Securities Act</i> (Alberta)
British Columbia	s. 6(2) of BC Instrument 81-513 <i>Self-Dealing</i>
New Brunswick	s. 137(2) of the <i>Securities Act</i> (New Brunswick)

Newfoundland and Labrador	ss. 112(2), 112(3), 119(2)(a) and 119(2)(b) of the <i>Securities Act</i> (Newfoundland and Labrador)
Nova Scotia	ss. 119(2) and (3) of the <i>Securities Act</i> (Nova Scotia)
Ontario	ss. 111(2) and (3) of the <i>Securities Act</i> (Ontario)
Saskatchewan	ss. 120(2) and (3) of the <i>The Securities Act, 1988</i> (Saskatchewan)

## Appendix E

### Investment Fund Conflict of Interest Reporting Requirements

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

#### Transition

101.(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 National Instrument 81-102 *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 National Instrument 81-102 *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 National Instrument 81-102 *Mutual Funds*, as amended by subsection 11(2) of this Instrument, does not apply to the mutual fund if the mutual fund complies with subsection 2.5(2) of National Instrument 81-102 *Mutual Funds* as that provision was in force on September 21, 2014.

(3) Despite any amendments to the contrary in this Instrument, 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

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

(2) Subsection 64(3) of this Instrument comes into force on January 1, 2015.

**Citation**

103. This Instrument may be cited as MSC Rule 2014-2.